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COURT OF GENERAL SESSIONS OF THE PEACE

IN AND FOR THE COUNTY OF NEW YORK

PART II.

-----X
THE PEOPLE OF THE STATE OF NEW YORK : Before :-

-against-

: HON. THOMAS C. O'SULLIVAN,

ELISE HOFFMAN,
(Two cases)

: and a Jury.
:
-----X

New York, Tuesday, April 25th, 1911.

THE DEFENDANT IS INDICTED FOR ABORTION.

INDICTMENT FILED MARCH 8TH, 1911.

A p p e a r a n c e s :-

T. Channon Press, Esq., Assistant District Attorney
for the people.

Max Steinert, Esq.,

Abraham Levy, Esq. and

Murray M. Simon, Esq.,

for the Defendant.

(Twelve talesmen are duly called and take their
seats in the jury box)

Amos G. Russell,
Official Stenographer.

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MR. PRESS: Gentlemen, this is a case of abortion. Are any of you gentlemen prejudiced against the enforcement of that law?

(No response)

MR. PRESS: Are any of you gentlemen prejudiced against the Colored race?

(No response)

MR. PRESS: Would you take the word of a colored person, just as you would the word of a white person? Would you, Mr. Foreman?

THE FOREMAN: Yes, sir.

MR. PRESS: Would you?

THE SECOND JUROR: Yes.

MR. PRESS: You would believe a colored person just as readily as you would a white person?

THE SECOND JUROR: Yes, sir.

MR. PRESS: Would you?

THE THIRD JUROR: Yes, sir.

MR. PRESS: Do any of you gentlemen know Mr. Levy, the attorney for the defendant here?

(No response)

MR. PRESS: Impossible. None of you know Mr. Levy? That is wonderful, or his associates in this case?

(No response)

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MR. PRESS: Do any of you know Elise Hoffman,
or Joseph Hoffman, or Jacob Hoffman?

(NO RESPONSE)

MR. LEVY: One of these jurors has served on a
case which I tried.

MR. PRESS: Which one?

MR. LEVY: Number 11.

(The eleventh juror is challenged peremptorily
by Mr. Press)

MR. PRESS: Do you want to get away?

THE SECOND JUROR: If I possibly can.

MR. LEVY: He looks like a good juror.

MR. PRESS: You won't consent to excuse him?

MR. LEVY: Have you a very important engagement?

JUROR NUMBER TWO: I have a very important busi-
ness engagement. I would like to get away.

(The Second Juror is excused by consent)

MR. PRESS: The people will excuse No. 1.

THE CLERK OF THE COURT: Mr. Rubenstein is chal-
lenged. George E. Shaw.

(Mr. George E. Shaw takes the foreman's seat)

MR. PRESS: No challenge for cause.

MR. LEVY: Under the provisions of the Code of
Criminal Procedure, your Honor, I request the District
Attorney to exhaust his peremptory challenges before the

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defense can be called upon so to do.

THE COURT: All right.

MR. PRESS: That is utterly impossible, if your Honor pleases, in view of the fact --

THE COURT: Just a moment. Mr. Stenographer, read Mr. Levy's motion.

(Mr. Levy's motion is read by the stenographer)

THE COURT: Motion denied.

MR. LEVY: Exception, please.

THE COURT: Proceed.

MR. LEVY: Challenges are withdrawn, as I understand.

MR. PRESS: I said, no challenges for cause.

MR. LEVY: Let that be noted on the record.

Gentlemen of the Jury, as the District Attorney informed you, this case is brought against the defendant at the bar, charging her with having committed an abortion upon the person of a young colored woman, which resulted in a miscarriage of that woman. Is any man--any gentleman on this panel who entertains such a prejudice against that offense as will operate to the disadvantage of the defendant? In other words, would the very nature of the offense charged against her engender in your minds any hostility against her?

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(No response)

MR. LEVY: You need not be afraid to speak, because my purpose is simply to get twelve fair minded men who will approach this case without any prejudice, with no bias, and with the determination to be fair in the performance of their duty, so, if you have any doubt concerning the matters of which you are interrogated, I wish you would answer and tell me so.

(No response)

MR. LEVY: It is made a crime under the law of this state for any person to either, through instruments, or with drugs, to bring about an abortion of a pregnant woman; and I ask you gentlemen whether you entertain any prejudice against a person so charged with such an offense. Is there any gentleman upon this panel who has the pleasure of knowing the learned Assistant District Attorney, Mr. Press?

(No response)

MR. LEVY: Or Mr. Wasservogel, or any other gentleman in the District Attorney's office?

(No response)

MR. LEVY: Mr. Shaw, what business are you in?

MR. SHAW: Contractor.

MR. LEVY: Have you had any experience as a trial juror in a criminal case?

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MR. SHAW: sir?

MR. LEVY: Have you had any experience as a juror before this Term?

MR. SHAW: No, sir.

MR. LEVY: You think you could approach this case with a fair mind?

MR. SHAW: I will try.

MR. LEVY: No doubt of it in your mind?

MR. SHAW: No.

MR. LEVY: Married man?

MR. SHAW: Yes, sir.

MR. LEVY: Mr. Newburg, what business are you in?

MR. ISAAC J. NEWBURGH: Real estate.

MR. LEVY: And have you ever sat in the trial of Criminal cases before this Term of Court?

MR. NEWBURGH: Not before this term.

MR. LEVY: You have no prejudice against a person charged with the offense that this defendant is charged with?

MR. NEWBURGH: Not any.

MR. LEVY: It is provided, gentlemen, in the law, as his Honor will tell you, that a person charged with crime is privileged to become a witness for himself, or herself, if he or she chooses, but if the defendant does not take the witness stand, no presumption shall go against

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he will have covered the ground thoroughly.

MR. LEVY: I asked the jurors whether --

THE COURT: I understand, Mr. Levy. Of course, the Court will allow a reasonable latitude in that, but the Court will not allow the attorney to indulge too much in his definitions of the law. He may, if he wishes, of course, to a certain extent, outline his own policy of the trial, if he cares to, and, with regard to that, if there are certain rules of law which may touch that policy, I think he may refer to them. Not beyond that.

MR. LEVY: Yes, sir, not beyond that. Now, then, if the learned Judge tells you that the burden of proof is upon the prosecution, and that the defendant need not make any reply until the guilt of the prisoner is established beyond a reasonable doubt, such instruction will be followed by you, would it?

(No response)

MR. LEVY: In other words, if, upon the people's case, you entertain a reasonable doubt, as to her ~~her~~ guilt, you will give the defendant the benefit of that doubt. Am I right about that, gentlemen?

(No response)

MR. LEVY: I take it that you are a married man, as well, Mr. Newburg?

MR. NEWBURG: Yes.

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MR. LEVY: Mr. Jager, what business are you in?

MR. HENRY JAGER: Saloon business.

MR. LEVY: You have had experience as a juror?

MR. JAEGER: Yes, sir.

MR. LEVY: And the law which the Judge tells you is the law, that you will follow, will you?

MR. JAEGER: Yes, sir.

MR. LEVY: And you would not convict a person unless you were satisfied upon your conscience beyond a reasonable doubt of the guilt of that person?

MR. JAEGER: No, sir.

MR. LEVY: Mr. Fleisher, what business are you in?

MR. WALTER L. FLEISHER: Engineer.

MR. LEVY: May I take the liberty of asking how old you are?

MR. FLEISHER: Thirty-one.

MR. LEVY: Married?

MR. FLEISHER: Yes.

MR. LEVY: And I presume your answers will be the same, practically, in response to questions I put generally as was made by -- as I infer was made by reason of your silence?

MR. FLEISHER: Yes.

MR. LEVY: Mr. Gons, what business are you in?

MR. VINCENT GONS: Cigar business.

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MR. LEVY: And have you had any experience as a trial juror in criminal cases?

MR. GONS: Yes, sir.

MR. LEVY: Before this term of Court?

MR. GONS: Yes, sir.

MR. LEVY: Where is your business?

MR. GONS: 134 Second Avenue.

MR. LEVY: Manufacturer?

MR. GONS: Yes, sir.

MR. LEVY: In business alone?

MR. GONS: Yes, sir.

MR. LEVY: Mr. Manheim, what business are you in?

MR. WILLIAM F. MANHEIM: Meat dealer.

MR. LEVY: Married man?

MR. MANHEIM: Yes, sir.

MR. LEVY: And, if the Judge tells you it is the law, you would require the burden of proof to be sustained by the prosecution before you would convict?

MR. MANHEIM: Yes.

MR. LEVY: Mr. Josephson, what is your business?

MR. MAX JOSEPHSON: Manufacturing Cigars.

MR. LEVY: Where?

MR. JOSEPHSON: 198 Broome Street.

MR. LEVY: In business alone?

MR. JOSEPHSON: Yes.

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MR. LEVY: Have you ever sat on a jury before?

MR. JOSEPHSON: The first time, in General Sessions.

MR. LEVY: The first time in a Criminal Court?

MR. JOSEPHSON: Yes.

MR. LEVY: Mr. Sanchez, are you a married man?

MR. ARNOLD SANCHEZ: No, sir.

MR. LEVY: May I take the liberty of asking you how old you are?

MR. SANCHEZ: Twenty-seven.

MR. LEVY: And where do you live?

MR. SANCHEZ: 39 Catherine Street.

MR. LEVY: You live with your folks?

MR. SANCHEZ: My mother.

MR. LEVY: What business are you in?

MR. SANCHEZ: Advertising.

MR. LEVY: You make the same answers, I suppose, to the questions that the other gentlemen have?

MR. SANCHEZ: I would.

MR. LEVY: I would. When you say in the advertising business, what do you mean?

MR. SANCHEZ: Advertising solicitor.

MR. LEVY: Connected with whom?

MR. SANCHEZ: A newspaper.

MR. LEVY: Any one newspaper, or generally?

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MR. SANCHEZ: One newspaper.

MR. LEVY: Which paper? Please?

MR. SANCHEZ: Times.

MR. LEVY: Mr. Frank, you have been on juries, haven't you, many times?

MR. SIMON FRANK: Yes, sir.

MR. LEVY: And I have no doubt that, in this case, as in other cases, in which you have sat, you would follow the instruction as to the law as laid down by the learned Judge?

MR. FRANK: I would.

MR. LEVY: I have no doubt of it, sir. Have you any prejudice against a defendant because of the nature of the offense that is charged against him?

MR. FRANK: No.

MR. LEVY: You would want her guilt to be proven before you would convict?

MR. FRANK: Yes.

MR. LEVY: Mr. Lakner, what business are you in?

MR. HERMAN LACKNER: Manufacturer of feather goods.

MR. LEVY: And are you a married man?

MR. LAKNER: Yes, sir.

MR. LEVY: Have you ever been on a jury in a criminal case before this term?

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MR. LAKNER: Before Judge Goff.

MR. LEVY: What is your business, Mr. Joyce?

MR. JAMES JOYCE: I am not connected with any company. I am in the engine business.

MR. LEVY: Are you a married man, Mr. Joyce?

MR. JOYCE: Yes, sir.

MR. LEVY: Have you sat on juries before?

MR. JOYCE: Not until this term.

MR. LEVY: Mr. Eisinger, what business are you in?

MR. JOHN F. EISINGER: Decorating.

MR. LEVY: In business alone?

MR. EISINGER: Painting.

MR. LEVY: Have you been on juries before in criminal cases?

MR. EISINGER: Yes, sir.

MR. LEVY: We have no challenges for cause.

MR. PRESS: The people will excuse Number Eight,

THE CLERK OF THE COURT: Edward S. McCreery.

Eighth seat, Mr. McCreery.

MR. PRESS: Mr. McCreery -- and I address these remarks to those who have come on the jury since I have examined you. Do any of you know Mr. Levy?

(No response)

MR. PRESS: Do any of you know of any reason why you cannot determine the issue in this case on all the

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facts as they are presented to you, taking the law from the Court?

(No response)

MR. PRESS: Do any of you know either of the associates of Mr. Levy?

(No response)

MR. LEVY: Mr. Simon and Mr. Steinert?

MR. PRESS: Or Elise Hoffman, the defendant at the Bar?

(No response)

MR. PRESS: The people will excuse Number Eleven.

THE CLERK OF THE COURT: Charles Kenson.

MR. PRESS: Do you know Mr. Levy, Mr. Kenson?

CHARLES KENSON: I do not.

MR. PRESS: Do you know Mr. Steinert?

MR. KENSON: I do not.

MR. PRESS: The other gentleman associated with him?

MR. KENSON: No, sir.

MR. PRESS: Do you know Elise Hoffman, the defendant at the Bar?

MR. KENSON: No, sir.

MR. PRESS: Have you any prejudice against the enforcement of the law against abortion?

MR. KENSON: Not at all.

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MR. PRESS: Do you know of any reason why you can not determine the issues in this case?

MR. KENSON: No.

MR. PRESS: Taking the law from the Court?

MR. KENSON: No.

MR. PRESS: The jury is satisfactory to the people.

MR. LEVY: I will excuse Number One.

THE CLERK OF THE COURT: Henry Holtz, first seat, Mr. Holtz.

MR. LEVY: Mr. Levy, what business are you in?

MR. HOLTZ: Manufacturer.

MR. LEVY: Where is your place of business?

MR. HOLTZ: Brooklyn.

MR. LEVY: You live where?

MR. HOLTZ: 210 West Twenty-fourth.

MR. LEVY: Are you a married man?

MR. HOLTZ: Yes, sir.

MR. LEVY: Have you ever sat upon a jury in the trial of a criminal case before this term of Court?

MR. HOLTZ: No, sir.

MR. LEVY: You heard the questions that were put to the other gentlemen, did you not?

MR. HOLTZ: Yes, sir.

MR. LEVY: Have you any prejudice against a person

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charged with having committed an abortion upon another person?

(No response)

MR. LEVY: You have not.

(No response)

MR. LEVY: Do you understand my question?

MR. HOLTZ: I don't understand exactly what abortion means?

MR. LEVY: What.

MR. HOLTZ: I don't understand exactly what abortion means.

MR. LEVY: I will tell you. A woman pregnant with child having some artificial means used upon her for the purpose of bringing about a miscarriage. Now, do you understand that?

(No response)

MR. LEVY: Have you any prejudice against a woman, a mid-wife, or any other woman, who does such a thing, or who is charged with doing such a thing?

MR. HOLTZ: Not exactly.

MR. LEVY: What do you mean, then, Mr. Holtz?

MR. HOLTZ: Well, that is according.

MR. LEVY: According to what?

MR. HOLTZ: To the circumstances.

MR. LEVY: Well, the law says, Mr. Holtz, and I

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am not permitted to state the law, but if I make any statement about the law, which is not confirmed by the Court, don't pay any attention to what I say.

MR. HOLTZ: Yes, sir.

MR. LEVY: The law says that the only reason-- the only excuse, the only justification for the commission of an abortion is to save either the life of the mother or the life of the child; then the law permits such an act to be done; but if it is not necessary to commit an act of that kind to save either the life of the mother or the life of the child, it is made a crime in this State.

MR. HOLTZ: Yes, sir.

MR. LEVY: And you will follow the law, won't you, Mr. Holtz?

MR. HOLTZ: Yes, sir.

MR. LEVY: Now, in following the law, you will, of course, be guided entirely by what the Judge tells you the law is, will you?

MR. HOLTZ: Yes, sir.

MR. LEVY: And even though you don't agree with the law, or you believe the law to be different, you will follow the law, if the Judge tells you it is wrong?

MR. HOLTZ: Yes, sir.

MR. LEVY: You understand, don't you, what is meant

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by a reasonable doubt in a case?

