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**CASE**

I N D E X:

Dir: Cr: Re-Dr: Re-Cr:

Opening address of Ass't  
District Attorney Derby, 2

Champe S. Andrews, 17 28

Edwin D. Watkins, M. D., 29

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Harry W. Fritchman,	150			
Edwin D. Watkins, M. D. resums.		150	154	
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- : I N D E X:-

	Direct	Cross	Re-D	Re-C.
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Frank A. Lord	218	223	224	225
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George W. Williams	232	241	272	
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COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York - Part V.

-----X  
 :  
 The People of the State of New York :  
 :  
 : B e f o r e :  
 -against- : Hon. James T. Malone, J.  
 : And a Jury.  
 FRANCIS GRAY BLINN, impleaded :  
 with MARY MILLER :  
 -----X

New York, April 6th, 1908.

Indicted for Attempted Abortion.

Indictment filed November 24th, 1903.

A P P E A R A N C E S :

For the People, Assistant District Attorneys Train and Derby.

For the Defendant, Charles F. Le Barbier, Esq.,  
(Messrs Unger & Stevens, of counsel)

-----  
 A jury was duly empanelled and sworn.

James E. Lynch,

Official Stenographer.

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OPENING ADDRESS OF ASSISTANT DISTRICT ATTORNEY  
DERBY, ON BEHALF OF THE PEOPLE.

May it please the Court, and gentlemen of the jury, the defendant Francis Gray Blinn is accused by the Grand Jury of the crime of attempted abortion.

The Grand Jury of the County of New York, by this indictment, accuse Francis Gray Blinn and Mary Miller of the crime of an attempt to commit the crime of abortion, committed as follows: The said Francis Gray Blinn and Mary Miller, both late of the Borough of Manhattan, City of New York, in the County of New York, aforesaid, on the 22nd day of November, in the year of our Lord, One thousand nine hundred and three, at the borough and County aforesaid, with intent to produce the miscarriage of a certain woman whose name is to the Grand Jury aforesaid unknown, who was then and there a woman pregnant with child, the same not being then and there necessary to preserve the life of the said woman or of the child with which she was so pregnant as aforesaid, did feloniously attempt to use and caused to be used certain instruments whose names are to the Grand Jury aforesaid unknown, with the same intent, and did then and there attempt to force, thrust and insert the same and to cause the same to be forced, thrust and inserted upon and into the womb and private parts of her, the said woman, against the form of the statute in such

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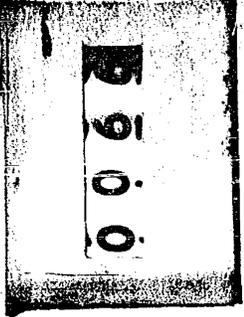
case made and provided, and against the peace of the People of the State of New York and their dignity.

You will notice, gentlemen of the jury, that the indictment says "The same not being then and there necessary to preserve the life of the said woman", and I might say right here that the only time when an abortion can be performed legally, is either to preserve the life of the woman or to preserve the life of the child, and we will show you in this case that neither of those conditions existed in this case.

Now, the defendant at the bar, Francis Gray Blinn, had been, previous to 1903, practicing medicine in New York County for a period perhaps of 15 years. The County Medical Society, a Society organized for the purpose of seeing that only duly licensed physicians should practice in this County, and for seeing that they should practice in a strictly legal way.--

MR. UNGER: (Interposing) If your Honor please, I regret exceedingly to interrupt the learned counsel for the People. He was telling us that the County Medical Society became satisfied. What they may have been satisfied with or dissatisfied with, does not concern us.

THE COURT: Yes, that is objectionable, to state that, Mr. Derby.



MR. DERBY: (Continuing) Well, the County Medical Society determined to investigate the conduct --

MR. UNGER: (Interposing) Now, if your Honor please,

MR. DERBY: Why, your Honor, that is perfectly proper.

THE COURT: Just direct your attention, Mr. Derby, to what you expect to prove in order to establish the burden which you carry. Tell the jury what you expect to prove.

MR. DERBY: (Continuing) The People expect to show you, gentlemen of the jury, that Mr. Champe S. Andrews, who was in 1903 counsel for the County Medical Society, in the Spring of 1903, acting for the Society --

MR. UNGER: (Interposing) If your Honor please, I beg my friend's pardon, but I do not know whether he apprehends the extent or purport of your Honor's ruling.

THE COURT: I do not think it is very harmful, Judge Unger, but it is objectionable.

MR. UNGER: And I apprehend it may be harmful, because the case hinges upon the relations of these parties to the case, and while it may later on appear what they were, for the present it is not the part of the prosecution to show --

MR. FRAIN: (interposing) Well, I submit that the

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MR. TRAIN: (interposing) Well, I submit that the

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statement that Mr. Champe S. Andrews was acting for the County Medical Society is perfectly a proper part of the case and that is what the learned counsel for the defendant objected to.

THE COURT: Well, go on, Mr. Derby.

MR. DERBY: (continuing) Mr. Champe S. Andrews, in the Spring of 1903, hired a post office box in Bayonne, New Jersey, under the name of J Sterling Loomis, M. D., and he had correspondence with the defendant at the bar, Dr. Blinn, under that name. That correspondence was interrupted during the summer by Dr. Blinn going to Europe, and when Dr. Blinn had arrived back in September, Mr. Champe S. Andrews sent for a young man by the name of Watkins, and having had a conference with Watkins in his office some time in September, 1903, Watkins immediately went out and telephoned to Dr. Blinn and made an appointment to meet him that same afternoon in September. Dr. Watkins went up to the defendant's house, was admitted by a woman in the costume of a nurse, and met Dr. Blinn in his reception room, in that house, 165 West 47th Street. He called Dr. Blinn's attention to the fact that he had been corresponding with him previously. He said his name was J. Sterling Loomis; that he was a doctor in Bayonne, New Jersey, and that he had over there a young man of wealth

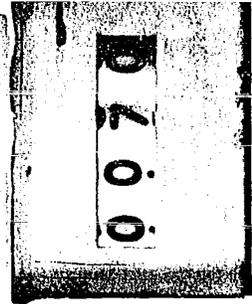
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and position who had gotten a girl into a delicate condition, and that this young man had requested himself, Watkins, to perform an abortion on the girl; that he, Watkins, had told the young man that it was out of his line, but that he knew of a man in New York who was an expert at just that sort of work, and Dr. Watkins told all this to Dr. Blinn, and asked Dr. Blinn if he would undertake to perform an abortion upon this girl. Dr. Blinn consented there to do it, and he said he would charge five hundred dollars, and would give Dr. Watkins a one hundred dollar commission, and as an evidence of his good faith, Dr. Watkins asked Dr. Blinn to sit down right there and write an agreement to perform the operation, the name of which was not mentioned, for five hundred dollars, in order that he, Watkins, might show it to the young man in Bayonne, New Jersey, which Dr. Blinn did.

Dr. Watkins and other persons who were interested in this case against Dr. Blinn, for some time, on account of the Election coming on and the other persons interested in this arrangement being busy with other affairs, were unable to get a girl to play the part in this plant.

Now, you will readily see, gentlemen of the jury, that in cases of abortion, the only evidence you can get against defendants is by means of a plant or trap, be-

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cause, if an abortion is successfully performed, the woman is the last person in the world who is willing to testify, and in case she dies, of course the most important evidence is missing. So, in pursuance of this arrangement, Dr. Watkins and the other persons interested in the Society set about finding a young woman, but at first their efforts met with no success, and they could not get a girl to play the part. So Dr. Watkins, one day in October, one Sunday morning, went to Dr. Blinn and told him that the young man and young woman of whom he had spoken on the previous occasion had gotten married and therefore it would not be necessary to perform an abortion in that case, but he told Dr. Blinn that he had another case over in Bayonne of a much wealthier young man, and that it would be absolutely necessary in that case to have an abortion performed, on account of the social standing of the parties involved, and Dr. Blinn said that he would take that case; that he would give the girl one of the best rooms in his house, which he was having fitted up, and he said to Dr. Watkins to bring in all the cases he possibly could, and as Dr. Watkins went out, he said, he slapped him on the back and he said "The more the merrier".

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Some time early in November, Dr. Watkins met, for the first time, a girl who is going to be known in this case as "Annie", and whose name never has been known

either to Dr. Watkins or to anyone concerned in this arrangement.

MR. UNGER: (Interrupting) I object to that statement. That is not part of the case and is intended to have some effect on the jury.

THE COURT: No, I do not think it has any part in the case.

MR. UNGER: I request that your Honor instruct the jury to disregard it.

THE COURT: The Court will instruct the jury when it comes to the time when the court should instruct the jury, but it now instructs counsel for the People to address himself to what he expects to prove, and reserve anything that he may have by way of comment for his summing up. Go on, Mr. Derby.

MR. TRAIN: Mr. Derby did not comment on anything, if your Honor please.

THE COURT: Well now, we will get ahead faster, Mr. Train. Counsel for defendant objects to it.

MR. DERBY: (continuing) A woman by the name of Annie is found, who agreed for the sum of fifty dollars to take part in this affair.

MR. UNGER: If your Honor please, I object to that.

MR. DERBY: I am going to prove that fact.

THE COURT: Well, Mr. Derby, anything you expect to

prove you may state to the jury.

MR. DERBY: I expect to prove that.

MR. UNGER: I object.

THE COURT: proceed. That is what he says.

MR. UNGER: Your Honor will allow me an exception to that? Will your Honor advise the jury to disregard the statement about the payment of fifty dollars?

THE COURT: Anything counsel for the People expects to prove he may state to the jury.

MR. DERBY: (continuing) I expect to prove that, gentlemen of the jury, and have no question that we will do so, that this girl was gotten for the sum of fifty dollars, and on Friday, I believe the 20th day of November, that girl was brought down to Mr. Frank Lord's office, Mr. Lord being at that time an Assistant District Attorney, and a conference was held in Mr. Lord's office at which Mr. Champ S. Andrews was present.

MR. UNGER: (Interposing) Your Honor will pardon me. This will be my last interruption. For the purposes of the record we object to the statement on the part of the learned counsel for the People as to what they may have said or done or what happened in the absence of the defendant. They laid a plan or plot, it is true, but what they laid out and agreed among themselves surely is not

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part of the People's case, and I request your Honor to admonish the jury to disregard the statement of counsel as to what took place in the District Attorney's office in the absence of this defendant, or by which this defendant could not be bound.

THE COURT: You must disregard everything, gentlemen, except what is established here in evidence or which the Court permits to go to you as competent and relevant to this case.

MR. DERBY: (continuing) A conference was had in Mr. Lird's office on Friday, November 30th, and I know perfectly well that I have no right to tell you what was said there, and I had no intention of so telling you, but I only intend to tell you the things I am able to prove and the things that are perfectly proper. A conference was held at Mr. Lird's office that day, at which Mr. Andrews was present, together with Dr. Watkins, who will appear as one of the People's witnesses in this case, and arrangements were perfected for the attempted abortion.

Now, I might say here, gentlemen of the jury, that Dr. Watkins comes from the town of Chattanooga, Tenn.; that from the age of 15 it was decided he should become a physician, and at the age of 15 he was apprenticed, as is customary in the South, to a doctor, and went around with

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that doctor for some years while that doctor performed operations on patients in the town of Chattanooga, both males and females, and blacks and whites, and that after that, Dr. Watkins went to the University of Virginia, from which he graduated, and then came here to study medicine at Columbia Medical Institute, at which he was at the time this affair occurred, and he is now the House Surgeon at the Presbyterian Hospital.

From the conference at Mr. Lord's office, Dr. Watkins went up again to the house of Dr. Blinn, and saw Dr. Blinn there, and told him that the young man, or rather the young woman about whom he had spoken on the previous occasion was in a proper condition now to be operated upon, and that he would bring her in on the following Sunday morning at 11 o'clock, and Dr. Blinn said he would be ready for her on that day, and said he would give her one of the best rooms in his house, and Dr. Watkins told him that the girl was in a highly nervous condition, and would not submit to any preliminary treatment at all; that he would have to perform the operation right after he brought them there, and he also told Dr. Blinn that the young man was highly excitable, and would have to be treated with the greatest tact. Dr. Blinn said that he was always up against that proposition; that the young man always was

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up against that proposition; that the young man always was nervous, and that he would treat him with the greatest consideration. It was arranged then that this young woman should be brought with the man who was supposed to have gotten her in the delicate condition on Sunday morning at 11 o'clock.

Now, it had been arranged that an officer by the name of Harry Fritchman, then attached to the District Attorney's office, should take the part of the young man who had gotten the girl in the delicate condition. Officer Fritchman, Dr. Watkins, Mr. Champe Andrews, counsel for the Medical Society, and I believe Joseph E. Corrigan, at that time an Assistant District Attorney and now a Police Magistrate, and a few other police officers, Frank Lord, of the District Attorney's office, all these people, together with the girl Annie, met at Pabst's Cafe at about 9 o'clock on Sunday morning, the 22nd of November, 1903. Lord produced on that occasion five one hundred dollar bills, which I believe had been seized by the District Attorney in some gambling raid, and in the cafe at Mr. Pabst's Mr. Lord marked these bills with pin marks, in order that they could be subsequently identified, and gave them to officer Fritchman. Then, Watkins, Harry Fritchman, the officer who was to take the part of the young man who

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had gotten the girl in the delicate condition, and the girl Annie herself, the three of them, climbed into a cab, the girl Annie having a dress suit case with her with a change of clothing in it, in order to give the impression that she had come to stay for some time; the three of them drove to Dr. Blinn's house, 165 West 47th Street, and the rest of the party, Lord, Corrigan and the police officers and others went and took up their station opposite Dr. Blinn's house, where they could be in case of urgent call.

Dr. Watkins and the girl and Fritchman were admitted to Dr. Blinn's house, and were <sup>left</sup> looked in a reception room, and while they were in the reception room a nurse came from upstairs and asked the girl Annie to come upstairs and have a louché and to have some preliminary treatment. Annie refused to go up there until she was going to be operated upon, which she said was to be right off, without any preliminary treatment at all, and Dr. Blinn came on the scene soon after, and Watkins explained to him that the girl was nervous and that it had been arranged that she was to be operated upon without any preliminary treatment.

Dr. Blinn ushered them into the inner room in which he had his operating table.

Now, I might say, attached to that operating table

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on that morning was a tray, containing certain instruments which will be shown you in this case. Among those instruments were a pair of forceps and a probe and a chloroform bottle and chloroform inhaler, and certain other instruments which we will show you.

The first thing Dr. Watkins did when he got in the room with Dr. Blinn was to tell Dr. Blinn that his friend, officer Fritchman, who was known as Jack, was in a nervous condition and needed a drink of whiskey. Dr. Blinn promptly Fritchman downstairs and gave him a drink of whiskey, then came up and told Dr. Watkins that his friend wanted him downstairs, and joined Fritchman downstairs where Fritchman passed the five one hundred dollar bills over to Dr. Watkins, the ones that were marked, and Watkins came upstairs and handed the five bills to Dr. Blinn in the entry outside the operating room. Dr. Blinn was just in the act of handing back one of those bills to Dr. Watkins as his commission, when Fritchman appeared, coming from downstairs, and the Dr. hurriedly put the money in his pocket and walked into the operating room.

In the operating room was the co-defendant who is mentioned in this indictment, a woman by the name of Mary Miller, who, I believe, assisted at these operations. Dr. Blinn took the girl Annie and put her on the operating

table and took down her underclothing, threw her skirt up over her head, exposing her private parts, and he seemed to be nervous, owing to the fact that officer Fritchman who was playing the part of the young man, was standing so near the operating table, and he called Dr. Watkins out into the hall and told him that he never had such a thing happen him before. He said he was not accustomed to operate with his room full of people, and that he could not stand for it. Well, Watkins told him that the girl would not consent to have the operation done unless the young man were present, and that it would all have to be given up unless Fritchman was allowed to stay there. So the doctor made the best of the circumstances, and went back in the operating room, and placed Fritchman as far from the operating table as he could get him, over near the window. Then Dr. Blinn turned to the nurse, Mary Miller, and he says "Now, you give the chloroform", and Annie, the girl on the table, objected; she said she would not trust anybody to give the chloroform except Dr. Blinn himself, and Watkins whispered to Dr. Blinn and said "You start the chloroform, and then after the girl gets under the influence of it, why, I will continue it, and you can perform the operation". So Dr. Blinn put the chloroform, inhaler on the girl's face, and had begun to sprinkle

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chloroform on the inhaler, when Fritchman pulled out his gun and said "Doctor, you are under arrest".

