

START

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CASE

CASE #2077

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK. PART 111.

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

Before:

-against-

HON. JOSEPH F. MULQUEEN, J.

SALVATORE MANZELLO.

and a jury.

-----X
Indictment filed May 4, 1915.

2522

Indicted for rape in the first degree, assault in the first de-
gree, &c.

New York, May 17, 1915.

A P P E A R A N C E S.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY WILLIAM A. DeFORD.

FOR THE DEFENDANT: MR. CHARLES SULLIVAN.

Peter P. McLoughlin,
Official Stenographer.

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MR. DeFORD: Lieutenant George H. Quackenbos, is the sign language expert of the police department, and I would like to have him qualify as interpreter in the deaf and dumb language in this case. I will use him when I call the first witness, Annie Vento, who is deaf and dumb.

MR. SULLIVAN: I object to him being called as interpreter until his qualifications are shown.

GEORGE H. QUACKENBOS, proposed as an interpreter in the sign language, being duly sworn, as to his qualifications, testified as follows:

(The witness states that he lives in Staten Island, the address 63 Dubois avenue, West Brighton, Staten Island.)

DIRECT EXAMINATION BY MR. DeFORD:

Q What is your occupation? A I am a lieutenant of police.

Q Are you familiar with the sign language by which ideas are communicated to the deaf and dumb, and by which they communicate ideas to other people? A Yes, sir; I taught the deaf for a great many years.

Q What is the language called? A The sign language of the deaf.

Q How long have you been using that language? A Thirty years.

Q You are familiar with it? A Yes, sir.

Q Have you had a large experience in interpreting that

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3.
language in courts? A I have, for the nineteen years that I have been in the department and before that I taught the deaf in a State institution at 68th street and Lexington avenue. I was appointed by the State Board of Education to the Institute in Trenton, New Jersey where I taught the deaf for years and in other places.

Q I want the sign in the deaf and dumb language to indicate that a person had been done any grievous injury?

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

MR. DEFORD: I will show its materiality later because I am going to show--

THE COURT: How many systems of the sign language are there.

A The pelepee and the

Q There are two? A Yes, sir.

Q Two? A Yes, sir.

Q Now, have you talked with the complaining witness in this case? A I have.

Q What sign language did she use? A She used the universal sign language of the deaf, that is generally used throughout this country and England; that is a separate system.

Q You understand the signs used by her? A I do thoroughly well. She is not as proficient in the signs as most deaf mutes of her age and experience are, but she is still perfectly plain with me, and it is quite as clear as spoken lan-

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guage.

THE COURT: I will allow the question.

Objection overruled; exception.

Q Will you state whether or not there is a sign which belongs to the sign language, the universal sign language which you say the complainant used which indicates that the person using it has been done an injury or has been done bad.

MR. SULLIVAN: I object to that.

MR. SULLIVAN: I will allow it. Exception.

Q Yes or no, please. Is there such a sign? A Yes, sir.

Q Will you show the jury what the sign of that language is the sign which indicates that the person using it has been done bad?

MR. SULLIVAN: I object to that. I will allow it.

Exception.

A The sign bad. (illustrating).

Q Stand up and show it. A (The hand pushed up or turned back up, just like that (illustrating). That is the universal sign for bad, and what kind of bad is qualified afterwards by augmenting that sign.

Q Does that language contain a sign which indicates that the person using it had been done bad as the result of an act of sexual intercourse or an attempt with an act of intercourse?

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

Objection overruled; exception.

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A The sign bad accompanied by the finger placed in the hand in that manner (illustrating) indicate bad act of unlawful sexual intercourse (witness illustrates to the jury.)

Q Now are those signs that you have given used by this system of the sign language which you say the complainant employed? A That is the system which she employed, yes, sir.

CROSS EXAMINATION: BY MR. SULLIVAN:

Q In conversing in the sign language, do you use two hands or one? A In the sign language we use one hand with some signs, and two hands with others; there are about 48,000 signs.

Q Is there a system of the sign language where one hand alone is used? A The manual alphabet show what the signs are. There are two manual alphabets, one with hands, and one with one hand, but the sign language uses the whole body, the arms, the face, the hands, all are used in the sign language, and that must not be confused with the manual alphabet, either doubly or singly.

Q Now, in using the sign language, do you use the manual alphabet? A In using the sign languages, the signs are frequently explained or augmented by the use only of the single hand alphabet. I may say that deaf mutes do not use the double hand, that is only used by school children. Those who do not understand it use the single hand.

Q Does this woman use the single hand? A Yes, sir; surely.

Q You have talked with her? A I have.

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Q You have talked with her since the hearing in the police court? A I have.

Q Is the manual sign made by two hands as well as by one? A What do you mean by the manual sign?

Q The manual sign of spelling a word? A You mean the ordinary alphabet, A, B, C, D, E with one hand (illustrating).

Q And you use two hands two? A No, sir; not with the deaf. This is a more handy alphabet to use--that is never used by the deaf not in a great many years.

BY MR. DeFORD:

Q Will you state whether or not there is a sign of that language, which, the system which you have, the universal system referred to, which indicates that the person making it has been kissed? A There is the sign for kissed (indicating) the fingers of that hand placed to the cheek (indicating).

Q Will you again make to the jury so that they will get a clear understanding about it, the two signs, the sign indicating the person making it had been kissed, and the sign indicating that the person making it had been done bad or grievously injured and that a person making it had been injured by a person committing an act of sexual intercourse?

THE COURT: I don't think that is necessary.

MR. DeFORD: I wanted to show that all three of them are practically the same.

A The sign for bad is this (indicating)

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8.
Q And kiss? (Indicating) The fingers of the hand this way, the lips closed and the hand placed against the side of the cheek.(Illustrating)

Q And the sign for bad. A The general sign for bad without indicating what particular bad act is meant is that (indicating). That is bad (illustrating). Now, a bad taking of anything, stealing, as we call it is this (illustrating).

Q I want the sign indicating bad by an act of sexual intercourse? A Now, that bad act is placing the finger there (indicating) that is unlawful sexual intercourse.

Q When the last sign is made will you know that the act was completely done? A That is complete (illustrating).

Q The one act? A Yes, sir.

BY MR. SULLIVAN:

Q Do you mean to say that that sign indicates sexual intercourse? A Yes, sir; not only that but that is sexual intercourse (unlawful sexual intercourse,) the committing of a bad act.

Q Immoral? A Yes, sir.

BY MR. DEFORD:

Q I want to ask you this: Does this complainant have a correct and clear use of the sign language, I mean does she employ it properly, fairly well? A She employs it --

MR. SULLIVAN: I object to this.

THE COURT: I will allow it.

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Q And kiss? (Indicating) The fingers of the hand this way, the lips closed and the hand placed against the side of the cheek. (Illustrating)

Q And the sign for bad. A The general sign for bad without indicating what particular bad act is meant is that (indicating). That is bad (illustrating). Now, a bad taking of anything, stealing, as we call it is this (illustrating).

Q I want the sign indicating bad by an act of sexual intercourse? A Now, that bad act is placing the finger there (indicating) that is unlawful sexual intercourse.

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BY MR. SULLIVAN:

Q Do you mean to say that that sign indicates sexual intercourse? A Yes, sir; not only that but that is sexual intercourse (unlawful sexual intercourse,) the committing of a bad act.

Q Immoral? A Yes, sir.

BY MR. DeFORD:

Q I want to ask you this: Does this complainant have a correct and clear use of the sign language, I mean does she employ it properly, fairly well? A She employs it --

MR. SULLIVAN: I object to this.

THE COURT: I will allow it.

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MR. SULLIVAN: I take an exception.

THE WITNESS: (Continuing) She employs it-- she uses the sign language fairly well so that she is very clearly understood in every sign. To illustrate it she does not make this sign of sexual intercourse properly. Instead of doing it that way she makes it without placing the hand there (indicating).

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

THE COURT: He is qualifying as an expert. I will allow it.

Exception.

Q Did you ever have occasion to ask her to give the sign indicating sexual intercourse? A I did.

Q Did she make an imperfect sort of a sign?

MR. SULLIVAN: I object to that.

Objection overruled; exception.

A She makes a sign that way without closing the hand. (Indicating).

(Mr. George H. Quackenbos, the witness just examined was then sworn as interpreter in the sign language.)

ANNIE VENTO, a witness called on behalf of the People, being duly sworn, by interpreter Quackenbos, testified as follows:

THE COURT: Do you object to the use of this inter-

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MR. SULLIVAN: Yes, sir.

THE COURT: On what ground?

MR. SULLIVAN: On the ground that he has been associated with this case too long, and that he is a police officer interested in the prosecution.

Objection overruled; exception.

(Mr. Quackenbos acts as interpreter.)

THE COURT: If you want to test the qualifications of the expert further I will allow you to cross examine him now. Or if you wish to interrogate him as to his bias in any way I will allow you to question him. Otherwise I will allow him to act as interpreter. I think that his qualifications have been sufficiently shown. If there is anything that you wish to ask him on the question of bias you may do so. Do you want to have him take the witness stand.

MR. SULLIVAN: yes, sir.

THE COURT: If you wish he may take the witness stand again.

GEORGE H. QUACKENBOS, resumes the stand.

BY MR. SULLIVAN:

Q How many times have you acted for this woman? A I couldn't tell you, but in the police court I interpreted in this case as I do in a great many, as I have in most all cases of the kind; and again before the grand Jury I interpreted in

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this case-- and again before the Grand Jury a second time I interpreted in this case.

Q Have you seen this woman anywhere outside of court?

A I have seen her pass, bid good bye; she has asked me about when she must come again, whether she was through, beyond that nothing.

Q Have you ever seen her at the Waverly House, the Crittenden Mission? A I don't know where that house is. Where is it.

Q Ninth street. A The reason I ask you that is that I was interpreting up somewhere in that neighborhood, I don't know the name of it.

Q Up on Tenth street? A Yes, sir; Tenth street.

Q How many times were you there? A Once; I went with another detective.

Q Miss Goldman? A I haven't met her.

Q Was she present at the time of this interpretation that you did up there? A I am not positive; there was a lady there; I don't know that she was the only one, a doctor-- that is the only one.

Q You are in the police department? A I am.

Q You have been in this case since the arrest of the defendant? A Since it came in the police court.

Q When was that? A I do not know; I have had, I suppose, fifty cases since that, and I cannot tell. I go all over the city in deaf-mute cases. I interpret in the court.

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Q In your interpretation in this case you have certain prepossessions, certain notions in your mind about it? A No, sir. I not only do not, but I assure you, but I don't remember the case enough to carry it in mind; I have seen so many cases, and have interpreted in so many cases, that the impression has passed from my mind.

Q I will take your word for it. Now, if you were to interpret in this case, isn't it quite possible that your mental attitude or mental impressions as to the case will affect you in your interpretation? A Why, I don't know how it could. It is a matter of absolute indifference to me; I am not a bit interested in it; certainly not.

Q You are not the arresting officer here? A No, sir; I don't know who he is.

Q You mean you don't know this defendant? A No, sir, never I wouldn't know him, I never saw him but once before, and that was in the police court; I never spoke to him.

Q Your only connection with him has been since this case began? A I only saw him that once.

Q You have never spoken to him? A No, sir; never; would not have known him unless he was pointed out to me.

BY THE COURT:

Q In your opinion there is no reason why you cannot faithfully tell us what she says to you in the sign language? A Certainly not; if there was I should tell you. so.

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A N N I E V E N T O, the complaining witness, resumes the stand.

THE COURT: Tell her she will only talk to you in the sign language; to wait until she hears from you, and then answer you.

DIRECT EXAMINATION BY MR. DeFORD:

Q How old are you? A Nineteen years.

Q Where were you born? A I was born in Galveston, Texas.

Q What was your father's name? A Mr. Charles Vento.

Q Is your father alive? A No, sir; he is dead.

Q When did he die? A I am not sure, I think it was nine or ten years ago.

Q Is your mother alive? A Yes, sir.

Q Have you any brothers and sisters? A Two brothers.

Q Any sisters? A I have a sister; I have but one sister; only one sister.

Q Now, ask her if she is sure that she has only one sister. A Two. I have two sisters. I got my sister three sisters.

THE INTERPRETER: She is confused. I think she is counting her self in as a sister. She is probably confused in saying that she has two and with herself she has three sisters.

Q How many brothers have you? A Three brothers, two little ones and one that is bigger.

Q When did you come to New York? A One year ago.

Q Where did you go when you came to New York? A I went

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to live on Grand street .

THE INTERPRETER: She does not give the number. She says six and then nine, and then she made the sign "I do not know".

Q Who did you go to live with? A I went to live some where on Grand street with my mother.

Q Who else was living there when you got there?

THE INTERPRETER: She repeats constantly the number of the house as 6 or 9, I don't which is right, and I have asked her again and again.

Q Now ask her at her mother's house who lived there?

A My brothers and my mother.

Q Did your sister Margaret live there? A Yes, sir.

Q Was her husband there? A Yes, sir.

Q Did she have a little baby? A One.

Q Did you all live in the same apartment together? A Yes.

Q Now who did you sleep with in the room, or had you a room there? A With my sister.

Q Who else? A I slept in the same room that my sister was sleeping in, my brother has a little room aside.

Q Where did your mother sleep? A She slept in the same room.

Q Now where did your sister Margaret and her husband and baby sleep. Did they have another room? A She slept in the room to one side; they had a room.

THE INTERPRETER: She repeats "they had a room".

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And then she says, "it was one side".

Q Do you know the defendant, this man here (pointing to the defendant) A Yes, sir.

Q How long have you known him? A A month or longer than that.

Q A month or longer than that? A Yes, sir.

Q What do you call him? A His name is Salvatore Manzello; they call him Salvatore; his name is Salvatore Manzello, and I call him Salvatore.

Q Did you see him on the 17th of November, 1914? A Yes.

Q Where? A He came to the room.

Q What room? A He came to the hall, to the door.

Q The door to what room, what door? A He came to the door that leads to where the kitchen is.

Q Where were you then? A He came through the kitchen and I was in the kitchen.

Q What were you doing in the kitchen? A I was sitting in the kitchen and had the baby on my lap.

THE INTERPRETER: I have to repeat again and again the questions. She is not as bright as most deaf mutes.

Q Who was in the house with you then? A My two little brothers.

Q Where was your mother?

MR. SULLIVAN: I object to that. She could not tell.

Q Did your mother leave the kitchen before that? A My mother had gone out.

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Q How long had she been gone? A Perhaps an hour; since about eight o'clock.

Q Where was your sister then, your sister Margaret?

A She had gone out to buy some goods; I don't know what, but to buy some goods.

Q How long had she been gone when the defendant came?

A Just a little time.

Q Was there anybody else in the apartment there at that time but your two little brothers and the baby and yourself?

A My mother, two little brothers and the boarder.

Q Whom do you mean by the boarder. (Point him out)

(She points to that man-- indicating the defendant)

Q I said who do you mean by the boarder, and she points with her finger in this way? A Yes, sir. (indicating the defendant.)

THE COURT: The record must show that she indicates the defendant.

Q Who let the boarder in? A I sat on the chair and my little brother ran to the door; he opened the door.

Q What did the boarder do when he came in? A He pulled me along by the arm.

Q What is that? A He pulled me along by the arm.

(She repeated that three times.)

Q Where did he take hold of your arm? A He pulled me by the hand to the bedroom.

Q Where was the baby when he took hold of your hand?

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A The baby was away from me before. (That is what she says.)

Q Where was the baby? A He took the baby and put it in the carriage; she says I had the baby and he took the baby and put it in the carriage-- no, she says, not the carriage, but the bed.

Q He put the baby in the bed before he took hold of your hand or afterwards? A He first took the baby from me, and then he took my hand.

Q Did he pull you hard or did he just touch you?