MR. HOLTZ: Yes, sir.

MR. LEVY: You know that that is the property of the defendant?

MR. HOLTZ: Yes, sir.

MR. LEVY: And all such instructions as the Judge makes you will follow implicitly, will you?

MR. HOLTZ: Yes, sir.

MR. LEVY: Did I ask you whether you were a married man? Are you a married man?

MR. HOLTZ: Yes, sir.

MR. LEVY: Mr. Press, please give me the indictment with the names of the witnesses on back, or a copy of it.

(Mr. Press hands paper to Mr. Levy)

MR. PRESS: I can read the names for you, if you want them.

MR. LEVY: I would thank you very much.

MR. PRESS: Sarah Mosby is the complaining witness; officer Van Twisten; officer Bruckman; officer McIntosh; Ester Harris; Thore Emily Jensen; Reverend Mr. Johnson, and Doctor Bishop and Burrell, of Bellevue; I think that is all.

MR. LEVY: Gentlemen, you have heard the District Attorney read the list of names of those who will be,

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possibly, witnesses in this case. Is there any name in that list familiar to you?

(No response)

MR. LEVY: I will excuse number Five

THE CLERK OF THE COURT: Gustave Buck.

MR. LEVY: Mr. Buck, what business are you in?

MR. BUCK: Liquor business.

MR. LEVY: Married man, I suppose?

MR. BUCK: Yes, sir.

MR. LEVY: You have heard the questions that were put to the other gentlemen.

MR. BUCK: Yes.

MR. LEVY: Do you agree with those answers given by them, or have you your own ideas on the proposition?

MR. BUCK: Yes.

MR. LEVY: You agree with them?

MR. BUCK: Yes.

MR. LEVY: You have been on a jury before this term of Court?

MR. BUCK: Yes.

MR. LEVY: In criminal cases?

MR. BUCK: A long time ago, before Recorder Smythe.

MR. LEVY: Where is your place of business, Mr. Buck?

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MR. BUCK: 142nd Street and Brook Avenue, Bronx.

MR. LEVY: Any questions to ask Mr. Buck for
cause?

MR. PRESS: Do you know Mr. Levy, Mr. Buck?

MR. BUCK: No.

MR. PRESS: Do you know Mr. Steinert?

MR. BUCK: No.

MR. PRESS: Or Mr. Simon?

MR. BUCK: No.

MR. PRESS: Do you know Elise Hoffman, of Jacob
Hoffman?

MR. BUCK: No.

MR. PRESS: Do you know of any reason why you can
not determine the issues in this case, taking the law
from the Court, and disregarding all sentiment, and
the same questions apply to you, Mr. Foreman.

MR. HOLTZ: Yes.

MR. PRESS: You think you can determine the issues
here fairly between the people and the defendnt, and
you don't know Mr. Levy or his associates?

MR. HOLTZ: No.

MR. PRESS: The jury is satisfactory to the
people.

MR. LEVY: We will excuse Number Eleven.

THE CLERK OF THE COURT: Paul Prager.

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MR. LEVY: Mr. Prager, what business are you in?

MR. PRAGER: Manufacturer, of clothes and suits.

MR. LEVY: What firm?

MR. PRAGER: Wiener, Parker and Company.

MR. LEVY: Have you had any experience in criminal cases before this term of Court?

MR. PRAGER: Yes, sir, before Judge Blanchard.

MR. LEVY: You heard the questions propounded to the other gentlemen?

MR. PRAGER: Yes, sir.

MR. LEVY: Is there anything about the questions or the answers of the other jurors that suggests to you that you could not squarely and fairly sit in this case?

MR. PRAGER: No.

MR. LEVY: You feel that you could give this woman a fair trial?

MR. PRAGER: Yes, sir.

MR. LEVY: And follow the law as the learned Judge gives it to you?

MR. PRAGER: Yes.

MR. LEVY: And decide the facts from the evidence?

MR. PRAGER: Yes, sir.

MR. PRESS: You don't know Mr. Levy or his associates, do you?

MR. PRAGER: No.

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MR. LEVY: Do you know any one in the District Attorney's office?

MR. PRAGER: No, sir.

MR. PRESS: You have no prejudice, I take it, against colored people?

MR. PRAGER: No, sir.

MR. PRESS: And you would take the word of a colored woman just as readily as you would of a white woman, would you?

MR. PRAGER: Yes, sir.

MR. LEVY: In other words, gentlemen, every witness is to be judged and weighed upon his and her own merit.

MR. PRAGER: Yes.

MR. LEVY: If you believed a witness, it would not make any difference to you what her color was, or her condition was, or anything else. It is a question of whether or not you believe them. After all, you are the judges of the facts in the case. You understand that. And you are to judge the credibility of the witnesses.

The jury is satisfactory to the defendant.

MR. PRESS: Satisfactory to the people.

(The jury is duly sworn)

(On motion of Mr. Levy, all witnesses in this case

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on both sides, are excluded, from the Court room)

MR. PRESS: May it please your Honor, Mr. Foreman and gentlemen of the Jury: As has been stated to you, the defendant, Elise Hoffman, has been indicted by the Grand Jury of the County of New York for the crime of abortion, committed on one Sarah Mosby.

Sarah Mosby is a colored woman, aged twenty-five years, and prior to February 23rd, was a domestic in East Orange, New Jersey. She became pregnant while in orange, New Jersey, and, as the result of a communication had with a party, she came to 219 West Fifty-third Street, in the County of New York, and which premises were occupied by the defendant.

She informed the defendant of her condition, and the defendant said that she would fix her up all right, but would have to be paid fifty dollars. After some dickering, she agreed to accept forty dollars, and thereupon she directed the complaining witness, Mosby, to go up stairs and undress, and she did and she came down stairs, and she was then taken by the defendant into a room adjoining the parlor, and there placed upon an operating table, and an instrument, or some other foreign substance was put into her womb by the defendant.

She left the operating table, and, by directions

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of the defendant, went up stairs and walked about, took as much exercise as possible.

In that room with her was a girl by the name of Harris.

Next morning, the police arrived, and just as the policewere entering, the husband of the defendant came up and took the instruments or other articles from the womb of the complaining witness.

The complaining witness was taken to Bellevue Hospital, and there, I believe, on Saturday or Sunday, I am not sure of the date -- Thursday was the 23rd, 24th, 25th -- on the 25th there was an abortion, the foetus came away. We have that in Court.

There were several other girls in that house, whose names I have given you, and who will doubtless be witnesses, if the people see fit to call them.

Those are the facts the people will prove, and upon which they will ask for a conviction.

These premises were in East Fifty-third Street, I believe, not West Fifty-third.

Miss Mosby.

S A R A H M O S B Y, called as a witness on behalf of the people, being first duly sworn, testified as follows:-
DIRECT EXAMINATION BY MR. PRESS:

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Q What is your full name? A Sarah Mosby.

Q Where do you live? A 192 Prospect Street, East Orange.

Q What is your business? A Cook.

Q Where were you employed prior to the 23rd of February, 1911? A 192 Prospect Street, East Orange.

Q And were you there in the capacity of cook?

A Yes, sir.

Q Now, on February 23rd, do you know, of your own knowledge, what your condition was? A Yes.

Q What was it? A I was in the family way.

Q You were in the family way? A Yes.

Q You will have to talk loud enough so the last juror can hear you. Now, as the result of information you received, where did you go to in the City of New York?

MR. LEVY: I object to the form of the question, if your Honor please, as incompetent.

THE COURT: Yes, objection sustained.

Q On the 23rd of February, 1911, did you see this defendant, Elise Hoffman? A Yes, sir.

Q Where did you see her? A At her house.

Q Where was her house? A 219 West Fifty-third Street.

Q Was it West, or East? A It was West Fifty-third Street.

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Q It was West Fifty-third Street? A Yes, sir.

Q What hour of the day did you get there? A Between half past two and three.

BY THE COURT:

Q In the afternoon? A Afternoon.

BY MR. PRESS:

Q What kind of a house was that, a private house, or a tenement house? A It was a private house.

Q Who opened the door? A Mr. Hoffman.

Q And did you enter? A Yes, sir.

Q How long were you in before you saw the defendant?

A Not very long.

Q What did you say to the defendant, and what did she say to you? A I told her I was in the family way, and she asked me how long, and I said about two months, and she said that she would fix me all right, and I asked her the price, and she said fifty dollars, and I told her the doctor told me it was only forty, and that is all I would pay.

MR. LEVY: I did not hear the last part.

MR. PRESS: I consent that it be stricken out, as to any conversations had with any one other than with the defendant.

Q What did she say then? A Well, she told me that she would do it for forty dollars, but not to tell the other girl, because she was paying fifty.

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MR. LEVY: Objected to.

MR. PRESS: She said it.

MR. LEVY: If she said it, I have no objection.

THE WITNESS: I said she said she would do it for forty, but for me not to tell the other girl, because she was paying fifty.

Q What did you do then? A Why, then I went upstairs.

Q But, did you give her the money? A I gave her the money, after I went up stairs and got undressed, and came down, then I gave her the money.

Q How much money did you give her? A Forty dollars cash.

Q Now, when you went up stairs, did you go into a room? A Yes, sir.

Q State what furniture was in that room? A There was two beds, two white enamel beds, and a couch, and some chairs.

Q Was there any person in that room? A Yes, another girl, Esther Harris.

Q Did you speak to her? A I simply said--

Q Did you speak to her? A Yes.

Q That is all I want. Now, what did you do-- did you undress then? A Yes, I undressed.

Q After you undressed, what did you do? A I came

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down stairs.

Q And who did you see down stairs? A Mr. Hoffman was down.

Q And who else? A And then Mrs. Hoffman came in.

Q What did Mrs. Hoffman say to you? A She told me to go into the other room.

Q Where was the other room? A Right off from the parlor.

Q Did you go into that room? A Yes, sir.

Q And did she go into it also? A Yes, sir.

Q Now, describe that room, if you will, and what furnishings were in that room? A Well, I didn't see anything in there but the table; I didn't notice anything; it was very small.

Q What kind of a table was it? A Kind of operating table, with two things to rest your feet on.

Q How were those ~~in~~ two things situated with regard to the table? A They was on each side.

Q Were they at the foot of the table? A Yes, sir.

Q What did the defendant say to you? A She just told me to put up my feet, and I rested my feet up there.

Q How high were your feet above your body?

MR. LEVY: That assumes they were elevated.

MR. PRESS: She says so.

THE COURT: Objection sustained.

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MR. LEVY: The witness should be permitted to testify, and not the District Attorney. Let her say what was done.

MR. PRESS: The District Attorney is not attempting to testify, Mr. Levy.

MR. LEVY: Well, I object to it; it is leading.

Q Just describe what he did? A I just simply got up on the table, and raised my feet up, kind of high.

BY THE COURT:

Q How high? A It was pretty high; I don't just know how high they were, but it was pretty high.

BY MR. PRESS:

Q Were they raised above your body? A Yes, sir.

Q And what was your position on the table?

A I was laying on my back.

Q Now, while in that position, what, if anything, did the defendant do? A She injected something in ~~me~~ my womb; I didn't see it, but I felt it.

Q Can you state to his Honor and the jury what kind of a feeling it was?

MR. LEVY: Wait a moment. I object.

THE COURT: She may state "yes" or "no", if she can, whatever her answer is.

A It hurt very badly.

MR. LEVY: I object. That is not responsive.

THE COURT: She may state that. Proceed.

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MR. LEVY: I move to strike out the answer.

THE COURT: I will allow the question and I will allow the answer to stand.

MR. LEVY: Exception, please.

Q How long were you on the table? A Oh, about ten minutes, I guess.

Q What did you do then? A I got down and went up stairs.

Q When you got off the table, did you put your hand near your privates at all? A No.

Q Well, when did you, if you ever did? A Well, at night. That night, I felt something, so I just put my finger there, to see what it felt like.

Q And what did you find there?

MR. LEVY: Wait a moment. I object to that as not competent, relevant or material.

THE COURT: objection overruled.

MR. LEVY: Exception.

Q What did you feel? A

MR. LEVY: Let her answer the question.

MR. PRESS: Well, I am asking her.

MR. LEVY: You asked two questions.

(The stenographer reads as follows: "Q What did you find there?" "Q What did you feel?"

THE WITNESS: I felt a little rubber something.

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Q Did the defendant say anything to you when you got off the table? A Told me to go up stairs, and not to go to bed, but to walk around in the room.

Q Did you occupy that room during the rest of the night? A Yes, sir.

Q When did you next see the defendant?

A I saw her the next morning.

Q At about what hour? A Between half past eight.

Q And where did you see her? A She came into the room and asked me how I felt.

Q What did you say to her? A I didn't feel very good; I was having pains.

Q And what did she say to you? A She told me that I would be all right.

Q Did you see her again that morning? A No, I didn't see her any more.

Q Did you see the defendant's husband that morning?

A Yes, sir. He came--

Q What hour of the morning did you see him?

A It was about nine o'clock, I guess.

Q About nine o'clock? A Yes, I think it was about nine.

Q Where did you see him? A Why, he came down stairs.

MR. LEVY: Where?

Q Where? A He came into the room.

Q Into the room? A Yes, sir.

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A Until seven o'clock that night.

Q With whom did you go to the Flower Hospital?

MR. LEVY: I object to that, sir, as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. LEVY: Exception.

Q With whom did you go to the Flower Hospital?

MR. LEVY: Don't repeat the question.

A With Miss Harris, the other girl.

Q Were there any men accompanying you?

MR. LEVY: I object to that, sir, as incompetent, irrelevant and immaterial.

A Yes, the police --

MR. LEVY: Wait a moment.

THE COURT: - Objection sustained.

MR. LEVY: The answer is stricken out, I understand?

THE COURT: Yes. You might find out who accompanied her, if anybody.

Q Who accompanied you to the Flower Hospital?

MR. LEVY: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A The ambulance doctor and the police.

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Q How long did you stay at the Flower Hospital?

A From in the morning until seven o'clock at night.

Q From the Flower Hospital, where did you go?

A To Bellevue.

MR. LEVY: I object to that.

THE COURT: Same ruling. Objection overruled.

MR. LEVY: I want to state the grounds, your Honor, on the record. I object to it as incompetent, irrelevant and immaterial.

THE COURT: Yes. Objection overruled.

MR. LEVY: And I respectfully except.

THE COURT: Yes. Unless it is connected, it will be stricken out.

Q From the Flower Hospital, where did you go?

A To Bellevue Hospital.

Q How long did you stay at Bellevue Hospital?

A I was there over a week.

Q Do you know what ward in Bellevue Hospital you were in? A Ward Thirty-four.

MR. LEVY: Objected to as not material.

THE COURT: Question allowed.

MR. LEVY: Exception.

Q While you were in Ward thirty-four, in Bellevue Hospital, did anything happen to you?

MR. LEVY: I object to it, sir, as incompetent,

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irrelevant and immaterial.

THE COURT: Objection overruled.

MR. LEVY: Exception, please.

THE COURT: "Yes" or "no".

A Yes, sir.

Q What happened?

MR. LEVY: Same objection, your Honor.

THE COURT: Same ruling.

MR. LEVY: Exception, please.

A I had a miscarriage.

Q What day was that on, do you recollect, Miss Mosby?

A The 25th.

Q The 25th? A February 25th.

Q At about what hour of the day or night was that?

A It was at night, -- around eight o'clock, I judge.

Q At night time, were there any persons present in your room or at your bed side? A The nurses.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. LEVY:

Q How old are you, Miss Mosby? A Twenty-five.

Q And where were you born? A Virginia.

Q How long have you lived in New York? A I never lived here. I live in East Orange.

Q How long have you been north? A About eight years.