Well, Dr. Blinn threw up his hands and made very little show of resistance, and Fritchman was enabled to handle him and remove the five hundred dollars from his pocket. Meanwhile, Dr. Watkins had gone to the door and blown his whistle, and other parties had run in from across the street, and put everybody in the house practically under arrest.

Now, Dr. Blinn was taken down to the police station and put under fifteen hundred dollars bail for examination in the Police Court next day, and next day he appeared at the Police Court I believe, and the examination for some reason was adjourned, and the bail bond continued over to the following day, Tuesday, but when Tuesday had come, Dr. Blinn had disappeared. He had decided that the best place he could go would be to go to Canada, as fast as his legs could carry him, and Dr. Blinn did not appear to plead to this indictment -- the date of the indictment being the 24th of November, 1903 -- he did not appear to plead to the indictment until January of this year, just about two months ago, and nearly five years from the time the indictment was filed.

Mr. Andrews will be the first witness.

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C H A M P E S. A N D R E W S, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Andrews, where do you live? A I reside at 43 West 16th Street.

Q In the year 1903 were you a practicing lawyer? A I was.

Q And counsel for the County Medical Society? A Yes sir.

Q How long before 1903 had you heard of the defendant?

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

THE COURT: I will take it.

MR. UNGER: Your Honor will allow me an exception.

A Three years and a half.

Q Three years and a half before 1903? A Yes sir.

Q Had you ever met him? A No sir.

Q Was he a member of your Society, do you know? A An expelled member. He was not at that time.

Q Not at that time? A No.

Q Had you personally ever had any conversation with him? A No sir, I don't recall ever having seen him, or known him at all.

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Q In the year 1903 --

(Question withdrawn.)

Q You are a native of Chattanooga? A I lived there for eighteen years.

Q And did you know Dr. Watkins? A Yes sir.

Q Who came from the same place? A Yes sir, since he was a very small boy.

Q And was he living in New York in 1903? A Yes.

Q Studying medicine. A Yes.

Q Did you during the Spring of that year, did you see Watkins in relation to the defendant?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

Q Well, did you have a talk with Watkins?

MR. TRAIN: I will withdraw the question.

Q Did you have a talk with Watkins during the Spring, Summer or Autumn of 1903? A I did. I beg pardon, counsel.

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: I will take it.

MR. LE BARBIER: Exception.

A I did.

Q When was your first talk with Watkins? A If my memory serves me clearly it was in September or October.

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Q prior to that time had you been to Bayonne, New Jersey? A Not personally.

Q Well, had anyone in your employ been there? A Yes sir.

Q Had you personally written any letters to the defendant?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A Under my direction letters were written, but not in my hand.

MR. LE BARBIER: I move to strike that out as incompetent, immaterial and irrelevant, and as not responsive.

MR. TRAIN: Consented to.

(Stricken out.)

Q Are you personally aware of where the defendant was during the summer of 1903?

MR. LE BARBIER: Objected to as immaterial.

Objection overruled. Exception.

A In Europe.

BY THE COURT:

Q If you know? Do you know he was in Europe? A Yes sir.

BY MR. TRAIN:

Q Was this talk you had with Watkins after or before

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the return of the defendant from Europe? A About the time of his return.

Q Could you fix the date that you talked with Watkins?

A I would not like to accurately.

Q Was it in September? A I should say it was in September.

Q At the same time did you see any other persons?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and as indefinite.

THE COURT: Well, I suppose it has reference to the defendant.

Q Well, at the time you talked with Watkins, were any other persons present? A At several of the interviews there were several people present.

MR. LE BARBIER: Your Honor will pardon me? I move to strike out the answer as incompetent, immaterial and irrelevant, and not responsive, and not binding on the defendant.

THE COURT: What is the purpose of this?

MR. TRAIN: I simply want to get the personnel of the actors in this drama.

THE COURT: I take it that it is preliminary. He has to go step by step, I suppose. I will take it and give you the benefit of an exception.

MR. LE BARBIER: I take an exception.

A Mr. Lord, who was at that time an Assistant District Attorney, I believe, Mr. Fritchman, who was a police officer attached to the District Attorney's staff; Mr. Theodore Smith, who was my first assistant, lay assistant in the work of the County Medical Society, and the President of the County Medical Society.

Q Who was that? A At that time, I believe it was Dr. Van Vliet. I served under seven of them and it is difficult for me to remember just which one.

Q Well, do you remember was Judge Corrigan one of the persons? A Yes, Judge Corrigan also, and Mr. Johnstone of the District Attorney's office.

Q Was Mr. Jerome present at any of the conversations? A I went to see Mr. Jerome at one interview, if I remember accurately in regard to the identity of this girl, keeping it secret.

MR. LE BARBIER: I move to strike that out as incompetent, immaterial and irrelevant.

THE COURT: Strike it out.

Q Well, did you ever personally, yourself, go to the premises occupied by the defendant at 165 West 47th Street?

A I did on the day of his arrest.

Q Did you go prior to that? A Only to pass the place by and see his sign, and to get the location of the premises. I did not enter.

Q. On Sunday, the 22nd of November, were you one of the parties that went to the Pabst Cafe, Columbus Circle?

A. Yes.

Q. What time did you go there? A. In the morning, I should say, about 9 to 10.

Q. What persons assembled there?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant and not binding on the defendant in any way.

Objection overruled. Exception.

A. Mr. Lord, Mr. Smith, Mr. Fritchman, the girl whom we called and knew as Annie, Dr. Watkins, I think Mr. Johnstone of the District Attorney's office, Mr. Corrigan, and myself; six, seven or eight of us.

Q. Well, quite a group of people? A. Yes.

MR. LEBARBIER: I move to strike that out as incompetent, immaterial and irrelevant, and not binding on the defendant.

THE COURT: I will give you the benefit of an exception.

Q. Now, about this time, were you present when five one hundred dollar bills were marked?

MR. LEBARBIER: Objected to.

MR. TRAIN: Do you object because it is leading?

MR. LEBARBIER: Objected to as incompetent, imma-

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terial and irrelevant, not binding upon the defendant in any way, anything that took place at Pabst's Cafe, or anyone that one that went there, or anything in relation to these so-called marked five one hundred dollar bills.

Objection overruled. Exception.

A Yes, there were five one hundred dollar bills marked, I think, by Mr. Lord, by a series of pin pricks.

Q Well, you saw them marked? A I did, yes.

Dr. Watkins

Q And after this occurred, and Annie and Fritchman got in a cab? A Yes sir.

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and not binding upon the defendant.

Objection overruled. Exception.

Q After that, how did you go down to 165 West 47th Street?

Same objection; same ruling and exception.

A We either walked or rode on a car.

Q You do not remember how you went there, but when you did get there, where did you go? A We stood on or near the corner of Seventh Avenue and the street on which it is located, 47th Street, I think, over near the corner. We all assembled there.

Q Well, and the people in the cab? A No, they had gone. I did not see them until afterwards.

Q This 165 West 47th Street, is that the north or

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south side of the street? A That is on the north side, faces south.

Q How far were you from the door, as you stood on the corner? A I should say 250 feet, perhaps 300.

Q What was the next thing happened?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and not binding on the defendant.

Objection overruled. Exception.

A Why, we heard a whistle, which had been a prearranged signal which Dr. Watkins was to give, and when that whistle blew the officers and others rushed in.

MR. LE BARBIER: I respectfully move to strike out anything regarding the whistle and the prearranged signal.

THE COURT: Motion granted.

Q Well, the whistle blew and you and the others on the corner there rushed to the house? A Yes.

Q How did you enter the house? A I think Dr. Watkins let me in the basement, if my memory is clear after these years.

Q Well, it is five or six years ago? A It is, but as I remember it, he opened the door and let me in the basement, and there was reason for it.

MR. LE BARBIER: I move to strike out that there was reason for it.

THE COURT: Strike it out.

MR. TRAIN: Well, Mr. Le Barbier will bring out the reason.

MR. LE BARBIER: May I make the suggestion that these comments be not made by the District Attorney?

THE COURT: Yes.

Q You entered by the basement? A I did.

Q And you think you saw Watkins there? A Yes.

Q Did you see anyone else in the basement that you recall at that time? What did you do next? A Why, I went there to get the girl and get her away, and I saw the girl.

Q Where was the girl when you saw her?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and not binding on the defendant.

Objection overruled. Exception.

Q Well, you tell your story in your own way.

Same objection. Objection overruled. Exception.

Q Start going in the basement there and tell what happened? A I went to the basement and I saw on that occasion there some people that I had seen previously and I went upstairs, and I went downstairs, and I did not leave until I had gone through the entire house to see whether there were beds there, and whether it was a hospital.

Q Now, did you go into the doctor's room, the rear room? A I did.

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Q And do you remember when it was you went there?

A I went to the doctor's room as soon as I could after entering the house.

Q Well, do you remember whether you had done anything in the basement before you went upstairs? What I want to get at is how long it was before you got in there? A I should say immediately.

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

Q Well, do you recall who was in there, or what was being done or anything about it? A Why, after -- Dr. Blinn was there and the woman and nurse dressed in nurse's costume was there; there was an operating table; there were instruments and pans, and appliances of that sort, and particularly I remember a cone for administering ether.

Q Well, do you remember whether Annie was in the room at that time? A She was, yes.

Q Do you remember where she was? A I would not like to say that I do. It is difficult for me to recall just when I first saw, just what position she was in when I first saw her.

Q Well, do you remember anyone else was in the room?

A Mr. Lord was there; Eritchman was there, and when I went back Watkins was with me; he was there; he had been there

before in the basement, and he went back at that time.

Q Well, he went in the room with you? A He went in the room, yes, and I think there was another officer.

Q Well, was there some officer connected with the Medical Society? A Yes.

Q What was his name? A Smith.

Q Was he there? A Yes, he was there. He went in with me.

Q Well now, after that, what was the next thing happened, as you recall it?

MR. LE BARBIER: This is after the arrest, I suppose?

Objected to as incompetent, immaterial and irrelevant, and no substantive part of the case.

Objection overruled. Exception.

A I had taken the girl away; sent her away in a cab.

Q You took Annie away? A Yes, so that the newspapers reporters or anyone could know who she was.

THE COURT: Strike that out.

Q Well, after that, did you remain in the house or did you go away? A I think I went away.

Q You were not there when the defendant was taken to the Police Station? A No.

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

Q Well, did you pay this girl fifty dollars?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and not binding upon the defendant in any way.

THE COURT: Objection sustained.

MR. TRAIN: Well, I do not care. I withdraw it.

MR. LE BARBIER: I object to any remarks.

THE COURT: Yes, that is improper.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Mr. Andrews, did you testify at the former trial of this case? A I did not, sir.

Q That is, in 1903, at the time of this visit there, or throughout the year, was this Dr. Watkins a duly licensed practicing physician, so far as you know? A I think not.

Q Do you know whether he was?

MR. LE BARBIER: Question withdrawn.

Q When you went into the doctor's office, did you observe instruments there? A Yes sir.

Q Were there any instruments different from any others that you observed in other offices? I mean to say any other doctor's office that you had been in? A I have seen instruments that I saw there in other doctor's offices, but not displayed as they were, Mr. Le Barbier.

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Q Are you at present connected with the County Medical Society? A No sir, not since the last of December.

MR. LE BARBIER: Now, may it please the Court, I respectfully move to strike out all the testimony of this witness, on the ground that it is incompetent, immaterial, and irrelevant; on the ground that it does in no way bind the defendant on any matter whatever.

Motion denied. Exception.

EDWIN D. WATKINS, M. D., being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. DERBY:

Q Now, Dr. Watkins, how long have you been in New York? A I came to New York in June, 1902.

Q Where are you from; where is your home, Dr. Watkins?

MR. LE BARBIER: I object as immaterial.

THE COURT: I will take it.

MR. LE BARBIER: Exception.

Q Where is your home? A Chattanooga, Tennessee.

Q Now, before you came to New York, where had you been, Dr. Watkins?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

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Q Are you a graduate of the University of Virginia?

A I graduated from the University of Virginia in 1902. I left there in January, 1902.

Q Now, previous to your going to the University of Virginia, did you have any experience in medicine? A Several years.

Q Seven years? A Several years association with a physician.

Q Will you tell the jury how you came to be associated with a physician?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and in no way binding upon the defendant, and in no way pertaining to the issue.

THE COURT: I do not see how it is very material.

MR. DEEBY: May I explain to your Honor how it is material?

THE COURT: Oh, I assume from the fact that counsel for the People is asking, that he thinks it is material, and if he thinks it is material, I am going to allow him to get the testimony. If it is not, I will entertain a motion to strike it out.

Q Now, will you explain to the jury --

MR. LE BARBIER: Just a moment, counsel. May it please your Honor, in support of our position here in taking

exceptions, the prosecution virtually anticipate all our other case, all our cross examination, and are endeavoring in this unfair method, as we submit, it seems to us, to bring out these facts, which in no way are a part of their case.

MR. DERBY: Now, may I address the Court?

THE COURT: I do not think it is necessary, Mr. Derby, because the court sees no unfairness exhibited up to this time.

MR. LE BARBIER: I concede that your Honor does not. Exception.

Q Now, Dr. Watkins, will you describe to the jury what medical experience you had while you were in Chattanooga and before you went to the University of Virginia?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A When I was 15, there was a doctor at my home who took me under his instruction, and instructed me in the various technique, the office and house visiting work, in medicine and surgery, including among that the practice among women, of obstetrics and the delivery of children, and gynecology, the general disease of women, and that has been the custom in the South for a long number of years.

MR. UNGER: We move that that be stricken out.

THE COURT: Yes, strike that out.

MR. UNGER: And that the jury be instructed to disregard it?

THE COURT: Yes.

BY THE COURT:

Q Dr. Watkins, just answer questions and do not go outside of that? A Yes sir. I had examined a number of women before I went even to my academic college, under the tutelage of this physician, who taught me the methods of vaginal examinations, and I had examined some twenty or twenty five women up to the time of my second year in the medical school, on account of my association with this doctor at my home in Tennessee.

MR. LE BARBIER: If your Honor please, we respectfully move to strike that all out.

MR. DERBY: Its relevancy will appear later.

THE COURT: Well, at the same time, it is matter of which I am going to let some stand, but some of it is improper.

MR. DERBY: Will your Honor hear me?

THE COURT: No, I will not hear you about it.

MR. TRAIN: If your Honor please, one of the chief attributes of this witness is to testify that the woman who was in this case was pregnant. Now, in order to show that

this witness is competent to give any subh testimony, we are merely qualifying him as an expert.

THE COURT: That is as far as I am going to permit you to do, Mr. Train, and I am going to allow the other side the right to cross examine, to develop how experienced and how competent he is. He may state what his experience is, but nothing further, because that is matter of cross examination.

BY MR. DERBY:

Q Now, during the time you lived in Chattanooga, how many pregnant women did you examine altogether?

MR. LE BARBIER: At what age? Objected to as incompetent, immaterial and irrelevant.

MR. DERBY: I do not care what is the age.

THE COURT: I think it is matter of cross examination, and I will sustain the objection.

Q Now, while you were at the Iniversity of Virginia, did you have any additional medical work? A I did.

Q Under a doctor there? A In the dispensary, at the University of Virginia Medical Svhool.

Q And during that time at the University, you made frequently examinations of women?

MR. LE BARBIER: Objected to as incompetent.

THE COURT: Yes, it is leading, and I think for the purpose of qualifying him, the People have gone as far as

they are entitled to.

Q Now, in 1903, when you were at the Columbia Medical School, had you had such experience as would enable you to determine whether a woman was in a pregnant condition or not?

A I had.