MR. SULLIVAN: I object to that.

Q What did you do when he took hold of your hand or took hold of your arm? A He pulled my arm; I pulled back; I tried to get away; he shut the door, the bedroom door.

MR. SULLIVAN: I move to strike out "I tried to get away".

THE COURT: I will allow the answer to stand.

MR. SULLIVAN: I take an exception.

Q Where were your little brothers when he took hold of your arm and pulled you? A He gave each one a penny and put them in another room and shut the door.

Q Did he give them a penny before he took hold of your arm or afterwards? A First he put them in the room, gave them a penny, and then pulled me by the arm.

Q Where did he take you to? A In his bedroom.

Q Did he pull you along all the way from the kitchen to

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his bedroom.

MR. SULLIVAN: I object to that, if the Court please.

MR. DeFORD: She has already stated that he took hold of her arm and pulled her along and she pulled back.

MR. SULLIVAN: I think that is leading and suggestive.

THE COURT: I will sustain the objection to the last question. Let her state what happened.

BY MR. DeFORD:

Q After he took hold of your arm, what did he do to you?

A He took me over and threw me on the bed, and closed the door.

Q After he got in his bedroom what did he do?

THE INTERPRETER: She makes the same sign referred to.

A He had sexual intercourse with me. He threw me down.

MR. DeFORD: Was it kissed or sexual intercourse.

THE COURT: The jury saw it.

THE WITNESS: He locked the door on me.

Q Did he lock the door after he got in?

MR. SULLIVAN: I object to that as leading and suggestive.

A It was only shut; it was not locked; not locked.

Q Now what did you do after he threw you down on the bed?

A I tried to break away; I was not strong I tried to scream and he put his hand over my mouth to silence me. (That is the sign silence). The interpreter indicating.

THE WITNESS: (Continuing) we put his hand over my

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mouth to silence me. I was crying.

MR. SULLIVAN: I move to strike out the part of the answer as to what she tried to do.

THE COURT: I will strike out the last part "to silence me", and simply say "He put his hand over my mouth." Please go on.

THE COURT: The last part is her conclusion as to what he did it for. The jury can determine why he put his hand over her mouth.

BY THE COURT:

Q What about your clothing. How were you dressed when he came in?

MR. DeFORD: I was just coming to that.

BY MR. DeFORD:

Q Did you notice your clothing or the bed clothing after the defendant had intercourse with you?

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

THE COURT: I will allow it.

MR. SULLIVAN: I take an exception.

A I did. I noticed that my drawers were torn at the bottom torn and at the sides, and there was blood on the bedclothes.

MR. SULLIVAN: I move to strike that out.

THE COURT: Motion denied; exception.

THE COURT: How was she dressed at that time, before the act is what I wanted to know.

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BY MR. DeFORD:

Q Did you wear a corset at the time the defendant took you into his bedroom?

MR. SULLIVAN: I object to that as leading.

THE COURT: I will allow the question.

MR. SULLIVAN: I take an exception.

BY THE COURT:

Q Did you have corsets on that day?

THE INTERPRETER: I asked first if she knew what the word corset meant, and she said, "I do". and indicated to the sign for it. I asked her if she had corsets on that day and she said "no, they were loose", and I asked in what way they were on her, and she said yes, but they were not tight they were loose.

Q Did you notice or observe your corset after the defendant had sexual intercourse with you?

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

THE COURT: I don't know whether it is or not. I will allow it. It may develop to be material.

A I don't remember that I saw anything about the corsets.

Q Did your face have anything on it after the defendant had sexual intercourse with you, was it marked in any way?

MR. SULLIVAN: I object to that as leading.

THE COURT: I will allow the question.

MR. DeFORD: I have got to have some way to draw the

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attention of the witness to the subject.

THE WITNESS: His hands were dirty, and my face was clean, and he marked my face.

THE INTERPRETER: That is the exact thing that she says.

BY THE COURT:

Q What kind of dirt was on his hands?

THE INTERPRETER: I put the question to her just as the Court told me, and she repeats again and again "his hands were dirty, my face was clean when he came in".

BY MR. DeFORD:

Q Tell her to scream like she screamed when he put his hands over her mouth?

MR. SULLIVAN: I object to that.

MR. DeFORD: I want the jury to get some idea of what sort of a scream she can make.

(The witness illustrates making a sound.)

Q Now tell her to scream as loudly as she can. A Again, again, again. (Witness makes the same sound three times.)

Q Is that as loud a noise as you can make?

MR. SULLIVAN: I object to that if the Court please.

THE COURT: I will allow the question.

MR. SULLIVAN: I take an exception. I think she has answered it already.

THE WITNESS: Yes, that is as loud as I can.

THE INTERPRETER: She repeated it again twice, and then

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made the sign that her throat is small.

Q Did you tell any person that the defendant had done you bad after he did this to you?

MR. SULLIVAN: I object to this question.

THE COURT: I will have to sustain the objection to that question.

Q Did you say anything to anybody about what occurred to you afterwards?

Objected to;

THE COURT: I will allow it.

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

A I had tried to tell my sister.

Q How long after this defendant did bad to you, how many minutes or hours. Just answer the question, how many hours or minutes. She has not stated that yet. Tell her to say how many minutes-- how long after this happening did you speak to your sister about it? A My sister went out at 8 o'clock and returned at nine, and I told her when she returned.

Q Was your sister the first person that came to the apartment after this, yes or no?

THE INTERPRETER: It is impossible to say yes or no.

I would have to translate just what she says.

Q I want an answer to my question. A My brothers came in before my sister from the adjoining room.

Q Your brothers came in from the adjoining room, and then

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the sister came in? A Yes, sir.

Q Was the defendant there when your sister came in? A He was still there.

Q He was still there? A Yes, sir.

Q How long after this happened to you was it before your sister came in? A Not long, a little time, not long. She does not know.

Q Did you know what the defendant wanted to do with you when he took you in his bedroom, when he took hold of your arm and took you back to his bedroom?

Objected to.

THE COURT: I will allow the question.

MR. SULLIVAN: I take an exception.

A I was afraid; I was afraid of him; I thought he was fool me; that is what she said.

MR. SULLIVAN: I move to strike out the answer as not responsive.

THE COURT: I will allow it to stand.

THE INTERPRETER: That answers the question, but about what she does not say.

CROSS EXAMINATION BY MR. SULLIVAN.

Q How long had this defendant been living as a boarder in your family?

THE COURT: Why can't you prove that by some other witness. It is so hard to get things out of her.

A I don't know, he boarded for two, maybe three, may be

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four months, maybe more. Now she says three months.

Q During that time, three, four or five months, or whatever it was, you had been in those rooms alone with the defendant many times? A Yes, sir; I had seen him a number of times.

Q Being alone-- you and he together were there alone?

A That was the only time that we both were alone, I think.

Q Did this defendant sleep there at that house that night, the 17th of November, after this happened? A I don't think he came back that night.

Q Now, how long did he board at the place after this thing happened? A It might be two or three or four days; she does not remember.

Q Now since you have been in this city this last year have you been working in any factory? A For three or four days I worked in a factory, cutting out flags.

Q Is that the only employment you have been in since you have been in the city? A Nothing else. That is all.

Q Did you work anywhere before you came to New York city, work in any factory? A I attended a class in school; I did not work.

Q Can you write? A I can wrote some; I can write a little.

Q Can you read writing? A Yes, sir. I can read.

Q Can you read the newspaper? A A little bit.

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stand it?

THE COURT: You can get all that from some other witness, Mr. Sullivan, if you wish.

A Four rooms.

Q How many families live on that floor, if you know, it might be two or three or four, I don't know.

Q Was your brother-in-law, your sister, your mother, your three little brothers in there on the 17th of November, right along, and thereafter while the defendant remained there?

THE COURT: Suppose you reserve those questions for some other witnesses. There are other witnesses, and if you cannot prove it by them, I will allow you to recall her. This is a part of your defense. I cannot allow you to go into your defense with this witness. You may recall her if you do not get the information you want from some other witness. That is not cross examination on her direct testimony.

MR. SULLIVAN: I take an exception.

THE COURT: If there is any cross examination directed to this particular case that you wish to have you may ask the questions, but these other matters can be asked of other witnesses. See how difficult it is to get any information from her. You may call this witness back later if you wish.

DOCTOR ANN T. BUNCHAM, a witness called on behalf of the People, being sworn, testified as follows:

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(The witness states she lives at 38 West 10th street in the city of New York.)

DIRECT EXAMINATION BY MR. DeFORD:

Q What is your occupation? A I am a physician.

Q Are you a graduate of a school of medicine? A I am.

Q What school? A College of medicine of the Syracuse University.

Q Have you engaged in the general practise of medicine?

A I have, yes, sir.

Q Have you specialized in any particular department of medical practise or observation? A Yes, sir; I have.

Q Will you state what it is? A I have been particularly interested in the relationship between mental defects and delinquency for the past six years.

Q And moral delinquency as manifested by criminal acts?

A Yes.

Q Have you had a great deal of experience in observing persons for the purpose of determining the relation of their mental condition for defectiveness to moral delinquency?

A Yes, sir.

Q Has that practise or observation caused you to make a study both of the physical condition as well as the mental qualities of the persons that you have examined?

MR. SULLIVAN: I object to that as incompetent, irrelevant and immaterial. The form of the question is improper.

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Q Have you made an observation of many persons for the purpose of determining their mental condition with reference to moral delinquency? A I have, yes, sir.

Q Now, has that observation consisted of observations and examinations of their body as well as a method to determine the quality of their mind, general knowledge and so forth?

Objected to; objection overruled; exception.

A Yes, sir.

Q Describe it. A It includes a general history of the case. It takes into consideration the physical condition as well as the mental condition, the environment and all the available information.

Q Do you make an examination of the physical condition of the person under observation? A Yes, sir.

Q Then do you make some effort to get at the mental condition? A Yes, sir.

Q Now what methods do you adopt for the purpose of ascertaining the mental condition of the person under observation?

MR. SULLIVAN: I object to that.

MR. DeFORD: I am trying to show that she is specially qualified for the work in which she has been engaged.

A I have employed the tests well known in this field of work, that is the psychology test known as the Bene Seman and also other tests which have been devised by different psychologists to test different mental qualities.

Q For instance how are the mental qualities classified

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what mental qualities? A The Bene Seman test is perhaps the best known. They are a test of a series of different things which a child, a normal child, at different ages is supposed to be able to do, and in addition to that other test I used, testing the ability to concentrate, the judgment, and then test the ability to form rational associations, and of course I don't have any--

Q Did you make a test for the purpose of ascertaining the whether they have knowledge that usually runs with the age of the person under observation, the knowledge of things generally? A Yes, sir.

Q Did you have under observation the witness who preceded you on the stand, Annie Vento? A Yes, sir.

Q When was she first brought to you? A The 30th of April, 1915.

Q Did you subject her to a physical examination? A I did.

Q Did you subject her also to these various tests for the purpose of ascertaining her mental condition? A Yes, sir; I did.

Q Now, will you state to the jury what you found her physical condition to be.

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

Q What date was this? A The 30th of April.

MR. DeFORD: I wanted to prove pregnancy.

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MR. SULLIVAN: I understand that pregnancy must have proceeded four or five months before it can be positively established.

THE COURT: Was there any other physical examination at the time prior to this. I don't see how this is material. It is rather remote. If she can state how far the pregnancy had advanced she may do so. If the first doctor examined her and gave the result of his examination it might enable him to say whether her condition then was a state of pregnancy and he could state whether she had an act of intercourse. That is all you have to prove in this case.

MR. DeFORD: I am fully prepared to prove pregnancy. This girl testified that she never had any relations with anybody else in her life.

THE COURT: If the doctor can testify as to the date of the pregnancy she may do so. I will allow that.

Q From the physical examination, could you testify, of a female, how long pregnancy has existed? A Approximately, yes, sir.

Q With any degree of accuracy? A Yes, sir; I think so.

Q Within what period? A I should say from five to six months.

Q Then how close would you come to it in your judgment?

A Well, I would make that statement between five and six months.

Q The question is -- you wouldn't be five or six months wrong? A I beg pardon.

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Q Could you state from an examination of this patient about the time when the pregnancy was caused? A Yes, sir; approximately.

Q Not within five or six months, you don't mean that?

A I should say she had advanced in pregnancy between five and six months.

BY MR. DeFORD:

Q I am speaking now of the witness, Annie Vento? A Yes.

MR. SULLIVAN: I move to strike out all the testimony about pregnancy.

Motion denied; exception.

Q What did you find her mental condition to be as the result of the test to which you subjected her?

MR. SULLIVAN: I object to that as incompetent.

THE COURT: I will allow it. The charge in the indictment is based on the mental weakness of the complainant.

THE WITNESS: I made a diagnosis of secondary dementia in the case.

Q What do you mean. Tell the jury what you mean? A I mean, that in my opinion, there is a condition of mental retardation which has been brought about, progressively, from inflammation of the brain from which she is said to have suffered when she was five years old. In addition to that the deaf mutism has shut off impressions from reaching the brain.

MR. SULLIVAN: I object to this.

THE WITNESS: And that has resulted in a lack of de-

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velopment. She has failed to attain full mental development because these impressions have--

Q You call that ementia? A Yes, sir; secondary ementia.

Q You state that her mental development is incomplete, is that correct? A I would consider it so.

Q Are you able to state--did you make any tests for the purpose of ascertaining her ability to coordinate ideas? A I did.

Q Now, what do you mean by the phrase "coordinate ideas"?

A I mean to put things together, that is to have the ability to explain cause and effect, for instance, I took ten small articles which I put down in a certain order, and it having been explained to her beforehand, that she was to give me as well as she could the order in which those articles had been put down, and then I took them, and put them in order, and I then asked her to put those articles altogether in pairs according to the way that the things naturally belonged together. For instance, there was a shoe and a hat, a gun and a hat and a cup, a chicken, a man, and a horse and her arrangement of those articles was not reasonable, nor was she able to explain why she did those things.

Q You mean when you say that she could not coordinate her ideas you mean that she could not express them with normal lucidity or clearness? A Yes, sir; I mean that.

Q In their normal and reasonable relation to each other?

A Yes, sir; her relationship did not seem to be rational.

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Q How did you communicate with her? A An interpreter came over for the mental examination.

Q Is that a simple test to be made for the purpose of ascertaining the capacity of the subject to coordinate ordinary ideas? A I should say it is a very simple test.

Q Did you ask her any questions for the purpose of ascertaining what her state of mental development was, as to what her information or knowledge was with respect to the ordinary experiences of life of a girl of her age? A Yes, sir, I did, to some extent. I carried that on after the formal mental examination was had, chiefly by writing.

Q By what? A By writing. That is I wrote questions for her to answer, and I found her slow in comprehension; I had to re-phrase my questions frequently, and even though they were put simply I found that she was tardy in her realization of what I meant. Her answers showed that-- her answers were expressed in a very childish way, that is, there were words which were frequently left out.

Q How many such examinations have you made of children?

A I have made hundreds of them.

Q How many? A I can't tell, I don't know.

Q Can't you give us some estimate? A Well, I presume I have made at least a thousand; I made over a thousand.

Q Over a thousand examinations? A Yes, sir.

Q For the purpose of ascertaining the mental condition of children? A Yes, sir.

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(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

AFTER RECESS:

D R. A N N T. B I N G H A M, a witness for the people, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. DeFORD:

Q Now, Doctor, are you able to tell from the examination of Annie Vento she is a person of weak or immature mind from the viewpoint of her age and so forth?

MR. SULLIVAN: I object to that as incompetent and immaterial.

THE COURT: She may express her opinion.

Q Are you able to express an opinion? A Yes, sir.

Q Will you state what the opinion is?