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Q That is, you came from Virginia about eight years ago; is that right? A Yes, sir.

Q Then, you must have been at that time about seventeen years old; is that right? A Yes, sir.

Q Do your people live here? A I have two sisters.

Q Have you any relatives in Orange? A My sister is in Orange. I have a sister in Orange.

Q A married woman? A No, she is single.

Q And who did you work for? A Mrs. Lincoln.

Q And you worked for her in the month of February of this year? A Yes.

Q How long had you been working for Mrs. Lincoln?

A Nearly two years.

Q Are you married? A No.

Q Have you ever been married? A No.

Q And when did you first find out that you were in the family way? A During January.

Q Do you know who was the cause of your condition?

A Yes, sir.

Q Who was he? A A fellow in Orange.

Q A colored fellow? A Yes, sir.

Q And what is his name?

MR. PRESS: Oh, I object, your Honor. That is immaterial.

THE COURT: Objection sustained.

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MR. LEVY: Will your Honor indulge me a moment, please. It was ruled by the Appellate Division in this State, in the matter of Inspector Cross, that an interrogation into the antecedents of a witness is proper. I am asking this question for the purpose of attacking the credibility of the witness, and it is not done for any purpose of unwarrantably embarrassing the witness or subjecting her to any humiliation, but merely for the purpose of enabling the jury, by her giving a history of her associations and surroundings--

THE COURT: All right. Let her answer.

Q Now, then, what is his name? A Phillip Gude.

Q Did he know that he had put you in the family way?

A Yes.

Q And he refused to marry you? A Yes.

Q Have you ever before been pregnant? A No.

Q At no time? A No.

Q That was the first time in your life that you were pregnant? A Yes, sir.

Q You are sure about that? A Yes, sir.

Q Have you any doubt about it? A No.

MR. PRESS: The witness did not express any doubt if your Honor pleases. She said no.

MR. LEVY: I understand that. This is cross examination.

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THE COURT: Proceed.

Q Now, I want to ask you whether you appreciate the fact, Miss Mosby, that you are under oath. Do you? You are sworn to tell the truth. Do you know that? A Yes, sir.

Q You know what an oath is, don't you?

A (No answer)

Q Answer me, please. Do you know what an oath is?

A Yes, sir.

Q What is your idea of an oath? What is an oath?

A To tell the truth.

Q And ~~xxx~~ what happens if you don't tell the truth?

A You tell a story.

Q What happens to you, do you know, if you don't tell the truth? A I don't know.

Q What? A I don't know.

BY THE COURT:

Q Have you any religious beliefs about that? Do you go to Church? A Yes, sir.

Q Do you pray? A Yes, sir.

Q To whom do you pray? A To God.

Q Have you any religious belief concerning the telling of the truth or telling a falsehood? Now, what is your religious belief, if you have any? A To tell the truth.

Q Well, if you don't tell the truth, Mr. Levy wants to

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know what will happen to you. What do you believe?

A I don't know.

Q Have you any religious belief as to what will happen to you if you don't tell the truth? A Go to prison.

Q For one thing. That is not your religious belief, is it. What do you believe in religion about it?

A I believe God won't love me.

Q Will he do anything else? A Well, he will kill me.

Q What? A He will kill me.

Q Not quite that. Do you believe that telling a falsehood under oath will have any effect upon you in this world, or in the next, aside from the punishment in prison?

A In the next world.

Q In the next world, what do you believe about that?

A I won't go to Heaven.

BY MR. LEVY:

Q Now, then, I want to ask you, after the questions have been put to you, I want to ask you were you ever before pregnant? A (No answer)

BY THE COURT:

Q Were you ever in the family way before this time?

A Yes, sir.

BY MR. LEVY:

Q How many times were you in the family way before

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this time? A Once.

Q Did you have a child? A Yes, sir.

Q And how long ago did you have a child? A Four years.

Q Is that child living? A No, he died.

Q And did you have that child by the same man?

A No, sir.

Q Another man? A Yes, sir.

Q And where did you have that child? A Down in Virginia.

Q Are you married to the man? A No.

Q Now, you say you had that child down in Virginia?

A Yes, sir, I went down in Virginia.

Q When did you go down to Virginia? A I went down; it was about four years ago; I got thatway, and I went to Virginia and had it.

Q Was the man who caused -- was the father of that child, did he live up here North? A He was down at the sea shore, yes.

Q Whereabouts? A Down to Cape May.

Q Who did you work for then? A I lived in Philadelphia then.

Q Where did you work in Philadelphia? A I lived in West Philadelphia, with Mrs. Grout, St. Bernard Street.

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Q Were you traduced in Philadelphia? A Yes, sir.

Q And not in Cape May? A No, I met the fellow in Cape May.

Q Now, did you understand before, when I asked you a question whether or not you had ever ~~been~~ before been in the family way, you said no to me, didn't you?

A Yes, but I didn't understand.

Q You didn't understand the question as to whether you had been in the family way, or not? A No.

Q What about that question didn't you understand?

A I didn't know exactly what you meant.

Q When I asked you whether you had been in the family way, you didn't know what I meant? A Well, I knew what that was, but I didn't understand just what you meant.

Q You knew what it was? A Yes.

Q And when I asked you ~~about~~ about being in the family way before, you understood that, didn't you?

A I didn't understand just what you meant when you first asked me.

Q Didn't understand the question? A I knew what the family way was, but I didn't understand it.

Q Didn't you want to conceal it? Didn't you want to hide that?

MR PRESS: Objected to.

THE COURT: Objection overruled.

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A No, I didn't want to hide it. I want to tell the truth and nothing but the truth.

Q Were you telling me the truth when you said you had never been in the family way before? A No, but I didn't mean to tell you anything that was not true. I just didn't understand what you asked me.

Q Let us try it a little more. Now, didn't you have more than one child? A No, I didn't have but the one.

Q Didn't you have a miscarriage? A No, only this one, that is all.

Q Only that one? A Yes.

Q You didn't tell the District Attorney about that, did you? A He didn't ask me.

Q Well, now, when you were in the family way the second time, you were frightened, weren't you?

A Yes, sir, I was frightened.

Q And you wanted to get rid of that, didn't you?

A Well, I didn't know what to do.

Q You say you went to see this woman, Mrs. Hoffman?

A I went to the Doctor.

Q Now I didn't ask you about any doctor; I asked you about going to this woman. You went to this woman. What did you go to the woman for? A Well, I went there to see what she could do for me.

Q What did you expect her to do for you?

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A I expected her to fix me so I would be all right.

Q What do you mean by fixing you so you would be all right? What do you mean by that? A I thought she would fix me; I didn't know what she would do.

Q What did you expect her to do for you? A I expected her -- I expected to have a miscarriage.

Q You went to her for the purpose of getting a miscarriage, didn't you? A Yes, sir.

Q And you were willing to pay for that, weren't you? A Yes, I paid for it.

Q Did you know it was wrong to have a miscarriage brought about? A I didn't think it was any harm. I didn't know. The doctor sent me there.

MR. LEVY: I move to strike that out, if the Court please.

MR. PRESS: It is brought out by the examination.

THE COURT: Yes, strike out the last part of it.

Q Didn't you think it wrong to have an abortion committed on you? A I didn't know whether it was wrong, or not.

Q Well, you know the difference between right and wrong, don't you? A Yes, sir.

Q What? A Yes, sir.

Q As a matter of fact, you haven't got much religion

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about you, have you? A Yes, I got religion. I go to Church every Sunday.

Q You do go? A Yes, I do.

Q And you didn't think it was wrong to do away with an unborn child? A Yes, it was wrong to do it, but I didn't know what to do.

Q Now, when you got to Mrs. Hoffman's house-- when you came to her house, and the first time you saw her, did you speak to her first? A The first time I saw her?

Q Yes? A She came in; I was sitting in the parlor, and she came in.

Q And what did you say to her? A I spoke to her.

Q What did you say to her? A I told her the doctor sent me over there, and I was in the family way, and he sent me over there, and that it would cost me forty dollars.

Q You will have to speak up louder. All these gentlemen want to hear you. I want you to tell me what you said to her first. Now, is that plain? A Yes.

Q Do you understand that? A Yes, sir.

Q Now, talk to these gentlemen. A Well, I told her I was in the family way, and she asked me how long was I gone, and I said about two months.

Q Well, go on. Tell me the rest of the talk?

A She said she would get me all right.

Q Did you tell her anything about what you wanted her

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to do to you? A No, I didn't tell her what I wanted her to do. I just told her the doctor sent me there.

Q Did you tell her what you were sent there for?

A No; she knew, because the doctor told me he sent me to her.

Q Did you tell her what you were sent there for?

A No, I did not.

Q Did she examine you? A No, she did not.

Q Did she ask you whether you had ever had a baby before? A Yes.

Q And what did you tell her? A Yes.

Q Did you tell her yes? A Yes.

Q Look at me and tell me whether you told her?

A Yes.

Q You told her you had a baby before? A Yes.

Q Did you tell her you were a married woman?

A No.

Q Did you tell her you were a single girl? A She did not ask me.

Q Did you tell her your name? A She didn't ask me my name.

Q Did you tell her where you lived? A I told her I was sent over from Orange. I suppose she knew that.

MR. LEVY: I move to strike out, "I suppose she knew", your Honor.

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THE COURT: Yes, strike it out.

Q How long were you in talk with her, in conversation with her? A Not long.

Q How long? A About half an hour.

Q What time of the day did you get there?

A Between half past two and three.

Q What time did you leave Orange? A I left Orange around Eleven o'clock.

Q Had you been in New York before? A Only in there two or three days, two or three times; I never lived there any time.

Q Tell me -- remember that you are under oath. Haven't you been in trouble in your life time with the police? A No, I never had any trouble with the police before in my life.

Q Who did you have trouble with? A I haven't had trouble with anybody.

Q Nobody? A No.

Q You have never spoken to any policemen before that day? A Never in my life before that day.

Q Did you tell Mrs. Lincoln of your condition?

A No, I did not.

Q Well, now, then, she told you to go up stairs, you say, and undress yourself? A Yes, Mrs. Hoffman told me.

Q Was there any one in the room at the time?

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A Yes.

Q Who? A Miss Harris.

Q I am talking of the room where you had your talk with Mrs. Hoffman? A Oh, no, there was nobody in there but her and I.

Q Nobody overheard your conversation? A No, I didn't see anybody around.

Q Did you go up stairs alone? A Yes, I went up-stairs alone.

Q Did you know what room to go to? A Yes.

Q How did you know what room to go to? A Because I had went up-stairs before.

Q When had you been up stairs before? A I went up-stairs and then came back down.

Q When did you go up stairs the first time? A When I first got to the house I went up stairs.

Q On the same day? A Yes, sir, the same day.

Q What time was that? A That was between half past two and three o'clock or when I got there.

Q When you came there, the first place you went to was up stairs? A No, I went into the parlor and sat down, and then he taken me up stairs, and I got up stairs and came back down stairs again.

Q You told us a few minutes ago that you had your talk with Mrs. Hoffman, the defendant, and that he asked you how

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far you were gone, and you said about two months, and that she then told you to go up stairs and undress yourself. Is that right? A When I first went there, I asked for Mrs. Hoffman. Mr. Hoffman rang the bell-- I rang the bell and he let me in, and I asked for Mrs. Hoffman.

Q Now,--

MR. PRESS: Let her go on.

MR. LEVY: No, I won't let her go on.

THE COURT: No, that is her answer. Proceed.

MR. LEVY: I except, as not responsive.

THE COURT: Proceed.

THE WITNESS: I went into the parlor and sat down, and Mrs. Hoffman came in, and we had a talk.

MR. LEVY: Now, that is an answer.

THE COURT: Let her finish.

MR. PRESS: Let her finish.

THE WITNESS: And she told me to go up stairs and undress, and I went up stairs and undressed, and came back down stairs again.

THE COURT: The question Mr. Levy asked you is, how did you know what room to go to?

THE WITNESS: Mr. Hoffman taken me up stairs first.

Q The first time, or the second time? A The first time, he taken me up stairs, to get undressed.

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Q Before you had any talk with Mrs. Hoffman?

A No, afterwards.

Q Well, when you undressed yourself, you came down stairs and went into the back room, you say? A Yes, sir.

Q Were you afraid? A I felt kind of nervous; I wasn't so very.

Q Did you know what was going to be done to you?

A I didn't know what was going to be done, no.

Q What were you nervous about? A Well, I was just nervous; I couldn't help it.

Q You say you didn't know what was going to be done to you? A I didn't know what she was going to do to me.

Q Did you know that you were going to have an abortion committed? A Well, I knew she was going to do something, but I didn't know what it would be, what she was going to use, or anything.

Q You told the District Attorney that you felt some pain; is that right? A Well, I did, yes, that night, during the night I felt pain.

Q I am not talking of during the night. You say she injected something into you? A Yes, she did.

Q And that you felt pain while that was going on?

A I did feel a pain.

Q Much pain? A Not very much, but during the--

Q Give me an idea of about what kind of a pain?

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A There wasn't very much pain, but I felt it.

Q Now, when you say it was injected in you, was it something that seemed to come out of a syringe?

A I didn't see it used; I just felt it.

Q How far in did you feel it? Very far? A No, it didn't seem to be very far.

Q About how much? An inch? A Yes, about an inch, I judge.

Q You know how much an inch is? A Yes.

Q Well, give the jury an idea of what you think an inch is. How big is an inch? A About that much. (Indicating)

Q The length of your finger? Let the gentlemen there

THE COURT: Let the gentlemen there agree upon what that does represent, one or two inches.

MR. LEVY: I think two inches would be nearer to it.

THE COURT: Hold your finger as you did at first. Now, turn your hand to the jury.

MR. LEVY: About two inches, I think, would be nearer to it.

Q Did she do anything to open up your parts?

A She only put this thing in.

Q Did it take her long to put it in? A No, not long.

Q How long? A Oh, about five or ten minutes.

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Q You mean to say she was working over you to put that in five or ten minutes? A Yes; it was about that long.

Q Can you tell time? A Why, yes.

Q And you know how much ten minutes are? A Why, yes, I know how much it is.

Q Now, do you say it took her ten minutes to--

A I said five or ten minutes.

Q Which is it, five or ten? A I didn't see the clock, but I judge it is about five or ten.

Q Five or ten? A Yes.

Q Did it seem to be a large substance? A No, it didn't seem to be very large.

Q Didn't stretch you at all? A No, it didn't seem to. Just simply hurt me; that is all.

Q What part of your privates did it hurt you? The front part? A Yes.

Q Or inside, which? A It seemed to hurt me in my womb.

Q In your womb? A Yes, sir.

Q How long did that pain last, about?

A It didn't last very long.

Q About how long? A As soon as I got up stairs and walked around it went away.

Q Now, that was about what time that you got up

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stairs after this thing was done? A About three o'clock.

Q About three o'clock? A Yes, sir.

Q Did you remain undressed while up stairs?

A Yes, simply had on a gown, that is all.

Q A gown? A Yes, sir.

Q Did you see the defendant later that day?

A No, I didn't see her.

Q Now, do you mean to say that you were feeling all right and well before you came to see Mrs. Hoffman?

A Well, I felt sick.

Q You felt sick? A Yes, sir.

Q Well, did you have pains before you came to Mrs. Hoffman? A No, I had no pains.

Q Where did you feel sick? A I just felt sick to my stomach, and I had a head ache.

Q And vomiting, I suppose? A No, I didn't do any vomiting.

Q And did you feel any pains in your lower parts?

A Before I came there?

Q Before you came there? A No, I didn't have any pains.

Q And you wanted to be understood that you were not examined at all before this thing was done to you?