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and I move to strike out the answer.

THE COURT: Sustained. Strike it out.

Q Were you able to tell whether a women was pregnant or not?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: He may state his experience, and you may argue from his experience the number he had. Objection sustained.

Q Had you known Mr. Champe S. Andrews before September, 1903? A Yes sir.

Q And you had some conversation with him? A Yes sir.

Q After that conversation with Mr. Andrews what did you do, doctor?

MR. LE BARBIER: Objected to as incompetent, and in no way binding upon the defendant, and in his absence, and foreign to the issue.

MR. TRAIN: He went to see the defendant and had a talk with him.

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MR. DERBY: I tried not to be leading and that is why the question was put in such a general way.

THE COURT: It does not strike the court it is material. If counsel for the People is going to show it is, I am going to take it, and I will allow the other side, counsel for the defense, to move to strike it out if it be not material. I cannot see how it is at this time.

Objection overruled. Exception.

Q After your conversation with Mr. Andrews, what did you do, Dr. Watkins?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, unless limited to the defendant.

Objection overruled. Exception.

A I saw the defendant.

Q You went to see the defendant? A I went to see the defendant.

Q Now, will you describe to the jury where the defendant lived and what the conversation you had with him was, in your own way? A The defendant lived in a house on West 47th Street, between Sixth Avenue and Seventh Avenue, on the north side of the street. The exact number of the house I have forgotten. I went to see the defendant on an afternoon in September, which I remember to be about the 19th. I rang the bell and was admitted by a woman in the uniform of a nurse, having just telephoned Dr. Blinn that I was coming.

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Dr. Blinn said I might come. I announced myself as Dr. J. Sterling Loomis, of Bayonne, New Jersey. He said he would see me, and I went in to see him in his private office.

Q Well, did he recognize you? Had you ever seen him before? A

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and on the further ground that the sole purport of the indictment is of the 22nd day of November, 1903, whether there was an attempt at abortion. I am not going to submit to your Honor here the law of attempts or traps, but we submit they have nothing to do with this case. The law of this State permits that kind of thing, we are now brought down to the day, the 22nd of November -- was a crime committed?

MR. DERBY: It all bears upon the question of intent.

THE COURT: I will give you an exception.

Q Had you previously seen Dr. Blinn? A No, not before that day in September.

Q Well, did he show any sign of recognition? A He seemed to know who Dr. J. Sterling Loomis was.

Q Did he tell you that he had had any correspondence with Dr. Loomis?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

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THE COURT: You may ask what the conversation was.

Q What was the conversation.

MR. LEB BARBIER: Objected to as incompetent.

Objection overruled. Exception.

A I mentioned that we had had this correspondence, and he seemed to agree to it.

BY THE COURT:

Q We do not want what seemed, but what he said? A He agreed to it, that we had had correspondence.

MR. UNGER: I move to strike that out.

THE COURT: Strike that out.

Q Mr. Witness, you understand now, you are to tell the conversation between you and Dr. Blinn, and so nearly as you can convey it to the jury in the language of Dr. Blinn and yourself. Do not argue from it or draw any inferences, because the jury are here to draw inferences from the testimony. You tell just what was said by you and by Dr. Blinn? A Yes sir.

Q And in the language as nearly as you can recall it?

A Yes sir.

BY MR. DERBY:

Q I should first ask you what you gave Dr. Blinn as your name? Did you tell the jury that?

MR. LEB BARBIER: Objected to as leading.

THE COURT: Yes, it is leading. Let us get the con-

versation.

BY THE COURT:

Q What was the conversation? A I said "Dr. Blinn, I am going to bring in the case of a young woman who is pregnant; this young woman is three or four months pregnant, and has been gotten that way by a young man of great wealth and influence who lives in Bayonne, New Jersey, and they consulted me about doing an abortion, to prevent a scandal, and I said I could not do it, but that I would refer them to a man in New York who was a specialist in that line, a great specialist, and that I would go in to see Dr. Blinn", and I said "Now, I have come to see you about it, and the case is all ready, and I will bring them in". Dr. Blinn said "Very well", that he would do the work. I asked him what his prices were and he said "anywhere from one hundred to five hundred dollars". I told Dr. Blinn that these people were very wealthy and it made no difference how much he charged. He said "Very well, then make it five hundred dollars; I will give her one of my very best rooms", and then I said to Dr. Blinn, "Now, will my part be how much?" He said "One hundred dollars I will give you", and then, just before leaving, I said to Dr. Blinn, "I do not want these people to think that I am faking them; five hundred dollars is rather a large fee to charge for an operation; now, can't you give

me some sort of statement that you charge five hundred dollars for the operation? Do not say what the operation is, but just say that you will do the operation for five hundred dollars", and he gave me a written statement to that effect.

MR. UNGER: I object to that, that he gave him a written statement, an agreement in writing, and I move that it be stricken out.

THE COURT: No sir.

Exception.

BY MR. DERBY:

Q Did he write the statement in your presence? A He wrote the statement in my presence.

Q What other conversation did you have with him on that occasion, anything you remember? A Nothing in particular that I remember. I said "I will be in with the case soon."

Q When was the next time you saw Dr. Blinn? A The next time I saw Dr. Blinn was on a Sunday morning in October, having just received a letter from him written to Dr. J. Sterling Loomis at Bayonne, New Jersey, and I went in to see Dr. Blinn that Sunday morning, and talked to him in the same room that I talked to him before, and I told him that the first case was called off because the couple had decided to be married, and that I had other cases that were to come, and that I would bring in one of those, and we had a general

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amiable conversation, and he said "very well", to bring in all that I could, that he would attend to them all, and on parting he said "Bring them all in, the more the merrier".

Q Now, when was the first time that you saw thw women that has been mentioned as Annie? A About one week before the day of the arrest, the 22nd day of November, 1903.

Q Where did you fir st see her? A I saw Annie in an Armory, which is, I think, on 66th Street or 65th Street, West, near Columbus Avenue; a Cavalry Armory.

Q Will you describe to the jury what Annie looked like?

MR. UNGER: Objected to.

THE COURT: How is that important?

MR. DERBY: If it is objected to, I will withdraw the question.

Q Did you at some time in November go down to the office of Mr. Frank Lord, then an assistant in the District Attorney's office? A I did, two days before the arrest took place, which was on Friday afternoon, November 20th, 1903.

Q Who was present at that interview in Mr. Lird's office?

MR. LES BARBIEU: Objected to as incompetent, immaterial and irrelevant, and not binding upon the defendant.

THE COURT: Well, what is the importance of it?

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Disclose it to me.

MR. DERBY: The importance of it, your Honor, is to show that two days before this arrest these parties met together in the office of the District Attorney, and this woman was present there, and on that occasion Dr. Watkins made an examination of this woman externally, to ascertain what condition she was in. Now, it may be an important element in this case, your Honor, to show that that woman was pregnant.

THE COURT: Well, not at this time. I will sustain the objection.

Q Did you make an examination of the woman on that occasion? A On that occasion I made an external examination only.

Q And as the result of your determination, what conclusion did you reach?

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

THE COURT: Objection sustained.

MR. TRAIN: The indictment, your Honor, alleges that an attempt was made to perform an abortion on a pregnant woman. Now, it is merely a question of the order of proof.

THE COURT: Yes. Objection sustained.

Q I omitted to ask you, Dr. Watkins, where you are attached now? A The Presbyterian Hospital.

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Q How long have you been attached there? A Since July of 1906.

Q And your position in that hospital is what? A House Surgeon.

Q As House Surgeon, do you have occasion to examine women frequently?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: I think you have got, so far as is necessary for the establishing that he is competent to testify as to the condition, I think you have got enough.

MR. DERBY: Well, your Honor, I had not asked him any question on that, bearing on the period after he was admitted.

THE COURT: I am not going to permit you to cross examine him.

Q After your interview in Mr. Lird's office, where did you go? A I went to Dr. Blinn's house.

Q And saw the doctor again on that occasion? A Yes.

Q What did you say to the doctor on that occasion?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: I will take it and give you an exception.

MR. LE BARBIER: Exception.

A I told Dr. Blinn that the case was ready for operation; that this young couple was a very much wealthier couple than the first one, that they would come in on Sunday morning with me, and that she would have -- she was a very nervous young lady, and she would have no preliminary treatment; that she would take an anaesthetic and have the operation done right there; that the young man, the sweetheart, was a wealthy young man, and he was very nervous over it; that he would have to be treated with a great deal of consideration and kindness; and Dr. Blinn assured me that he would do so.

BY THE COURT:

Q Now, just tell us what he said, please? A He said "I will treat him with the greatest consideration, and you will have to learn to do the same. I always treat those young men with great consideration, because they are always very nervous and worked up about the affair, and I assure you that I will treat him with all consideration, and I will give -- I am having my upstairs fitted up by some carpenters, and I will have the front room, the best room in the house ready by Sunday morning; I will have the carpenters hurry with the work and I will have it all ready for your patient".

BY MR. DEPBY:

Q Now, on Sunday morning, before 11 o'clock, did you

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see this woman Annie and officer Fritchman anywhere? A Yes.

Q Where did you see them? A I saw them at pabst's Cafe on Columbus Circle .

Q Who was present there?

MR. LE BARBIER: Objected to. The same general objection.

Objection overruled. Exception.

A Annie was there; Mr. Andrews was there; Fritchman was there; Mr. Lord was there, and some police officer, I don't remember his name. I think it was Rappolt. I am not certain.

Q What took place in that cafe?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and in no way binding upon the defendant.

THE COURT: What is the importance of it, Mr. Derby?

MR. DERBY: I want to show, your Honor, that certain money was marked on that occasion.

THE COURT: Go on.

MR. LE BARBIER: Exception.

A I saw Mr. Lord and Mr. Andrews and Mr. Fritchman sitting at a table, and they had five one hundred dollar gold notes, marking them, and writing down the numbers of the bills on a slip of paper.

Q Did you see them put any marks on them, any pin

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holes? A They put pin holes in the face of the goddess of liberty.

MR. LE BARBIER: pardon. We respectfully move to strike that out. The best evidence is the bills themselves.

MR. TRAIN: The bills would not show what was done in the Pabst Cafe.

MR. LE BARBIER: Well, they would corroborate in some way this.

THE COURT: I will overrule the objection and give you an exception, or rather, deny the motion.

MR. LE BARBIER: Exception.

Q What was done with the bills? A Fritchman took them. They were given to Fritchman.

Q By whom, do you remember? A By Mr. Lord.

Q Now, after you left pabst's cafe, what did you do? How did you leave the Cafe? A Annie and Fritchman and myself walked out on the Circle side and got in a cab and drove to Dr. Blinn's with the suit case.

Q Did you see the contents of the suit case? A Never saw the contents of the suit case.

Q When you got to Dr. Blinn's, what did you do, ring the bell? A We got out of the cab and walked up the stoop and rang the bell, and a woman in the uniform of a nurse admitted us to the parlor, and we sat down there. There was a woman in the parlor, and we waited some 25 or 30 minutes.

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Q This was what time? A We got there about 11 o'clock  
We waited some thirty minutes.

Q You and Writchman and Annie? A Yes sir with this  
other woman, in the parlor. I never knew who she was, and  
then Dr. Blinn appeared at the door leading from the parlor  
into a room in the rear, which was his office or operating  
room. The room in which I had had these previous conversa-  
tions with him, and said he would be ready in just a minute,  
and closed the door. In a few minutes, a woman appeared at  
the door leading into the hall from this parlor, and told  
Annie --

MR. LE BARBIER: Objected to.

BY THE COURT:

Q Was it in the presence of the defendant? A No sir.

THE COURT: Strike it out.

BY MR. DERBY:

Q Go on? A A few minutes later I walked out into the  
hall and saw Dr. Blinn standing in the door of his office  
leading into the hall. I walked down to Dr. Blinn and said  
" Now, this work has to be done right here; I explained to  
you all about that; she is a very nervous young woman; she  
will have no preliminary treatment" and he said "Very well,  
it will be done; go back and wait". I went back in the par-  
lor; the door closed. In a few moments Dr. Blinn opened the  
door leading from the parlor into his operating room, and

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Fritchman and Annie and myself walked into the operating room. In the operating room were Dr. Blinn and the woman dressed as a nurse. There was an operating table, an instrument cabinet and a few other articles of furniture, and Annie took a seat on a chair. Fritchman walked over toward the window, toward the west window. Dr. Blinn placed a screen between the operating table and Fritchman, and Fritchman moved around closer toward the operating table to get around the screen. It was just then that Dr. Blinn said, I said to him "I want to see you outside a minute". We walked outside in the hall, and into the parlor, and I said "My friend is very nervous and would like to have a drink; will you give him a drink of whiskey?" He said he would. So he went back and took Fritchman downstairs, and I went back in the operating room. Dr. Blinn came up the steps and said to me "Your friend wants to see you downstairs", and I went downstairs and Fritchman gave me the money, and I walked back up the steps, and Dr. Blinn was standing at the top of the steps, and I handed him the five one hundred dollar gold notes. He started to take one off to hand to me. He saw Fritchman coming up the steps and folded them up and put them in his vest pocket.

BY MR. DERBY:

Q Were those the same notes that were handed to officer Fritchman in the Pabst Cafe?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

MR. TRAIN: The question is withdrawn.

Q Well, go on with your story? A Then we walked into the operating room, and Annie was standing at the side of the table with her clothes loosened. There was a tray on a stand attached to the operating table, and on this tray were some instruments, and Dr. Blinn and the nurse, the woman in the uniform of a nurse who was in his office, helped Annie on to the table, put her up, in what we call a lithotomic position, lying on her back, legs over in some stirrups, to hold her feet in position; put a sheet over her and a towel under her. Then Dr. Blinn stopped and said "Doctor, I want to see you outside a moment". So we went outside again and walked in the parlor. He said "I have never had a game like this worked on me before; I don't understand it". I said "I don't know what you mean by a game; this is no game; what do you mean?" He said "Well, I won't have that man" -- referring to Fritchman -- "standing at my back; I don't want him in there." I said "Well, put him out; I don't want him in there myself, but you can't do it, you can't put him out, because Annie won't have the work done unless Jack is there" -- referring to Fritchman as Jack -- "unless Jack is there". So he said "Well, he must not stand at my back". I said "Well, make him stand where you want him"

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and with that we turned around and we walked back into the operating room, and Fritchman moved over closer toward me, and Dr. Blinn made some arrangement with the patient, putting a towel under her and arranging a sheet over her, and told the nurse to start giving the chloroform, and Annie objected, saying that no one was to give her chloroform but Dr. Blinn.

Q Wait a minute. In what condition was Annie at this time; were her private parts exposed? A Private parts were exposed. She was lying on her back with her skirts thrown up and her private parts exposed.

Q Now, are you able to state to the jury whether or not this woman at that time was in a pregnant condition?

A Yes.

MR. LE BARBIER: Objected to.

MR. DERBY: This is part of what I must prove under the indictment.

THE COURT: I will take it.

MR. UNGER: Your Honor will allow us to cross examine the witness on the voir dire, as to his qualifications?

THE COURT: Yes.

MR. UNGER: Do you press the question now?

THE COURT: Do you desire to cross examine now upon his qualifications?

MR. TRAIN: I think we had better finish first.

MR. LE BARBIER: Then I understand it is withdrawn?

THE COURT: Withdrawn.

MR. UNGER: We beg leave to make a suggestion to the court, that unless they prove by competent evidence that this woman was pregnant as set forth in the indictment, that all of the testimony with respect to any relations with her will be incompetent, immaterial and irrelevant, and we will move to strike it out.

MR. TRAIN: Under the Code, you do not have to prove she is pregnant at all, and I also submit to your Honor that it is merely for the court's satisfaction that any cross examination as to the witness's competency is indulged in.