MR. SULLIVAN: I object to that on the ground, in the first place, that it does not come within the meaning of the allegation of the indictment. The language of the question is such as to leave the thing too far away from the issue here.

THE COURT: Any other ground?

MR. SULLIVAN: On the ground that it is irrelevant, incompetent and immaterial.

THE COURT: The jury will decide upon the qualifications of the witness on this subject. You may cross examine her now, if you wish. I will overrule the objection on

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the other ground. If you wish to cross examine her you may.

BY MR. SULLIVAN:

Q How many times did you talk with this woman? A I spent one whole morning with her, and another afternoon I talked with her by writing, for probably an hour and a half. I have seen her in the Waverly House. My office is in the same house where the girl has been staying.

Q You made a long examination of her? A Yes, sir; I would consider it so.

Q One of those examinations was very prolonged? A Yes.

Q By yourself alone? A Yes, sir.

Q When was the first examination? A The 30th of April.

Q Last month? A Yes, sir.

Q When was the second? A I can't tell you exactly, it was perhaps a week later, I am not certain of the date.

THE COURT: I overrule the objection.

Exception.

BY MR. DeFORD:

Q Will you state what your opinion is as to her mental condition at the time you examined her whether she was mentally weak or immature or the reverse?

MR. SULLIVAN: I object to that as not coming within the accusation of the indictment.

THE COURT: Objection overruled.

MR. SULLIVAN: I take an exception.

A The diagnosis which I made conveyed the idea that I--

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Q What is your opinion? A My opinion is that she is immature, that she is not fully developed mentally.

Q That she is mentally weak from the standpoint of her age? A Yes, sir; if you want to use that term I prefer immature.

Q Is that the proper word? A Yes, sir.

Q Her immaturity results from weakness, does it not?

MR. SULLIVAN: I object to that.

THE COURT: Objection sustained.

Q Your opinion is that she was mentally weak and immature, is that correct? A Yes, sir.

Q Now, are you able to state to the jury,-- are you able to express an opinion as to whether her mental condition or the quality of her mind was that of a girl of nineteen or a girl of fifteen or a girl of ten?

MR. SULLIVAN: I object to that. Objection overruled.

Exception.

A Yes, sir.

Q Will you now state your impression or your opinion on that subject? A Well, I considered that her mental development far below that of a normal girl of nineteen years.

Q How far below, can you state? A I don't believe her mental development is possibly beyond that of a normal girl of ten years.

CROSS EXAMINATION BY MR. SULLIVAN.

Q You predicate that opinion upon two interviews with

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her? A Yes, sir.

Q What standards do you apply of maturity, nineteen years old? A I have used, as I have explained to you, the well known psychological tests which have been worked out or standardized on normal children at various ages.

Q Your conclusion was that this girl was not up to the standard of a normal standard child of nineteen years of age?

A Yes, sir.

Q Didn't you find, in some respects, that she had a greater degree of cunning than some children of nineteen? A No, sir.

Q You will not go any further than to say that she is below the average of a girl or a woman of nineteen years of age in mental maturity or development? A I consider that I have gone further than that when I made the statement here that she had not advanced beyond the mental development ordinarily reached by the normal girl of ten years.

Q Ten years? A Yes, sir.

Q On what do you predicate your opinion, upon the tests that you have made, the tests that you have narrated here?

A And all my conversations with her, yes, sir.

CHARLIE VENTO, a witness for the people,

duly called, testified as follows:

DIRECT EXAMINATION BY MR. DeFORD:

Q You saw me upstairs, didn't you? A Yes, sir.

Q I asked you some questions up there, didn't I? A Yes.

Q Didn't I ask you some questions upstairs. Speak out?

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A Yes, sir.

BY THE COURT:

Q You just talk to me. You can make more noise than that if you were out in the street. Did you see the soldiers today? A Yes, sir.

BY MR. DeFORD:

Q Charlie, do you know what it is to tell a lie, do you know what a lie is. Will you say yes instead of nodding. What do you say to that. Do you know what it means to tell a lie?

A Yes, sir.

Q Where do you go to if you tell a lie? A Down to the devil.

Q Who told you that. Did you learn that in school or did your mother tell you that? A I learned it in school.

Q What school did you go to-- do you know what school you went to? A Yes, sir.

Q Did you say no, you didn't know what school, where was the school, Did somebody take you to school. Who took you to school? A Margaret.

Q Who is that? (Indicating the complaining witness)

A Annie.

Q Is she your sister? A Yes, sir.

Q What is that? A Yes, sir.

Q Does she look after you when your mother is away?

A No.

Q Never takes care of you? A Yes, sir.

Q Yes. A Yes, sir.

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Q Now, stand up. Do you know who this is? (Pointing to the defendant) A Yes, sir.

Q Who is that man there? A Margaret's cousin.

Q That is your sister Margaret's cousin-- she is your sister. A Yes, sir; that is her cousin, Margaret's cousin.

Q Were you at home one day when he was there?

MR. SULLIVAN: I object to this as incompetent and immaterial.

A Yes, sir.

THE COURT: There is nothing objectionable so far.

Q Did he ever give you a penny Charlie? A Yes, sir.

Q Now just tell me when he gave you a penny?

MR. SULLIVAN: I object to this as incompetent

THE COURT: I will allow it.

Q When did he give you a penny. I want you to tell me about it. Can,t you tell me when he gave you a penny?

MR. SULLIVAN: Find out how old the witness is.

MR. DeFORD: Seven years old.

Q Now, did he give you a penny one time? A Yes, sir.

Q What did he say to you when he gave you a penny, anything? A Yes, sir.

Q What did he say to you?

MR. SULLIVAN: I object to this.

Q Now, who was present when he got his penny. I want to get his mind fixed on the transaction. What did he say to you when he gave you the penny? A Go in Margaret's room

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Q Did he say "Go in Margaret's room"? A Yes, sir.

Q Did you go in Margaret's room? A Yes, sir.

Q Now, have you a little brother named Sam? A Yes, sir.

Q Where did Sam go? A In Margaret's room.

Q Did he go in Margaret's room? A Yes, sir.

Q What did Margaret's cousin do after you went in Margaret's room? A He brought Annie in his room.

Q He brought Annie in his room? A Yes, sir.

Q What became of the baby, where was the baby? A In the bed too.

Q In the bed? A Yes, sir.

Q Whose bed? A His.

Q His bed? A Yes, sir.

Q What did he do with Annie, where did Annie go? A In his room.

Q Did he go with Annie or did she go alone? A No, sir; he carried her.

Q What did the defendant do? A Carry her.

Q Can you show or tell the jury, can you show, I will stand by you, and show these men how he carried her, what did he do to her, can't you show me like you showed me yesterday?

MR. SULLIVAN: I object to that.

Q Can't you show me how he carried her? A He took her by the lap.

Q Do the same thing to me that he did to her, come on, I won't hurt you? (Witness illustrating).

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Q You do the same things with your hand that he did with his hand. You try to show me what he did to her. Nobody is going to hurt you. Come on, and show me what he did. Did he catch her? A Yes, sir.

Q You show me how he ketched her, don't you want to do that? A No, sir.

Q What are you afraid of, Charlie, I am not going to hurt you. You show these men just how he put his hands on Annie. Can't you show me?

MR. SULLIVAN: I object to this.

Q Now, you went in Margaret's room, did you? A Yes, sir.

Q What is that? A Yes, sir.

Q Was the door left open or was it shut? A Shut.

Q Shut? A Yes, sir.

Q What did you do with the penny, have you still got the penny? A No, sir.

Q What did you do with it, did Sam get a penny too?

A Yes, sir.

Q Who gave Sam the penny? A Margaret's cousin.

Q After you went in your room did you come out again?

A Yes, sir.

Q Did you see Annie when you came out? A Yes, sir.

Q What was she doing when you saw her after you came out of the room? A Crying.

Q Did you tell Margaret anything about it? A Yes, sir.

Q What is that? A Yes, sir.

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Q When did you tell her about it? A When he took Annie in the room.

Q You didn't see Margaret until afterwards. When did you tell Margaret about it? A When she came.

CROSS EXAMINATION BY MR. SULLIVAN:

Q Didn't you tell Margaret you saw Annie and this defendant kissing? A No, sir.

Q Didn't you tell your mother than? A No, sir.

Q That you saw them kissing each other? A No, sir.

Q How many people have talked to you about this case; how many times have you been examined, and have you talked this matter over, before you came to court today? (No answer.)

MARGARET VILLANO MALUSSO, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states that she lives at 507 East 11th street, in the city and county of New York.)

DIRECT EXAMINATION BY MR. DeFORD:

Q Where do you live? A 507 East 11th street.

Q Are you married? A Yes, sir.

Q What is your husband's name? A Salvatore Villano.

Q What business is he in? A He works at the dock.

Q Where did he live on or about the 17th of November, 1914? A 218 Grand street.

Q Who lived with you there? A Salvatore Manzanillo.

Q Was he in the room with you? A Yes, sir.

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Q In this city? A Yes, sir.

Q And county? A Yes, sir.

Q Now, just tell the jury how many persons lived in that apartment where you lived, that is, to say, who roomed together in the apartment there, how many rooms? A Four rooms.

Q How many bedrooms? A Three.

Q Who occupied one of the bedrooms? A My mother.

Q Who occupied it with her? A And the children.

Q The children? A Yes, sir.

Q Her children? A Yes, sir.

Q Now, how many were there? A There was five.

Q In that room? A Yes, sir.

Q Now, there was your mother in that room? A Yes, sir;

Q And four children? A No, sir; five children, one and that is six with the mother.

Q That made five children who occupied one of the bedrooms? A Yes, sir.

Q How many children were boys? A Three boys.

Q What were their ages? A Five, seven and ten.

Q And ten? A Yes, sir.

Q Now the two girls occupied the same room? A Yes, sir.

Q What girls? A Annie Vento and Bridget Vento.

Q Who occupied the next room? A My husband.

Q Who was the third room occupied by? A Salvatore Manzello.

Q The defendant? A Yes, sir.

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Q Did you have a little baby? A Yes, sir.

Q Your husband and yourself and the baby occupied one room

A Yes, sir.

Q And the defendant occupied another bedroom? A Yes, sir.

Q Did anybody share that room with him? A His brother-in-law.

Q Now the fourth room in the apartment was a kitchen, is that right? A Yes, sir.

Q Now, how are those apartments arranged, when you come into the apartment do you come into a hall? A Yes, sir; you come into a hall, and go through the kitchen.

Q You go into the kitchen from the hall? A Yes, sir.

Q Now, how are the bedrooms with respect to the kitchen?

A The bedrooms-- one was on the front, my bedroom and the other was on the back.

Q On the back? A Yes, sir; another on the back.

Q Two on the back? A Yes, sir.

Q It was consisting of front^{bed}/room and in the rear two bedrooms? A Yes, sir.

Q When you came in the hall is the kitchen opposite the hall? A Yes, sir.

Q Now what did you use the kitchen for, was the kitchen the living room of the apartment? A Yes, sir.

Q That was the place that you stayed when you were there when you hadn't gone to bed? A Yes, sir.

Q Is that right? A Yes, sir.

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Q Did you take your meals there? A Yes, sir.

Q Your work was done there? A Yes, sir.

Q That is the place you sat about after your meals?

A Yes, sir.

Q Now, was there a door leading from the kitchen to either of the bedrooms which adjoined it? A The one next to it, the bedroom.

Q Was there a door leading from the kitchen? A Yes, sir.

Q Directly to any of the bedrooms? A Yes, sir.

Q Which bedroom? A To all the bedrooms.

Q Would you have to go out from the kitchen into the hall to get to those bedrooms? A Yes, sir.

Q Could you go from the kitchen directly through the door of the kitchen to the bedroom? A Yes, sir; the kitchen to the bedroom.

Q Did you have to go out from the kitchen into the hall to get into the bedroom? A You have to go in the kitchen to go into the bedroom.

Q When you come into the apartment you went into the kitchen? A Yes, sir.

Q You go from the kitchen to the two bedrooms through two doors? A Yes, sir.

Q And to the front bedroom through one door? A Yes, sir.

Q Now, you couldn't go into the bedroom unless you went in the kitchen? A No, sir.

Q Which room did the defendant occupy? A His room.

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Q Which one was that, one of the two rear bedrooms or the front bedroom? A One of the two rear rooms.

Q Was it the rear most one or the one next to the kitchen? A The one next to the kitchen.

Q The kitchen? A Yes, sir.

Q Who occupied the rear most bedroom, the one beyond the defendant's bedroom, first his room comes, who occupied the next bedroom? A My mother's room, then comes mine.

Q Who occupied the front bedroom? A Myself.

Q Who is that? A Myself.

Q Now, were you at home on the morning of the 17th of November when this affair occurred? A No, sir; I was not.

Q You were home early in the morning? A Yes, sir.

Q What time did you get up that morning? A Six o'clock, in the morning.

Q Six o'clock? A Yes, sir.

Q What time did you husband get up? A It was about half past five.

Q Did you see the defendant that morning? A No, sir; I didn't see him; I seen him about 8 o'clock in the morning.

Q Did you see your mother that morning? A Yes, sir.

Q Did your husband leave the premises that morning? A Yes.

Q About what time? A About 6 o'clock.

Q Did your mother leave that morning? A Yes, sir.

Q What time did she leave? A She left at about half half past six.

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Q Did you see the defendant in his room at all that morning? A No, sir; I didn't see him that morning.

Q You don't know when he left? A No, sir.

Q Now, your husband and your mother left there that morning after you got up? A Yes, sir.

Q They left the house? A Yes, sir.

Q Now, did you leave there that morning? A Yes, sir.

Q What time? A About a quarter^{to}/eight when I left.

Q Who was in the apartment when you left? A My two-nrother, my sister with the little baby.

Q Your sister Annie? A Yes, sir.

Q And Charlie? A Yes, sir; Charlie and Sam.

Q And your little baby? A Yes, sir.

Q Did you leave Annie in charge of the little baby? A I left the baby with Annie in her lap.

Q In her lap? A Yes, sir.

Q And left the two children there with her? A Yes, sir.

Q Now, when you went out did you lock the door or was it locked? A She locked it herself.

Q Who? A Annie.

Q How do you know?

THE COURT: Strike that out.

Q Did you see her lock the door? A Yes, sir; I told her to lock it.

THE COURT: Strike that out.

Q How could you tell it was locked? A I pulled the lock

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like this (illustrating).

Q After you went out? A Yes, sir; after I went out.

Q Do you know whether she locked the door or not? A Yes, sir; she locked it. I know I didn't leave unless I heard it locked.

Q You heard the bolt slip in the lock? A Yes, sir.

Q You heard that that morning? A Yes, sir.

Q Now, did you return to the apartment later that day?

A About ten o'clock.

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

Q Who did you find there when you got back? A I found Salvatore Manzello.

Q The defendant? A Yes, sir.

Q Who else did you find there? A My little brother and sister.

Q You found everybody there that you left there? A Yes.

Q In addition to the defendant? A Yes, sir.

Q Now just describe to the jury what your sister was doing, what her appearance was, and what she said when you got in? A When I got home I saw my sister, and I asked her what was the matter;; she was kind of weeping, and I said, "What is the matter", and she gave me a sign that I did not understand.

Q What was the sign? A The sign (illustrating).

Q Make the sign distinct and clear? A This way (illus-

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trating).

Q Did she do it this way (indicating) A No, sir; this way (illustrating).

Q You say she was weeping when you got back? A Yes, sir.

Q Did you notice the appearance of her clothes? A No, sir.

Q Was that all she said to you? A Yes, sir.

Q You can answer yes or no. Did Charlie say anything to you? A Yes, sir.

Q Was the defendant present when Charlie said it to you? A No, sir.