A No, I was not examined at all.

Q Now, you have attempted to describe that table

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that you were on -- that you say you were on. How wide a table was that? A Wide? It was not wide.

Q Well, about how wide? Tell me? A It is about that wide. (Illustrating)

Q About as wide as the table at which the stenographer is writing? A About that, yes, sir.

Q And how long was it? A Oh, it was -- it seemed to be a little longer than that.

Q How long would you say it was? Give us an idea-- your idea of how long? A It is about that long, I judge, about like that. (Illustrating)

Q I don't mean wide? A I know; you mean long.

Q I mean long? A Yes.

Q The length, not the width? A Well, this can be the length, about this length. (Illustrating)

THE COURT: Point out something here that you think would be about the same length, or nearly.

MR. LEVY: Look around and see.

THE COURT: Stand up and go down there.

THE WITNESS: About half as long as that

(Indicating the Judge's bench)

Q Half as long as the desk at which his Honor sits, is that right? A Yes, it seems to me it was about half as long as that.

MR. LEVY: I should say that is about three feet?

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THE COURT: The gentlemen will agree upon that/
measurement.

MR. PRESS: That is quite agreeable.

MR. LEVY: Say between three and a half and four
feet.

Q Look at this table here. Tell me was it as long
as this table, or shorter? or longer? A It seems to me
it was a little longer than that table. It was not large.
That long. (Indicating)

MR. LEVY: Will your Honor permit me to use this
rule measure?

THE COURT: If the gentlemen are satisfied.

MR. LEVY: Satisfied, Mr. Press?

MR. PRESS: Yes.

BY MR. LEVY:

Q You say, Miss Mosby, about half the length of his
Honor's desk? A Yes.

THE COURT: She has indicated the table.

MR. LEVY: I will measure it.

Q You say about the length of this table; is that
right? A Yes, I think it is about the length of that.

BY THE COURT:

Q Was it longer than that? A I think it was a little
bit longer.

Q How much longer? A It was not much longer.

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MR. LEVY: This is three and one half feet long, this table.

BY MR. LEVY:

Q Now, will you tell us whether or not that table was covered with anything? A Yes, it had some carpet on it; it looked to be carpet.

Q Carpet? A Covered with something like that, some kind of stuff.

Q Soft, or hard? A It was kind of soft.

Q Now, won't you describe -- because if it becomes important to know your statement about the table and how it was made up -- won't you describe what was at the foot of that table? You said to the District Attorney there was something there to put your foot on? A Yes, sir.

Q And what was that made of? Iron, or a board?

A No, it seemed to be covered with some kind of stuff.

Q What was it, iron? A No, it was wooden.

Q Wood? A Yes, sir.

Q How high would you say that table stood?

A It was about like that, I guess. (Indicating)

Q That is, the usual height of table, I suppose?

A Yes, sir.

MR. LEVY: Is that right, Mr. Press?

MR. PRESS: Yes.

Q How long were you on that table? A I was not

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on there long; about five or ten minutes.

Q Did you put your foot on that foot rest?

A Yes, sir.

Q And was the table perfectly level? A My head was kind of back.

Q What did your head rest on? A It rested on a kind of cushion pillow like, which was onto the chair; it was kind of soft.

Q Was the table straight, level, or was the table inclined up? A Inclined.

Q Inclined? A Yes, sir.

Q You know what inclined means, do you? A Yes, sir.

Q It means running up and down? A Yes, sir.

Q Now, you were there about ten minutes on that table?

A Five or ten minutes; I just didn't know how long it was.

Q Now, did you see any blood then at that time?

A No, not then.

Q When did you first see blood? A During the night, when I woke up, I had pains.

Q While you were in the house? A Yes, during the night, while I was in the house.

Q Didn't you have any blood on your clothes before you came into that house? A No, not a sign.

Q Or any stains? A No.

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Q And you are sure about that? A Yes, sir, I am sure.

MR. LEVY: May we suspend now, your Honor?

THE COURT: Yes. Gentlemen of the Jury you are admonished that you are not to discuss any matters connected with this trial, nor to permit anyone to speak to you about it, nor form nor express any opinion as to the guilt or innocence of the defendant, until the case is finally submitted to you. We will take a recess until two o'clock.

(The Court accordingly took a recess until Two P.

M.)

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A f t e r R e c e s s .

S A R A H M O S B Y , resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. LEVY:

Q Now, Miss Mosby, before you came to New York, you consulted a doctor, didn't you? A Yes, I went to see the doctor.

Q Loud, so we can all hear. Did you consult a doctor? A Yes, I went to see the doctor.

Q Now, what was the name of the doctor you consulted? A Dr. Alexander.

Q And he lives where? A He lives in Webster Place; I don't know the number.

Q East Orange? A Orange.

Q And you went to consult him about your condition, didn't you? A Yes, I went to see him.

Q About your condition? A Yes, sir.

Q And did you go to see him for the purpose of trying to bring on a miscarriage? A well, I went to see him; I didn't know what was the trouble at that time; I didn't know whether that was the trouble or not.

Q Did he examine you? A No, he did not.

Q Well, what did you go to see the doctor for? A Well, I felt sick, and I went to see him.

Q Did the doctor tell you that you were pregnant?

A Yes, he said he thinks that is what the trouble was; he

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is not sure.

Q And what did you tell him, that you wanted to get rid of it? A No, I didn't tell him that.

Q You didn't tell him that you wanted to get rid of it? A No, I didn't say I wanted to get rid of it.

Q What did you say to him that you wanted done? A Well I didn't know for sure what was the trouble and he said he would give me some medicine.

Q Do you mean to say he gave you ~~some~~ medicine without examining you? A Yes, he did; he didn't examine me at all.

Q Well, what did he give you medicine for? A I don't know; but he didn't examine me.

Q Do you know what he gave you medicine for? A Well, I judge it was for that, but he didn't examine me at all.

Q How long before you came to New York was it that you first consulted Dr. Alexander? A It was in January.

Q January? A Yes.

Q And this alleged abortion took place on the 23rd of February? A Yes, sir.

Q What time in the month of January was it that you consulted Dr. Alexander? A It was about the middle of the month.

Q What? A About the middle of the month.

Q How many times did you go to see that doctor? A I went there twice.

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Q And upon either one of those occasions did he examine you at all? A No, he did not.

Q When was the second visit that you made to him?
A That was the latter part of January, or the 1st of February.

Q Will you tell me when you called to see him what you complained of? What did you complain of when you went to see this doctor? A Well, I felt sick; I had sick headaches, and I felt sick all over.

Q Did you tell him that you had had intercourse with a man? A No, I didn't.

Q Did not? A No, I didn't.

Q Well, he gave you medicine without making an examination? A No, he didn't examine me at all.

Q Well, what did you do with the medicine? A Well, I taken it.

Q You took the medicine. A Yes.

Q Did he ask you questions as to what your condition was? A No, he didn't ask me any questions whatever.

Q Well, without examining you, will you tell me, if you can, what he treated you for? A Well, I suppose he knew what was the trouble, but he didn't examine me, that is sure.

Q Did you tell him that you were a girl, a virgin?
A What?

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Q Did you tell him that you had no intercourse with a man? A He didn't ask me, sir; I didn't have any call to tell him anything. If he had asked me I would have told him.

Q All that you complained of was a headache? A I felt sick and I had pain in my chest at the time.

Q Chest? A Chest, and I felt sick all over.

Q What part of the chest? A Here (indicating).

Q Up here (indicating)? A Yes, sir.

Q You went to see him because your monthlies did not come on? A No, they had stopped when I went to see him.

Q Did you tell him your monthlies had stopped? A He asked me if they stopped.

Q What did you tell him? A And I said, yes, they had stopped.

Q They had stopped? A Yes, sir.

Q And then he gave you medicine? A Yes, sir, he gave me this medicine.

Q How often did you take that medicine before the 23rd of February? A He gave me the prescription, and I had it filled. I don't know how many pills there were in the box, but I taken them all.

Q They were pills? A Yes.

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Q And where did you get the prescription filled?

A At a drugstore in Orange.

Q In Orange? A Yes, sir.

Q Do you know how many pills you took? A No, I don't know how many there were in the box.

Q How many did you take at a time? A One.

Q One a day? A No, it was one every two hours; I think it was.

Q How many pills altogether did you take? A I don't know; I didn't count them; I don't know how many there were in the box.

Q Well, about how many, Sarah? A Well, I can't say, because I don't know exactly how many there were.

Q You took every one that was in the box? A I took all there was, yes.

Q You took every one that was in the box? A Yes, I taken them all.

Q After you had taken all the pills that were in and the box, you did not find that it was doing you any good, what did you do? A Well, I went back to see him the second time.

Q Then what did he do? A He told me he could send me to a hospital in New York.

Q Now, I am willing to bring that out. To send you to a hospital in New York? A Yes, sir.

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Q And gave you an address? A Yes, he gave me Mrs. Hoffman's address on a card.

Q What name did he give you? A Mrs. Hoffman's.

Q And you came over to New York? A Yes.

Q Up to that time did you notice any blood or flow?
A No, I never saw a thing, not until after that was done.

Q Now, as a matter of fact, Miss Mosby, did you take more than one box full of pills? A No, I did not.

Q Only one box full? A That is all.

Q Well, the second time that you went to see him, did you tell him you were still in the family way, or did you speak about your being in the family way? A Well, I simply told him that my periods had not come, and he told me he would send me to this hospital.

Q Did you tell him you wanted to get rid of it? A No, I didn't tell him.

Q Do you mean to say he sent you over to the hospital, without your telling him that you wanted to get rid of it?
A Yes, he did; he told me-- after I told him my periods had not come then he told me he would send me to New York to a hospital.

Q Did you not say to him that you were not a married woman? A He knew I am not married, I guess.

Q How did he know you were not a married woman? A I

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don't know. He didn't ask me anything about whether I was married or single. I suppose he must have known that I was single.

Q Never mind what you suppose. Did you say anything to him? A He didn't ask me if I was single.

Q Didn't ask you. When you felt yourself-- the District Attorney asked you about that-- when you felt yourself in the night, you say you felt something in your privates, is that right? A Yes, I felt something there.

Q Well, what did you feel? A Well, I just felt a little rubber something.

Q What? A I just felt something, a little rubber something.

Q About how thick or how wide, or what? A It was a little round thing.

Q What? A It was a little round something, just felt kind of like rubber.

Q You were perfectly willing to have an abortion performed on you, were you?

MR. PRESS: That has been answered several times, if your Honor pleases.

THE COURT: She may answer.

Q Do you understand the question, Miss Mosby? A What is that?

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Q You were perfectly willing to have an abortion committed on you? A well, I didn't know what to do, so I had it done.

Q What? A I didn't know what to do.

Q Listen to me.

THE COURT: You need not be afraid to answer truthfully.

Q Were you willing, or were you not willing, that an abortion should be committed on you? A I was willing, if it would do me any good; I didn't know.

Q What good did you expect it to do you? A (No answer).

Q Do you understand my question? A Yes, I do.

Q Then please answer it. What good did you expect it to do you?

THE COURT: Look here, you need not be afraid that any harm is going to come to you from telling the truth at all.

THE WITNESS: I am telling the truth. I just thought it would not throw a disgrace on me.

Q What? A I thought it wouldn't throw a disgrace on me; it would save my character.

Q That is to say, you thought if you could get rid of it, and you did not have to bear a child, that you could

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save yourself the disgrace that you would have if you bore a child? A Yes.

Q Is that what you mean? A Yes, sir.

Q So, as a matter of fact, you did go there to get rid of the child, for the purpose of preventing disgrace to yourself; is that right? A Yes, I went there.

Q ~~Yes~~ What? A Yes, I went there.

Q What?

MR. PRESS: She meant that.

Q Now, one other matter, Miss Mosby, and then I will let you go. A What other matter?

Q I am going to ask you?

THE COURT: He is going to ask you a question.

Q You were arrested, weren't you? A well, the police came there; I suppose so, yes.

Q You were arrested for allowing an abortion to be committed upon yourself, weren't you? A Yes, I judge so.

Q What? A I judge so. He didn't say.

Q And were you told that if you told all you knew about this case that you would get out of it? A Yes, he told me to tell the truth.

Q And you were told that if you told the truth about how this thing happened, that nothing would happen to you? A Yes.

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Q And that if you told all that Mrs. Hoffman had to do with you, that you would be let go? A Yes, they told me if I told the truth.

Q About her, that you would be let go? A They said if I told the truth, yes.

Q That you would be let go? A Yes, I would be free, if I told the truth.

Q You would be free if you told the truth? That is to say if you told that Mrs. Hoffman performed an abortion upon you that you would get your liberty?

MR. PRESS: I object, if your Honor pleases. The witness has stated three times now that she was told that, if she told the truth.

THE COURT: Objection sustained.

MR. LEVY: Do you sustain that, sir?

THE COURT: The objection is sustained.

MR. LEVY: Exception, please.

Q Now, are you telling the truth, as you call it, now, for the purpose of saving yourself from any trouble to yourself?

MR. PRESS: I object, if your Honor pleases, to the form of the question.

THE COURT: I will allow that. Is it because you are afraid of any trouble coming to yourself that you are telling the truth now?

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THE WITNESS: I am telling the truth, and nothing but the truth.

Q What is the motive, what is the reason that makes you tell this story-- My friend, Mr. Press, stands with his arms extended.

MR. PRESS: I have a right to stop the witness from answering until--

MR. LEVY: The witness is told not to answer until you make your objection, but let me finish my question. I can't talk with you standing in front of me.

MR. PRESS: I am sorry.

MR. LEVY: I insist upon the District Attorney being seated.

THE COURT:

~~MR. LEVY~~ Will you repeat your question?

Q What is the motive, what is the reason that makes you tell this story about the alleged abortion that Mrs. Hoffman performed upon you? A (No answer)

BY THE COURT:

Q Why do you tell this story? A Why do I tell it?

Q Yes. A well, they asked me to tell it, and I am telling the truth.

BY MR. LEVY:

Q Who asked you to tell it? A The detectives came around and got this statement; they asked me for a statement, and I gave it to him; it was the truth.

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Q Which detective was it that spoke to you about this? A Mr. Van Twistan, and he simply asked me for my statement, and I gave it to them.

Q And what did Mr. Van Twistan say to you about what would happen to you if you told the story against Mrs. Hoffman? A He didn't say what would happen to me if I told the story, because I would not tell the truth. I am telling the truth.

Q Did Mr. Van Twistan say anything to you about your being let go, if you testified against Mrs. Hoffman?

A He told me if I told the truth that it would be all right.

Q Did he say what he meant by being all right? A That I would be free.

Q That you would be free. Now, you were pretty well scared, when you were arrested? A Well, I wasn't too scared. I told everything that happened. I knew what happened to me.

Q Please answer my question. You were pretty well frightened, weren't you, when you were arrested? A Yes, sir, I was very nervous.

Q And you were afraid you had gotten yourself into trouble, weren't you? A Yes, sir; I didn't know; I never had been in anything like that before.

Q And you were willing to do anything to get yourself

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out of trouble? A No, I wanted to tell the truth. I told the truth.

MR. PRESS: Objected to.

THE COURT: She has answered that.

Q Did Mr . Van Twistan say anything to you about what you were to say? A No.

Q Who spoke to you about what you were to say? A Well, he asked me for my statement, and I gave it to them.

Q I know, but who besides Mr. Van Twistan told you what to say?

MR. PRESS: I object, because that is suggesting that somebody did suggest.

BY THE COURT:

Q Did anybody tell you what you had to say? A No, nobody told me what I had to say.

BY MR. LEVY:

Q No one told you what you had to say? A No, sir.