THE COURT: I shall permit him to cross examine upon the subject of his qualifications, if they object upon that ground, but the question, I understand, has been withdrawn.  
BY MR. DERBY:

Q Now, what conversation did you have about chloroform, or did Dr. Blinn and Annie have about chloroform? A Dr. Blinn told the nurse, or this woman in the uniform of a nurse, to give the chloroform to the patient, to start it, and the nurse picked up the inhaler and retainer, and Annie objected, saying that she was not going to have anybody give her chloroform but Dr. Blinn, that she did not think the nurse was competent to give it, and she did not think I was

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competent to give it, and she was going to have Dr. Blinn give the chloroform. So I said to Dr. Blinn in a low tone " You start the chloroform and when you get her under the chloroform I will take it and give it, and you can go on with the operation". So Dr. Blinn took the chloroform inhaler and retainer from this co-defendant, Mary Miller, or the woman in the uniform of a nurse, and shook some chloroform on to the inhaler and put it over her nose, and shook some more on. At that juncture, Fritchman said "Hold on there, doctor, you are my prisoner."

Q What did you do when Fritchman pointed his gun at the doctor?

MR. LE BARBIER: Objected to as incompetent.

THE COURT: Is there any testimony that he pointed any gun?

MR. DERBY: I misunderstood the witness, perhaps.

Q Did Fritchman draw a gun? A Yes.

MR. UNGER: Well, that is leading.

BY THE COURT:

Q Yes; tell what happened? A Well, he pointed a pistol at Dr. Blinn and said "Hold on there, doctor, you are my prisoner", and Dr. Blinn turned around and looked at him, and walked right straight up to him and stopped. At that moment I left the room, opened the door and walked out in

the hall and walked to the front door, opened it, and blew the whistle.

MR. UNGER: We object to whatever the witness did in the absence of the defendant and move to strike it out.

THE COURT: Yes, strike it out.

BY MR. DERBY:

Q Did Dr. Blinn make any statement subsequently in his office when the other parties had come into the room.

MR. LE BARBIER: Objected to as leading.

THE COURT: I will take any testimony, any statement made by the defendant to the witness.

MR. LE BARBIER: Exception.

A I never heard him make any statement.

Q Did you hear him talking over the telephone or anything of that sort? A Yes, I heard him talking over the telephone to some one. I don't know what he said.

Q After Dr. Blinn was put under arrest, and while he was still in the room, what happened, if anything?

MR. LE BARBIER: Objected to as incompetent.

Objection overruled. Exception.

A When I went back in the room, Dr. Blinn was sitting in a chair, and Fritchman and Mr. Lord were examining the money, and I went downstairs and came back, and when I came back they had him handcuffed, and he was handcuffed to a negro porter there in the house, a negro, I don't know what he

was, and then they had this conversation over the telephone, and then we went down and got in the police patrol and drove down to the precinct station on that same street, 47th Street, and there I left Dr. Blinn.

Q Did you after the arrest occurred, some time subsequently, reduce your recollection to writing?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

MR. DERBY: It is very important as bearing on his creibility -- I mean his accuracy of information at the present time.

THE COURT: I will sustain the objection.

Q What did you do; did you take any instruments away with you, Dr. Watkins? A No sir.

Q Did you gather up the instruments at the time the doctor was arrested? A No sir.

Q Did you see anyone? A Yes, I told one of the police officers to be sure to get those instruments.

Q In the presence of Dr. Blinn? A Dr. Blinn was in the room.

MR. LE BARBIER: Objected to. In his hearing?

Q In the hearing and presence of Dr. Blinn? A Four feet from him.

BY THE COURT:

Q How was it said, said out loud or by whisper? A I

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said "Be sure to get those instruments."

Q You spoke out loud in the presence of the defendant? A Yes sir.

Q How many feet away? A Four.

BY MR. DERBY:

Q Did you see anyone pick up the instruments? A I saw one of the police officers pick up the instruments.

Q Do you know which one it was? A I don't know.

Q Did you examine the chloroform bottle on that occasion? A Yes sir.

Q Tell the jury what you saw in the chloroform bottle?  
A Well, the bottle was nearly full of liquid which had the smell of chloroform. Chloroform has a very characteristic odor, and I took some of that chloroform out of that bottle and put it in another bottle which I had, and took it to a chemical laboratory and examined it to be able to swear it was chloroform, and analyzed it for chloroform.

MR. LE BARBIER: Objected to and I move to strike out what he did with the bottle.

THE COURT: He said he examined the bottle and then he took it and had it analyzed?

MR. LE BARBIER: Well, that I move to strike out, that part of it.

Motion denied. Exception.

BY MR. TRAIN:

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Q Now, did you analyze it yourself? A Yes sir, I analyzed it myself.

Q And you found it to be chloroform? A Yes sir.

Q Now, will you look at these instruments and state whether you have seen any of them before (indicating)?

A Yes sir.

Q Now, look at People's Exhibit 1 for identification, and state where you first saw that instrument? A I first saw that in the tray which was resting on a stand attached to the instrument -- I mean attached to the operating table in Dr. Blinn's office on the morning of the arrest, November 22nd, 1903.

Q Well, was that instrument there at the time this woman was on the table and at the time that the defendant administered the chloroform to her? A This instrument was on the tray, attached to the table.

MR. TRAIN: I offer that in evidence.

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant and in no way binding upon the defendant.

THE COURT: Where did he say they were?

MR. TRAIN: They were on the tray attached by an arm to the operating table.

THE COURT: Yes, I will take it.

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MR. LE BARBIER: Exception.

(Marked People's Exhibit 1.)

MR. TRAIN: I offer this other instrument for identification.

(Marked People's Exhibit 2 for identification.)

Q Did you ever see that before, People's Exhibit 2 for identification? A Yes sir.

Q Where? A I saw this on the same tray.

Q At the same time? A Yes.

MR. TRAIN: I offer that in evidence.

Same objection; same ruling and exception.

Marked People's Exhibit 2.)

MR. TRAIN: I offer these articles for identification.

(various articles are marked People's Exhibit 3 to 7 inclusive, for identification.)

Q I show you people's Exhibit 7 for identification and ask you if that is the tray in which the instruments were contained?

same objection; same ruling and exception.

A Yes.

MR. TRAIN: I offer it in evidence.

(Marked People's Exhibit 7 in evidence.)

Q I show you people's Exhibit 6 for identification and ask you if that is the chloroform inhaler that you refer to?

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A Yes sir.

MR. TRAIN: I offer it in evidence.

Same objection; same ruling and exception.

(Marked People 's Exhibit 6 in evidence.)

Q I show you People's Exhibit 5 for identification, and ask you if you saw that article there also?

MR. UNGER: It may be understood for the purposes of the record that the same objection goes to all of this, if your Honor please?

THE COURT: yes, and exception.

A That is the retainer, bottle.

MR. TRAIN: I offer it in evidence.

Same objection; same ruling and exception.

(Marked People's Exhibit 5 in evidence.)

Q I show you People's Exhibit 4 for identification and ask you if that was on the tray at that time? A That was.

MR. TRAIN: I offer that in evidence.

Same objection; same ruling and exception.

(Marked People's Exhibit 4 in evidence.)

Q Look at people's Exhibit 3 for identification; was that also there? A That was there.

MR. TRAIN: I offer that in evidence.

Same objection; same ruling and exception.

(Marked People's Exhibit 3 in evidence.)

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The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Tuesday, April 7th, 1908, at 10:30 o'clock A. M.

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New York, April 7th, 1908.

T R I A L R E S U M E D.

E D W I N D. W A T K I N S, M. D., a witness for the People, resumes the witness stand.

DIRECT EXAMINATION CONTINUED:

MR. TRAIN: If your Honor please, on page 31 of the minutes of yesterday's proceedings there appears a question followed by a motion, the result of which is somewhat ambiguous. The question was asked Dr. Watkins, and I bring this to your Honor's attention now in order that I may not delay the Court by repeating the question: "Now, Dr. Watkins, will you describe to the jury what medical experience you had" etc., and the answer beginning: "When I was 15", and ended "and that has been the custom in the South for a long number of years".

MR. UNGER: We moved that that be stricken out.

MR. TRAIN: Yes, and the the Court said "Yes, strike that out." Now, that answer up to the phrase "and that has been the custom, etc" appears perfectly competent and proper.

THE COURT: There is no question about it, but it was so voluminous that it was all stricken out.

MR. TRAIN: Well, did not your Honor refer to that

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last clause?

THE COURT: You may ask it again and get a proper answer to it, and I think that will straighten it out, Mr. Train, and bear in mind this, Mr. Witness, just to answer questions and do not go outside of the proper limits of questions.

MR. TRAIN: If your Honor did not intend to strike the whole answer out --

THE COURT: The Court did, for the reason that there was so much of it that it thought it best to strike the whole thing out and to allow counsel to get a responsive answer to the question.

MR. TRAIN: That being so, I think, your Honor, that there will not be found any particular evidence in the case as yet bearing on the doctor's qualifications.

THE COURT: Well, that will be for the jury to say.

MR. TRAIN: Well, that is why I want to put him a few more questions on that.

THE COURT: Well, it seems to me that you have established primarily that he is in a position to give an opinion.

MR. TRAIN: Well, does your Honor desire me to question him over again? I understood your Honor to say "You may put the question over again"?

THE COURT: I think that would be better, Mr. Train.

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MR. TRAIN: Yes, that is what I propose to do.

THE COURT: Well, yes.

BY MR. TRAIN:

Q Doctor, will you describe to the jury what medical experience, particularly with relation to obstetrics, that you had while you were in Chattanooga, before you went to the University of Virginia, while you were at the University of Virginia, and what experience of that nature you have had since that time? A I was associated with a doctor who had -

THE COURT: Just a second. If you prefer, Mr. Train, I will allow him to look at his answer there and to permit that answer to be an answer to the question, if that would be satisfactory, leaving out that that has been the custom in the South for along time.

MR. TRAIN: Well, I might ask him if it is a fact as it appears. I merely want something put on the record.

THE COURT: Yes, I see. That is the only objection to the answer.

MR. UENGLER: Well, if your Honor please, I have no doubt that my motion of course was intended to strike out that part of his answer in which he said that that has been the custom in the South for a long number of years, and I have no objection to let the rest of it stand, as he testified, that when he was 15 years of age he started the study

of obstetrics.

THE COURT: yes, very well.

BY MR. TRAIN:

Q Well, is it a fact that after you had gone to the University of Virginia, you, from time to time, continued the study of obstetrics? A Yes, I was associated with the same doctor in the summer vacations.

Q And now, since you have left the University of Virginia, you have graduated from the College of Physicians and Surgeons, have you not? A Yes.

Q And you are a regularly licensed and practicing physician and surgeon? A Yes.

Q And part of your equipment is a knowledge of obstetrics? A Yes.

Q And you practiced the same? A very little of obstetrics now.

Q But since becoming House Surgeon of the Presbyterian Hospital, have you continued? A Not obstetrics.

Q But are you at the present time able to determine whether or not a woman is pregnant with child?

MR. UNGER: We object to the witness as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A Yes, I am competent to say.

Q And were you on the day when you examined this woman

known as Annie?

MR. UNGER: Same objection.

MR. LE BARBIER: Your Honor, he has shown some little studies, it is true, but in no way qualified.

THE COURT: I will permit you to cross examine him if you think he is not qualified.

MR. TRAIN: Now, in order to save time, there are certain other questions to which I believe, if all the signs do not fail, the same objection will be raised, namely, the question as to what is a miscarriage, and how a miscarriage can be performed, and whether the instruments offered and accepted in evidence are proper and suitable for performing a miscarriage. Now, that objection would be raised on those questions, and if your Honor will permit those questions to go on the record?

MR. LE BARBIER: Well, we have not come to that part yet, your Honor.

THE COURT: The question is now, gentlemen, what is going to conserve the time of the jury. If you feel like pressing your objection at this time, I am going to permit you to examine this witness. If you think it can accomplish your purpose by deferring it, and it is going to save the time of the jury and the court by it, I would be very glad if you would accommodate yourself to it.

MR. UNGER: If your Honor will indulge us one min-

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ute for a conference, probably we will reach some conclusion about it.

BY MR. TRAIN:

Q Now, there is objection to that question, and the court will permit the defense to cross examine upon it.

THE COURT: Yes, and only upon that point.

MR. TRAIN: Now, by consent of the defense, I will put other questions and they will examine on all of them.

THE COURT: very well; proceed.

BY MR. TRAIN:

Q Doctor, are you able to tell the jury what a miscarriage is? A Yes sir.

MR. UNGER: The understanding is that there is an objection to all of the questions to this witness?

THE COURT: You are going to examine the witness as to his qualifications after they have been put?

MR. UNGER: yes sir.

BY MR. TRAIN:

Q Will you kindly do so? State what a miscarriage is?

MR. UNGER: That we object to, because we want to cross examine at length on that proposition.

THE COURT: yes, of course.

Q Will you kindly state whether or not a miscarriage can be brought about by artificial means?

MR. LE BARBIER: Objected to.

Q Will you state whether or not People's Exhibit 1 is an instrument with which an artificial miscarriage could be brought about?

THE COURT: I think you perhaps ought to ask the witness if he knows what it is used for. If that is objected to, I think I will sustain the objection.

MR. UNGER: The objection has been raised.

THE COURT: Well, I sustain the objection to that.

MR. TRAIN: Well, enough has been asked to bring up the whole general question, and I will retire for the present.

THE COURT: You may cross examine upon the subject of his competency.

BY MR. UNGER:

Q Doctor, just a very few questions. Your age is what?

THE COURT: Pardon me a second. I understand, Mr. Train, you have not finished your examination yet on direct?

MR. TRAIN: No, but enough is on record now so that if the court judges the witness competent as to those questions, it certainly will hold him competent to answer the remainder.

BY MR. UNGER:

Q Your age is what, doctor? A Twenty seven.

Q So that you were 15 years of age in 1896? A Yes sir.

Q At which time, I understand you to say, that you did make actual actual physical examination of women with a view to qualifying and equipping yourself for the medical profession, and more particularly for the line of gynecology; is that right? A Yes sir.

Q At the age of 15? A Yes.

Q And had then, at that age, mapped that out as a specialty in the profession in which you were going to engage? A Yes sir.

Q I understood you to say, doctor, likewise, in answer to Mr. Train's question, and you stated on the former trial that you are a regularly licensed and practicing physician?

A I am --

Q (Interrupting) Did you not say so? A I did.

Q But I understood you did say and told this jury that you are the House Surgeon in the Presbyterian Hospital?

A Yes sir, I am.

Q That is, you are not the chief in charge of the Presbyterian Hospital? A I am House Surgeon on the first surgical division at the Presbyterian Hospital.

Q How many House Surgeons are there there? A Two.

Q You are not qualified or permitted under the laws of this State to engage in the practice of medicine, or

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prescribe for people outside of your hospital, are you? A I am.

Q Do you claim that you are? A I am permitted to, and I have done it.

Q You have done it? A I have done it.

Q That is, you have engaged in the practice of the profession of a physician in the State of New York? A Yes sir.

Q Outside of the hospital? A Outside of the hospital.

Q And prescribed for patients not connected with the hospital? A Yes sir, exactly.

Q Have you any certificate from the State Education Department of Albany, or a license to practice medicine in this State? A I am registered.

Q Answer yes or no? A No.

Q Don't you know that that is an absolute and essential prerequisite to the right to practice? A It is not.

Q In what County did you prescribe for patients? A In the County of New York.

Q Have you filed a certificate in the office of the Clerk of the County as to your qualifications as a physician? A I have.

Q Have you received a certificate from the State Department of Education?

MR. TRAIN: Objected to as immaterial.

THE COURT: He might not have done that, Mr. Unger, and still be competent to answer these questions, you know. I have known some very, very excellent lawyers who failed to file a certificate some years ago.

MR. UNGER: Very true, your Honor, but they were a little over 15 years of age, and Governor Black permitted them to do it.

Q When did you file your certificate in the office of Clerk of the the County of New York? A It was last Summer.

Q Can you give the date? A I cannot, but it is on the record at the Board of Health.

Q No, I am asking about the office of the Clerk of the County of New York, sir, which is a prerequisite to practicing medicine in this County?

MR. TRAIN: I object to that.

THE COURT: Sustained, because it does not go to his ability to answer these questions that have been propounded to him.

MR. UNGER: Your Honor will allow us an exception.