Q What did Charlie say to you? A I asked him-- he had a cent in his hand, and I asked him who gave it to him, and he told me he gave it to him, and I said, "Why did he give it to him", and he said, "I don't know". I said, "Why did he give you the cent for", and he said "He gave me the cent, and put me in your bedroom, and took Annie in his room." I said, "How did he take her, and he said, "He took her by the shoulder and carried her in his room, and she was hollering and crying".

Q Now, are you older or younger than Annie? A Younger.

Q Now, how long did the defendant have a room in your mother's apartment? A About six months.

Q Is he related to your husband in any way? A Cousin.

Q His cousin? A Yes, sir.

Q Did you have any conversation with your mother after you had this talk-- after your sister made this sign to you, did you talk with your mother? A Yes, sir.

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Q Did your tell your mother what she had said to you?

A Yes, sir; I told my mother.

Objected to; objection sustained.

Q What was the defendant doing when you went into the apartment on your return? A He was standing there frying some liver.

Q He was frying some liver? A Yes, sir.

Q What did the defendant say, if anything? A He didnt say anything.

Q He didn't say anything at all? A No, sir.

Q Did he stay in the apartment after that? A A little while.

Q Continued to room there with you? A Yes, sir; just stayed one day, and the next day he went.

Q Were you present when he left the next day? A Yes, sir.

Q Did your mother say something to him? A My mother --

Q Did you hear it? A Yes, sir.

Q What did she say to him?

THE COURT: Did he say anything in reply to what your mother said?

THE WITNESS: Yes, sir.

BY MR. DeFORD:

Q State the conversation that your mother had with the defendant the next day?

MR. SULLIVAN: I object to that as incompetent.

THE COURT: You may state any conversation in which

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the defendant took part.

MR. DeFORD: We have shown that he took part in this.

BY MR. DeFORD:

Q You said the defendant made an answer? A Yes, sir.

Q You understand what that means? A Yes, sir.

Q Your mother said something to him, and he said something to your mother? A Yes, sir.

Q Tell us what your mother said to him, and he said to your mother? A My mother told him that he had kissed her, and my mother said "Was it really necessary to kiss my daughter", and he answered, "I didn't kiss your daughter. I did not touch her."

Q Did you tell your mother that he had kissed her? A Yes.

Q Why did you tell her he had kissed her?

MR. SULLIVAN: I object to that.

Objection sustained.

Q Did you understand the sign your sister made to you to describe or to indicate that he had kissed her?

MR. SULLIVAN: I object to that as an operation of her mind.

THE COURT: I will allow that.

Q Did you understand the sign your sister made? A No, sir; I understand it was like it was a kiss.

Q You understood it to mean a kiss? A Yes, sir.

Q That is what you repeated to your mother? A Yes, sir.

Q Now, what time was the defendant expected to rise and

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leave your apartment in the morning?

MR. SULLIVAN: I object to that.

THE COURT: I will allow it.

Exception.

Q About 5 o'clock in the morning.

Q Did he come back again? A Yes, sir; he came back.

Q What time? A About 8 o'clock in the morning.

Q On this morning that this transaction occurred did he return and bring coal with him? A Yes, sir.

Q About what time? A About 8 o'clock.

Q About 8 o'clock? A Yes, sir.

Q Were you there when he came? A Yes, sir.

Q Did he go away again? A Yes, sir.

Q So when he went away and you left Annie, the two little boys and the baby would be left? A Yes, sir.

CROSS EXAMINATION BY MR. SULLIVAN:

Q Now, eh, you spoke to your mother about this case what time was that? A In the morning about half past six in the morning.

Q That is on the next day? A Yes, sir.

Q Is that right? A Yes, sir.

Q Did you remain home during the day, the 17th of November? A Yes, sir.

Q Were you home? A Yes, sir.

Q Remained in the home all day? A Yes, sir.

Q Were you home all day? A Yes, sir.

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Q Was that older boy home? A No, sir; he wasn't home.

Q Where was he? A He was at school.,

Q Was he home when you came back that morning? A Ten years old boy, no, sir, he was not.

Q Was he there when you left to go out of the house that morning? A No, sir.

Q You left before eight? A Yes, sir, I left before eight and he left before that.

Q Where is the school? A Mulberry street.

Q Mulberry street? A Yes, sir.

Q About half a block or a couple of blocks away from where you live? A About three blocks away.

Q Did you see him at noon time when you came home? A My little brother? Yes.

Q The ten year old boy? A Yes, sir; about three o'clock in the afternoon.

Q You saw your mother what time during the day on the 17th?
A At night, 6 o'clock.

Q 6 o'clock? A Yes, sir.

Q You did not speak to her anything about this case at that time? A The next day.

Q The next morning? A Yes, sir.

Q Your sister was there? A Yes, sir.

Q That day this defendant came there at night? A In the morning he was there.

Q You were there in the morning? A Yes, sir.

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Q He came back that night? A Yes, sir.

Q The defendant slept there that night? A Yes, sir.

Q He had his supper there? A No, sir; he did not.

Q He ate something there? A No, sir.

Q Didn't his brother-in-law eat there? A Yes, sir.

Q Was he there at supper? A The defendant?

Q Yes. A No, sir; he was not.

Q What time did he come in? A He come in about 8 or 9 o'clock.

Q You were all up, you were not in bed? A No, sir; I was not up; my husband was up.

Q Your mother? A Yes.

Q And Annie? A No, sir; they were all gone to bed; they were all to bed.

Q You saw him come in? A No, sir; I did not.

Q Heard him talking? A Yes, sir; heard him talking.

Q What time did you get up the next day? A Six o'clock.

Q Was the defendant up at that time? A He was gone.

Q What time did you see him on the next day? A I didnt see him the next day.

Q Did you see him talking to your mother? A Yes, sir; the next day.

Q What time was that? A About 8 o'clock in the morning.

Q In the morning? A Yes, sir.

Q Was Annie there? A Yes, sir.

Q You were there
? A Yes, sir.

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Q Your mother was there? A Yes, sir.

Q Anybody else? A No, that is all.

Q How old are they? A One is five years and one is seven

Q Now, at any time up to that time Annie had not made any statement to you or to your mother except that she had been kissed by this defendant, did she-- that was the statement she made, wasn't it? A Yes, sir.

MR. DeFORD: I object to that.

Q Now when this defendant and your mother had the talk the next day-- that was the next day, that was the time you were there? A Yes, sir.

Q Your mother was there, Annie was there, and this defendant was there in your house? A Yes, sir.

Q At that time you understood that this defendant had kissed Annie or Annie had kissed him one or the other? A yes.

Q Is that right? A Yes, sir.

BY THE COURT:

Q What sign did Annie make to you when you came in. Will you show the jury? (The witness illustrates to the jury).

Q You have shown that to the jury?

MR. DeFORD: Yes, sir.

BY MR. SULLIVAN:

Q Now, this defendant had a room there, he had his room, and he got his own meals, isn't that right? A Yes, sir.

Q Was there any trouble that morning about a gas bill asking him to pay it? A Yes, sir.

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Q Wasn't that discussed there that morning, about trying to make him pay for the gas bill? A It wasn't that morning; it was another time.

Q Didn't you come up that morning, and tell him about the gas bill you had against him? A I didn't say anything about the gas bill that morning.

Q Did you say anything about it the day before? A No, sir.

Q Was there anything about it at that time? A No, sir; I didn't ask him anything about the gas bill that month but the month before.

Q Your sister talks to you and her mother and all the family with her lips, doesn't she? A No, sir; by signs.

Q Doesn't she speak with her lips? A Well, she don't talk by the lips.

Q She makes signs by the lips? A Yes, sir.

Q Isn't it a fact that the general way she communicates with you, that she talks to you mostly with her lips, isn't that so, and she has been doing that for years; hasn't she? A yes, sir.

Q And she has become expert in the use of her lips, she can make herself understood, isn't that so? (No answer.)

Q How old are you? A Seventeen.

Q How many children have you? A One.

Q How old is she? A Ten months old.

Q This defendant here was living at your house, having a room there with another brother-in-law for about seven months,

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isn't that so? A Yes, sir.

Q This defendant worked on the dock with your husband, didn't he? A Yes, sir.

Q Isn't that so? A Yes, sir.

Q He used to work sometimes all night? A Yes, sir.

Q In the day time he was at home? A Yes, sir.

Q Isn't that so, during those seven months? A Yes, sir.

Q During that time Annie was home all day? A Yes, sir.

Q On many occasions during that time you left her in the house with him? A I did not.

Q You went out, your mother went out, your husband went out to do something, and he was left with her many times during those seven months? A No, sir; we never left him alone.

Q You stayed in the house all the time? A Yes, sir; I never stayed in the house all the time, but I never left her with him in the house alone; I always left her alone with my little brother; not with him.

Q But she has been there for little periods during the day? A I don't know when I was gone.

Q You were gone? A Yes, sir; I went to work.

Q Do you work? A I am working now; I was not working at that time.

Q You had been working during the last year off and on?
A Nos, ir; I wasn't working last year; I had been working about two months, that is all.

Q Did Annie work? A Yes, sir; she worked.

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Q Where did she work? A In Grand street.

Q How long did she work there? A About three or four months.

Q Doing what? A Cutting flags.

Q Now, as I understand it during the time that this defendant was rooming there there was your husband, yourself, your child, your mother and Annie, and the two children and this defendant and another boarder in that house, anybody else in it then? A No, sir.

Q Did you have more than two boarders? A That is all we had.

Q Now, then, about the 17th of November,-- how do you fix it to be the 17th of November? A Well, I know the date.

Q What day of the week was it? A I don't know what day it was of the week.

Q How did you come to select the 17th day of November as the date, how do you fix it? A Well, I know it was the date, the 17th of November.

Q As a matter of fact, this defendant left your place on the 6th of November? A He left the 6th of November?
if

Q You know he left there then and it could not be on the 17th, could it? A He left after this happened.

Q After it happened? A Yes, sir.

Q Well, how do you fix the 17th of November? A Because it was that day he left us, the 17th of November.

Q What means have you of fixing the date, A I fixed it--

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Q How do you fix it-- have you any way of fixing it except your statement of it? A Because I know it was that date, the 17th of November.

Q Have you got any memorandum that you made at that time?
A No, sir.

Q Do you know what day the other brother-in-law of this defendant who was boarding there left your place? A He left my place before I moved into Grand street.

Q Before you moved? A Yes, sir.

Q When did you move? A I moved on the first of December.

Q He left the day before? A yes, sir.

Q So he was there during the month of November? A Yes.

Q Is that right? A The brother-in-law--

Q The brother-in-law was there at the time-- had left there at the time she claims that this thing happened? A Yes.

Q Isn't that right? A Yes, sir.

Q You knew where this defendant had his place of business, this little coal business? A Yes, sir.

Q Didn't you? A Yes, sir.

Q He was arrested there, wasn't he? A Yes, sir.

Q He had that place at the time he was living there with you? A Yes, sir.

Q Do you remember the day when he was arrested? A yes; the day before New Year's; it was the last of December.

Q The 31st of December? A Yes, sir.

Q You had moved out of 210 Grand street on the first of

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December? A Yes, sir; we had moved out up to 18 Grand street on the first of December.

Q Where did you move to ? A To Elizabeth street, 198 Elizabeth street.

Q Now, when did you first get the notion or get information after this defendant left your place that he had sexual intercourse with your sister, how long after that? A A month about fifteen days after.

Q In other words, the first intimation that you got that there was any sexual intercourse between this defendant and your sister was fifteen days after he left, is that right?

A Yes, sir.

Q And in the meantime you were living there with your sister? A Yes, sir.

Q You saw her every day? A Yes, sir.

Q You were living there with your mother, is that right?

A Yes, sir.

Q And your husband? A Yes, sir.

Q It was not until fifteen days after he left that you got the information, is that right? A Yes, sir.

MR. SULLIVAN: Did your Honor allow the evidence of pregnancy?

THE COURT: I did.

Q Was it at that time you got information that she was pregnant? A I did.

Q That she was going to have a baby, is that the first in-

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formation you got? A Yes, sir.

Q It was not until after you had discovered that she was going to have a baby or that she was pregnant that this charge of sexual intercourse came out, isn't that so? A Yes, sir.

BY MR. DeFORD:

Q You can understand what your sister says by her lips?

A Yes, sir.

Q Do you mean you could look at her lips, and understands what she says? A Yes, sir; I can understand. She makes signs by the lips, only a few words she says by the lips.

Q But nearly all of her talk is by signs? A Yes, sir.

Q Is there any word she can say by her lips alone without using the fingers or hands? A No, sir; she doesn't say much by the lips. What she says she says by the hands.

Q Those are the only things that you can understand?

A yes, sir.

Q Had you ever seen that sign before? (Illustrating)

A No, sir.

Q Did you ever ask anybody what it meant prior to that; did you ever ask anybody what it meant prior to the time when the defendant was arrested?

Objected to; objection sustained; exception.

Q Do you know the sign of a kiss when you see it? A She gave me the sign of a kiss.

Q Do you know the sign of a kiss? A No, sir.

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I do not know.

Q Do you know what sign would say kiss to your sister in the sign language? A This way (illustrating)

Q Just one word? A Yes, sir.

Q When did you learn that? A She learned it to me.

Q She taught it to you? A Yes, sir.

Q That is not the sign your sister made you? A Yes, sir; she gave me that sign like this, and she did like this (illustrating) I said, "It is a kiss", I didn't understand the word correct."

THE COURT: She can show you the sign.

(Witness illustrating.)

THE COURT: You understand this is not corroboration of the complainant. It is permitted merely to rebut the inference that this woman did make a complaint that she had been injured. Corroboration must be from some other source than the complaining witness herself.

Q Now, can you state how long it was before you left the Grant street home that this occurred? A How long?

Q Yes. A After we moved from Grand street?

Q How long was it after this transaction occurred that you came back in that room, and when your sister gave you this sign that you left Grand street? A It was-- she gave me this sign right after, the same day that he was there.

Q How long after that was it that you left Grand street and went to Elizabeth street? A A week; just one week.

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Q Now, do you know when your sister had her menstrual period prior to the time when she gave you this sign, when this transaction occurred?

MR. SULLIVAN: I object to that.

THE COURT: I will allow it.

MR. SULLIVAN: I take an exception. How can she fix the time by that?

THE COURT: It may be some evidence that some one had intercourse with her.

MR. DeFORD: I am trying to show that she was acquainted with the time at which her sister had her menstrual period.

MR. SULLIVAN: Suppose she was.

MR. De FORD: I can fix the time by that.

THE COURT: I will allow it for that purpose.

MR. SULLIVAN: I take an exception.

Q Did you know when your sister had her menstrual period just prior to the time this transaction occurred?

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

THE COURT: I will allow it for that purpose, to fix the time only.

Q Do you? A Well, she was waiting for--

Q Do you know when she had her menstrual period last time prior to the time when this thing occurred? A She had it before this happened

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Q How long before in November? A About three days.

Q About three days before? A Yes, sir.

Q Did your sister prior to this time ever keep company with anybody at all?

Objected to.

THE COURT: I will allow it.

Q Did you ever permit any man to be with her alone? A No.

MR. SULLIVAN: I object to that.

Objection overruled; exception.

Q Do you know of any occasion when she was left alone with any man?

Objected to; objection overruled; exception.

A No, sir.

Q Did you ever leave her alone with any man after this occurrence?

Objected to; objection overruled; exception.

A No, sir.

Q Now, when your sister failed to have her menstrual period for about fifteen days, you say? A Yes, sir.

Q Now after this occurrence you made a complaint against the defendant? A Yes, sir.

Q Did you do it or did your mother do it? A My mother did it.

Q Now, did you examine your sister before you made this complaint to find out what her condition was, and did you observe anything about her?

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MR. SULLIVAN: I object to that. This is fifteen days now.