Q Now, what did Mr. Van Twistan say to you would happen to you if you did not give him a statement? A He didn't say what would happen.

Q Didn't say? A No.

Q Since you were arrested you were released on bail, were you not? A Yes, sir.

Q And where have you been living since that time?

A At my same place.

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Q With Mrs. Lincoln? A Mrs. Lincoln, 192 Prospect Street, East Orange.

Q And who brought you over from East Orange here?

A Who brought me over?

Q To this trial, yes? A My brother in law.

Q And anyone else? A No; that is all.

Q And who is your brother in law? A Reverend W. W. Johnson.

Q When did you tell the reverend doctor Johnson what you knew about this case? When was the first time that you told him about it? A My sister wrote him word about it.

Q What? A My sister wrote to him about it.

Q Now, these relatives of yours, your brother in law, no doubt is a very good man, and your brother in law told you it was your duty to come here and give your testimony, didn't he? A I knew it was my duty to come here.

Q And give your testimony? A Yes, sir.

Q Did you think that this woman did do any wrong?

MR. PRESS: I object, if your Honor please.

THE COURT: Objection sustained.

MR. LEVY: Exception.

Q Do you believe that you received any injury at the hands of this woman, the defendant?

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MR. PRESS: I object to that on the ground that it is incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

Q You understand my question, Miss Mosby?

A Yes.

Q Now, if you don't be careful to listen to it, the stenographer will read it to you. I want you to understand every question that is put to you?

(Question read by the stenographer as follows:

"Do you believe that you received any injury at the hands of this woman, the defendant?")

THE COURT: "Yes" or "no"?

A No, I didn't receive any injury, not yet.

Q You went to her to do you good, didn't you?

MR. PRESS: I object to that, if your Honor please.

THE COURT: Sustained.

MR. LEVY: Exception.

Q Who was it that put it into your mind that it was your duty, if any person put it into your mind, that it was your duty to testify against her? A Nobody.

Q What? A Nobody.

Q Do you do it because you think it is your duty to the State? A Yes, I think it is my duty to testify the truth.

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Q Well, will you explain why? A Well, I think I should testify against, and tell the truth.

Q You should tell the truth for what reason, Miss Mosby? Do you understand me? A Yes, sir.

Q If you don't understand me, I will try to make my questions more clear? A Well, you can make it more clear. I don't just understand it.

BY THE COURT:

Q For what reason should you tell the truth? That is the question? A Because I think I ought to do it for the State.

BY MR. LEVY:

Q We don't hear you? A It is because I ~~should~~ think I should tell the truth.

Q Is there any reason for it?

THE COURT: Yes, because she should tell it; that is her reason.

MR. LEVY: Because she should tell it. Is that what she said?

THE COURT: Yes, and I don't know that any human being can give a better reason.

Q How many times have you talked over this case, since you were arrested, with the Reverend gentleman who is your brother in law? A I haven't seen him but twice.

Q Who have you talked to about this case? A I haven't

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talked to any one.

Q Haven't you talked to the District Attorney? A Oh, yes, I talked to the District Attorney.

Q This gentleman here? A Yes, sir.

Q How many times? A Yes, sir.

Q Any one else you have talked to? A Yes, that other one there.

Q The young gentleman sitting next to Mr. Press?
A Yes, sir.

Q How many times did you talk to him? A Once.

Q Only once? A Yes, sir.

Q How many times have you talked with the detectives since you were arrested? A Once.

Q When was that? A That was in the hospital.

Q With any other person since that time? A No.

Q No one? A No.

MR. LEVY: That is all.

RE DIRECT EXAMINATION BY MR. PRESS:

Q You were how long in Bellevue Hospital? A Over a week.

Q And were you then bailed out after that? A I went to the House of Detention from Bellevue Hospital, and I was bailed out there.

Q How long were you in the House of Detention? A I

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was there nearly two weeks.

Q Then what happened? A They bailed me out.

Q Who bailed you out?

MR. LEVY: Wait a moment, I object.

MR. PRESS: If your Honor pleases--

MR. LEVY: Let me state my objection. Objected to as incompetent, irrelevant and immaterial.

MR. PRESS: It was brought out on the cross examination.

MR. LEVY: Wait until my objection is ruled on.

THE COURT: What is the objection.

MR. LEVY: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Question allowed.

MR. LEVY: Exception.

Q Who bailed you out, Miss Mosby? A I don't know who bailed me out.

Q Did any of your relatives bail you out? A No, none of my relatives.

MR. LEVY: Now, I object to that question, and move to strike out the answer.

THE COURT: Yes, strike it out.

MR. LEVY: You see how incompetent it is.

THE COURT: Strike it out, and the jury are directed

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to disregard absolutely anything further about this matter, or whatever has been testified to so far about it. We won't go any further into this, Mr. Press.

MR. PRESS: All right, your Honor, that is all.

GRACE COLLOTY, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your full name? A Grace Colloty.

Q Where do you live? A Bellevue Hospital.

Q Will you kindly state so the last juror can hear you. What is your business? A Nurse.

Q And where are you employed as a nurse? A Bellevue Hospital.

Q How long have you been there engaged as a nurse?
A Two years-- one year.

Q Two years. Stand up, Miss Mosby. Do you remember seeing that woman at any time in Bellevue Hospital (indicating Sarah Mosby)? A Yes, sir.

Q Referring to Miss Mosby. When did you see her first there? A 24th of February.

Q Were you on duty that day or evening? A That day.

Q That day? A Yes.

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Q And what ward were you in? A Ward 34.

Q And was she in that ward? A She was.

Q Now, during the 24th-- was that the 24th of February? A 24th of February.

Q 1911? A Yes, sir.

Q Did anything happen to that woman on that day?

A No, not that I know of.

Q Were you on duty the next day? A Yes, sir.

Q Between what hours? A Between 10 and 7 o'clock.

Q 10 and 7 in the day? A Yes, sir.

Q Did anything happen on that day? A Yes, sir.

Q What happened? A I found a mass in the bed, and I gave it to the doctor.

Q You gave it to the doctor? A Yes, sir.

Q And that was in the bed with this woman, Miss Mosby?

A Yes.

Q What doctor did you give it to? A Dr. Buell.

MR. PRESS: You may examine.

MR. LEVY: I have no questions to ask her.

K E N N E T H W . B U E L L , called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your full name? A Kenneth W. Buell.

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Q What is your business? A Physician.

Q And are you connected with any hospital? A Yes, sir.

Q What hospital are you connected with? A Bellevue Hospital.

MR. LEVY: Talk up a bit louder, please.

THE WITNESS: Yes, sir.

Q How long have you been connected with Bellevue Hospital, doctor? A About a year.

Q Were you connected with that hospital on the 23rd and 24th and 25th of February, 1911? A Yes, sir.

Q Do you know Miss Mosby, who was on the stand here, the first witness? A I remember seeing her at the hospital, yes, sir.

Q What ward was she in, doctor? A 34.

Q Do you remember the 25th of February, 1911? A Yes, sir.

Q Do you recollect the last witness on the stand?
A Yes, sir.

Q Being the nurse in charge? A I don't believe she was in charge, but she was on duty there at the time.

Q On ~~that~~ evening at what hour did she-- on that day, did she turn over any mess that she had received or brought your attention to, any mess in the bed of Miss Mosby? A She called me on the phone and said--

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MR. LEVY: No, no.

Q She called you on the phone, and asked me--

MR. LEVY: No, no.

Q Did you go up? A I came to the ward.

Q As a result of a telephone message? A Yes, sir.

Q And when you got there, what did you see?

MR. LEVY: I object to it as incompetent, irrelevant and immaterial.

Q In the bed of Mosby?

MR. LEVY: I object to it on the ground I stated.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A I didn't find it in the bed. Miss Colloty had taken a mass from the bed, on a piece of gauze that she had used as a vaginal support.

MR. LEVY: Talk louder, please.

THE WITNESS: She had taken a mass from the bed of the patient, Miss Mosby, and I left orders on the book for that mass to be saved for me to look at, and I looked at it, and in that mass was a foetus.

MR. LEVY: I object, if your Honor please, to the production and exhibition of what the District Attorney has in his hands, and which has been said to be a foetus on the ground it is not competent evidence, not material evidence, and not relevant, and is intended, and might possibly inflame and prejudice the minds of the

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jury.

THE COURT: Objection overruled.

MR. LEVY: Exception.

Q Is that the foetus that you refer to, doctor?
(Handing bottle to witness)? A Yes, sir, it is.

MR. PRESS: I offer that in evidence, if your
Honor pleases.

MR. LEVY: Objected to as incompetent, irrelevant
and immaterial.

THE COURT: You have not shown the custody of it
yet.

Q Since that time has that been in your possession?
A It has.

Q Continuously? A Yes, sir.

Q And until now has not passed out of your possession?
A No, sir.

MR. PRESS: I now offer it in evidence.

MR. LEVY: Objected to as incompetent, irrelevant
and immaterial.

THE COURT: Admitted.

MR. LEVY: Exception.

Same is received in evidence and marked Plaintiff's
Exhibit No. 1 of this date.

BY THE COURT:

Q What do you mean by a foetus, doctor? A I mean a

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premature child.

BY MR. PRESS:

Q When Miss Mosby was received at Bellevue Hospital, did you examine her? A I examined her.

Q What date was that on? A It was the day she was admitted; I don't remember just the date.

Q Have you got the report that was made on that date?
A I believe Dr. Bishop has it. I haven't it.

Q Well, you did examine her? A Yes, sir.

Q And it was within a few hours after her arrival there? A I should say about an hour or two hours afterward.

Q Will you say to his Honor and the jury her condition at that time?

MR. LEVY: I object to it as incompetent, irrelevant and immaterial.

THE COURT: Allowed.

MR. LEVY: Exception.

A well, she complained of--

MR. LEVY: I object to what she said.

THE COURT: Yes, not, what she said.

Q Not what she said, what your examination disclosed.

A It disclosed the os of the uterus was dilatated to admit about a finger.

MR. LEVY: I don't hear.

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THE WITNESS: The os was dilatated to admit one finger, and was a discharge, a bloody discharge and there was also a few small blood clots in the vault of the vagina; it was soft, and there did not seem to be any tenderness at all. It was a very little bit enlarged.

MR. LEVY: I don't hear you.

THE WITNESS: Slightly enlarged, the uterus.

THE COURT: You will have to speak louder, doctor. You can be heard, but with great difficulty.

THE WITNESS: I say that the uterus was slightly enlarged.

THE COURT: You may get him to explain to the jury the se technical terms.

Q Will you explain, doctor, if you will, the medical terms uterus and so forth? A Well, the uterus--

MR. LEVY: Particularly the os.

THE WITNESS: The uterus is the organ where conception is supposed to take place, the habitation of a child before it is born, and the external os is the opening to the uterus, about-- it is a very small thing. It is the opening. It will bearly admit a goose quill, I should say, and this was dilalated to admit about a finger.

BY THE COURT:

Q What is the effect of dilation of the uterus?

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A Well, it is usually--

BY MR. PRESS:

Q From your own knowledge, based upon your experience?

A Will you repeat the question again?

(Question repeated as follows: What is the effect of dilation of the uterus?)

THE WITNESS: The effect of a dilatation--

THE COURT: Yes, in a condition of pregnancy?

THE WITNESS: Well, it is usually suggestive of--

THE COURT: No, you are not asked what it is suggestive of at all.

THE WITNESS: Well, the question again, your Honor.

(Question read as follows: "What is the effect of dilation of the uterus in a condition of pregnancy?")

THE WITNESS: Well, the effect is labor is about to take place, or something previous to labor, an abortion, or miscarriage or something of that sort.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. LEVY:

Q Doctor, may I take the liberty of asking you how old you are? A Yes, sir, I am twenty seven.

Q You have been regularly admitted and licensed to practice medicine? A Not in New York State. I never have taken the examinations for the New York State Board.

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Q You are not a physician? A I have received my degree. I am not a licensee of New York State although I am licensed in other States.

Q What other States? A Well, Georgia is my home, and I have taken the examination.

Q You mean to say you have simply gotten a college degree? A And my State Board from the State of Georgia.

Q Did you pass through a course of examination in Georgia? A Yes, sir.

Q And how long have you been in New York? A I have been here about a year.

Q And what position did you occupy in Bellevue Hospital when this happened? A I was interne at Bellevue Hospital.

Q That simply means an attendant in the hospital?
A Not an attendant.

Q What would you call an interne other than an attendant? A Well, I should call it a member of the house staff of the hospital.

Q And do they in the hospital permit those who are not licensed physicians to practice upon unfortunates who are brought there for treatment? A I believe that not they are about ~~in~~ half of the men while ~~there~~ in hospitals have ~~not~~ their State Board.

Q So that practically most of the men employed in the

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public hospitals, particularly Bellevue, are simply apprentices, is that right? A They are not apprentices; they have their degrees.

Q They are there for the purpose of getting some kind of practice to qualify themselves for practice afterwards; isn't that so? A Yes, sir.

Q And to qualify themselves for their examination in this State? A No.

Q Well, as an interne there, what was there to prevent you, if you were qualified, from passing the examination required by the State Board here? A For the simple reason that I didn't have-- I didn't think I would practice in New York State, and, secondly, because I did not have the money to take the examination; it costs fifty dollars.

Q Doctor, these questions, I beg you to believe, are not intended to embarrass you, but they are put to you from what I conceive to be my duty in this case. Doctor, what experience have you had, either in gynecology or obstetrics? A Well, I have the course there in the college which involves about fifteen deliveries, and then we see a great many more, and then at the hospital, at Bellevue we have a varied experience.

Q You don't regard yourself as an obstetrician, do you? A No, sir.

Q Nor do you regard yourself as a gynecologist?

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A No, sir.

Q In other words, you are at the beginning of your career, ambitious to qualify yourself? A Yes, sir.

Q Doctor , you told his Honor in answer to his Honor's very pertinent question, what would be the effect upon a pregnant woman of the dilation of the os of the uterus and you said that it might have the effect-- it might mean that labor was about to commence or that an abortion, was about to take place? Is that right?

A The question again, please.

Q (Question read by stenographer as follows: "Doctor , you told his Honor, in answer to his Honor's very pertinent question, what would be the effect upon a pregnant woman of the dilation of the os of the uterus, and you said that it might have the effect-- it might mean that labor was about to commence, or that an abortion was about to take place; is that right?") A It would produce those effects.

Q Would it always produce those effects? A It might not always, but in the majority of cases it would.

Q How might the dilation of the os of the uterus be brought about, naturally or artificially? A That would depend upon the case. If it was a full term, why, nature would bring about the dilatation.

Q Haven 't there been cases where there has not been

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a full term of gestation, where there has been dilation of the uterus and of the os? A Yes, sir.

Q Now, then, in order that the jury may understand this, the os means the mouth, doesn't it? A The opening.

Q The mouth of the womb, the mouth we will call it? A I would say the opening.

Q The opening to the womb. It is that part of the uterus-- uterus means womb? A Yes, sir.

Q The jury are not physicians. The os is the opening; it is that part which permits the seed of the male to enter into the womb, isn't that right? A It is the passage from the vagina to the body of the uterus.

Q And it is that part which opens up to permit the passage of the child out of the womb, isn't it? A Yes, sir.

Q Now, have you ever known, even in your limited experience, of the dilation of the mouth or opening, or the os, to be brought about through natural causes, and not artificial causes? A Yes, sir.

Q So that by examining the os of this woman, Mosby, you were not in a position to tell whether that dilation was produced by artificial means or was the result of natural causes?

THE COURT: "Yes" or "no", doctor?

A No, by the case, but with the history.