Q I put the question specifically: Can you state when, as you say you did, last Summer, you filed in the office of the County of New York, a certificate entitling you to practice as a physician in this County?

MR. TRAIN: That is objected to.

Objection sustained. Exception.

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Q Oh, I did understand you to state, as a matter of fact, that you did file in the office of the Clerk of the County of New York the necessary certificate entitling you to practice?

MR. TRAIN: Objected to.

THE COURT: Now, Mr. Unger, I am going to permit you to ask him any questions that will affect or destroy his ability to answer these questions that have been propounded to him on the direct, but let us not go into outside matters.

Q Now, then, outside of this practice that you had in Chattanooga when you were 15 years of age, when you attended the University of Virginia -- that is a scholastic or academic institution? A And medical.

Q And you went there for scholastic training? A Yes.

Q And graduated for the collegiate department? A Yes.

Q How old were you then? A I was 19 when I graduated.

Q Then, you came North? A I went to Easton, Penna.

Q What were you doing there? A I was Assistant prof. of Chemistry at Lafayette College.

Q That had nothing to do with obstetrics? A Nothing.

Q Or with gynecology at all? A No.

Q How long were you there? A From February to June.

Q Then you came to New York? A Yes.

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Q And entered college? A The College of Physicians and Surgeons.

Q And took the usual course? A Yes sir.

THE COURT: Go on. I will take the answers to the questions.

MR. UNGER: One other question, if your Honor please.

BY MR. UNGER:

Q You are asked whether you could state whether this woman Annie -- was that the specific question? -- was in a condition of pregnancy at the time of your examination?

MR. UNGER: Is that your question, Mr. Train?

MR. TRAIN: Well, generally speaking, I think that was my question.

Q When you made the examination of this woman, what was the nature of the examination you made; when and where and under what circumstances? A It was in the hall adjoining the then office of Mr. Lord, connected with the District Attorney's office, on the Friday afternoon preceding the arrest, which took place on November 22nd, I think.

BY THE COURT:

Q What day of the week was that? A Sunday, sir.

Q Sunday following the Friday? A Yes sir. It was on that Friday that I made the examination, which was external only.

BY MR. UNGER:

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Q That is, the woman had clothes on? A Yes.

Q You made no examination; you saw her with your naked eyes? A No, I put my hand on her abdomen and felt it enlarged.

Q That is, you did not feel any quickening; you could not tell anything about that? A You cannot feel quickening at four months, sir. You cannot feel quickening at four months pregnancy.

Q Well, that is all you did, I understand; you saw the woman; saw her with the naked eyes and put your hands over her clothing and from that you reached the conclusion?

A And from her subjective symptoms.

Q What subjective symptoms? A The subjective symptoms of pregnancy up to four and five months are more important than the objective ones.

Q What subjective symptoms did you observe? A I took the patient's history.

Q That is, you took her say so? A Yes sir.

Q But is it not a fact, doctor, you did nothing than make an external examination? A External examination only.

THE COURT: I understand that you do not press your objection to his ability to testify on this subject. The weight, of course, you may question?

MR. UNGER: Well, in view of the nature of the ex-

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amination he says he made, we do press the objection.

THE COURT: Well, the court holds that he is competent to express an opinion, and the weight of his evidence, of course, will be for the jury.

MR. UNGER: Your Honor will allow us an exception.

BY MR. TRAIN:

Q Now, doctor, will you state whether or not the woman Annie was pregnant on the Sunday, the 22nd day of November, 1903?

MR. LE BARBIER: Objected to as incompetent. Do I understand he is competent to express an opinion now, or was at that time?

MR. TRAIN: I am asking him as to his opinion now, based on his examination then.

THE COURT: Yes.

MR. LE BARBIER: Exception.

A She was pregnant.

Q Now, without going into any great detail, will you state to the jury what a miscarriage is?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A A miscarriage is the --

Q (Interrupting) In the briefest possible way?

A (continuing) The expulsion of the child from the uterus

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or womb, up to seven months of pregnancy.

Q Well, what do you mean by seven months of pregnancy?

A A woman is pregnant nine months before the child is born, in the ordinary course, and up to seven months the child is considered not able to live if he be born.

Q Well, you are talking about this thing from a medical point of view? A That is all I know about it.

Q Well, all I want to know is what the physical side of a miscarriage is; what is meant physically by a miscarriage? Now, you said the expulsion of the child, an unborn child from the womb up to seven months; well now, after seven months? A It is not a miscarriage. It is called a premature labor, because the child is what we call viable, or able to live after seven months.

Q Now, will you describe the genital organs of a female, in the briefest possible terms?

MR. LE BARBIER: Objected to as incompetent, and not necessary at this moment, and irrelevant.

Objection overruled. Exception.

A The genital organs of a woman are divided into external and internal parts. The external parts consist of what we call the vulva, the outside lips which I will illustrate as such as my two hands put together (indicating), and as you open those, there is an opening rounded, which we call the hymen, and that opening goes into the vagina, which is a

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tube, that I would illustrate like that (indicating). In the normal state, the walls of that tube, which go to it, can be dilated, so that the walls separate, and at the upper end of this tube or vagina is placed the uterus or the womb, which consists of two parts, a body and a neck, and the neck appears at the end of the vagina about as my finger is there (indicating); only it is rounded, and not uneven like my fingers. Now, the canal of the vagina is continuous with the canal of the uterus. Now, the uterus is about the size of a pear, a small pear, that is, the virgin uterus, and this canal runs up to the top of the uterus, and out from the uterus on either side are the tubes, what we call the Fallopian tubes, which connect the uterus with the ovaries, and there is an ovary at the end of each tube.

Q Well now, do not bother with the ovaries. Where is the child, the unborn child? A The child forms normally inside of the uterus.

Q Now, is it connected in any way with the walls of the uterus? A Yes.

Q In what way? A Passing off from the child's navel, or, as we call it, the umbilicus, is a cord, or as we call it, the umbilical cord, which passes into the placenta, or afterbirth. Now, that placenta is attached to the inside of the womb, directly against the wall.

Q Now, in what way is it attached? A It is attached

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directly.

Q Now, the expulsion of the unborn child from the womb is what is known medically as a miscarriage? A Up to seven months.

Q Well, the expulsion, that is the miscarriage, is it not? A I cannot say more than seven months.

Q All right. Well now, is it possible to cause by artificial means a miscarriage? A Yes sir.

Objected to as incompetent, immaterial and irrelevant. Objection overruled. Exception.

Q Will you state how?

Same objection; same ruling and exception.

A In a pregnant uterus, an introduction of any foreign body will very probably bring about a miscarriage. What I mean by foreign body is such as a probe, a wire, or a liquid injected into the uterus will bring about a contraction of the uterus, and in that way will expell the child.

MR. LE BARBIER: We respectfully move to strike out the answer as incompetent.

Motion denied. Exception.

Q Now, is there any physical position of a woman's body which is more adapted to the success of an artificial miscarriage than others?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and as assuming a state of facts in

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no way relating to the issue under the indictment.

Objection overruled. Exception.

A Yes sir.

Q Will you state what that position is? A The position ordinarily used is that the woman is put on her back with her legs drawn up, and held by braces for her feet.

Q Will you state why that facilitates an artificial miscarriage? A Because it is easier to introduce an instrument into the vagina, and through the vagina into the womb in that position.

Q And such artificial means having been introduced into the womb, does that position of the woman's body facilitate the expulsion of the child, or does that make any difference? A I could not say that it does.

Q Now, take that instrument, People's Exhibit 1. Is that an instrument recognized in medical science?

Objected to as incompetent.

Objection overruled. Exception.

A Yes sir.

Q Will you state what it is? A It is a speculum.

Q And what is its use? A It is introduced into the vagina that way (indicating), and opened that way, so that you can see the womb.

Q Would that facilitate the introduction of a foreign body into the womb?

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Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A Yes sir.

Q Will you look at People's Exhibit 2 and state whether or not that is an instrument recognized and known to medical science? A Yes sir.

Q Will you state what it is? A A uterine dressing forceps.

Q What is its use? A Its use is to put things into the uterus or to pull things out of the uterus.

Q Well, does that include -- you mean it could be used for producing an artificial miscarriage? A Yes sir.

Q Will you look at People's Exhibit 3 and state whether that is an instrument recognized by medical science? A Yes sir.

Q What is that? A That is a uterine probe.

Q What is the use of that? A It is to introduce into the uterus itself, or to put other things in the uterus with it.

Q Could an artificial miscarriage be produced by the use of that instrument? A Yes sir.

Q By inserting it into the uterus? A Yes sir.

Q Will you tell the jury how you could accomplish that

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result? A Open the vagina that way (indicating), put this probe, a little bit bent, into the canal of the uterus, and push it around a little bit, and take it out, and that is enough.

Q That would cause a miscarriage? A Yes sir.

Q Now, look at People's Exhibit 4. Will you state whether or not that is an instrument recognized by medical science? A I could not say that it is. I do not know its name. It is a crude instrument of some kind.

Q Well, could that be used to produce an artificial miscarriage?

THE COURT: Well now, Mr. Train, he says he does not know anything about it.

MR. TRAIN: Well, if there was a pencil inserted --

THE COURT: Well, he knows nothing about this particular instrument.

MR. TRAIN: I did not ask him what that instrument there is.

THE COURT: Well, it has not been objected to, but the Court of its own motion excludes it.

MR. TRAIN: Well, if your Honor please, supposing there was no instrument on the table at all, and I asked this witness if a miscarriage could be produced by the use of the hand?

THE COURT: No, the Court will exclude that.

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Q Well, I will ask you this general question, doctor, is it not possible to produce an artificial miscarriage by means of a tooth pick, a wire, a nail, or any other artificial substance? A Yes sir.

MR. TRAIN: That is all.

THE COURT: I should have sustained an objection to that question, Mr. Train, if it had been made, but it was not made.

BY THE COURT:

Q Mr. Witness, were those instruments that you have testified to this morning, were they on this table? A They were on the tray, attached.

Q Where was the tray, on the table? A No sir, it was on a swinging arm attached to the table.

BY MR. TRAIN:

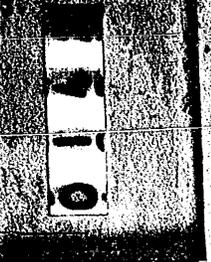
Q As I understand the testimony, you yourself analyzed the chloroform? A I did.

Q And you state from your own knowledge that what you analyzed was hloroform? A Yes sir.

BY THE COURT:

Q Let me ask you, have you made from time to time, during your professional career, examinations for the purpose of determining whether a woman is pregnant or not? A Many a time, yes sir.

Q And what methods do you adopt to determine the preg-



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nancy of a woman? A The history is first, and then the examination.

Q That is the usual and orderly method? A Yes sir.

Q Was that the method that you took in this case?

A Yes sir.

THE COURT: Go on, Mr. Le Barbier.

CROSS EXAMINATION BY MR. LE BARBIER:

Q In this particular case --

MR. LE BARBIER: Question withdrawn.

Q What methods do you pursue to ascertain that condition generally? A Which condition?

Q Of pregnancy? A The history of the case, and then physical examination.

Q Well, that physical examination consists of what?

A Of the parts externally, and under some circumstances internally, when it is justified.

Q When is that? A Not generally until after the fourth or fifth month.

Q Well, is it after the fourth or after the fifth month?

MR. TRAIN: Objected to as immaterial.

THE COURT: I will take it.

A After the fourth month, I would say about that time, Mr. Le Barbier. It is hard to define accurately, the day, but

I should say between the fourth and fifth month.

Q Will, you state that you can ascertain that state, say at the fourth month, without a physical examination, internally, so that you could swear to it with absolute certainty? A Well, altogether --

Q (Interrupting) Now, wait. Yes or no? A Well, I would like to limit my answer.

MR. LE BARBIER: Well, we respectfully ask the court to direct the witness to answer.

THE COURT: Yes, just answer the question yes or no, if you can.

A Not absolutely.

BY MR. LE BARBIER:

Q What do you understand by the words "duly licensed physician"? A I am duly licensed, in that I am registered at the Board of Health as a hospital interne.

BY THE COURT:

Q He has not asked you that, doctor; he has asked you what you understand by the words "duly licensed physician".

MR. UNGER: We are willing to take the answer, your Honor.

THE COURT: Yes, but the court is not willing that you should. The jury would like to have an answer to that question, I think. Repeat the question.

The question of Mr. Le Barbier is repeated by the stenographer as follows: "What do you understand by the words "duly licensed physician"?"

A Duly licensed to practice what I do.

BY MR. LE BARBIER:

Q Well, what do the words "duly licensed" to you mean? A It means that I am allowed by the State and County of New York to practice what I do.

Q Is that what you understand it to mean? A That is exactly what I understand.

Q When, at the last trial, this question was asked you, and you made this answer, what did you mean, on page 15: "Q By Mr. Train: Now, in order that you may not have to repeat anything that you say, will you say everything that you do say so that the last jurymen can hear every word. You are a regularly licensed and practicing physician and surgeon, are you not? A Yes sir" -- Is that true? A Yes sir.

Q Do you realize now that you have not filed a license with the County Clerk of the County of New York? Do you make any reservation in your answer? A Well, I --

Q (Interrupting) Do you make any reservation in your answer?

BY MR. TRAIN:

Q (Interposing) Do you know what that question means?

A No, I do not.

MR. TRAIN: Well, I do not.

BY MR. LE BARBIER:

Q You said a little while ago in your testimony that you filed your certificate and the requisite papers in the County of New York; is that correct; is it correct? A I misunderstood.

Q Now, is it?

MR. TRAIN: Give him a chance to answer.

BY THE COURT:

Q That is a question that admits of an answer, Mr. Witness, and let the cross examiner have an answer to it.

A I misunderstood and misinterpreted the meaning of that, and I beg your pardon for it, sir, and I would like to explain what my position is.

BY MR. LE BARBIER:

Q Did you not swear in the presence of this court and jury this morning, as many times, I think, as three times, that you had filed papers with the Clerk of the County of New York authorizing and licensing you to practice as a physician, and without which you cannot practice in this County? A In which you are mistaken, sir.

MR. TRAIN: Well, that is two questions.

THE COURT: You had better separate your question.

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MR. LE BARBIER: Well, I will separate that last.

(The question is repeated by the stenographer.)

BY THE COURT:

Q Now, did you or not swear three times? A Yes.

BY MR. LE BARBIER:

Q Now, is that true? A No sir.

Q Is it not a fact that the certificate that you filed with the Board of Health merely entitles you to sign certificates as an interne in the hospital? A It allows me to practice as a hospital interne.

MR. TRAIN: If your Honor please I object.

THE COURT: What is the purpose of this, Mr. Le Barbier? As affecting his credibility, I take it?

MR. LE BARBIER: Yes sir.

MR. TRAIN: Well, I was going to object to Mr. Unger making the audible remarks with regard to the witness, and with regard to the examination, in the presence of the jury.

MR. UNGER: Well, if Mr. Unger did so, he surely did not intend to do so.

THE COURT: I am satisfied that counsel on both sides will observe the proprieties of the situation, and that if there is any departure, it is unintentional.

MR. LE BARBIER: Well, I have not yet departed.

THE COURT: Well, I do not believe anybody has in-

tentionally.

BY MR. LE BARBIER:

Q Now, Mr. Witness, have you filed any papers with the New York State Education Department, in order to receive a license to practice medicine in the State of New York? A No sir.

Q The first time that you made any examination of this woman Annie was, if I understand you correctly, was it not, two days before the arrest in this case? A Yes sir.

Q How old a woman was Annie? A About 22.

Q A tall woman? A No sir.

Q Small? A Small.

Q Estimating, about what weight would she have? A Say 115 or 20.

Q Where did you see her on that day, two days before the arrest in this case? A I saw her in the office which then was Mr. Lord's.

Q Upstairs in this building? A Yes sir.

Q Did she come down with you to this office? A Yes sir.

Q You had frequently dined with her, hadn't you? A Not frequently.

Q How many times? A Twice before that.