MR. DeFORD: I asked her if it was not a fact that her sister did not have her menstrual period immediately thereafter, and I want to find out what now how she found it out.

THE COURT: She has fixed the time of the occurrence of this affair as eighteen days before.

Q Did you examine your sister after this occurred about two weeks after it occurred? A Yes, sir; fifteen days.

Q Had you passed her menstrual period at that time? A Yes, sir; she had passed it, nothing after that.

Q Did you examine her? A Yes, sir.

Q What did you find?

MR. SULLIVAN: I object to this as incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

THE WITNESS: A midwife told us that she is--

BY MR. DeFORD:

Q Did you call a midwife? A Yes.

MR. SULLIVAN: I object to that.

MR. DeFORD: Won't your Honor allow me to show the physical condition of this complaining witness fifteen days after this occurred when this woman examined her for the purpose of ascertaining whether she had had her period or not

?

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THE COURT: This witness is not a midwife. You have her testimony as to the period.

MR. DeFORD: I am asking her now about a subsequent period.

THE COURT: That is not going to fix the time. It may be a month or six weeks or four weeks. That does not help your case.

MR. DeFORD: I am doing the best I can with this case.

THE COURT: I understand that, but it is not material. What you have got to do is to have some corroboration of the complaining witness's story. Of course, you understand that the testimony of this little boy is not corroboration. There must be sworn testimony. That boy's testimony is not corroboration.

MR. DeFORD: Well, we don't need corroboration as far as assault is concerned.

THE COURT: Yes, you do.

MR. DeFORD: As far as assault is concerned, assault in the second degree?

THE COURT: Yes, as far as assault in the second degree is concerned.

MR. DeFORD: Corroboration as to that. We don't need corroboration under the fourth count in the indictment.

THE COURT: But you have to show that he had sexual intercourse with her. That is the material thing.

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MR. DeFORD: I have got to prove that.

D R. M Y R O N L. M O R R I S, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is attached to Bellevue Hospital.)

DIRECT EXAMINATION BY MR. DeFORD:

Q You are a practising physician in this city? A Yes, sir.

Q Graduate of a medical school? A Yes, sir.

Q What school? A Bellevue Hospital, Medical College.

Q Now, how long have you been in practise? A Two years.

Q Have you occupied any official position in Bellevue Hospital? A Yes, sir, assistant to the house surgeon.

Q During the performance of your duties as house surgeon at that institution you have had occasion to wait upon the girls sitting there on the bench?

MR. SULLIVAN: I object to that.

A I don't remember her.

MR. SULLIVAN: I object to that unless the time is fixed.

Q Did you attend upon a girl named Annie Vento who was over at that hospital? A Yes, sir.

MR. SULLIVAN: I object to that.

Q Did you make a physical examination of her? A Yes.

Q State what you found? A

MR. SULLIVAN: I object to that.

Q Now, I will ask you when that examination was made?

A Why, probably, on the day she came in; December 31st, 1914.

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Q December 31, 1914? A Yes, sir.

Q Did you make an examination of her then? A Yes, sir.

Q State what condition you found then?

MR. SULLIVAN: I object to that.

THE COURT: I will allow it.

MR. SULLIVAN: In the first place the physician does not identify the complainant as the girl who was in his place the 31st of December. It is also remote.

THE COURT: I will allow it.

Exception.

Q State the condition you found? A Do you want the complete physical examination-- I don't remember it, but--

Q Can you state what you remember, anything about the condition? A Yes, sir; I remember that--

MR. SULLIVAN: I object to that, to the witness making any partial statement.

THE COURT: He may state all that he can remember.

MR. SULLIVAN: It would not be a proper thing to go in.

MR. DeFORD: we can only state what he remembers.

THE COURT: We are going to get him state what he knows.

Q State then what you can remember of the condition you found as the result of that examination?

MR. SULLIVAN: I object to his reading from any notes.

THE COURT: If he has any notes that will refresh his

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memory he can read them.

Q Can you testify from memory? A If it is refreshed.

Q Can you testify from memory now. Put away your papers which refreshes your recollection. Can you testify from recollection, this minute? A Why--

Q Don't you understand that? A Yes, sir; I understand. Two hours ago I could not, now I can.

Q Can you now? A Yes, sir.

Q Can you at this minute testify from recollection?

A Yes, sir.

Q So far as your memory serves you, answer the question as to what you found? A Why, she had a rash all over her body and she remains a sore around her genitals; she had a yellowish discharge from her genitals.

Q What was this rash? A Why, we signed her out as syphilis.

Q Now, what else did you find -- you were making an examination for the purpose of discovering whether she was pregnant or not?

MR. SULLIVAN: I object to this.

Overruled; exception.

A No, sir; we did not-- not for pregnancy.

Q Making an examination for the purpose of determining whether the uterus had been punctured? A No, sir.

Q Never made such an examination? A No, sir.

BY THE COURT:

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Q From the examination that you made can you tell how old that condition was, how long it had lasted? A It could not have lasted more than-- it could not have been much before six weeks; it could not have taken place, the inoculation could not have taken place much before six weeks.

Q Does that condition indicate to you that six weeks before that she had contact with some syphilitic germ, is that it? A Yes, sir.

CROSS EXAMINATION BY MR. SULLIVAN:

Q You made a diagnosis finally as syphilis? A Yes, sir.

Q It was syphilis? A Yes, sir.

BY MR. DeFORD:

Q Did the discharge from the uterus indicate that there had been penetration?

MR. SULLIVAN: I object to this.

THE COURT: I will allow it.

A Not necessarily, no, sir.

THE COURT: That testimony is only admitted for the purpose of proving the time.

M A R Y V E N T O, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness says she lives at 507 Avenue A.)

DIRECT EXAMINATION BY MR. DeFORD:

Q Are you a widow? A Yes, sir.

Q When did your husband die? A Six years ago.

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Q Is the complainant here, Annie Vento, your daughter?

A Yes, sir.

Q How long has she been deaf and dumb? A She was deaf and dumb when she was four years old-- she became deaf and dumb.

Q Through illness? A Yes, sir; through illness.

Q What sickness had she? A Meningitis.

Q Were you at your home on the morning of November 17th or about that time? A Yes, sir.

Q Did you talk with the defendant at any time on the subject of kissing your daughter? A I asked him whether he kissed my daughter, and he immediately left the house when I asked him.

Q Did he say anything when you asked him that? A He answered that "She is mistaken, she is mistaken, it can't be me".

Q Then what did he do? A He moved from the house.

Q Did you subsequently make a complaint against the defendant?

MR. SULLIVAN: I object to this as incompetent, immaterial and irrelevant.

THE COURT: I will allow that if it is a fact.

A We made a complaint after he left the house.

Q Sometime after that? A Yes, sir.

Q Now, when you spoke to him about kissing your daughter, Annie, he said that she had made a mistake. Did you say anything to him about leaving the house or did you tell him he

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could stay there, or what did you say on that subject? A I put him out of the house.

Q What did you say to him?

MR. SULLIVAN: I object to this as incompetent, irrelevant and immaterial.

THE COURT: Whatever she said to the defendant about this transaction, -- if he made any answer, any conversation that they had on this subject matter is admissible. If he did not make any answer it is not admissible.

THE WITNESS: I said to him, if you don't leave the house by tonight I am going to make a complaint about you.

Q Did he leave? A He left.

Q What did he say? A Nothing.

THE COURT: That evidence is stricken out. It is not what she said is evidence; it is what the defendant said is evidence. He said nothing.

MR. DeFORD:

He had something before in the course of the conversation. This was a part of a running conversation. She accused him of kissing the daughter, and he said, "No, she is mistaken", and then she said in the course of the same conversation she told him to leave the house.

THE COURT: That is not enough. Suppose she told him to jump over the moon.

MR. DeFORD: Her telling him to leave the house was part of the conversation in which he participated.

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THE COURT: It is entirely immaterial. The only purpose in introducing such a conversation is to show what the defendant says.

MR. DeFORD: He left the house.

THE COURT: Yes. He was ordered out by the proprietor of the house, but that is not enough. You have got to have some tangible evidence. That is all. I simply suggest that.

MR. DeFORD: At the same time when he was accused of this thing.

THE COURT: He is ordered out. He goes out. That is no admission of guilt.

MR. DeFORD: But there is a part of the conversation that he participated in. The probative value of it is a matter for the jury.

THE COURT: There is not any probative value to it. It would be error to tell the jury so.

MR. DeFORD: That is, it has such slight value.

THE COURT: It has not any value. It is only incurring the risk of legal error.

BY MR. DeFORD:

Q Did your daughter have her menstrual period to your knowledge after your conversation with the defendant?

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

THE COURT: I will allow it.

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A No, sir.

Q She did not? A No, sir.

Q Not up to this time? A No, sir.

Q Now, did you take her to the hospital? A Before:

Q Did you take her to the hospital afterwards? A Yes.

Q What hospital? A 26th street.

Q Was that Bellevue Hospital? A 26th street, Bellevue Hospital.

Q Did you see the doctor that was on the stand there?

A I did not pay attention.

Q What day did you take her to Bellevue Hospital, what day was she taken there? A I do not remember.

BY THE COURT:

Q Was it around the holidays, was it Christmas or New Year's? A There was no feast.

Q Did you take her to any other hospital? A No, sir.

Q Did you take anybody else to that hospital? A No, sir; only that one.

Q Your daughter was the only one you took to the hospital?

A Yes, sir.

MARGARET MALUSSO, a witness for the People recalled.

BY MR. DeFORD:

Q Was your sister taken to the hospital? A Yes, sir.

Q About what time? A About 8 o'clock in the morning.

Q What date? A The 31st of December.

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Q Did you go with her? A No, sir.

Q How do you know she went to the hospital?

MR. SULLIVAN: I object to this.

Q You didn't go with her? A No, sir.

Q You didn't go? A No, sir.

Q Did you visit her at Bellebue while she was there?

A Yes, sir.

Q When did you visit her? A After the second day.

Q After the second day? A Yes, sir.

Q Was she in the hospital then? A Yes, sir.

Q In bed in the hospital? A Yes, sir.

BY THE COURT:

Q Who was with her when she left your house to go to the hospital? A She went by herself in the ambulance.

Q Did your mother go with her? A No, sir.

Q The ambulance came and took your sister? A Yes, sir.

Q What hospital was it? A Bellevue Hospital.

Q Where? A 26th street.

Q And the river? A Yes, sir.

M A R Y V E N T O, a witness for the people recalled..

BY MR. DeFORD:

Q Was the defendant here brought to the Bellevue Hospital while your daughter was there?

MR. SULLIVAN: I object to this.

MR. DeFORD: I am going to try to show that this

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Annie Venton, was in the hospital, and that the defendant was arrested the same day that the girl was taken there, and he was identified by her.

THE COURT: You cannot prove any identification.

MR. DeFORD: Only for the purpose of establishing the identity of the girl as Annie vento.

THE COURT: I think there is sufficient proof on that subject now.

MR. DeFORD: If that be so I will withdraw the question. That is all.

THE COURT: Her sister says that she visited her there the second day after she went there.

G I O R A L D O P R E S T I A, a witness called on behalf of the people being duly sworn and examined through official interpreter Mustaki, testified as follows:

(The witness states that he lives at 189 Crystie street).

DIRECT EXAMINATION BY MR. DeFORD:

Q Do you know the defendant here? A Yes, sir, my brother-in-law.

Q Is he a married man?

MR. SULLIVAN: I object to this, may it please the Court, as incompetent, irrelevant and immaterial to the issue.

THE COURT: I sustain the objection.

Q When did you first become acquainted with the defend-

ant?

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MR. SULLIVAN: I object to that.

Question allowed. Exception.

A He is married to my sister.

MR. SULLIVAN: I move to strike that out.

THE COURT: It is allowed for that purpose only.

MR. SULLIVAN: I move to strike it out.

THE COURT: Strike it out.

Q How long have you known him? A The time he married my sister.

Q Was that a week ago or a year ago or four years ago?

A We were together, I don't know how many years.

Q Did you know him in Italy? A Yes, sir.

Q When did he come to this country, do you know? A Three years ago.

Q Have you seen him frequently since he has been here?

A Always together.

Q Did you ever have a talk with him about Annie Vento?

A Yes, sir.

Q When? A In the court.

Q When he was arrested? A Yes, sir.

Q Now tell the jury what he said to you, and what you said to him?

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

THE COURT: A proper part of the conversation in which the defendant took part is admissible in evidence.

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Exception.

A He told me to bring him clothing, bring him some clothes belonging to him.

Q What else did he say to you? A Nothing.

Q What did he say about the charge, if anything?

MR. SULLIVAN: I object to that if the Court please.

Objection overruled; exception.

A He said, I am accused of having had sexual intercourse with this girl.

Q Did he say whether he had or not?

Objected to; objection overruled; exception.

A He told me that he knew the girl, but that they accused him of having sexual intercourse, but he was ashamed to tell me that he had sexual intercourse with her.

Q Did he say that he did or did not have sexual intercourse with her?

Objected to; objection overruled; exception.

A Yes, sir.

Q That he had had? A No, sir; not exactly about sexual intercourse, but he said "they arrested me for that".

Q What did he say about his arrest?

MR. SULLIVAN: I object to that, if your Honor please, as incompetent, irrelevant and immaterial.

A He didn't tell me that because he is ashamed of me to tell me that.

MR. SULLIVAN: I move to strike that out.

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Q Did he say he was ashamed to tell you ?

Objected to; objection overruled; exception.

A No, sir; he did not.

Q Now, will you tell this jury what he said to you on the subject of the arrest, whether or not he was guilty of the charge?

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

Objection overruled; exception.

A He did not confide to me about that.

Q Now, I will ask you if it isn't a fact that the defendant said to you then that he had lost his head, and had had intercourse with this girl?

MR. SULLIVAN: I object to that. It is does not relate to the charge in this indictment or the date.

Objection overruled; Exception.

A No, sir.

Q Did you ever have a subsequent conversation with him on the same subject? (No answer.)

Q Did you have a subsequent conversation with him on the same subject? A Yes, sir.

Q Now, answer the question. Did he say, in that conversation -- tell the truth now? A He told me that-- "I do not know whether I did have sexual intercourse with her or not, but I think I did.

THE COURT: Strike out the last part.

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Q Did he say that he did? A Yes, sir, that he did; he thought he did.

Q The defendant said, "I think I did"? A Yes, sir.

Q Did he tell you what he had done to the girl? A No.

Q Did he tell you why he didn't know whether he had sexual intercourse with her or not?

MR. SULLIVAN: I object to that.

THE COURT: I will allow all the conversation on this subject. Objection overruled.

Exception.

A I do not know whether he had done it or not because the defendant was ashamed to tell me.

THE COURT: Strike that out.

Q (Question repeated) A He would not tell me because he was ashamed.

THE COURT: Strike that out.

Q Where is your sister now, the defendant's wife? A Home in Italy.

Q Now, I will ask you, young man, if you didn't have a talk this morning with these two men standing there, just a few minutes ago, this man and that man? (Pointing to Kayser and Fantana) A Yes, sir.

Q Now, I will ask you if you didn't tell that man standing there (indicating Mr. Fantana) in response to his question whether or not Manzello had told you he had had intercourse with this deaf and dumb girl that you answered "yes"? A He did

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tell me that.

MR. SULLIVAN: I object to that.

THE COURT: This is for the purpose of refreshing his recollection.

MR. SULLIVAN: I take an exception.

A Yes, sir.

Q Did he speak in Italian or English? A In Italian; I told him that I know he was arrested for having intercourse with her, whether he did or not I did not know; he did not tell me.

Q Didn't they ask you if the defendant Manzello did not tell you that he had had intercourse with this deaf and dumb girl, and didn't you say yes?

MR. SULLIVAN: I object to that . It has been answered already.

THE COURT: This is as to the other person now.