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Q The history is something that was told to you. That we have not to deal with now. You, as a physician, looking at a subject, and called upon to make a diagnosis, from your observation and examination only, could you say that that condition was the result of artificial means or natural? A I could not say.

Q Doctor, could you say how far pregnant that woman was, A I could not definitely.

Q Could you, by an examination of the foetus in that bottle, tell how far she had been pregnant? A Not definitely.

BY THE COURT:

Q Could you approximately? A Approximately, yes.

BY MR. LEVY:

Q Approximately. Then taking that exhibit which has been admitted in evidence by his Honor approximate the age of the foetus? A well, roughly, I should put it from six to eight weeks.

Q The fact that you found no tenderness upon the os, the mouth of the uterus did that impress you with the idea that there had been no artificial means used to bring about the dilation of the uterus? A I didn't think of it.

Q Well, what do you think of it now, doctor?

MR. PRESS: May I ask what the question is?

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(The last two questions and answers are read by the stenographer.)

MR. PRESS: I don't understand the witness said there was no tenderness there.

MR. LEVY: Oh, yes, I made a note of it.

THE COURT: I don't remember any testimony concerning that at all.

Q Did you not say-- we will clear this up. Didn't you say that there was no tenderness? A (No answer).

BY THE COURT:

Q Did you testify to that? A I don't remember.

Q You don't remember whether you testified, or whether there was? A There are so many cases there that it is very hard for me to remember one case.

BY MR. LEVY:

Q Let us tie ourselves down to what you said to this jury a little while ago. Didn't you say that the os of the uterus was dilated to admit about one finger? A Yes, sir.

Q That there was a discharge and a few small blood clits; it was soft, and no tenderness. Didn't you say that? A I don't remember.

MR. LEVY: Now, then, I ask the stenographer to read it.

THE COURT: Yes, go back to it.

(The stenographer reads as follows: "The os ~~of~~ was

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dilatated to admit one finger, and there was a discharge, a bloody discharge, and there was also a few small blood clots in in the vault of the vagina; it was soft, and there did not seem to be any tenderness at all. It was a very little bit enlarged.")

THE COURT: Now, doctor, answer the last question:

THE WITNESS: According to that I said there was no tenderness, no seeming tenderness.

BY MR. LEVY:

Q Was that true, or not true, doctor? A There are so many cases there that I can't give you definitely, but I can get the chart and read you the examination as made at the time, if you want it.

Q Doctor, the liberty of this woman is at stake, and we must not guess at things. we must know facts. Now, is it true that there was or was not tenderness of the uterus? A If I answered it before, saying there was no seeming tenderness, that is what I found.

Q What? A If I answered previously that there was no seeming tenderness, why, that is what I found, to my recollection.

Q Why did you doubt it, doctor, when I directed your attention to it and read to you from my notes. Do you doubt it now? A No; I didn't doubt it at any time.

Q Now, if there was no tenderness, the question I

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want to ~~know~~ put to you flatly is, would that indicate that there was or was not an instrument used to bring about the dilation of the uterus? A There might be tenderness there, and there might not in an instrument dilation.

BY THE COURT:

Q The question is, would it or would it not, or would it have any indication as to whether there had been an instrument used for making the opening? A I can't say it would, from my limited experience.

BY MR. LEVY:

Q You don't know; is that what you mean? Frankly, you don't know? A Yes, I do know.

Q Are you guessing, or are you depending upon what you have read in books, or what you have seen? A What I have seen.

Q Have you ever seen a case of artificial abortion where there was no tenderness? A Yes, sir.

Q When? A I don't just recall now.

Q How long ago? A Those cases come into the ward every--

Q When did you last--

THE COURT: Let him answer the question. Those cases come into the ward, you say. Go ahead.

THE WITNESS: Every week or so. I am not in a posi-

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tion to state just definitely ~~which~~ each case, the time and so forth, there is too many of them.

Q The womb is a very sensitive organ, isn't it? A Not particularly so.

Q It is not? A No, sir.

Q The use of a hard substance, the use of any kind of foreign substances ~~is~~ against this very narrow opening, called the os would bring about some kind of irritation or inflammation, wouldn't it? A Not necessarily, no.

Q If it did not, would it indicate that the mouth of the womb was open, and there could be no pregnancy?

A State that question again.

Q (Question read by the stenographer as follows: "If it did not would it indicate that the mouth of the womb was open, and there could be no pregnancy?")

A The question previous.

Q No, this is the question I want answered. Doctor, this is the question. A Read the other question.

Q (Question read by stenographer as follows) "The use of a hard substance, the use of any kind of foreign substances against this very narrow opening, called the os, would bring about some kind of irritation or inflammation, wouldn't it? A Not exactly, no. Q If it did not, would it indicate that the mouth of the womb was open, and there could be no pregnancy?" A The mouth

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of the womb may be open, and there would be pregnancy. that would not have any particular bearing.

Q Have you ever known of any case where the mouth of the womb has been open and the woman has been pregnant?

A Yes, sir.

Q Isn't pregnancy produced by the closing up tight of the mouth of the womb, to prevent the possible flow out of the womb? A Not necessarily.

Q Where do you get your authority? A From my experience and my college course.

Q Now, can you tell me one case where you have ever known the mouth of a woman's womb to have been open, and she to have been pregnant? A Yes, sir.

Q Give me one case? A I don't remember the name, but any woman that has pregnant and has a rupture of the bag of water, previous to the birth of the child, the mouth of the womb is open and the child is still in the uterus.

Q That is after she has passed through the natural period of gestation; but do you know of any case of two months pregnancy or three months pregnancy or six or eight weeks pregnancy, where it has been possible for the mouth of the womb, to be open and the woman to be pregnant? A I could not tell.

Q Of course not. Are you able to swear now what produced or caused the miscarriage of that woman? A I am

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not.

Q You don't know whether it came naturally, or whether it was brought on? A No, sir, I do not.

MR. LEVY: You do not know. That is all.

ERNEST S. BISHOP, called as a witness on behalf of the people, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your full name? A Ernest S. Bishop.

Q Are you a duly licensed practitioner of medicine of the State of New York? A I am.

Q And are you connected with any hospital? A Bellevue Hospital.

Q Doctor, talk loud enough so the last juror can hear you. A The Bellevue Hospital.

Q How long have you been connected with that hospital, doctor? A About two years and ten months.

Q And what is your position there? A Resident physician, in charge of the alcoholic and prison cells.

THE COURT: A little louder.

A Resident physician in charge of the alcoholic and prison cells.

Q Do you know Sarah Mosby? A I do.

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Q Do you know when she was admitted to Bellevue Hospital? A May I refresh my memory, your Honor?

THE COURT: Yes. The doctor wants to know if he can refresh his memory.

MR. LEVY: Oh, yes, certainly, your Honor.

THE WITNESS: (After examining paper) She was admitted on the 24th of February at ten minutes of seven in the evening.

Q Did you examine her, doctor? A I did.

Q How long after she was admitted to the hospital did you examine her? A I examined her some time that evening. I don't know just the hour.

Q Can you state to his Honor and the jury just what condition she was in at that time? A At that time, she was having what we call an inevitable abortion. There was some discharge from her vagina, bloody discharge; her uterus was enlarged and softened, there was some opening in the canal going up into uterus, and she was having some pain.

Q Based on your experience, doctor, can you say what caused that abortion?

THE COURT: With any reasonable certainty.

Q With any reasonable degree of certainty.

MR. LEVY: I object to it if your Honor please, upon the ground that the proper foundation--

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THE COURT: Yes, I think that question ought to be modified.

MR: PRESS: The foundation is what Mr. Levy is objecting to; if your Honor pleases.

THE COURT: Yes, that is right.

Q How many cases of abortion have you examined?

A That I could not tell you, I was gynecologist, in charge of the gynecological service.

Q For how long? A For six months; and, of course, in all the wards there were more or less coming in. All through the hospitals there are those cases admitted from time to time, and there are a great many admitted to the wards, of which I am in charge, the prison wards in Bellevue.

Q Approximately, about how many have you examined in your time in Bellevue alone? A A good many hundred cases. I can't say just how many.

Q A good many hundred cases? A I should say so. Probably--

Q Prior to going to Bellevue--

THE COURT: He was going to say probably.

THE WITNESS: Probably three or four hundred.

BY MR LEVY:

Q Of abortion? A Yes, of course the work in the admitting office, and then ~~after~~ at the maternity ser-

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vike I should say that many, yes.

BY MR. PRESS:

Q And before going to Bellevue Hospital, had you had any experience in abortion cases? A Only such as came in at the Manhattan Maternity Hospital where I was for a while.

Q How long were you in the Manhattan Maternity Hospital? A About two and a half or three months, I should think.

Q And during that time you examined quite a number of cases there? A I did.

Q About how many would you say there, doctor? A I wouldn't hazard a guess.

Q But in Bellevue you are certain that a few hundred have passed through your hands, is that correct? A Yes, my examination.

Q Through your examination? A Yes, I should say so.

Q Now, doctor, based on that experience that you have had there, I ask you again, can you say, with any degree of certainty what caused the abortion in the case of Sarah Mosby?

MR. LEVY: Objected to as incompetent, irrelevant and immaterial.

Q Or produced the condition that you found on your ex-

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amination?

MR. LEVY: Now, which is the question?

THE COURT: I will allow that.

MR. PRESS: I will modify it to that extent.

MR. LEVY: Put the question over again, so that I can make my objection.

Q Based on your experience, doctor, can you say, with any reasonable degree of certainty, what produced the condition which you found when you examined Sarah Mosby on the 24th of February, 1911, at Bellevue Hospital, in the City and County of New York?

MR. LEVY: Objected to.

THE COURT: Based upon his experience and upon his examination.

MR. LEVY: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Repeat it that way. And your examination of Sarah Mosby at the time stated by you.

Q Based on your experience, doctor, and upon your examination of Sarah Mosby, at the time stated by you, can you say with any reasonable degree of certainty, what produced the condition which you found when you examined Sarah Mosby on the 24th of February, 1911, at Bellevue Hospital, in the City and County of New York?

MR. LEVY: I object to that question.

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THE COURT: Objection overruled.

MR. LEVY: I except, on the grounds stated in my objection.

A I should say that from the absence of adequate existing cause which I discovered at that examination, that in all probability, there was some interference with the normal course of pregnancy.

MR. LEVY: I move to strike out the answer as incompetent and immaterial.

BY THE COURT:

Q What sort of interference do you speak of, doctor?
Artificial or otherwise? A Artificial your Honor.

MR. LEVY: I move to strike out the answer, not to the last question, but the one before, as incompetent, irrelevant and immaterial.

THE COURT: Towhich do you refer?

MR. LEVY: Where he started in-- where the witness started in by saying, "From the absence of adequate existing cause", and so on.

THE COURT: I don't know to just what your remarks are directed. You had better make them more definite.

MR. LEVY: It is my duty, as an officer of your Honor's court, to direct your Honor's attention to what I consider to be error, and I want to do that. An expert may testify upon opinion based upon something upon which

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he bases his opinion.

THE COURT: That is what we are asking him for.

MR. LEVY: Now, the witness has not been asked for an opinion.

THE COURT: Well, he may have the question so put to him, in this way: Based upon your experience and your examination of Sarah Mosby; what, in your opinion, should have followed?

MR. LEVY: That was not asked.

THE COURT: Strike the question out, and ask it in that way.

MR. LEVY: And the answer is staricken out?

THE COURT: Yes, strike it all out.

MR. LEVY: You see, it does not call for an opinion.

THE COURT: Yes, the Court was of the opinion that the question was, "What, in your opinion".

MR. LEVY: May I note my objection to that, upon the same ground? I don't regard it as competent, relevant or material.

THE COURT: You may leave out the reasonable degree of certainty, for the benefit of the defendant.

MR. LEVY: I take an exception.

THE COURT: And he may give his opinion.

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BY MR. PRESS:

Q Based upon your experience and your examination of Sarah Mosby?

MR. LEVY: Don't answer this question, doctor, until-

THE COURT: No, let Mr. Press continue the question.

MR. PRESS: I cannot continue if Mr. Levy continually butts in on me.

MR. LEVY: I will continue to butt in until I am through with this case.

Q Based upon your experience, doctor, and your examination of Sarah Mosby on the 24th of February, 1911, what, in your opinion, was the cause of her condition as found by you at that examination?

MR. LEVY: Now, wait a moment. I object to that question as incompetent, irrelevant and immaterial, upon the grounds that the proper foundation has not been laid, that the proper hypothesis has not been established that sufficient has not been put upon the record to justify ~~for~~ the calling ~~for~~ an opinion of the witness.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A From the absence--

THE COURT: No; don't go back into what you base your opinion upon.

THE WITNESS: May I hear the question again?

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THE COURT: You are asked for your opinion.

Now, what is that?

THE WITNESS: My opinion is that her labor was interrupted by means other than natural.

MR. LEVY: I move to strike out the answer as not responsive.

THE COURT: Yes, motion granted.

THE WITNESS: May I hear the question again?

THE COURT: It is somewhat responsive, but not sufficiently so.

MR. PRESS: I ask that the question be read.

THE COURT: You are asked for your opinion, doctor.

THE WITNESS: May I have the question again?

Q (Question read by the stenographer as follows:

"Based upon your experience, doctor, and your examination of Sarah Mosby, on the 24th of February, 1911, what, in your opinion, was the cause of her condition as found by you at that examination?")

A Some interference with the normal course of pregnancy.

BY THE COURT:

Q And in your opinion was that interference artificial?

A Artificial, yes.

MR. LEVY: There is some part of the testimony, your Honor, which you have stricken out, which I respectfully ask you to instruct the jury to disregard.

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THE COURT: Which is that?

MR. LEVY: The part which you struck out.

THE COURT: That which has been stricken out?

MR. LEVY: Yes.

THE COURT: The Court directs the jury to disregard absolutely that testimony which was given by the doctor asking him for the cause, without giving it as his opinion, and the answers to that should be stricken out, and I again tell you gentlemen that you are not to regard that at all. The doctor has been called here, and he has been asked about his experience in such cases, preparatory to asking him a question based upon his opinion. He has given that opinion. You may regard that opinion as you would any other evidence; give it the weight that you deem it deserves; but as for other questions asked without giving his opinion, you are directed to disregard that.

MR. PRESS: That is all.

CROSS EXAMINATION BY MR. LEVY:

Q Now, in answer to the last question that was put to you by his Honor, as to whether or not in your opinion such means which interfered with normal pregnancy was the cause of the condition of that woman as you saw her?

His Honor asked you whether or not it was artificial, in

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your opinion, artificial in appearance, and you said it was, is that right? A That is right.

Q Now, could that artificial interference have been brought about either through instruments or through drugs?

A It could have been, it could.

Q Through what, doctor? A I think, it could.

Q It could. Either through drugs instruments?

A Either drugs or instruments.

Q If the young woman had been taking for a period of a month almost daily, a number of pills, such as emmenagogues, would it have produced the result--

THE COURT:

~~MR. PRESS~~: Is there anything in the testimony about the character of the pills?

MR. PRESS: There is not, your Honor.

if

THE COURT: Then you are going to ask a hypothetical question, you will have to leave that out.

MR. PRESS: Nor was it shown that they were taken daily for a month.

THE COURT: That is a question.

MR. LEVY: Well, that she took a box full of pills, about two every hour or one every hour.

MR. PRESS: Yes.

MR. LEVY: There is that testimony.

THE COURT: Yes.

MR. LEVY: And that they were taken for a condition

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that she complained of to her doctor.

THE COURT: Yes.