Q Is it not a fact that at the last trial you stated under oath that you had dined with her at least five times;

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yes or no? A Yes, by the end of the trial; I mean by the end of the case I dined with her after that day at Mr. Lord's

Q Before you met her upstairs in this building two days before the arrest herein, how many times had you seen this girl or woman Annie? A Once.

Q Where? A At an armory, which I think is on 66th Street and Columbus Avenue; either 66th or 65th.

Q Was anybody present with you? A Yes sir.

Q Who? A I beg pardon?

Q Was anybody present with you? A Yes sir.

Q Did you make an examination then? A Got her history.

Q Now, pardon me; did you or did you not make any examination then? A I made no physical examination.

BY THE COURT:

Q How many physical examinations did you make of her?

A One.

Q How many are necessary, speaking from your experience? A One.

BY MR. LE BARBIER:

Q Was anybody present with you upstairs on the occasion you say you made this examination? A No sir.

Q Where were you and where was the woman at the time?

A We were in the hall, and she was sitting on a bench.

Q She was what? A Sitting on a bench in the hall.

Q Yes, that is a public hall, is it not? A As I remember it, yes.

Q A public hall where people wait upstairs? A There was no one waiting there then. That was the first time I had been there. I don't know whether they wait there or not.

Q And you sat down on this bench with Annie? A Yes, and she stood up.

Q In front of you? A Yes.

Q And all you did was to place your hand on her stomach? A Yes.

Q Over her dress? A Yes.

Q And over her corset? A She did not have on a corset.

Q How do you know that? A Because I could feel that she had not, and she told me she had stopped wearing them.

Q Well, did you put your hand in her clothes or under her clothes to find out, so that we may be able to know whether or not she had a corset; yes or no? A No.

Q How long did you keep your hand on her stomach? A I don't remember.

Q Well, about how long?

MR. TRAIN: How is that important?

THE COURT: It may be. I do not know.

A Why, I should say thirty seconds.

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Q Then, what happened to Annie?

THE COURT: What do you mean?

MR. LE BARBIER: I mean to say, did she go away?

A We went into Mr. Lird's office.

Q Now, that is all of the examination that was made by you in this case? A Yes sir.

Q That was in November, 1903? A Yes sir.

Q Oh, if I understand you correctly, you had commenced your studies at the College of Physicians and Surgeons -- this happened before you commenced there? A You understand wrong, sir; that was after I had commenced my studies.

Q How long had you been a student? A I had been a student at the College of Physicians and Surgeons one year.

Q Now, at the age of 15, you say you used to go around with a doctor? A Yes sir.

Q And that was done in your native town? A Not in my native town. It is a town that is my home; it was then and is now, but not my native town.

Q Chattanooga? A Yes.

Q Did he go around with you on all those times? A Most of them.

Q In your fifteenth year, how many women did you examine?

MR. TRAIN: Now, your Honor has permitted examination as to the doctor's competency, and I do not see how this

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is competent or material.

MR. LE BARBIER: This is as to credibility.

THE COURT: I will take it.

A Not to be misunderstood, sir, in my sixteenth year I examined one; when I was fifteen I examined one. My fifteenth year was when I was fourteen years old.

Q In your fifteenth year you were fourteen years old?

A Yes.

Q Now, what age were you when you examined the first woman? A Fifteen, which is the sixteenth year.

Q What age were you when you examined the first woman?

A Fifteen years old.

Q Were you alone when you examined her? A The first one, no.

Q Was somebody with you? A Yes sir.

Q What time of day or night did you examine her?

MR. TRAIN: How is that material?

THE COURT: Mr. Le Barbier, let me ask him a question.

BY THE COURT:

Q Mr. Witness, from the time you were fifteen years of age, up to the time you prosecuted some studies here in New York, how many cases did you have? Let us have your best judgment; what number of cases, to determine the question of pregnancy? A Fully twenty-five.

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THE COURT: Well, does not that save us going through year by year; twenty-five cases?

Q And since that time how many?

MR. LE BARBIER: Well, that we object to.

A Hundreds of them, since.

THE COURT: He says hundreds since.

BY MR. LE BARBIER:

Q Now, in these instances that you speak of, you made the examination yourself? A Yes sir.

Q Without any physician being present? A Some not, and some with one.

Q Well, about how many of that number did you examine yourself?

MR. TRAIN: What difference does that make? He is going into it again.

THE COURT: I will take it.

A I should say I examined five or six by myself.

Q Black or white? A Mostly black.

Q Did you ever go further than simply put your hand on their stomach? A Yes sir.

Q In every case? A Not in every one.

Q In any case? A I just answered that.

Q How far gone were these women in pregnancy that you examined yourself? A Anywhere from three months to the time.

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Q How many were four months gone? A I remember distinctly two.

MR. TRAIN: How is this material?

THE COURT: Now, Mr. Le Barbier, I want to give you every latitude, because you represent a defendant here charged with serious facts, but, so far as we can, I would like to have you conserve everybody's time. The witness has said he examined some fifteen or twenty-five, I do not know which now, before he began his studies, and then several hundreds afterwards. I think that is about as far as we can get the witness on that subject. I am going to let you have every latitude that you think is material. If you think that is material to your case, go ahead, if you feel that it is essential; but I want to ask both counsel to limit their cross examination as much as they can, protecting the interests of both their clients.

MR. LE BARBIER: Yes sir, I will endeavor to do so.

Q Upon women pregnant at say four months, of all these women that you say you examined, how many at four months did you examine by physical examination? A I remember two distinctly. There were probably more.

Q Were those two then -- did you do anything more than take a history and feel their stomachs? A One, I did, and one I went further.

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Q One you did what? A One I felt only her abdomen and one I made I made a vaginal examination.

Q When you stated to the defendant in this case what you stated here on your direct testimony, that was all done for the purpose of deceiving him, wasn't it? A Yes sir.

Q With the same confidence that you now -- apparently earnestly?

MR. LE BARBIER: Question withdrawn.

Q When you told him that there was a person whom you had in a pregnant condition, that was not true, was it?

A No sir.

Q When you told him that your name was J. Sterling Loomis, that was not true, was it? A No sir.

Q When you told him that those people had got married whom you had first in mind, but that you had wealthier persons, that also was not true? A No sir.

Q And in everything you said to the doctor in that respect, it all was untrue, is not that so? A Yes sir.

Q What was the first date of the visit that you say you made to the doctor, to the defendant? A It was about September 19th; about; I cannot remember exactly.

Q Did anybody go with you? A Not at that visit.

Q Did you enter the defendant's premises? A Yes sir.

Q Did you see him there? A Yes sir.

Q Did you go into his office? A Yes sir.

Q Was anybody present at that conversation? A No sir.

Q Did you receive any literature at that time? A I received a letter.

Q Where is that letter? A In my pocket.

Q That letter is in your pocket? A Yes sir.

Q Addressed to anybody? A Addressed to no one.

BY MR. TRAIN:

Q Will you kindly produce that letter?

MR. UNGER: we are examining now.

BY MR. LE BARBIER:

Q From whom did you get the letter? A Dr. Blinn.

Q How long did that interview last at the time?

A Some 15 or 20 minutes.

Q Then you left him, did you? A Yes sir.

Q Now, at that time, when you said you had a woman pregnant, there was no woman in the case that you knew of that was pregnant, was there? A No sir.

Q So, in that respect as to the pregnant woman, that was false, wasn't it? A Yes sir.

Q When was the second visit to the defendant's house?

A It was on one Sunday morning in October.

Q Can you say when? A No sir.

Q The first Sunday? A I cannot remember.

Q The second Sunday? A I cannot remember.

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Q The third Sunday? A I cannot remember.

Q The fourth Sunday? A I could not state.

Q Is not there anything in your recollection that you can refresh your mind by and say when it was you saw the defendant in the month of October? A No sir, I am unable to say what Sunday that was.

Q Did you receive any literature from him then? A Not that I remember.

Q On the occasion of this second visit, was there any woman that you knew of that was pregnant, about whom you had spoken to the defendant? A No sir.

Q When was your third visit? A On the Friday, November 20th.

Q At what time? A In the afternoon.

Q Did anybody go with you? A No sir.

Q Was anybody present at the conversation between you and the defendant? A No sir.

Q On that occasion, did you receive any literature?  
A Not that I remember.

Q And the next time was on the Sunday in question?  
A Yes sir.

Q Now, on the Sunday in question, you went there, as I understand --

MR. LE BARBIER: Question withdrawn.

Q On the third visit, did you tell the defendant that

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you knew of a woman who was pregnant who was coming to his place? A Yes sir.

Q You told him that? A Yes sir.

Q You had in mind, you say, a woman who was pregnant? A Yes sir.

Q Was that this woman Annie? A Yes.

Q That was on Friday? A Friday.

Q What time? A In the afternoon.

Q After you had been down here to the District Attorney's office? A Yes sir.

Q And after you had made the cursory examination which you say you did with this woman Annie? A Yes sir.

Q You then went to the defendant's premises and said that you had a woman who was pregnant, did you not? A Yes sir.

Q Now, on that occasion did you receive any literature? A Not that I remember.

Q On the Sunday in question, what time did you arrive at the defendant's premises? A What is the Sunday in question?

Q November 22nd, 1903? A We arrived there at about 11 o'clock A. M.

Q When you went on the previous visit, that is to say on Friday, had you observed the condition of the house; yes or no? A Yes.

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Q Did you observe workmen in the house? A I heard them, and there were signs of workmen about the lower floor.

Q Were there signs of alterations in the house? A Yes sir.

Q And of alterations also under way, as far as you could observe? A Yes sir.

Q Did you speak with the defendant, if I understand you correctly, you did, but I am asking you to be accurate, concerning alterations in the house? A He spoke to me.

Q On the Friday previous to the Sunday in question, and the day that I mean, the day of the arrest, had you told the defendant anything about the identity of the woman? A I told him that she was a fine looking young woman.

Q Did you say whether she was black or white? A No sir.

Q Or any way to identify her in the event that she called? A No sir.

Q Do you know where that woman is now? A No sir.

Q Have you made any attempt to find her? A No sir.

Q Did she appear before the Grand Jury, as far as you know? A She did not.

Q Didn't you take her address at any time? A I never knew where she lived.

Q Didn't you think it was important in a case of this

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kind to preserve her address? A No sir.

Q Do you now state under oath that you do not know where she is? A I have never seen her since the day of the arrest, and I have never known wher she was, and do not know where she is to-day.

Q And if she were to come here, do you think you could identify her? A I probably could; I could not swear that I could.

Q What time did you arrive at the house on the morning in question; that is, the day of the arrest? A About 11 o'clock.

Q What did you do when you arrived? A We went up the stoop and rang the bell and we were admitted.

Q Went into the house? A Went into the house.

Q And into the parlor? A Into the parlor.

Q How is the parlor in that house, as you go in?

A The parlor was on the right hand side or the east side of the hall.

Q There is as you go in the front door, there is a hall that leads back into the rear of the premises? A Yes sir, there is a vestibule, then a hall, and the hall leads back to the rear of the premises, and the parlor is on the right hand side, which is the eastern side of the house.

Q After you passed the vestibule and got into the hall, you then went into the right hand side, into the parlor?

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A Yes.

Q At that time, there was Annie, yourself and Pritchman? A And a woman.

Q Do you know who she was? A No sir, she was in there when we went in.

Q How long did you three remain in that room? A About thirty minutes.

Q Did the woman that you say was there, had she left previously? A That I really do not remember.

Q You do not remember that? A No sir, I was not paying much attention to her. I remember that she was there and I wondered who she was, but I really do not know what became of her.

Q Was she a woman -- do you mean to say you did not pay any attention to her? A No, I did not pay any attention to her.

Q At all events, do I understand you to say that you remained about thirty minutes in that room? A Yes sir.

Q Then what happened? A Dr. Blinn came to the door leading into his office, and said he would be ready in a few minutes, and closed the door and went back into his office.

Q Did he say that to all of you there? A Just nodded to me and to the group, and said "I will be ready for you in a few minutes."

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Q Then what was the next thing done? A The woman in the uniform of a nurse appeared in the door leading into the hallway.

Q Leading into the hallway? A Yes.

Q How long after you say the defendant came to the door from his office and said "I will be ready in a few moments" was it before you went into his room; that is, when I say his room, I mean his office? A About five or six minutes in all.

Q The office is the room next to the parlor, back, is it? A Yes.

Q Leading into that, an ordinary physician's office?  
A Yes.

Q And leading from the parlor into the office was a connecting door between the parlor? A Yes.

Q So that you could go from the parlor right into the office without going around through the hall? A Yes sir.

Q Then, when you went into the office, that is the inner office, with Annie and Pritchman, did I understand you to say that you there saw an operating table? A Yes sir.

Q And a tray with some instruments on? A I saw a tray, but there were no instruments on it when we went in.

Q Haven't you sworn time and time again, yesterday, that when you went in there you saw a tray with instruments on it? A No sir.

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Q page 48: "Q Well, go on with your story? A Then we walked into the operating room and Annie was standing at the side of the table with her clothes loosened; there was a tray on the stand, attached to the operating table, and on this tray were some instruments".

MR. TRAIN: Now, that refers to an entirely different period. That is afterwards.

Q Does it refer to an entirely different period? A Yes sir.

Q very well; that is an answer. Now, do you say that when you went in that the first time you did not see a tray with instruments on it? A I saw the tray, but there were no instruments on it.

Q When was it you say that you saw the instruments for the first time? A When I came back from downstairs, at the time that I gave Dr. Blinn the money, when I came in the office that time, the instruments were on the tray.

Q That is the first time you say that you saw the instruments there, is it? A Yes sir.

Q When you went into the office itself, this first time, yourself, Fritchman and Annie, was there anybody else in the office? A There was a woman in the uniform of a nurse.

Q Do you know which one she was? A She was the co-defendant, Mary Miller.

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Q Do you know what has become of her? A Why, she was arrested at the time, and I think was just turned loose; I don't know.

Q Well, your information is that? A That is what I have been told.

Q How long did you remain in the office before you left the inner office again? This first time, when you went in with the people? A I should say that we were there for three or five minutes before I went out for the first time. It is hard to say, Mr. Le Barbier, but it was about that.

Q Well, at this time that you went in, was that tray there near the operating table? A At which time, Mr. Le Barbier?

Q The first time? A The tray was there.

Q Now, at that particular time, were there any instruments on the tray, yes or no? A Which time?

Q The first time? A No sir.

Q During all this time, was Fritchman in the room there with you? A During which time?

Q The first time, I am now speaking only of the first time; during this first time that you went in there, after you say you went in with Annie, Fritchman and yourself and saw no instruments on the tray, was Fritchman in the room with you? A Yes sir.

Q What did he do in that room? A Fritchman stepped

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over by the window.

Q Well, in that room, did you have any conversation with the defendant at that time? A I don't remember that I did.

Q Was anything said about any operation at that time by you? A I don't know that there was.

Q Was there any conversation had at that time by the defendant? A I don't remember.

Q Was there any conversation in that room that first time said by anybody? A No sir, not that I remember.

Q When you went into the room the first time with Annie and Fritchman, what happened? A Annie sat down on a chair.

Q What kind of chair was it? A It was an ordinary parlor chair.

Q Fritchman was standing up by the window? A Yes sir.

Q And you were where, about, in that room? A I was just off to the west of the operating table. I stopped about three or four feet from the end of the operating table.

Q Describe that table? A It was an ordinary operating table, with a metal frame, as I remember, and wooden top, which had a cushion over it.

Q Anything different from what you observed generally in offices of physicians? A It was a gynecological table.

Q Well, I know, but it was not the only one in existence, was it? A I suppose not.

Q You have seen numerous ones like it, haven't you?

A Yes sir.

Q And you have seen numerous ones like it in other physician's offices, haven't you? A Yes sir.

Q You stood then, near the operating table at this moment, and if I understand you correctly, Annie was on a parlor chair? A Yes.

Q Seated? A Yes sir.

Q And Fritchman was over by the window? A Yes.

Q Facing in or out? A I don't remember. I did not look. I don't remember noticing which way he was looking.

Q The nurse, where was she? A She was sitting on a stool which was right next to the operating table.

Q As you went in, and after Annie had sat or was sitting, as you say, on this parlor chair, on what side of the room was she sitting? A On the western side.