A I told him yes because I know he was arrested for having had intercourse with the girl,-- that my brother-in-law told me so.

Q Do you know Salvatore Malluso? A Yes, sir.

Q Did you have a conversation with Salvatore Malluso about Salvatore Manzello and Annie Vento? A Yes, sir.

Q I will ask you if you didn't tell Salvatore Malluso had said to you that he did have intercourse with the girl, Annie Vento?

MR. SULLIVAN: I object as all hearsay evidence.

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Objection overruled; exception.

THE COURT: The district attorney has a right to refresh the recollection of the witness, and to cross examine his own witness if he is taken by surprise.

A Malluso told me so.

Q What did you say to him? A I said I don,t know anything about it.

MR. DeFORD: I have one more witness who has not responded to the subpoena. That is Officer Mundo.

THE COURT: What can we do with him?

MR. DeFORD: I imagine he has been detailed to special duty. I will have him here in the morning. He is a very important witness.

THE COURT: I think you had better finish your case before the defense goes on.

MR. DeFORD: I think so too.

THE COURT: We will have to adjourn until tomorrow morning. I don,t suppose you need any help, if you do I will sign an attachment for you.

(The Court then admonished the jury calling their attention to Section 15 of the Code of Criminal Procedure, and adjourned the furth trial of the case until tomorrow, May 18, 1915, at 10.30 o'clock.)

New York, May 18, 1915.

TRIAL RESUMED.

MARGARET VILLANO MALLUSO, recalled.

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BY MR. DeFORD:

Q Were you present yesterday when the witness testified Gioraldo Prestia? A No, sir.

Q Was that witness a room mate of the defendant in your apartment? A Yes, sir.

Q Was the defendant and the witness the only two persons who occupied rooms in your premises outside of your family?
A Yes, sir.

BY MR. SULLIVAN:

Q When you left Grand street, you went to Elizabeth street is that right? A Yes, sir.

Q How many rooms did you have in Elizabeth street? A Three

Q How many boarders did you have there? A I didn't have any.

Q How many did your mother have? A My mother didn't have any.

Q Were you living in Grand street before your sister came here from Galveston? A yes, sir.

Q Was this defendant boarding there before she came?
A Yes, sir.

Q Was your mother there before she came? A My sister?

Q Yes. A They roomed together.

Q How long have you been in New York City? A A year in May.

Q A year this May? A Yes, sir, a year ago this month.

Q Were you married here? A No, sir; in Galveston.

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Q How long have you been married? A Two years in June.

Q When you married, did you leave home? A Yes, sir.

Q Up to two years you didn't live at home? A No, sir;

C O L U M B A P E P E, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 248 Mulberry street.)

DIRECT EXAMINATION BY MR. DeFORD:

Q What has been your business during the past year?

A I am a midwife.

Q Were you a midwife during the month of December, 1914 and the month of January, 1915? A Yes, sir.

Q Are you a licensed midwife? A Yes, sir.

Q How long have you been licensed as a midwife to pursue your occupation as a midwife? A Nineteen years.

Q Did you ever have occasion to examine Annie Vento, the girl standing there?

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

Objection overruled; exception.

A Yes, sir.

Q Did you make a physical examination of her body?

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

Objection overruled; exception.

A Yes, sir.

Q What parts of her body did you examine? A The natural

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parts, in the private parts.

Q Did you examine the vagina, the uterus and the hymen?

A Yes, sir.

Q Tell the jury what condition you found her parts in.

THE COURT: When was this examination?

THE WITNESS: I do not remember the date.

Q How long about? A I do not know.

Q Was it yesterday? A No, sir.

BY MR. DeFORD:

Q Was it before the girl was sent to the hospital?

MR. SULLIVAN: I object to that.

Q Do you know whether she was sent to the hospital or not?

MR. SULLIVAN: I object to that.

Objection overruled; exception.

THE COURT: He is merely trying to fix the time.

A No, sir.

Q You don't know that? A No, sir.

Q Was this examination made before or after Christmas of 1914? A Before.

Q Before? A Yes, sir.

BY THE COURT:

Q How long before, do you know how long before? A I do not know.

Q A year before? A No, sir.

BY MR. DeFORD:

Q Can't you state -- was it in the month of December, 1914?

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MR. SULLIVAN: I object to that, if the Court please, as leading.

A I do not remember.

Q How many months ago would you say it was?

MR. SULLIVAN: I object to that as already answered.

A I told you I did not remember.

Q Well, try to remember.

THE WITNESS: Why should you force me, your Honor. I got nine children.

Q Was it the latter part of the year 1914?

MR. SULLIVAN: I object to that as too indefinite and too vague.

Objection overruled: exception.

A I do not remember.

Q Was it after Thanksgiving, 1914?

MR. SULLIVAN: I object to this as incompetent, irrelevant and immaterial.

Objection overruled: exception.

A I don't remember.

MR. DeFORD: Well, I will fix the date by another witness.

BY THE COURT:

Q How many times did you examine her in your life time?

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

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A Once.

MR. DeFORD: Now, I can prove the date by another witness.

BY THE COURT: You better call the other witness. Step aside.

MARGARET VILLANO MALLUSO, recalled.

BY MR. DeFORD:

Q Are you acquainted with the witness Madam Columba Pepe who was just on the stand? A Yes, sir.

Q Was she called to attend your sister Annie at any time?

A yes, sir.

Q When was she called to attend her? A She was called the day before she was arrested.

Q The day before the defendant was arrested? A Yes, sir.

Q Did she come to the apartment? A Yes, sir.

Q Did you make an examination of her there? A Yes, sir.

Q Did you see her, were you present when she made the examination of your sister? A No, sir; my mother was there.

MR. SULLIVAN: I object to that statement.

Q How do you know that she made an examination of your sister at all?

MR. SULLIVAN: I object to this as entirely immaterial, not
She said she was there, and she does not know.

MR. DeFORD: I will consent that that be stricken out.

Q How do you know she was there? A I was in the house, but I was not in the room when she was examined.

MR. SULLIVAN: I object to that.

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Objection overruled; exception.

Q You saw her in the house? A Yes, sir.

Q Did you see her go into the room? A Yes, sir.

Q What date was that? A That was the day before he was arrested, the 31st of December.

THE COURT: Do you wish to cross examine the witness?

MR. SULLIVAN: No, sir.

MR. DeFORD: Does your Honor want any further proof as to the date?

THE COURT: No. She has testified that she saw the midwife go into the room, and the midwife says she never attended her but once.

C O L U M B A P E P E, a witness recalled:

BY MR. DeFORD:

Q You may describe to the jury the condition that you found upon the examination of Annie Vento, as you have described.

MR. SULLIVAN: I object to that as incompetent, irrelevant and immaterial, having no connection with this case.

Objection overruled; exception.

A She was all broken up. In there, my finger went right through it.

Q Was her hymen penetrated?

MR. SULLIVAN: I object to that. She doesn't know whether she had a hymen or not.

Objection overruled; exception.

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A I saw the ovary, that is all I saw.

THE COURT: You mean the ovary or the vagina?

THE WITNESS: I found everything broken, and I put my finger right through.

Q What do you mean when you say you found everything broken? A All ruined and disgraced.

THE COURT: Strike that out.

Q Do you know what a hymen is?

MR. SULLIVAN: I object to this as incompetent, immaterial and irrelevant.

Objection overruled; exception.

A Yes, sir.

Q Was that broken or not? A Yes, sir.

THE COURT: I don't think you can ask her any further questions.

CROSS EXAMINATION BY MR. SULLIVAN:

Q Do I understand you to say that you found a condition to exist there that you would find to exist in the case of a married woman? A I don't understand you.

Q Repeated. A Yes, sir.

Q In other words, from the examination you would say that the woman was accustomed to have sexual intercourse frequently? A That I don't know.

Q The condition would show that.

Objected to.

A I don't know.

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Q Well, the conditions were such as your experience would convince you would exist in the case of a woman who had been accustomed to frequent sexual intercourse? A I only examined her, and I know she has been penetrated, but how many I couldn't tell you.

F R A N K S. M O N D O, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is attached to the 171st precinct).

BY MR. DeFORD:

Q Are you a police officer? A I am.

Q What duty were you assigned to in the month of December, 1914 and in January, 1915? A Detective Bureau, First Branch.

Q Are you an Italian? A I am.

Q Do you speak Italian fluently? A I do.

Q You understand it? A I do.

Q Did you arrest the defendant here? A I did.

Q At what time and place? A I arrested him about 1 p.m. December 1st, at 160, in front of 160 Mott street, I believe it was Mott street, I got it in my book.

Q What was he doing at the time? A Why, he was engaged in a coal cellar, he was delivering coal, he was in the coal business, ice and coal.

Q Did you have any conversation with him at the time you arrested him? A I believe I did at the time,-- no, sir when I arrested him I told him he was under arrest, and then

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on the way over to the Police headquarters, I told him what he was accused of doing.

Q What did you say to him? A That he was accused of having sexual intercourse with Annie Vento.

Q What did he say to that?

MR. SULLIVAN: I object to that.

THE COURT: Whatever the defendant said you may tell us.

Objection overruled;

Exception.

THE COURT: Any declaration made by the defendant may be admitted in evidence.

THE WITNESS: He told me he had nothing at all to do with the girl.

Q Then what did you do? A I had him entered in the blotter at Police Headquarters; I then took him from Police Headquarters down to the hospital where the girl was; I took him to the bedside of the girl.

Q You took him to Bellevue Hospital where the complainant was? A Yes, sir.

Q Where this girl was, Annie Vento? A Yes, sir.

Q Now, did you have any conversation with him in her presence? A No, sir; not with him.

Q Where did you take him to from there, from the hospital?

A I took him to Police Headquarters.

Q Then where did you take him? A He was locked up in a cell.

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Q Did you subsequently have a conversation? A I did, from Bellevue Hospital to Police Headquarters.

Q What was that conversation? A I told him that the girl had identified him-- and had identified him as having sexual intercourse with her, that he had better tell the truth about it, and he told me, going down in the car with him, he had sexual intercourse with her, but it was only once, and that the reason why the complainant said-- that the complainant consented-- and the reason why she consented of him having intercourse with her-- was that she thought he was a single man.

Q Is that all he said on that subject? A Yes, sir; that is all at that time.

Q Did you have a subsequent conversation with him on the same subject? A I took his testimony then in writing at Police Headquarters.

Q Did you have it typewritten? A I did.

Q Have you that statement with you? A I have.

Q Will you produce it. A Yes, sir.

BY THE COURT:

Q In what language did you talk to him? A In Italian.

(The statement referred to is marked people's Exhibit 1 for identification.)

Q I show you a paper marked people's Exhibit 1 for identification, and I ask you if that is a statement that you had written, and if it correctly embodies his statement to you? A Yes, sir.

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MR. SULLIVAN: I object to that.

THE COURT: It is marked for identification.

MR. DeFORD: I am not offering it now.

Q Does that contain the answers to questions put to him and the answers that he made? A Yes, sir.

Q Yes or no? A Yes, sir.

Q I call your attention to a cross mark on the statement between the words can and write, and then under that cross mark the words "mark of Salvatore Manzello," and ask you whether he made that cross mark to that statement? A Yes, sir.

Q In your presence? A Yes, sir.

Q And in the presence of what other persons? A Detective Daniel Devoti.

Q Did you read to him the contents of that statement before he made his mark there? A Why, yes, those were the questions I had put to him; either I or Detective Devoti read it over again, and told him what was in it.

Q Did you read those questions to him and the answers that he made to them, the questions and answers as they appear on that paper? A I don't really remember whether they were read to him or Detective Devoti read them over to him, but they were read over to him.

Q Were they read over to him? A Yes, sir.

Q In Italian? A Yes, sir.

Q Is Devoti an Italian? A Yes, sir.

Q How long has he been in the United States?

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A Yes, sir.

Q Does he speak and understand the Italian language?

A Yes, sir.

Q You say the contents of that paper were read over to him before he made his mark? A Yes, sir; they were.

Q As it appears on that paper? A Yes, sir.

MR. DeFORD: I offer it in evidence.

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

THE COURT: I don't think the paper is admissible in evidence.

MR. DeFORD: I think it is admissible on the theory that it is a written declaration of the defendant, although written by somebody else.

THE COURT: It is written in English. Under the circumstances I would rather have you ask him the questions, and refresh his memory from the paper.

Q Now, I will ask you if you put to him certain questions, and if he made to you certain answers in the presence of Detective Devoti?

MR. SULLIVAN: I object to that if the Court please as an improper method of procedure on the part of the police.

Objection overruled; exception.

THE COURT: He has already testified that he

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questions are written there, and that the defendant answered him in Italian, and that those are his answers, and that that was typewritten, and the paper was signed by the defendant with his mark. I do not think, as a document, is admissible in evidence, but the statements that he made are admissible.

Q Can you remember now the questions that you put to him and the answers that he made literally? A Yes, sir.

Q If you cannot you may refresh your memory. What was the first question you put to him? A I asked him.

Q Look at the paper, and refresh your recollection, and then close it again. A I asked him what his name was.

Q What did he say? A Salvatore Manzello.

Q What is the next question? A "Where do you live".

Q What did he say? A 167 Mott street.

Q What is the next question? A "How long have you known this giel"? A. About six months.

"Q. Where did you first meet her? A. At 218 Grand street.

"Q. How long ago? A. About six months ago."

Q What is the next question? A "Q. Did you have sexual intercourse with her? A. Yes.

"Q. When did you have sexual intercourse with her? A. In November". He was not sure then whether it was the latter part of October or November, but he said in November about ; on the 6th floor.

"Q. Where? A. 18 Grand street.

"Q. Did you have intercourse, with her since November? A No.

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I moved away..and have not seen her since.

"Q. Who was the one that suggested the sexual intercourse?

A She unbuttoned her drawers, and "I got on top of her".

THE COURT: What date was that?

THE WITNESS: This was made on December 30th.

Q Is it dated there there? A No, sir; it was made the same day of the arrest, the same day of the arrest.

MR. SULLIVAN: I move to strike out all that testimony as incompetent, immaterial and irrelevant.

Objection overruled; exception.

Q Is that all the conversation you had with him on that subject? A That is all.

MR. SULLIVAN: No cross examination.

THE PEOPLE REST.

MR. SULLIVAN: I move that the Court instruct the jury to acquit the defendant upon the ground that the evidence which has been presented is wholly insufficient, in law, to justify or support the conviction upon any count in the indictment.

THE COURT: Motion denied; exception.

MR. SULLIVAN: I move that the Court instruct the jury now to disregard the testimony of this Dr. Binham as incompetent, irrelevant and immaterial, and not addressed to the issues in this case.

Motion denied; exception.

MR. SULLIVAN: I move that the Court strike from the

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record the testimony of Dr. Morris, the witness Morris, which relates to the condition of the woman whom he examined or claimed to have examined in Bellevue Hospital as there is no identification, and it is irrelevant, incompetent and immaterial to the issues in this case.

MR. DeFORD: I think his testimony is competent as showing the time at which the complaining witness was interfered with.

THE COURT: Motion denied.

MR. SULLIVAN: I take an exception to your Honor's ruling.

THE COURT: I will charge the jury that the fact that she had, according to his testimony, some syphilitic affection was not proof that she had sexual intercourse, but that it was a circumstance. They may consider his statement as to the time when that syphilis was probably acquired in his opinion, and that may be taken into consideration in connection with all the other testimony on the subject.

MR. SULLIVAN: I move that the Court take from the consideration of the jury the first count of the indictment upon the ground that there is no evidence sufficient in law, to submit that issue to the jury.

THE COURT: Motion denied; exception.

MR. SULLIVAN: I move that the Court take from the consideration of the jury the second count of the indictment.

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ment which charges assault because that is an offense which is included in the rape, they both constitute the same offense.