Q First of all, doctor, let me ask you, so the juryb
may understand, what is an emmenagogue? A An emmena-
gogue is--

MR. PRESS: Objected to.

THE COURT: Objection sustained.

MR. LEVY: This is preliminary.

THE COURT: Objection sustained. There is nothing
in the testimony concerning it at all.

MR LEVY: I except.

Q What kind of drug usually can produce an aborting
of a pregnant woman?

MR. PRESS: Objected to.

THE COURT: Objection sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Was there any outward or physical evidences,
from your examination of Sarah Mosby, to indicate the kind
of artificial means that were used to interfere with
her pregnancy? A There was not.

Q Did you notice whether or not the uterus was tender?
A (Consulting paper) A It was tender.

Q You know the young man who has been here, Doctor
Buell, do you know him? A I do.

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Q He was in attendance as well, wasn't he? A He was.

Q He has testified that it was not tender. Is your recollection different? A I am going on the record as taken at that time.

Q He has testified, I will tell you, that it was not tender. Do you agree with him or don't you? A I do not.

Q There would be tenderness, anyway, would there not, where an abortion or a miscarriage is brought about naturally? A (No answer)

BY THE COURT:

Q Would that be a necessary condition, doctor? A It would not be a necessary condition.

BY MR. LEVY:

Q But it is a usual condition? A It is a common condition.

Q Doctor, take a woman pregnant nearly two months, six ~~ex~~ to eight weeks, any sudden shock or fright, would that bring about an abortion.

MR. PRESS: I object, if your Honor pleases.
There has been nothing shown here that there was any fright or shock or anything attending it.

THE COURT: Objection sustained.

MR. LEVY: Exception.

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Q If a woman were an extremely nervous woman, doctor, and were subjected to arrest, would that, in the condition of a woman who was pregnant for six to eight weeks, possibly produce a miscarriage? A It has not been shown that this is an extremely nervous.

THE COURT: I will allow the question.

A It would depend more upon the local conditions than the woman's generative organs, than it would upon an immediate shock.

Q It would be possible? A It would be possible.

Q And it has in your experience occurred? A It has occurred.

Q Doctor, does it require any degree of force, physical force, to bring about a miscarriage? A You may, in a given case, ~~but not~~ or in any case.

Q In any case? A In a great many cases, it does.

Q And in other cases it does not? A In some cases it does not.

Q Sometimes a trivial interruption in the ordinary course of a woman's life would bring about a miscarriage?

A If the woman was in a local condition I mean if the woman's organs were in a condition predisposing to an abortion, that might be the fact.

Q Now, take the case of a young woman like Sarah Mosby, about twenty five years of age, unmarried, had

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heretofore borne a child, finds herself pregnant to the extent of about six to eight weeks, goes to a physician, receives from the physician some kind of pill, the nature of which has not been disclosed, which she takes regularly for her condition, prescribed to her by the physician for her condition, finds herself without relief, comes to New York, finds herself arrested, charged with participation in some illegal matter, would that, from cases you have observed, and had experience in-- A Are you asking about this case?

Q (Continuing) --be likely to produce an abortion?

MR. PRESS: Objected to unless it is shown in this question at what time these pills were taken.

THE COURT: What is the question?

(The question is read by the stenographer.)

MR. PRESS: I have objected upon the ground the time when the pills were taken has not been stated.

THE COURT: I will allow him to answer the question. From that statement, would you give any opinion?

THE WITNESS: In a woman like Sarah Moseby, who had been using the pills for that ~~max~~length of time, I don't think it would.

Q Would you regard her as a strong woman? A A strong woman.

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Q Speak up? A I regard her as a normal woman, so far as her reproductive organs are concerned.

Q Well, doctor, assuming that she had been taking some pills to bring about an abortion, which is in evidence here, if she took pills, after going to a physician to get a prescription for that purpose, and she was subjected to a condition of excitement by reason of her arrest, and she described her condition as being nervous, and she was frightened, would that be likely to bring about such a condition?

MR. PRESS: Objected to because the question is framed not upon the evidence, but upon Mr. Levy's own opinions. The pills were not taken for the purpose of an abortion.

THE COURT: There is not anything in the testimony to show she had been taking pills to bring about an abortion. That is too violent an assumption altogether.

MR. LEVY: Let me direct your Honor's attention to--

THE COURT: No, I sustain the objection.

MR. LEVY: Let me explain to you where it is in evidence.

THE COURT: You had it right in your first question, that she had been taking pills; but there is not anything in the testimony either denying or admitting that

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she was taking pills to abort, as a means of abortion.

MR. LEVY: Will your Honor indulge me a moment, please.

MR. PRESS: Q If your Honor pleases, you have ruled, and it seems to me that Mr. Levy should curtail his speeches.

MR. LEVY: I am going to make this speech to his Honor, if his Honor will indulge me, whether you like it or not. Your Honor will remember that the witness testified she found her periods did not come.

THE COURT: And that the doctor never examined her.

MR. LEVY: But that he must have known what was the matter. You remember her words. He gave her pills, and she went to him the second time, and he said, "I can't do anything for you. I will send you to New York, to a hospital."

THE COURT: Your hypothetical question already asked has assumed as much as you are warranted in assuming about these pills, and the Court sustained the objection.

MR. LEVY: And I very respectfully except.

Q Now doctor, what examination did you subject that woman to, tell me? A I examined her by the use of what we call a speculum, visibly, and by a manual examination.

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Q Now, you used a speculum. Some of these gentlemen may not know what a speculum is. What is a speculum? A A speculum is an instrument which is introduced into a vagina with the object of spreading it apart, so that you can look into the deeper portions of it.

Q It is a sort of hollow cube, isn't it? A No.

Q What is it then? Describe it. A It has two leafs, which are introduced closed, and then opened by means of a screw.

Q That spreads out the vagina, and gives you an opportunity of looking into the interior; is that right?

A At the interior.

Q Now, did you do that? A I did.

Q Used the speculum? A Yes, sir.

Q Who was with you then? A The nurse.

Q And what did your observation through the speculum disclose to you? A It disclosed that the-- the lower part of the uterus was enlarged and softened; the opening of that lower part was opened; it was an abnormal condition, and there was a bloody discharge coming from it.

Q Did you see any abrasion? A Not to my recollection.

Q Did you see any laceration? A Not to my recollection.

Q Did you see any contusion? A Not to my recollection,

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no.

Q If artificial means was used for the purpose of dilating a uterus, wouldn't there be congestion? A Not necessarily.

Q Do you mean to say that you can insert a catheter, if you like, without producing some sort of abrasion or contusion, or a congestion? A Without producing any which you could see, yes.

Q Which you could see? A Yes.

Q Would the condition which you saw with your eye-- could the condition which you saw with your eye there through the speculum have been produced by the use of drugs and not by means of an instrument? A That is the condition which is present in any premature labor.

Q I don't hear you? A I say that condition would be present in any abortion at that time.

Q Natural or artificial? A Natural or otherwise.

Q Drugs or instruments? A Yes, or without either.

Q Or by a fall, or by a shock, or by being knocked is that right? Don't nod your head; answer. A That is right.

Q Now, doctor, we heard this young physician talk about the os; meaning the opening as he said, to the womb. Now, there are two descriptions, are there not, of the os? A Just what--

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Q To designations? A There is an external os, with an internal os, with a connection between them, if that is what you mean.

THE COURT: Mr. Levy seems to be inclined to call it the os on account of his physiological derivations, perhaps, or mouth, while the physician would insist on calling it the opening. Now, there is the difference between the lawyer and the physician.

THE WITNESS: Perhaps, if I described the cervix, you would have something to go on.

THE COURT: Now, what he wants to know is about his characterization of the os as an opening. Was the physician right or wrong, in your opinion?

THE WITNESS: It is an opening.

Q In its normal condition, in its normal condition; is but it [^]also the mouth to the womb, isn't it? A It is the mouth, if you care to call it so.

Q Is that right? A I have a mouth, too, but I have no os.

Q When you speak about it, you speak about the mouth of the womb? A Yes.

Q And that means the os. There is the inside os and the outside one, and what is the inside one called? A The internal os.

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Q The os uteri, isn't it? A Not to my knowledge.

Q Well, may be I am wrong. I want to know whether or not the normal condition of that opening or mouth is tightly closed, or open to any degree, so that any foreign substance can penetrate it or be inserted into it, in its normal condition. A In its non pregnant normal condition, yes.

MR. LEVY: Will you repeat the question.

(Question read by the stenographer as follows:

"Well, maybe I am wrong. I want to know whether or not the normal condition of that opening, or mouth, is tightly closed, or open to any degree, so that any foreign substance can penetrate it, or be inserted in it, in its normal condition?")

THE WITNESS: No, it is not open to any great degree.

Q well, can any foreign substance be inserted in it, without any effort, or does it require effort to penetrate into the uterus, through that opening or mouth? A It requires an amount of effort, yes, sir.

Q Effort? A Effort.

Q Now, then, there is the os cirvex, isn't there?

A No, the os is part of the cirvex.

Q Part of the cirvex; and the canal that is going to be penetrated from the mouth of the vagina to the womb is how long? A That is part of the cirvex.

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Q How long? A On an average, I should say, about an inch.

Q One inch to reach the mouth of the womb, or to reach that opening of the womb? A Yes, about the distance between the external os, and the internal os.

Q Now, doctor, you want to be understood as testifying, from your observation of the condition of that young woman do you mean that artificial means had been used to bring about her miscarriage, in plain English? A Will you repeat that again.

(Question read by stenographer as follows: "Now, doctor, you want to be understood as testifying, from your observation of the condition of that young woman, do you mean that artificial means had been used to bring about her miscarriage, in plain English?") A I express that as my opinion.

Q There was not anything physically present that would make a certainty of it? A No, there was the absence of other causes for it.

Q What other causes were absent? A A displacement of the uterus.

Q Is that usual in a normal miscarriage? A In a normal miscarriage?

Q Is there such a thing as normal miscarriage? A No, sir.

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Q There is not? A Not to my knowledge.

Q When I speak about a normal miscarriage, I mean not criminal; I mean such as for instance, brought about through a fall or an accident, or through a fright, as distinguished from a criminal miscarriage.

A As a rule in an accidental abortion, there is some cause within the organs themselves.

Q Now, there is no displacement of the womb here?

A I found none.

Q There was no inflammation of the womb? A Well, I don't know what you mean by inflammation.

Q You know what I mean by any substance being inflamed; you know that is meant by that? A I know what I mean by it.

Q What would you mean by an inflamed condition?

A An inflammation-- an ordinary congestion is an inflammation.

Q Did you find any in this case? A As regards congestion it is there. I didn't find any disease.

Q No disease? A If that is what you mean.

Q There was no tearing, no abrasion, and no laceration?

A No, not that I could see. I believe the woman had had one pregnancy before, and, therefore, there was a small amount of laceration, the result of previous pregnancy.

Q Could you tell from your examination the number of

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times that she had borne children? A No, sir.

Q But you could tell that she had borne a child?

A Yes, sir, but we had her history.

Q I am trying to get at your own actual observation. The history you got from the woman herself? A Yes, sir.

Q She told you that. But independtly of that, I want you to pass your opinion upon your own observation, not upon what the woman told you. You were prone to believe that there had been some artificial interference because of what the woman told you, weren't you? A I don't remember whether I asked her first, or examined her first.

Q You have told us about the history of the case, and when you speak about the history of the case you took into account what the woman told you about her having had some instrument applied to her?

MR. PRESS: Objected to because the witness has already stated that he does not know whether he examined her first or heard her history first.

THE COURT: Objection overruled.

A If I heard the history before I examined her I did, otherwise if course, I didn't.

Q Doctor, one other matter. Had you been informed, in making up your knowledge of the so called history of the woman had you been informed that she had taken pills for a month previous to the time of this abortion? A I

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had not.

MR. PRESS: Objected to.

THE COURT: He has answered that he has not.

Q Now, one other matter. You see upon the table in front of you a bottle, which contains what seems to be a foetus, is that right? A Yes, sir.

Q Have you ever seen that before? A I don't know whether I have seen this one before. If that is the one that came from the defendant, I have seen it before.

Q Do you say you have or have not? A If that is the one that came from--

Q I am not here to give you information. I want to get information from you. Do you recognize it? A I don't see how you can recognize that.

Q Is there any mark on the bottle? A No.

Q Or label on it which will help you? A No; no label on that that can help me along.

BY THE COURT:

Q You haven't it in your custody, had you, doctor?

A I did not.

BY MR. LEVY:

Q Now, doctor, just a few additional questions. How long have you been practicing medicine? A For two years and ten months.

Q Two years and ten months. And when was it that you

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had the opportunity of witnessing four hundred abortions?

A I believe I didn't say four hundred abortions.

Q Well, what did you say about that? A I said that I had examined a number of hundreds-- Of cases of abortions, and, as a moderate estimate, I said I had examined two hundred, I thought.

Q Well, take two hundred, then, of abortions. You mean miscarriages, don't you? A No, I mean abortions.

Q Criminal abortions? A No, I don't mean criminal abortions. I mean miscarriages, if you like.

Q An abortion is any kind of miscarriage? A I use the wider term in my statement, yes. t

Q What do you mean, criminal abortions? A No, I mean abortions.

THE COURT: Q He didn't say anything about criminal abortions. He said abortions.

Q In order that the jury may understand you mean in any case where a woman aborted a child before the natural period of time? A No.

Q What do you mean? A I mean in any case where a woman aborts in the early months of pregnancy. If a child is a live child, that is a premature birth.

Q You mean before the proper period of gestation had passed through, if a woman aborted a child, you would call that abortion?

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THE COURT: You are giving the professional meaning. You mean the meaning the doctors have.

THE WITNESS: I am including in that the early-- a miscarriage in the early months.

Q A miscarriage in the early months. Well, how many cases of criminal abortions have you seen by reason of instruments? A I don't know; a large number.

Q What? A A large number. I don't know how many.

Q Well, how many? A I would not hazard a guess on that.

Q Can 't you give me some estimate, by artificial means, such as drugs and instruments? A I believe a number I have seen. As a result of drugs, I ~~cannot recall~~ only recall-- Personally I am sceptical about the drug abortion.

Q What? A I say, as regards drugs, I am rather sceptical about drugs aborting a normal uterus.

MR. LEVY: I move to strike out the doctor's scepticism.

THE COURT: I will allow the answer to stand.

MR. LEVY: You allow it to stand?

THE COURT: Yes.

MR. LEVY: I take an exception.

Q Doctor, there are drugs, are there not, that will abort a woman pregnant? A If she is in a condition to

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respond to the drugs.

Q Answer me. Are there drugs that will bring about a miscarriage in a woman who is pregnant? A It depends on the woman.

Q "Yes" or "no"? A I can't answer that "yes" or "no."

Q You know what urgot is? A Yes.

Q Does that produce an abortion? A In some women, and others it won't.

Q Then it will produce an abortion under certain circumstances? A Yes, sir.

Q And there are other drugs which will produce abortions? A Yes, sir, there are; under ^{the} same circumstances.

Q You have had two years and ten months experience as a doctor? A Yes.

MR. LEVY: That is all.

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HERMAN HENIGSON, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. PRESS:

Q What is your full name? A Herman Henigson.

Q Where do you live? A Number One East One hundred and Twelfth Street.

Q What is your business? A Process server.

Q Process server? A Yes, sir.

Q Connected with where? A District Attorney's office, County of New York.

Q Did you see Esther Harris? A I did.

Q To-day? A I did.

Q Where did you see her?

MR. LEVY: Objected to as not material or relevant to this issue.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A At 16 Essex Street, Newark, New Jersey.

Q Did you have a subpoena with you? A I did.