Q On the western side as you went in? A On the western side.

Q That would be then near the operating table, wouldn't it? A The operating table was situated more toward the east of the room.

Q How large was the room, about? I understand it was a room about 19 feet wide, wasn't it? A I should say so, yes.

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Q Something like that; how deep, do you know? A Oh, I should say 14 feet; 14 or 15 feet.

Q And as you went through the middle door of the parlor on this visit, going in that way, and Annie then became seated upon the chair, was it on the left or right hand side as you went into the office? A The left hand side.

Q How far away from the operating table? A Situated about four feet from the operating table.

Q Was anything said by you or the defendant previous to leaving the room, previous to anybody leaving the room at that time? A Yes.

Q Who spoke? A Dr. Blinn.

Q Did he speak to you? A Spoke to me.

Q What did he say to you? A Said he wanted to see me outside.

Q Did you go outside? A Yes sir.

Q Then, what did you do? A He said to come out in the hall, in the parlor, and we went in there, and I said "My friend Jack is very nervous ; will you give him a drink?"

Q That is to say, you came out from the back room, down the hall and into the parlor, and then told him that? A Yes sir.

Q Then, what happened? A He said, certainly, he would give him a drink, and went back for Fritchman.

Q Did he go back into the room, the defendant? A I

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don't know.

Q Aren't you able to state with some degree of certainty whether or not the defendant at this particular moment went back into his office, where Fritchman, was, as you say, standing? A No, I would not state, because I don't remember.

Q Do you recall that Fritchman came out? A Yes.

Q Where did he go? A Downstairs.

Q Did anybody go down with him? A Dr. Blinn.

Q Do you know how long they remained downstairs? A A few minutes.

Q What did you do in the meanwhile? A I walked back in the operating room.

Q And at this moment, in the operating room, were the people in the same position? A At that moment, yes, in the same position.

Q Annie was still seated? A Annie was seated on this parlor chair.

Q Then, you left her and went outside and went downstairs, did you? A Well, the nurse said to me --

Q (Interrupting) Nevermind what the nurse said? A Yes, I went out and met Dr. Blinn.

Q How long did you remain in that room before you went out and met Dr. Blinn? A Only a very few minutes.

Q Well, five or six minutes, do you think it was?

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A Well, it might have been five minutes.

Q Then what happened to you; did you go downstairs?

A Dr. Blinn -- yes, I went downstairs at Dr. Blinn's request.

MR. LE BARBIER: I move to strike out the latter part.

THE COURT: Strike it out.

Q Now, up to this moment, do I understand you correctly, nothing had been said or done about anything concerning an operation? A From what time?

Q From the time that you went from the parlor into the inner office and were there some few minutes, and then Fritchman came out and went downstairs with the doctor, and you went back in the inner office, up to that time nothing was said about any operation? A No sir.

Q And nothing was done concerning any operation?

A Yes, there was.

Q What? A There was something done.

Q What was done? A The nurse was making up dressings, cotton dressings; she was sitting on this stool.

Q Well, do you know that she was doing it for this purpose? Do you know whether she was doing it for this purpose? A Well, she was doing it.

Q Was she doing it for this purpose now, of your own knowledge? A I can't say.

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BY THE COURT:

Q Was anything said by her to you with reference to what she was doing it for, the purpose of it? A No sir.

BY MR. LE BARBIER:

Q Then you went, if I understand you, downstairs, did you? A Yes sir.

Q And downstairs where did you go? A To the foot of the steps.

Q Did you go over to the dining room downstairs? A I don't remember that I did.

Q When you got to the foot of the steps, as you say, downstairs, you mean the stairs leading from the office down; they were sort of back stairs? A Led from the hall down. The head of the steps was just outside the office.

Q And you went down to the foot of those stairs? A Yes.

Q When you went down to the foot of these stairs, did you see the defendant there? A Not at the foot of the stairs.

Q Where did you see the defendant? A I left him at the top of the steps.

Q He had gone down with Fritchman, hadn't he? A But he had come back.

Q Oh, he had come back in the meantime? A Yes sir.

Q Now, when you came out of the room, after Fritchman and the defendant had gone downstairs, did you at any time

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see them downstairs? A I did not see them.

Q Did you see either of them downstairs? A I saw Fritchman downstairs.

Q Where did you meet the defendant when you went downstairs? A I did not meet him downstairs.

Q You met him at the top of the stairs? A Yes.

Q Did you see Fritchman at that time? A I saw him when I went downstairs.

Q No, at the time that you met the defendant at the top of the stairs, did you see Fritchman? A No sir.

Q Was he in your sight? A No sir, because I was not looking at him.

Q Did you see him, is the question? A No, I did not see him.

Q Having met the defendant at the top of the stairs, what, if anything, happened? A At which time? I met him, yes.

Q At the first time? A I met him at the top of the steps, and he said "Your friend wants to see you downstairs", and I went downstairs to see Fritchman.

Q And you went into the dining room? A I don't remember that I went into the dining room.

Q Did you see anybody else down stairs besides Fritchman? A No.

Q Did you see any person attending to the alterations of the house in that room? A No.

Q Sure about that? A I am sure that I don't remember.

Q Well, that is not the question. Are you sure that you did not see anybody attending to the alterations in the dining room at that time? A Yes sir.

Q Well, why did you answer that you do not remember?

MR. TRAIN: Oh, he has answered.

THE COURT: Well, he has had a little time to think it over, Mr. Le Barbier.

Q Did you see anybody else in that dining room? A No sir.

Q Did you see a colored person there? A No sir.

Q When you went downstairs and saw Fritchman, as I understand you, did you go into the dining room? A I don't remember that I went in the dining room. I have answered three times already.

Q How long did you remain downstairs with Fritchman?

A A very few minutes.

Q Then, did you go upstairs? A Yes sir.

Q Then, where did you see the defendant? A At the top of the stairs.

Q Where was Fritchman at this time? A Fritchman came up behind me.

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Q Was he right behind you? A A few steps.

Q Are you sure about that? A Yes sir.

Q And with Fritchman a few steps behind you, as you say, what if anything happened between you and the defendant? A I gave him the money at the top of the steps.

Q With Fritchman a couple of steps behind? A I did not say a couple of steps; I said a few.

Q But on the same stairs, wasn't he? A He was coming up the steps.

Q Now, at the time that you handed the money, as you say you did, to the defendant, did you see Fritchman on those stairs? A No sir, my back was turned to him.

Q Then, how can you say he was a few steps down on those stairs? A Because I turned.

Q (Interrupting) After you had given the money --

MR. TRAIN: (Interposing) Let him answer, please. If your Honor please, Mr. Le Barbier interrupts the witness.

THE COURT: Go on.

A Will you repeat that, please?

Q How could you tell that Fritchman was a few steps, as you say, behind you, when you gave the defendant this money, that you say you gave him? A Because I turned immediately and saw him coming up the steps, half way up or more.

Q What became of you just at this moment; what did you do?  
A Just after I gave Dr. Blinn the money, you mean?

Q Yes. A Well, we went into the operating room.

Q You and the defendant and Fritchman? A And Fritchman.

Q The three of you went in there together? A Yes sir.

Q Now, by the operating room you mean the doctor's office, do you not? A Yes sir.

Q Isn't it a fact that at no time Fritchman went into the operating room or the doctor's room before he went downstairs? A No sir, he went in there.

Q Are you sure about that? A Sure of it.

Q What? A Sure of it.

Q Did you hear Fritchman testify at the last trial?

A No sir.

Q When you came up this time, after giving the money to the defendant, and as you say, went with the defendant and Fritchman into the office, was Annie still seated on the chair, yes or no? A No.

Q What? A No.

Q Where was she? A Annie was at the side of the operating table.

Q Was she dressed or undressed? A Her clothes were loosened about her waist.

Q Did you see that? A Yes sir.

Q Did you go up and look at her? A No sir. I was standing aside.

Q So that you could see her? A I could see it.

Q And at this time, then, did you observe the tray that you say was adjacent to the operating table? A Yes sir.

Q At that time were there instruments on it? A Yes sir.

Q These instruments that you say you have described here? A Yes sir, those instruments (indicating).

Q Those are the instruments? A Those are the instruments.

Q Up to this time, when you went in and saw these instruments on the tray, had you had any talk with the defendant about any operation that morning? A From what time?

Q From the time you entered the place? A The house, you mean?

MR. LE BARBIER: Will you kindly repeat the question?

MR. TRAIN: The witness does not know whether he refers to the house or office, because there had been some conversation in the hall.

THE WITNESS: That is what I mean.

THE COURT: The objection is overruled. Go on.

BY MR. LE BARBIER:

Q Entered the house, put it? A Yes sir.

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Q Where was this conversation? A It was standing in the doorway leading from the hall into Dr. Blinn's office, before --

Q (Interrupting) Before what? A Annie, Fritchman and myself had gone into the office together.

Q Well, if I understand correctly, I asked you a little while ago, up to that time, had there been any talk by anybody about any operation, and you answered no? A No, you did not ask me that question.

MR. LE BARBIER: I respectfully submit it.

Q I asked you also whether up to that time, had there been any attempt about any operation, and you said no?

A Can I have those questions read over again?

THE COURT: No, just answer questions. Answer the question.

MR. TRAIN: Can I have that last question repeated?

(The stenographer repeats the last question.)

BY THE COURT:

Q Do you understand the question? A No sir.

Q Well, try and make it plainer, Mr. Le Barbier. He does not understand it.

BY MR. LE BARBIER:

Q When was it that morning that you say you had this conversation with the defendant about an operation? A It was just after I had the conversation with the nurse in the

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hall, soon after she appeared at the door first.

Q Well, I do not wish to delay this cross examination - when you had entered the parlor the first time with the others? A Yes.

Q And you remained there about 30 minutes? A Yes.

Q Now, during that time, did you have any talk with the defendant concerning any operation? A Not during that 30 minutes.

Q Or with anybody else during that 30 minutes; yes or no? A With my own party, with Pritchman. With no one connected with the institution.

Q That is it, with anyone connected with that house? A No sir.

Q Then, it was, that you went into the inner office? A No sir.

Q Then, where did you go? A There is a part of this evidence that is left out, because Dr. Blinn was not present. The nurse came to the door.

Q Now, with Dr. Blinn, I am asking you?

MR. TRAIN: Now, if your Honor please, he said "Did you have any talk with anybody?" And the witness explained that the nurse came to the door. Now, we are entitled to have that question answered.

THE COURT: Well, the cross examiner has now directed his attention to Dr. Blinn. Having that in mind, the

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witness will answer the cross examiner.

Q (Question repeated). A I had had a conversation with Dr. Blinn about the operation.

Q In other words, did you leave your party at any time within those thirty minutes and go anywhere to have a talk with Dr. Blinn, did you? A It was at the end of that 30 minutes.

BY THE COURT:

Q Now, doctor, you understand the question? Now, just answer it. A It was at the end of the wait that Dr. Blinn and I had our talk.

BY MR. LE BARBIER:

Q Where did you go? A I went into the hall.

Q You said a little while ago, and I refer to the minutes and the court and this jury, that you waited some thirty minutes, and I was very particular to ask specifically what was done, and you said that you and Annie and Fritchman went from the parlor into the inner office. Now, I want to know whether that is or is not correct? A That is correct, but something had happened before that.

Q Before you went into the office? A Yes sir.

Q What did you say to the doctor? A I told him that no preliminary treatment would be taken; that the girl would not have it.

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Q Where was this? A That was standing in the door leading from the hall into his office.

Q Yes; before the thirty minutes or after the wait?

A At the end of the wait.

Q So that you did not go into the inner office with these people -- oh yes, you went in and then went to the door? A I went out into the hall and down to talk to Dr. Blinn, and he said "very well", that then he would go ahead with the operation without the preliminary treatment, and I went back into the office. Then he appeared at the door and opened it, and we went in together.

Q Don't you understand that I asked you whether you went directly into the inner office, and didn't I understand you to say yes? A I said I went directly, because I had already come in from the hall, just a moment, and we went into the inner office. That is direct. We did not go through any other room to go to the office.

Q Did you have any other conversation with him that morning? A When, at what time?

Q Any time? A Yes.

Q When was it? A Well -- you mean just conversation, I suppose?

BY THE COURT:

Q Go on, doctor, answer the question. We are losing a lot of time? A Dr. Blinn called me out and said "I want

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to see you outside a moment", and we went outside into the hall and into the parlor, and he said to me "I never had a game like this worked on me before, and I won't have that man in my operating room while I am there, while I am operating; I am not used to having a crowd in my operating room, and I won't have him in there", and I said "Well, put him out; I don't want him in there, but you can't do the work without Jack in there, because Annie won't have it". He said "Very well, then, he is not going to stand at my back".

BY MR. LE BARBIER:

Q Now, when was this conversation?

BY THE COURT:

Q (Interposing) Is that all of the conversation, so that we will not be obliged to go back again? A That was practically all of it, sir.

BY MR. LE BARBIER:

Q Now, when was this said? A This was said after the trip downstairs. We returned from the trip downstairs. Then certain things took place in the operating room, and after those things had taken place in the operating room, for which you do not ask, we went out into the parlor and had this conversation.

Q Well now, was this conversation before or after the defendant and Fritchman had gone down, as you say, for the drink? A Oh, it was afterwards.

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Q Then, did you come back from the parlor? A Came back in the hall and into the operating room.

Q When you went into the operating room at that time, what was the position of the people? A The patient was on her back on the table, the operating table, with her legs up on the stirrups.

Q She was already in that position? A Yes, she was in that position.

Q When you left the room, was she in that position?  
A Yes sir.

Q Did you see anybody put her in that position? A Yes sir.

Q Did you help put her in that position? A No sir.

Q Did you touch her in any way at all? A No sir.

Q Sure about that? A I am sure.

Q Then, after she was in this position, as you say, you and the doctor went out into the parlor and had this talk, is that right? A That is right.

Q When you went back into the defendant's office, at this particular moment, after this conversation in the parlor, was the person of the patient exposed? A Yes sir.

Q You saw that? A Yes sir.

Q Anything over her? A There was a sheet thrown over her body, draped down over her thighs.

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Q That you saw? A Yes sir.

Q When you went out that time into the parlor with the defendant, do you know how the defendant was dressed?

A Why, he just had on a sack suit.

Q He had it on, didn't he? A Yes.

Q He had his coat on? A As I remember. I don't remember that he had taken it off.

Q When you were talking with him in the parlor did he have his coat on? A As I remember, yes. I don't remember that he did not have it on.

Q At any time, do you remember him with his coat off; do you? A No sir.

Q When you went back into the parlor from the defendant's office, which was immediate, wasn't it, immediately after this talk, wasn't it? A Yes sir.

Q The defendant still had his coat on, didn't he?

A Yes sir.

Q Now, when you went in there at that moment, and you say Annie was on the operating table, what was the first thing done by anybody in that room? A Dr. Blinn went over to the operating table and made some readjustments to the drapings of the patient. He put a towel under her, changed the position of the sheets a little bit.

Q Is that all he did? A That is all I remember that he did.

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Q What was the next thing happened? A I told Fritchman to come over here a little bit.

Q You called him over? A I just said "Come over here, stand here", and he came over and stood there.

Q That naturally was in the hearing of the defendant? You said that in the hearing of the defendant? A I said it. I suppose he heard it.

Q Well, at all events, go on; what happened now?  
A Fritchman came over by my side, right here (indicating).

Q Now, proceed with your story as to just what happened at that moment? A Dr. Blinn told the nurse to start the chloroform, start giving the chloroform to the patient.

Q You say you heard him say that? A Yes.

Q What did he say? A He said "Start the chloroform", as I remember the phrase.

Q Well, as you remember; do you remember? A Well, I do not remember his exact words, no.

Q Well, do you remember there was chloroform there?  
A I do.

Q Well, what did you see done about any chloroform?

MR. TRAIN: Why don't you give him a chance to tell you?

BY THE COURT:

Q Is that the substance of what he said? A Yes sir, that is the substance of what he said.

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MR. LE BARBIER: May it please the Court, may I be preserved from these remarks?