THE COURT: Motion denied.

Exception.

THE COURT: They will take up the assault charge if they find that a rape was not committed, or an attempt to commit a rape.

MR. SULLIVAN: I take an exception to your Honor's ruling on that

MR. SULLIVAN: I understand that the district attorney has abandoned the third count of the indictment.

MR. DeFORD: I have not abandoned any. I stated to the jury that I would rely upon both of the counts, and I described one rather than the others.

THE COURT: I think I will submit the whole indictment to the jury.

MR. SULLIVAN: I am going to make a motion to take from the consideration of the jury the third count of the indictment upon the ground that there is no evidence to justify its submission to the jury.

THE COURT: Motion denied; exception.

MR. SULLIVAN: I move the Court to take from the consideration of the jury the fourth count in the indictment upon the ground that there is no evidence in this case to

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support or justify the submission of it to the jury.

Motion denied; exception.

MR. SULLIVAN: I move that the Court compel the district attorney to elect upon which count he shall go to the jury, and upon that proposition I would like the Court to hear me for a moment, if your Honor please. This case goes to the jury as a see-saw proposition. The defendant does not know where he stands, force or no force. The theory on one side of the prosecution is that there was force used. Now where they fail upon that they take up another proposition that there was no force necessary, but there was mental weakness. Now, the People have two practically irreconcilable theories, and the defendant has got to sustain the burden of both in his defense before this jury. It seems to me that where the theories of the prosecution inconsistent and so incompatible that they require the abandonment of one or the other of the counts in any rational explanation of the situation, and the defendant should not be put in such jeopardy in a case like this that he does not know ^{what} the issue presented to the jury is.

THE COURT: I will deny your motion.

MR. SULLIVAN: I ask the Court to direct the district attorney to elect.

Motion denied; exception.

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SALVATORE MANZIELLO, the defendant being duly sworn in his own behalf, testified through official interpreter Mustaki as follows:

(The witness states he lives at 167 Mott street.)

DIRECT EXAMINATION BY MR. SULLIVAN:

Q How long have you lived in the city? A Thirteen months.

Q Where did you come from? A Italy.

Q What have you been doing since you have been here?

A Longshoreman.

Q Longshoreman? A Yes, sir.

Q Where have you been living? A I was at first-- well, the last address.

Q Where have you lived since you have been here for the last thirteen months? A Third avenue and Mott street and Mott street again, and then I lived with these people here.

Q How long have you lived with them? A Four months and a half.

Q When did you go to live with them? A On the 15th of June. Q What year? A 1914.

Q How long did you stay with them? A Four months and a half.

Q When you went to live with them was this girl, Annie Vento there? A No, sir.

Q When did she come there? A Fifteen days after.

Q Now, do you remember when you left, what time in the month it was, what day of the month it was when you left that

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place? A It was in the month of November.

Q What day of the month, do you remember? A About the 6th or 7th of November.

Q Were you there on the 17th of November? A No, sir.

Q You heard Annie Vento testify here yesterday, didn't you? A Yes, sir.

Q You remember the occasion she testified to about your having intercourse with her in that flat, the last time? A Yes.

Q Now, will you tell the jury what happened there in your own way? A Fifteen days after I was in that house--when I came in that house she started fooling with me, and I didn't care to fool with her because I didn't wish to fool with her. Then a few days afterwards she started on making love with me, and I was making love with her. (The witness states to the interpreter, "You know how that is".)

Well, of her own voluntary will she came to me and wanted to have sexual intercourse. I did not force her; I did not ask her for it at all. Then four months afterwards I went to fry some liver in the house, and when I was frying the liver why she was there with her two brothers, and she was in her own room, and I was in my room. While I was frying the liver she was there with the baby and the brother on the other side of the stove, and the sister came back five minutes, the sister came. When the sister came with some meat in her hand she said, "Look at that much meat for twenty cents". Well, I said, "everything is very dear, I bought some liver too, and

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everything has gone up in price". The little boy was there, and he said, "Have you got a penny". I said, "Yes, here is a penny", and I gave him a penny. Then I left half the liver there, and I took half the liver, and I went to my business. At four o'clock I brought the plate and fork there, and we were conversing with her sister, and then I went back to the basement a half an hour after that, and then I went back to the house at 8 o'clock. And then, the following morning, I went to work, and then at half past seven I went to the house and asked if they wished any coal, and they said, "Yes, bring ten cents worth". Then the mother says, "Why, do I find my daughter crying". She called the sister, and I said, "Did you see your sister crying", and she said "Yes", she says, "she told you done something bad to her". I said, "No, I did not". When they accused me I called the complainant, and I said to her, "Did I do anything", and the complainant said-- with her finger like that-- that said no, which means no. Then they told me to leave the house, and after dinner I went away from the house.

Q Did you put your hands on this woman, the complainant, and pull her into the bedroom, and put your hand over her mouth, and force her? A No, sir; she came voluntarily in my own room.

Q When you stayed there on that night was anything said to you, or when you visited the place in the morning was anything said to you about this matter? A No, sir; nothing at all.

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Q What was said about your kissing the girl? A They said, "Why do you kiss my daughter".

Q Is that what they said. When did you see that girl?
A The following morning.

Q That is the morning that you left? A Yes, sir, after dinner that same day.

Q It is a fact that the talk that they had with you at that time was about your kissing the girl, is that right?

A Yes, sir.

Q Now, were you alone with this girl? A I had sexual intercourse with her more than fifteen times.

Q Covering what period? A From July till November.

Q Did you ever force her? A No, sir; never.

Q Was it in this flat? A Always in the same bed.

Q In this bed? (No answer.)

THE COURT: Did she always cry?

THE WITNESS: Never.

BY MR. SULLIVAN:

Q Did you ever see her crying? A No, sir; never.

Q Was she crying the morning when you fried the liver, and her sister was there, was she crying then? A No, sir.

Q Did you ever hear this woman, Annie Vento, talking with her mother, having any quarrel with her mother? A Yes, sir.

Q Do you know whether she can scream? A Yes, sir; whenever she was mad with her mother she would scream.

Q Well, how far away could you hear it? A Up to the 8th

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floor, because the apartments are very close together there.

Q How many families live on a floor? A Five.

Q Will you show us now about how loud she can scream, as you have heard her (witness illustrates by screaming).

Q Did you hear her do that many times? A Yes, sir; they used to have different quarrels, the mother and brother and the sister, and she used to get mad.

Q Have you syphilis? A No, sir.

Q Did you at any time use any force or violence or threats of any kind to obtain sexual intercourse with this woman? A Never.

Q Can you understand this woman by her signs and expressions? A Yes, sir.

Q How does she express herself ordinarily, in the house to the members of the family, in what way, by what form? A With her fingers.

Q How about her lips? A Yes, sir; sometimes with the lips.

Q Did you ever have any talk with her about her past life, her relations with men before you? A Yes, sir.

Q Before you took up any relations with her did she tell you her story? A Yes, sir.

Q Was she in the flat when you were along with her?
A Yes, sir.

Q Since you have been here up until October you were working during that time -- when you were working

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did you work at night? A Yes, sir.

Q Was it in the day time that you were at the flat? A Yes

Q During that time were you and she frequently alone there? A Yes, sir.

CROSS EXAMINATION BY MR. DeFORD:

Q When did you leave Italy? A The 15th of October.

Q What year? A 1913.

Q Where are your wife and family? A In Italy.

Q Where does your wife live in Italy? A On the Via Garibaldi.

Q In what city? A Portambeno, Province of Giungenti.

Q How many children have you? A Two.

Q Have you ever been convicted of any offense in Italy?

A No, sir.

Q You say never? A Never.

Q When did you first meet Annie Vento? A At the last day of the month of June.

Q 1914? A Yes, sir.

Q When did you have your first act of sexual intercourse with her? A The month of July.

Q How long after you became acquainted with her? A 20 days after.

Q 20 days after? A Yes, sir.

Q Where did this act occur? A In her own mother's house.

Q What room was that? A There were four rooms there.

Q Was it the second room from the kitchen? A yes, sir.

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Q Who was present? A No one.

Q Where were the two boys? A They were on the roof.

Q Where was the little boy? A At that time there was no baby.

Q When was it, what hour of the day was it? A 10 o'clock in the morning.

Q Was there anybody in the apartment besides Annie and yourself? A Nobody.

Q Where were you working then? A 34th street.

Q Who for? A Giovanni DeMauro was my boss.

Q This occurred about the first of August? A Yes, sir.

Q You were working for this man at that time? A Yes, sir; in the month of October.

Q You said it occurred in the month of August, didn't you? A Yes, sir, about July, August, September and October.

Q What does he mean by that? A The first time between July and August.

Q Was it the latter part of July or the first part of August that you had this first act of sexual intercourse with her? A Either the end of July or the first of August.

Q Who were you working for then? A 34th street.

Q Well, who for? A Giovanni DeMauro.

Q What number on 34th street? A No. 74.

Q Did you work in the day or night time? A Sometimes in the day time, sometimes at night.

Q How often did you work in the day time, and how often

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did you work at night? A Two or three days we were working in the day time, then we will have a rest and then work again, two or three days in the night.

Q What business is that man engaged in? A In the coal business.

Q How did you come to have sexual intercourse with Annie Vento, the first time? A She was fooling with me and I was fooling with her, and that is the way I had sexual intercourse with her.

Q Did she commence fooling with you or did you commence fooling with her? A She started to fool with me.

Q Did she commence to fool with you for the first time that morning? A Yes, sir.

Q Where was her mother then? A In the factory.

Q All of them gone? A Yes, sir.

Q Did you work the night before? A Yes, sir.

Q What time did you get through work? A Five o'clock.

Q Where did you have your breakfast? A In the house.

Q In the house? A Yes, sir.

Q Who gave it to you? A The married daughter.

Q Then how long after was it that you had your breakfast that you had intercourse with Annie the first time?

A At ten o'clock.

Q Now, what did Annie say to you when she first began to fool with you? A She was making me signs of having sexual intercourse with her finger, putting her hand this way, and

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says "Why don't you do that to me".

Q Where did you learn about the deaf and dumb language?

A I was practising with her.

Q You had known her about fifteen days at that time, had you? A I was practising from that time on with her.

Q You had known her about fifteen days at that time, is the question. Answer the question. A The sister taught me how to make the signs of the deaf and dumb.

Q Did the sister speak to you what the sign was for sexual intercourse? A No, sir.

Q Who taught you that? A She, herself.

Q Had she taught you the sign before she used it on the day that you had sexual intercourse with her? A Yes, sir.

Q When-- how long after you first met her? A At that time we were together with her.

Q When was that, how long before this day? A When I was with her.

Q When was that, how long after you first met her, how many days? A About twenty days.

Q Well, after you first met her? A Yes, sir.

Q That was about twenty days after you first met her that you had intercourse with her for the first time, wasn't it?

A Yes, sir.

Q The sister taught you what this sign meant at the time you had intercourse with her, is that correct?

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Q How did she tell you what the sign meant, what did she do, what did she do to you? A (Witness indicating) She says, "You are afraid, you are trembling". She made the sign with both her hands like that (indicating, you are afraid and then she put her right arm under her side (witness indicating)

Q How did she say "You are afraid, and you are trembling, did she point to you, and then do this (illustrating). A Yes.

Q When did she tell you the meaning of the sign so that you could tell the jury a little while ago that she made the sign of sexual intercourse to you; when did she tell you that that meant sexual intercourse? A While she was fooling with me.

Q What was that sign. (Make it again) (Witness illustrates).

Q The other sign that you made (Witness illustrates). There was a red cover on the table, and she pointed to that red cover, and she says, "I want you to make me produce some of that color out of me".

Q When did she teach you to make that sign that you made us a short time ago, that is the sign, when did she show you that? A While we were together.

Q Make that sign again for the jury. (Witness illustrates)

Q Put that sign this time (indicating) A Without like that.

Q You don't do that before, did you? A Yes, she said, "I want you to make me produce some of that color out of me".

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Q. Didn't you tell the jury awhile ago in answer to my question that the sign that she made was a sign from the lips and putting your finger through there (illustrating)? A. No, sir. He says that is what I did (witness illustrates).

Q. Will you say you did not make the sign awhile ago when telling me the sign that the girl made to you like this (illustrating).

A. No, sir.

Q. You understood from this action of hers that she wanted to have sexual intercourse with you? A. Yes, sir.

Q. Had you intended prior to that time to have sexual intercourse with her if she would permit you? A. No, sir.

Q. You didn't want to have sexual intercourse with her, did you? A. No, sir.

Q. You knew she was a deaf and dumb girl, didn't you?
A. Yes, sir.

Q. You would never have said anything to her about having sexual intercourse if she hadn't approached you? A. Yes, sir.

Q. She put it into your head, did she? A. Yes, sir.

Q. She did it by making the sign you have described, telling you that she wanted you to make come out of her the color of the table cloth, is that correct? A. Yes, sir.

Q. Did you fondle her, put your arms around her and kiss her? A. No, sir.

Q. Did she put her arm around you and kissed you before that? A. No, sir.

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Q Did you repulse her or did you permit her to do it?

A Yes, sir; I repulsed her.

Q How many times did you repulse her before you yielded?

A About four times.

Q Then you finally yielded, did you? A Then I lost my head, and I done it.

Q Did you repel her four times on this one day? A No, sir; three times the first day.

Q Was the door locked to the apartment? A Open.

Q Was it locked then? A No, sir.

Q It was not locked that day? A No, sir.

Q Did she take you to her bedroom? A She brought me to the bed of her mother.

Q That is the room she occupied, wasn't it? A Yes, sir.

Q Did she always take you there when she had intercourse with you? A Sometimes in my room.

Q Did she always approach you, and ask you for the intercourse after that or did you go with her? A Sometimes I would ask her, and sometimes she would.

Q How often did you have intercourse with her from that time up until the time of your arrest? A More than fifteen times.

Q Now, when did you go into the coal business for yourself?

A From the time I arrived from Italy.

Q When was it that you were working for this other man for a part of the time-- A No, sir; from the time I came from Italy.

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Q You were in business for yourself from the time you came from Italy? A I used to work for a boss; I always used to work for myself, that is the way I went on.

Q Was there a time when you worked for yourself, and you didn't work for a boss? A In the month of October I took a basement for myself.

Q Were you working in the day or night time? A In the day time.

Q In the day time? A Yes, sir.

Q What time in the month of October, did you go to work for yourself? A About the 6th of October.

Q How many times did you have sexual intercourse with Annie wento during the month of October? A Five times.

Q Where, in her room or your room? A In my room.

Q What time? A Ten o'clock in the morning or eleven o'clock in the morning.

Q Ten o'clock in the morning or eleven o'clock in the morning? A Yes, sir.

Q After the family were all gone? A Yes, sir.

Q Now, on what day was it that you had this last act of intercourse with her? A The 5th of November.

Q The 5th of November? A Yes, sir.

Q How long had it been then since you had an act of intercourse with her; how long before the time had you had an act of intercourse with her? A Four or five days before.

Q At the same hour? A Yes, sir; always the same hour.

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Q Now, on this morning-- or when you say that on this morning of the 5th, that being the day that you fix-- you had gone to work, hadn't you, about 5 o'clock? A Yes, sir.

Q What time did you return from your work? A At 6 o'clock at night.

Q Did you return from your work at 8 o'clock the first night -- didn't you leave for work at five o'clock in the morning? A Yes, sir.

Q Did you return to your apartment again? A At 8 o'clock in the morning.

Q Who did you find there when you went back? A The mother and the sister.

Q Hadn't you been there to leave coal before that time? A No, sir.

Q Didn't you leave the apartment about five o'clock and return about 7 o'clock with some coal and then go away? A No.