Q Did you serve that subpoena on her? A I did.

MR. LEVY: Objected to, as not material or relevant.

THE COURT: Objection overruled. Proceed.

MR. LEVY: Exception.

Q Did you request her to accompany you to New York?

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MR. LEVY: Objected to. It calls for a conversation in the absence of--

THE COURT: No, go ahead.

MR. LEVY: I take an exception.

A I did.

Q Did she accompany you to New York? A She did not.

Q Did she refuse to accompany you to New York?

MR. LEVY: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A She refused.

BY THE COURT:

Q Now, as to the service, did you hand her a paper?

A I did.

Q What was that paper? A A subpoena, to appear in Court.

BY MR. PRESS: -

Q Did that subpoena call for her attendance in Part Two?

MR. LEVY: Objected to.

BY THE COURT:

Q Did you read the subpoena? A Yes.

MR. PRESS: Permit me to put the question.

MR. LEVY: The witness answered too quickly, and

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I want to get my objection in.

THE COURT: Proceed, gentlemen.

BY MR. PRESS:

Q Will you state the contents of that subpoena, to the best --

MR. LEVY: Objected to.

BY THE COURT:

Q Did you read it? A I did.

Q Did you leave it with her? A Yes, sir.

Q Do you know what was on it? A Yes, sir.

Q What was on it?

MR. LEVY: Pardon me, your Honor, with all due respect --

THE COURT: You may have your exception.

MR. LEVY: Let me state my objection.

THE COURT: Make your objection.

MR. LEVY: I object to it as incompetent, irrelevant and immaterial, hearsay, and calling for the contents of a document not produced in Court.

THE COURT: Objection overruled. Proceed.

MR. LEVY: I take an exception.

A It commanded one Esther Harris Richardson to appear in Part Two of the Criminal Court of the County of New York on the 25th day of April.

THE COURT: That is all.

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MR. LEVY: No questions.

MR. PRESS: Shall we proceed, your Honor, or shall we adjourn now? Mr. Levy has an engagement.

MR. LEVY: Your Honor, I have to sit upon a commission upon which I was appointed by this Court, and which meets at four o'clock, and I have got to go there. The case is called for four o'clock, and I have to sit from four to five.

THE COURT: I know you are a busy man, but you ought to recall that sometimes in the progress of a trial--

MR. LEVY: Well, I try to do according to my light and understanding.

THE COURT: You said this might run into to-morrow. I do not intend that it shall run much beyond it.

MR. LEVY: Will your Honor allow me time enough to attend the Commission and come back?

THE COURT: I will sit here as long as I think I can stay here, in view of the fact that we have had only two or three witnesses in this case; I think we have not gone on as well as we should have.

WILLIAM H. VAN TWISTER, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

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DIRECT EXAMINATION BY MR. PRESS:

Q What is your full name? A William H. Van Twister.

Q Where do you live? A 31 North Washington Place,
Astoria, Long Island.

Q You are a member of the Police Force of the City
of New York? A Yes, sir.

Q And have been for how long? A About fifteen years
and a half.

Q Do you know Sarah Mosby? A Yes, sir.

Q Where did you first see her? A At 219 East Fifty-
third Street.

Q 219 East Fifty-third Street? A Yes, sir.

Q Is that in the County of New York? A Yes, sir.

Q On what day did you see her there? A On the 24th
day of February, 1911.

Q At about what hour? A About nine A. M.

Q In what part of the building did you see her?

A On the second floor rear; that is, the rear room.

Q In the rear room? A Yes, sir.

Q What kind of a room was that? A Bed room.

Q How many beds were in that room? A Two.

Q Was there any other occupant of that room at that
time? A Yes, sir.

Q Her name?

MR. LEVY: I object, to it, as not competent,

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material or relevant.

THE COURT: proceed.

MR. LEVY: Exception.

A Esther Harris Richardson.

Q Did you see the defendant there at that time?

A Yes, sir.

Q What part of the house was she in?

A The first floor rear room, rear parlor.

Q Did you arrest her at that time? A No, sir.

MR. LEVY: Arrest who, the defendant?

MR. PRESS: The defendant.

THE WITNESS: Not at the time I met her on that night.

Q When did you arrest her? A After I went up stairs through the building.

Q You came back again, did you? A Came back again.

Q And arrested her? A I told detective Druckman--

Q Never mind what you told him. Did you tell him anything in the presence of this defendant?

A Yes, sir .

Q State what you told him in the presence of this defendant? A I told Detective Druckman to take this defendant around to the Station house, and let her stay there, and for him to come back again.

Q How was Sarah Mosby and Esther Richardson dressed

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when you entered the rear room on the second floor.

A The Richardson woman had a night dress on, and the Mosby girl had a wrapper.

Q Were they in bed, or were they walking about?

A The Richardson girl was sitting on the bed, and the Mosby Girl was sitting on a chair.

Q What did you do with the Mosby girl, if anything?

A I spoke to her.

Q Did you take her anywhere? A Later on, I told her to dress herself.

MR. LEVY: Not what you said to her.

Q She dressed herself, did she? A She dressed herself, and I sent her to the hospital.

Q With whom did you send her to a hospital?

A In an ambulance, to the Flower Hospital, with the ambulance surgeon, and a uniformed police officer.

Q When did you next see her? A When I went to Bellevue Hospital; I don't just remember the date; I went there with Mr. Wilmott.

Q Did you search that house? A Yes, sir.

Q Did you find anything in that house?

MR. LEVY: Wait a moment.

Q (Continuing) In the way of instruments? or other things?

MR. LEVY: Objected to as not competent, material

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or relevant.

THE COURT: Objection sustained.

Q Did you have any conversation with this defendant?

A I did.

Q What did you say to her? and what did she say to you? A I asked her what sort of a house she was running here. She told me it was a furnished room house. I asked her who occupied the house, and she said, "I have three women roomers". I asked her where they were. She said there was two on the next floor, and one was on the top floor. That is about all I remember.

Q Did you see the woman on the top floor? A I did; yes, sir.

Q What was her name?

MR. LEVY: I object to it.

THE COURT: Objection sustained.

Q Well, there was a third woman in the house?

MR. LEVY: Objected to as not material.

THE COURT: Objection sustained.

Q How was the third woman dressed?

MR. LEVY: Objected to as not material.

THE COURT: Objection sustained.

MR. PRESS: Only for the purpose, if your Honor please, of proving that she was in this house, establishing the fact that she was in that house.

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Q Were there any other women in the house other than the defendant and the two women whom you have named, in the back room, on the second floor?

MR. LEVY: Objected to as not material.

BY THE COURT:

Q Do you know? A Yes, sir, I know.

MR. LEVY: I object to it as not material, your Honor.

THE COURT: Objection overruled.

MR. LEVY: Exception.

BY MR. PRESS:

Q How many other women were there?

MR. LEVY: Objected to.

A One.

MR. LEVY: As not competent, relevant or material.

THE COURT: Objection overruled.

MR. LEVY: Exception.

Q Where was she?

MR. LEVY: Objected to. That is another woman, not connected with this case.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A She was in the rear parlor.

Q How was she dressed?

MR. LEVY: Objected to as not material or relevant

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or competent.

THE COURT: Objection overruled.

MR. LEVY: Exception.

A She had her hat on and a fur coat, fully dressed.

Q Do you know her name?

MR. LEVY: Objected to as not material.

THE COURT: We have had enough on that. Objection sustained.

Q Did you send her to the hospital with the other two women?

MR. LEVY: Objected to.

THE COURT: Objection sustained.

MR. PRESS: That is all.

MR. LEVY: I have no questions to ask you, officer.

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THE COURT: Gentlemen of the jury, you are admonished that you are not to discuss any matter connected with this trial among yourselves, nor permit any one to talk with you about it, nor to form any opinion on it until it is finally submitted to you. We will take an adjournment until to-morrow morning until ten thirty.

(The Court accordingly took a recess until to-morrow, Wednesday, April 26th, 1911, at ten thirty A. M.)

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THE PEOPLE, Etc., vs. ELISE HOFFMAN.

New York, Wednesday, April 26th, 1911.

TRIAL CONTINUED

Present :

HON. THOMAS C. O'SULLIVAN, J.,

And a Jury.

Appearances :

Same as before.

THE DEFENDANT IS ARRAIGNED AT THE BAR.

HENRY E. BRUCKMAN, called as a witness
on behalf of The People, being first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. PRESS.

Q What is your full name ? A Henry E. Bruckman.

Q Where do you live ? A 1419 Katonah Avenue, Bronx.

Q You are a member of the police force of the City of
New York ? A I am.

Q And have been for how long ? A About five and
one-half years.

Q Attached where ? A Detective Bureau.

Q Do you remember the 24th of February, 1911 ?

A I do.

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Q On that day, did you see Officer Van Twisten ?

A I did.

Q Did you accompany him to the premises 219 East Fifty-third Street, in the City and County of New York ?

A Yes, sir.

Q At what hour of the day did you get there ?

A I should judge it was in the neighborhood of nine, or half past nine, in the morning.

Q Who did you see there ? A I saw the defendant and Jacob Hoffman and a girl who was employed there. I saw three women leaving the premises, and another woman in the rear room at the time that they were there.

Q Did you see one Sarah Moseby there ? A I did.

Q Is she one of the three that you say you saw leave the premises ? A Yes, sir.

Q Where did they go, those three women ? A They were standing on the sidewalk, and one of them was just putting her foot into an ambulance.

Q Did Sarah Moseby go into the ambulance ? A Yes, sir.

MR. PRESS: You may examine.

MR. LEVY: I have no questions.

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THORE EMILY JENSEN, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS.

Q What is your full name ? A Thore Emily Jensen.

Q Where do you live ? A Tuckahoe.

Q On the 23rd of February, 1911, were you in the City of New York ? A Yes.

Q Where were you staying on that date ?

MR. LEVY: Objected to as not material, your Honor.

THE COURT: What is the ground of your objection,

Mr. Levy ?

MR. LEVY: As not material, your Honor.

THE COURT: I beg pardon.

MR. LEVY: Not material.

THE COURT: Objection overruled.

MR. LEVY: Exception.

THE COURT: The materiality of it cannot be determined immediately, and unless it is material and connected, it will be stricken out, upon your motion.

Q Where were you staying on the 23rd of February, 1911 ? A 219 East Fifty-third Street.

Q Were you in that same place on the morning of the 24th of February, 1911 ? A No.

Q When did you leave the premises 219 East Fifty-

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third Street ?

MR. LEVY: Your Honor, I make the same objection to that, upon the same ground.

THE COURT: I don't know, so far, how that is material.

MR. PRESS: My only object is to show -

THE COURT: I don't care to have you state what the object is. I don't see how that place is related to the trial at all.

MR. PRESS: That is the house occupied by Mrs. Hoffman.

THE COURT: I know, but you must not testify. Let her testify who lived there, if she wants to, or who was there, but before you show she lived there, we want to know whether or not her stay or residence there was in any way material to this case.

MR. PRESS: Very well, your Honor.

THE COURT: Her going and coming, so far, do not appear to be of any materiality here or competency whatever.

Q Who were in that house with you on the 23rd of February, 1911 ?

MR. LEVY: Objected to as incompetent, irrelevant and immaterial. The question might be, did you see Sarah Moseby there on that date, but I don't think it

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competent or material to allow proof -

THE COURT: I will allow the question.

MR. LEVY: Exception, please.

Q On the 23rd? A Mr. and Mrs. Hoffman.

Q A little louder, if you will; the jurors cannot hear you. A Mr. and Mrs. Hoffman and two colored women.

MR. LEVY: Will you raise your veil, Miss; I think we could hear better if you would, please.

(Witness complies.)

THE COURT: Now, proceed.

Q Were there any other parties in that house on that day, the 23rd of February, 1911? A I don't remember the date; I remember - What day of the week was the 23rd of February? I don't know.

Q You don't remember what day of the week it was?

A No.

Q How long had you been staying at that house?

MR. LEVY: Objected to as not material.

THE COURT: Objection overruled.

MR. LEVY: Exception, please.

A I stayed there from Saturday until Friday.

THE COURT: Speak loud, so the Jury can understand you.

THE WITNESS: From Saturday until Friday.

Q What day did you leave the house? A Friday.

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Q It was on a Friday ? A Yes, sir.

Q Did you see Sarah Moseby there on that day ?

A Yes.

Q Where did you first see her on that day in that house ? A On the stairs, going down to the ambulance.

Q Had you seen her in that house before that day, Miss Jensen ? A No.

MR. PRESS: You may examine.

MR. LEVY: No questions. If your Honor please, I move to strike out the testimony of this last witness, as not being competent, relevant or ~~in~~ material or pertinent to the issue.

THE COURT: Motion denied.

MR. LEVY: Exception, please.

THE PEOPLE REST

MR. LEVY: May it please your Honor, there are two counts in this indictment, and the first count charges the commission of the act by means of an instrument; the second count charges the alleged commission of the act by ~~means~~ divers means to the Grand Jury unknown. I would respectfully request that your Honor direct the District Attorney to elect under which count in this indictment he proposes to

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submit this case.

THE COURT: What is the first count alleged, Mr. Levy ?

MR. LEVY: The use of an instrument; and the second alleges by divers means unknown to the Grand Jury.

THE COURT: Yes, I will ask the District Attorney to elect.

MR. PRESS: Then we will take the second count, by divers means to the Grand Jury unknown.

MR. LEVY: Then the first is withdrawn, is that the idea, the first count ?

MR. PRESS: You have asked me to elect. I am electing.

MR. LEVY: I want it stated on the record.

THE COURT: I beg pardon ?

MR. LEVY: It should be stated on the record whether or not the Learned District Attorney withdraws the first count.

MR. PRESS: If your Honor pleases, I have been asked to elect; you have directed me to do it, and I have elected.

THE COURT: Yes, I have directed the District Attorney to do it, and you have elected.

MR. LEVY: Now, may it please your Honor, I

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ask your Honor to direct the Jury, under the provisions of Section 410 of the Code of Criminal Procedure, to acquit the defendant, upon the ground that the People have failed to establish facts sufficient to sustain the indictment, the count of the indictment which is submitted by the District Attorney, upon the ground of a variance, a material variance between the proof and the allegations in the indictment.

THE COURT: Motion denied.

MR. LEVY: An exception, if you please.

With all due respect, your Honor, and because I believe in the force of what I have stated in my motion to ask your Honor to advise the Jury to acquit, and because of my belief in the merit of the motion, I also rest my case.

THE COURT: Yes; it is not necessary for you to state why you rest it. You may rest. Your motions are denied.

MR. LEVY: Now, then, if your Honor pleases, upon the whole case, upon the entire case, - I am required to do this, to make this motion - I renew the motion that your Honor advise an acquittal, upon the ground the People have failed to establish facts sufficient to sustain the indictment, because of insufficiency

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of proof, and because of material variance between the proof and the allegations of the indictment.

THE COURT: Motion denied.

MR. LEVY: Exception, if you please.

I suppose, your Honor, that I can agree with Mr. Press with regard to the time that we are to take in summing up to the Jury. How much time would you want, Mr. Press ?

THE COURT: How much time do you think you need ?

MR. LEVY: I would like to finish this case before recess, if possible.

THE COURT: I should like to have you do that long before recess.

MR. PRESS: I will agree on twenty minutes, or twenty-five minutes, if Mr. Levy wishes. Twenty-five minutes I will agree to.

MR. LEVY: Within half an hour.

MR. PRESS: Fifteen minutes.

MR. LEVY: Well, I will take half an hour; perhaps less.

(Mr. Levy then summed up the case on behalf of the Defendant.)

(Mr. Press then summed up the case on behalf of The People.)

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