BY THE COURT:

Q When did you deliver the coal? A 8 o'clock.
BY MR. DeFORD:

Q When you left the coal there was the mother and the sister Margaret there, were they? A Yes, sir.

Q How long did you stay there then? A About five minutes.

Q Had you had your breakfast then? A No, sir; I had not.

Q What time did you come back? A 8 o'clock at night.

Q 8 o'clock at night? A Yes, sir.

Q Well, when did you have intercourse with Annie on that

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ing, in the morning or the night time? A In the morning about half past ten.

Q What time? A About half past ten.

Q I asked you when you came back after you left there at 8 o'clock? A I left in the morning at 5 o'clock that house, and I came back at ten.

Q Now, you left the house at 5 o'clock, and then came back at 8, and then went away, and then came back at ten o'clock? A On the 5th of November you are talking about?

Q The time you had intercourse with Annie the last time?

A I left in the morning at 5 o'clock, and I came back at ten o'clock.

Q Was it after you got back at ten o'clock that you had intercourse with her? A Yes, sir.

Q How long were you alone with her after you got back at ten o'clock? A Five or ten minutes.

Q Did you go back there at that time for the purpose of having intercourse with her? A No, sir; I went there to fry some liver.

Q Did she approach you, and ask you to have intercourse with her after you got there? A No, sir.

Q Did you ask her? A No, sir.

Q How did it happen then? A Well, she came into my room.

Q What were you doing in your room? A I was perspiring; I was changing at that time my underwear.

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Q Were your clothes off when she came into the room?

A Yes, sir; I was naked.

Q Did she have her clothes on? A She took her drawers off in the room, when she came in the room.

Q You had nothing on at all? A Yes, sir; I was naked.

Q When did you give the boys the pennies? A The sister-- when the sister came she asked me for a penny to buy some vinegar.

Q You didn't give the boys any pennies at all that morning? A No,, sir.

Q How long were you undressed in your room that morning? A Five minutes.

Q Was the door of the apartment locked then? A No, sir.

Q From the outside or the inside? A Open.

Q It was locked then? A No, sir.

Q Was the door to your room locked? A No, sir; open.

Q Did you take off your underclothes? A No, sir.

Q Were the little boys there at that time in the apartment? A Yes, sir.

Q Where were they? A In the room of the mother.

Q Who put them there? A They were there playing, I don't know.

Q Were they there playing when you went in to your room to undress? A I heard them laying, but I don't know whether they were there or not.

Q Did you say a little while ago that they were on the

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roof? A On the last day they were in the apartment, the two boys.

Q Did you tell me before they were on the roof? A Only at that beginning when I had sexual intercourse they were on the roof.

Q On this last day they were in the room? A Yes, sir.

Q Did you put them in there? A No, sir.

Q Did you ask them to go in there? A No, sir.

Q Did you give them any pennises; did you give each of the boys a penny? A Only to buy a penny's worth of vinegar.

Q Did you give them any pennises that morning before their sister came back, when you were there alone with Annie? A No.

Q Was the door to the room in which they were shut or open? A Everything was open; it was not locked.

Q Was the door between the kitchen and your room open?

A Open.

Q Wide open? A Yes, sir; open.

Q Anything to prevent the boys from coming from their room to your room? A When I was having sexual intercourse I would lock the door.

Q Did you lock it this day? A No, sir.

Q How long after you had sexual intercourse with the girl was it, before her sister came back? A In ten minutes.

Q Where was Annie when the sister came in? A She was seated in front of the stove.

Q Seated in front of the stove? A Yes, sir.

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Q You did not dress until after you had intercourse with Annie that day? A Yes, sir; I dressed myself afterwards.

Q So that you had dressed and gone out into the front room within ten minutes after you had intercourse with her, is that correct? A Yes, sir.

Q Do you know Charles Prestia? A Yes, sir; he is my brother-in-law.

Q He roomed with you, didn't he? A Yes, sir.

Q Did you send him to Mrs. Vento to offer her some money to keep this thing out of court?

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

Objection overruled; exception.

A No, sir.

Q Didn't you know that he had been to Mrs. Vento to make an offer for her to settle the matter out of court?

MR. SULLIVAN: I object to this as incompetent, immaterial and irrelevant and improper.

A No, sir; I did not.

Q You never told her any such thing? A No, sir; I am locked up; I can't go there.

Q The question is did you tell him to go to Mrs. Vento?

A No, sir.

Q Did he tell you that he had been to Mrs. Vento, and offered her a sum of money for you?

MR. SULLIVAN: I object to this.

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THE COURT: Objection sustained.

Q What is that rash on your face?

MR. SULLIVAN: I object to that if the Court please, as incompetent, immaterial and irrelevant.

A That has always been my complexion.

Q I call it a rash. Let the jury see the side of your face.

(Witness turns the side of his face to the jury.)

Q Were you taking any medicine for blood trouble when you were at Mrs. Vento's house?

Objected to; objection overruled. Exception.

Q Yes or no. A Yes, sir; I used to take a kind of medicine, it was for the purpose of stopping perspiration because I was perspiring a great deal.

Q Did you use it on your face too? A No, sir, I used to drink it.

Q Were you crying when the sister came back to the house the last time you had intercourse with her? A No, sir.

Q The sister didn't ask you why she had been crying, did she? A No, sir.

Q Didn't you testify a little while ago that the sister had asked you why her sister was crying? A No, sir; the day after the mother said "why did I make my child cry".

Q The mother said that to you the next day? A Yes, sir.

Q Did the sister say it to you the next day? A No, sir.

Q Did the other sister tell you the next day that Annie

had told her

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had told her you had done her bad? A No, sir.

Q Didn't you testify to that awhile ago? A No, sir.

Q The mother told you that Annie had told them that you had done bad to her that day? A No, sir.

RE DIRECT EXAMINATION BY MR. SULLIVAN:

Q After you left the place on grand street where you were living with these people you continued to have your place of business on Mott street at the time of your arrest? A Yes, sir; that is where I was placed under arrest.

Q Now the consultation that you had with the sister and the mother about Annie was at the time of your arrest wasn't it? A No, sir; I was arrested two months after.

MR. SULLIVAN: Is your Honor going to take a recess now? I want to recall a witness who was on the stand last night, the witness Prescia.

THE COURT: Who is that?

MR. SULLIVAN: Prescia.

THE COURT: You call him as your witness?

MR. SULLIVAN: Yes, sir, I make him my witness.

R E B U T T A L.

D R. A N N. B I N G H A M, a witness for the People, recalled.

BY MR. DeFORD:

Q Did you make an examination of the private parts of the girl, Annie Vento, when she was at the institution?

MR. SULLIVAN: I object to that as irrelevant, imma-

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terial and too remote.

Q Well, now, did you make an examination of the vagina, and the uterus? A Yes, sir.

Q Will you tell the jury whether or not you were able to form an opinion from that examination as to whether the girl had submitted to repeated acts of intercourse?

MR. SULLIVAN: I object to that.

THE COURT: I sustain the objection. You couldn't tell that.

THE WITNESS: You can.

MR. DeFORD: She says she can.

BY MR. DeFORD:

Q When was the examination made? A The 30th of April, 1915.

Q The 30th of April, 1915? A Yes, sir.

THE COURT: You found the hymen ruptured at that time?

THE WITNESS: Yes, sir.

BY MR. DeFORD:

Q Completely destroyed? A Yes, sir: it was torn in three separate parts.

Q It had disappeared, hadn't it? A Well, I shouldn't express it that way.

Q Could you say whether it had been a recent penetration or an old penetration? A Well, I should say it was an old penetration, and that the parts had completely healed: it cer-

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tainly was not recent.

Q There were signs of penetration which were not recent?

A Yes, sir.

BY MR. DE FORD:

Q Now, have you any means of determining from the examination of the private parts of a female whether a woman has submitted to repeated acts of sexual intercourse, or is it possible to tell from the appearance in the case of a woman who has repeatedly practised sexual intercourse? A Between that and one who has been practising it once or twice?

MR. SULLIVAN: I object to that.

Q What is the difference?

MR. SULLIVAN: That is the physical examination of April 30th.

Q Will you state the difference? A Well, in a case where intercourse has taken place repeatedly there is what we consider a furrowed appearance of the vagina, that is the mucous membrane is somewhat roughened; it has not smooth appearance which is found in the virgin or one who has practised intercourse comparatively a few times.

Q Will you describe the appearance of the vagina when intercourse has been had one or two times? A Well, there is that absence of the furrowing which I have spoken of in the other instance, the mucous membrane is smoother.

Q From the examination that you have made of the parts of Anna Wilson, are you able to express an opinion as to wheth-

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er she had submitted to frequent acts of intercourse or few or to one? A Yes, sir; I can.

Q What is your opinion on that subject?

MR. SULLIVAN: I object to that if the Court please as incompetent, immaterial and irrelevant.

Objection overruled; exception.

A My opinion is that she had not had repeated acts of intercourse.

BY THE COURT: ---

not

Q You could tell whether she had any intercourse or not?

A She was pregnant.

Q I mean apart from that, by the condition of the vagina?

A Why, yes.

Q You could say whether there was one penetration which had perforated the hymen or destroyed the hymen-- isn't that all? A Well, isn't that synonymous?

Q Any other object would penetrate the hymen without sexual intercourse, any blunt instrument would penetrate the hymen, isn't that so? A Well, there must be force enough back of it.

Q But the question that Mr. DeFord asks you is whether there has been one penetration or many penetrations. From your experience as a physician, and the examination of women-- does that enable you to form an opinion as to whether there has been little or very much sexual intercourse? A Yes, sir; I said so.

Q You have given the reasons for it? A Yes, sir.

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BY MR. DeFORD:

Q Now, was there anything about the condition of the vagina of this girl, or the uterus or any of her private parts which indicated the use of violence, external violence, violence unusual to the ordinary act of intercourse?

Objected to; objection sustained.

Q Will you describe the appearance of the uterus and the vagina as you found it?

MR. SULLIVAN: I object to that as too remote.

THE COURT: Objection sustained. I will allow her to state whether she had repeated acts of intercourse.

Q Would you consider fifteen times repeated acts of intercourse? A Yes, sir.

Q You would call that repeated intercourse? A Yes, sir; I think so.

Q Would that leave a condition from which you could determine that the girl had more than one act of sexual intercourse? A Yes, sir.

Q You found these marks present in this girl? A Yes, sir.

BY MR. DeFORD:

Q Would the condition of the hymen, that is to say, the character of the rupture of the hymen indicate or throw any light upon the question whether there had been more than one act of intercourse?

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

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A No, sir.

Q Nothing in the rupture itself which would indicate that?

A No, sir.

BY MR. SULLIVAN:

Q Now, would the interval of time from the last intercourse and the examination have any bearing upon the condition of the vagina? A No, sir; none whatever.

Q Now, if you could tell whether a person had sexual intercourse five times or ten times-- could you tell? A No, sir; I cannot, of course state the number of times.

Q Will you just answer my question?

THE COURT: She said no.

MR. SULLIVAN: That is an answer.

BY MR. SULLIVAN:

Q Can you tell whether a person has had sexual intercourse seven or fifteen times? A No, sir.

Q After three months since the last? A No, sir;

BY MR. DeFORD:

Q You cannot tell positively? A No, sir; certainly not.

Q Now, did you put any questions to this girl in the course of your examination of her for the purpose of ascertaining her knowledge of sex life at all or the sexual function?

MR. SULLIVAN: I object to that.

MR. DeFORD: I think I have a perfect right to

ask that question.

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THE COURT: Objection sustained. I think that would be clearly hearsay, anything said by the girl.

MR. DeFORD: I am not asking her to testify to what the girl said, but I am asking her if she asked the girl any questions for the purpose of ascertaining her knowledge of the sexual function.

Objection sustained.

MR. DeFORD: I want it for the purpose of showing that this girl was in perfect ignorance of the sexual function.

THE COURT: That you will have to show from the girl herself.

MR. DeFORD: To put her on the stand and ask her the questions?

THE COURT: Yes. You cannot put her unsworn declaration to the witness in evidence.

MR. DeFORD: This witness has given her testimony as to what the physical and mental condition of the girl was, and she also examined the girl's body.

THE COURT: That is not a question for experts whether or not she had any knowledge of the sexual relation. That is not a question for experts. That is a question of every day experience.

MR. DeFORD: I want to know whether she has a knowledge of the sexual function of the normal girl of nineteen years of age.

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THE COURT: I have already allowed her to testify as to the physical and mental condition of the girl, and the ability of the girl according to her tests.

MR. DeFORD: But not on that particular subject.

THE COURT: I won't allow you to examine her on that subject because it is not a matter for expert testimony.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

(AFTER RECESS, 2 p.m.)

A N N I E V E N T O, the complaining witness being recalled.

BY MR. DeFORD:

Q Did the defendant ever do you bad, by that I mean, have sexual intercourse with you more than once?

Objected to; objection overruled; exception.

MR. DeFORD: Defendant testified he had many acts of intercourse with her, and this is proper rebuttal.

THE WITNESS: (Through interpreter Quackenbos) Three times.

Q That same day?

MR. SULLIVAN: I object to that.

A Yes, sir.

Q The same time? A Yes, sir.

Q Ever before that day? A November 17th, November 17th.

THE INTERPRETER: She keeps repeating.

Q I don't understand the question? A November.

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ber three times, not after that, she has not answered whether before or not.

MR. SULLIVAN: I object to anything further unless there is some question.

THE COURT: I will allow it.

Q Ever before that time?

Objected to; objection overruled; exception.

A One time, one time, not before, three times November 17th is what she repeats.

BY MR. SULLIVAN:

Q Do you remember having three acts of sexual intercourse with this defendant, is that right? A At one time three times.

BY THE COURT:

Q Did he do it in July? A He did it in July, and I think in October, and he did it three times on November, on the 17th.

Q Ask her is she sure he did it in July, and see if she understands that question? A She understands the question, and she repeats the answer, one time in July, and again in October but he did it three times in November, on the 17th, and that was the last time.

MR. DeFORD: If your Honor please, I have had this girl in my room a number of times, and the lieutenant colonel, examined her, and he told me the result of his examination. Miss Goldman also reported the result of her examination to me, and this statement has never

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been made before.

MR. QUACKENBOS: May I interrupt-- At the police trial I interpreted, and again before the Grand Jury, as I do in all these deaf and dumb cases, and she told me he did it once, but never before that one time.

BY THE COURT:

Q Now, ask her if any one told her to say it was done in July?

THE WITNESS: No, sir.

THE INTERPRETER: I asked her if anybody told her, to say that, and she says no.

Q Did your mother tell you? A She says no.

THE INTERPRETER: I asked her who told her, and she said no, and then she says the last time was November 17th-- I didn't say it was the first time.

MR. DeFORD: In view of these circumstances there is nothing to do in this case now, but ask your Honor to withdraw a juror, and dismiss the case--that is all-- on the ground of the insufficiency of the evidence. But I want to say this that I did ~~to~~ have this girl, examined through the lieutenant here, Mr. Quackenbos, and he reported to me that she had testified that was the only transaction which she ever had with the defendant, and that she never had sexual relations with any other person. Miss Goldman made an investigation, and she made the same report to me. Mr. Quackenbos had gone through the matter in the police court. The same question was asked her repeatedly and

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she constantly denied any knowledge of anything of the kind, but that one time.

BY THE COURT:

Q Did you tell your mother about the occurrence in July?

A No, sir; I kept my mouth shut; I was silent.

Q How long had you known him the first time he did it to you? A He fooled me, he told me I must not tell my mother about it, and I did not tell my mother about it in November.

MR. DEFORD: Upon the record the evidence before the jury would not justify the defendant's conviction and, I therefore ask that the charge against him be dismissed, and the defendant discharged.

THE COURT: Motion granted.

(By direction of the Court the jury return a verdict of not guilty.)

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