THE COURT: yes, the witness is in the hands of the cross examiners, and the Court asks counsel for the People to allow him to stay in the hands of the cross examiners until he is finished.

BY MR. LE BARBIER:

Q Did you see the chloroform there? A Yes sir.

Q Before he said these words to the nurse, substantially, about the chloroform, did you see the defendant take hold of any instrument? A Not that I can remember.

Q Won't you kindly try and not say "I don't remember".

MR. TRAIN: Objected to.

THE COURT: Well, that is what he should say, counsel, if that is the truth, that he does not remember.

Q You were there at the time, weren't you? A Yes sir.

Q You were there as a detective, weren't you? A Yes.

Q You had practiced these deceptions on the doctor, hadn't you? A Oh, yes.

Q You were there for the purpose of finding out whether this thing would be successful or not? A I was there to make it successful.

Q Yes, to make it a success? A Yes.

Q And you had received how much for your share in this thing? A Nothing.

Q Fifty dollars, hadn't you? A I had received nothing.

Q Didn't you state at the last trial you had received fifty dollars? A I stated at the last trial that throughout the whole thing, that my disbursements were fifty five dollars, for which I was reimbursed.

Q At all, events, you received fifty dollars, didn't you? A Fifty five dollars.

Q And had your disbursements been promised you? A Yes.

Q Did you receive these disbursements before November 22nd or afterwards? A Some I received before.

Q So that you had received money already, in your possession? A Yes.

Q Now then, being there for that purpose, as a detective, being there with a knowledge of the deception which you had practiced upon the defendant, being there, as you say, to make this a success, can you tell this court and jury whether or not before anything was said to the nurse about chloroform, you did or you did not see the defendant have any instruments in his hands? A I cannot say that I did see him with an instrument in his hand.

Q Or after that? A Or after that.

Q Or at any time that morning did you see the defendant with any instrument? A I cannot say that I did.

Q When you say that you heard these words about the

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chloroform, did you see anybody go towards the chloroform bottle, or inhaler, or whatever it may be, that is, Exhibit No. -- did you? A I saw the nurse pick it up.

Q Did you see her do anything with it? A She just picked it up, and she did not have time to do anything with it.

Q Did you see her do anything with it? A She gave it to Dr. Blinn.

Q Did she herself sprinkle anything on it? A No sir.

Q Are you sure about that?

BY THE COURT:

Q (Interposing) What did she do with it? A She gave it to Dr. Blinn, sir.

BY MR. LE BARBIER:

Q Did you at this time see Dr. Blinn do anything with the chloroform? A He shook chloroform on to the inhaler.

Q Just at this particular moment, what was the position of the defendant in that room? A At which particular moment?

BY THE COURT:

Q When he was shaking the chloroform.

A At the head of the table.

BY MR. LE BARBIER:

Q Standing up? A Syanding up.

Q And at the head of the table was what -- what part

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of Annie? A The head.

Q Up to this time, had he gone toward the --

MR. LE BARBIER: Question withdrawn.

Q Before he had said anything to Annie about any chloroform, had he at any time up to that moment gone toward Annie, as far as you could judge, for any purpose of examination; yes or no? A How can I say whether he went for purposes of examination?

Q Well, I will ask the question, if you do not understand it; probably I am just stupid enough not to put it correctly? A Perhaps I am stupid enough not to understand it, too. He went toward her --

MR. TRAIN: I object to the remarks of counsel.

THE COURT: Now, counsel on both sides must conduct this case in a proper manner. We are trying to get through, and these gentlemen are here away from their business, and this case must proceed properly. Go on, now.

MR. LE BARBIER: Well, I have said nothing yet. I am referred to as incoherent and stupid.

MR. TRAIN: I did not say that. He said he was stupid himself.

THE COURT: Well, anything like that is stricken out.

Q Did you before the defendant said anything about chloroform, see the defendant in any act of examination -- of course, I mean of this woman? A I saw him standing in

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front of the --

Q (Interrupting) Now, will you answer the question?

MR. TRAIN: Give him a chance.

THE COURT: Now, let the witness answer what he saw and what he understands.

A Your Honor, I cannot say whether he was there for examination. He was standing at the lower end of the table, at which end the patient's parts were exposed, and her legs thrown up, and he was standing there, as he told the nurse to give the chloroform.

Q I thought you just said a moment ago that at this particular moment he was standing at the head of the operating table, and I asked you --

MR. TRAIN: I object to that. The doctor said when he was giving the chloroform he was at the patient's head.

THE COURT: gentlemen, we will take a recess now, until two o'clock.

In the meantime, do not discuss this case or form or express any opinion about it, but keep your minds open until it is finally submitted to you.

(recess until 2 o'clock P. M.)

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## A F T E R R E C E S S .

## T R I A L R E S U M E D .

E D W I N D . W A T K I N S , a witness for the People, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. LE BARBIER:

Q At the time that he spoke about the chloroform, was he at the head of the operating table or the foot? A Dr. Blinn, you mean? Dr. Blinn was at the head of the table.

Q Whom did you see first open the chloroform bottle?

A It was not opened.

Q It was not opened? A No sir; it was already open.

Q Who is the first one you saw use it? A Dr. Blinn was the first one I saw pour the chloroform out of the bottle.

Q At that time, how far away were you from Blinn, the defendant, and the chloroform bottle? A About eight feet.

Q Could you smell it? A Not at that point.

Q Did you go over at any time to the chloroform bottle? A Yes sir.

Q Did you smell it before you went over to it, yes or no? A No.

Q Do you state to this court and jury that when you saw the defendant take out the chloroform bottle and sprinkle chloroform, and you but eight feet away, that you did not

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smell it? A I did not smell it at that time.

Q And that you did not smell it until you went over to the table itself and picked up the bottle? A No, I smelled it before I got to it, when I was two or three feet from it.

Q That is, when you first smelled it, is it? A Yes sir.

Q So that, you did smell it then, before picking up the bottle? A Yes sir; I smelled the chloroform that had been poured on to the inhaler.

Q So that you did smell the chloroform before picking up the bottle? A Yes sir.

Q Do you remember this question being put to you and the answer being made at the former trial: "Q Did you smell the chloroform? A I picked up the bottle and smelled it.

Q Could you smell it without picking up the bottle? A No. I was standing too far away" -- did you make that answer?

A I suppose so, if it is down there.

Q Well, do you know whether you did or not? A Why, yes, I made it.

Q Well, was that answer a true answer when you gave it? A I would say no.

Q Was the answer a true answer when you gave it? A No.

Q And you were under oath at the time, yes or no?

A Yes.

Q You say you took away some of the chloroform? A Yes sir.

Q Took it away in what? A In a bottle.

Q In a little bottle of your own? A No, it was a bottle I picked up there.

Q And you poured chloroform out into that bottle and took the bottle away, didn't you? A Yes sir.

Q Where is that bottle? A I don't know. I left it after I had analyzed the chloroform, I lost track of the bottle. I suppose I left it in the laboratory, five years ago.

Q Is that your best recollection of the subject?  
A Yes, that is my best recollection upon the subject of that bottle.

Q You were a detective here for the purpose of ascertaining and remembering, were you not, what occurred there? A Yes sir.

Q You were also interested at the time in preserving evidence, weren't you? A Yes sir.

Q And you now say that you think you left the bottle at the laboratory? A Yes sir.

Q Was this question and answer put to you at the last trial: "Q Have you that bottle here? A Oh no. I threw that away long ago". A Well, that is what I did.

Q Well, did you throw it away or leave it at the laboratory? A Well, that is throwing it away, just leaving it at the laboratory to be collected up.

BY THE COURT:

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

BY MR. LE BARBIER:

Q You did not say anything about leaving it at the laboratory at the last trial, did you? A No, I did not, because I was not asked.

Q Was it at that particular moment then, that Fritchman made the arrest? A What, at that particular moment?

Q That we are speaking of? A Was what at that particular moment?

MR. TRAIN: You are talking about throwing the bottle away.

BY THE COURT:

Q With reference to the turning out of the chloroform, was the arrest made immediately after that?

THE COURT : That is as I understand it?

BY MR. LE BARBIER:

Q Was it? A No, I got the chloroform after the arrest was made.

Q No, that does not answer the question. At the time the doctor sprinkled the chloroform, as you say, was the ar-

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rest then made? A Yes sir.

Q Had you at that time said anything to the defendant about the physical condition of the woman, that is, as to what she had to eat, as to the physical condition of her stomach, so to speak, at that time? A I told the defendant that I would bring her in, deprived of food, so that she might take an anaesthetic.

Q Did you state that at the last trial? Did you now, under oath, yes or no? A No.

Q Do you know that chloroform cannot be administered unless the patient is prepared to receive it? Do you know that much? A I know that chloroform is often administered when they are not prepared to receive it.

Q Well, is chloroform an irritant? A Well, it is an irritant to the nose and throat and mucous membrane, a slight irritant.

Q And in this particular instance, where you now say for the first time that you say you told the defendant that she would be in a condition to receive it, that the chloroform was about to be administered? A That the chloroform was administered.

Q Well, in what way was it administered? A Dr. Blinn poured some chloroform from the retainer on to the inhaler, put the inhaler over the woman's mouth and nose, and poured some more chloroform on.

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Q Yes, did the patient become unconscious? A No sir.

Q At any time? A No sir.

Q And you said in answer to, I think his Honor's question, that you substantially said everything that had been said between you and the defendant up to the time of the arrest; you said that before recess. Now, when was it that you now say that you told the defendant about the condition of the woman to receive chloroform? A I told him on the Friday before the day of the arrest, that I would bring her in prepared for the operation as to her stomach.

Q At the last trial, did you say anything about telling the defendant the Friday before? A I don't remember that I did.

Q Or at any other time? A I don't remember that I did. I did in one testimony.

BY THE COURT:

Q Where was that? A I think, sir, it was in the testimony given before the Grand Jury, but I am not certain.

MR. LE BARBIER: We respectfully move that that be stricken out and that the jury be instructed to disregard it. It was in the absence of the defendant.

THE COURT: It may be stricken out, if you do not want it.

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BY MR. Le BARBIER:

Q Do you know that the defendant did not have the minutes of the Grand Jury?

MR. TRAIN: Objected to.

MR. Le BARBIER: If he knows it.

MR. TRAIN: That is objected to. It is immaterial.

THE COURT: If at any time, Mr. Le Barbier.

MR. Le BARBIER: Yes, your Honor.

Q Do you know that the defendant did not have the minutes of the Grand Jury at any time? A I don't know whether he did or not.

Q When the defendant then administered this chloroform to the patient, as you say, what did the defendant do after that? A He walked over to Fritchman.

Q Did he give the chloroform in the hands of anybody else?

A I don't know what happened to the chloroform then.

Q Did he give it to anybody in that room to further continue administering to the patient? A I don't know.

Q Why don't you know? A Because I left the room very shortly, and I don't know whether he had the chloroform or not.

Q You did not leave that room until the arrest, did you?

A No.

Q Now, we have this patient in the position of having the chloroform, being administered, as you say? A Yes.

Q (Continuing) By the defendant? A Yes.

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Q (Continuing) And the woman, not unconscious; now, was any further administration of that chloroform made by anybody in that room to the patient? A I don't know that there was.

Q Is that the best answer that you can give? A That is the very best I can give, sir, according to my recollection.

Q Is that the best recollection that you have upon the subject? A That is the very best recollection, sir.

Q Immediately then, after this chloroform being administered, as you say, was it then that the defendant was arrested?

A Yes, sir.

Q After having administered this chloroform, as you say, did the defendant take up any instrument? A I don't know that he did.

BY THE COURT:

Q You did not see him take up any instrument? A No, sir, I don't know that he took up any instrument.

BY MR. Le BARBIER:

Q Don't you know that, as a matter of fact, the defendant never administered any chloroform to this woman on that day?

A I know that he did.

Q Don't you know as a matter of fact that he never went to the chloroform bottle, or took it up or in any way touched the chloroform bottle on that day? A I know that he did.

Q How is your memory so much better on a point of that kind than on all other matters that you say you cannot remember?

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A Because that is a very important point, and the others are incidental.

Q You say that the others are incidental? A It seems to me that they are. I remember certain things, and those I can testify to. I can testify to nothing that I don't remember.

Q At this particular moment, when he was administering the chloroform, do I understand you were within how many feet of the defendant? A About eight feet.

Q Where was Fritchman at that time? A Fritchman was standing a little to the left, and behind me.

Q Did he have the chloroform bottle in his hand when he was arrested? A Who, Dr. Blinn? I don't know.

Q You do not know? A No, sir. I don't know what happened to the chloroform bottle after Fritchman said, "Doctor, you are my prisoner."

Q I am asking you at that particular moment when Fritchman said, "Doctor, you are my prisoner," did the doctor have, as you say, the chloroform bottle in his hand? A Yes, sir.

Q Then, why do you say you do not know? A Well, I beg pardon. I misunderstood. I thought you said after the arrest took place. That was at the moment of the arrest.

Q Now, do you know what became of that chloroform bottle, if it was in the doctor's hands? A No, I don't know what he did with it right then, but I know where it was as soon as I came back to the room.

Q That is to say, when the arrest was being made, what did you do? A I waited a moment until Dr. Blinn walked down to Fritchman and stopped in front of Fritchman. Fritchman had a pistol in his hand pointing it at Dr. Blinn.

Q Who was at the head of the patient at this particular moment, was he? A Dr. Blinn was at the head of the patient at the particular moment that Fritchman said, "Doctor, you are my prisoner, hold on there," and pointed a pistol at him.

Q Were you facing Dr. Blinn? A Yes, sir.

Q So that Fritchman was facing the defendant also?

A Yes, sir.

Q Then Fritchman walked past you up to the defendant and said, "You are my prisoner"? A Fritchman did not move.

Q Just pulled out the gun or revolver? A Yes.

Q And pointed it at the doctor? A Yes.

Q The defendant, and said, "You are my prisoner"?

A Yes, sir, that is my recollection of it.

Q What did you do then? A As soon as Dr. Blinn walked down to Fritchman and stopped, I opened the door into the hall and walked to the front door, opened the front door and blew the whistle.

Q How many times did you blow the whistle? A Three times, as prearranged.

Q What? A As prearranged.

MR. Le BARBIER: I move to strike that out, "As pre-

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arranged."

THE COURT: Strike it out.

Q When you blew three times on this whistle, what happened?

A Several men came into the house from across the street.

Q They passed you in the hall? A Yes.

Q They went into the inner office? A Yes.

Q Did anybody come from downstairs, upstairs? A At that particular moment?

Q Yes. A Not that I know of.

Q Did all these people come in before you started to go back into the defendant's room of office? A Five or six of them did, yes.

Q Did you go with the last one? A Yes, I walked in behind them.

Q And as you were going in the room, going back along the hallway into the doctor's office, were any people coming from downstairs up those stairs that were leading into the doctor's office? A Yes.

Q You saw some people? A I saw a man coming up there.

Q How many? A A negro; I saw him coming up.

Q Did you see a woman? A I think that there was a woman behind him.

Q Did you see anybody else? A That is all I remember.

Q All these people then went into the defendant's office?

A Yes, sir.

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Q Then you went in? A Yes, sir.

Q How much time did that take? A A very few minutes.

Q Four or five minutes? A I should say three or four minutes.

Q Did you see in that room, when you went back, that is to say, in the defendant's office, Officer Rappolt? A Now, I think Rappolt was there. I don't know.

Q Did you see Officer O'Farrell? A I am not sure.

Q Will you say that he was not there? A Well, sir, I cannot, because I didn't know the names of those men at the time.

Q Or from subsequent information? A I understood by hearsay that Rappolt and O'Farrell were in there, but I cannot swear to it.

Q Do you know whether or not Police Officer Burton was in there? A No, sir, I did not know those men by name.

Q How many officers were in that back room when you say you went back into the defendant's office? A I don't know how many were officers, but there were about five men who had come in from the outside. I don't know which were officers and which was not. That was none of my business.

Q Was there anybody there by the name of Corrigan?

A I think Corrigan was there.

Q Did you ever speak to him under the name of Corrigan?

A I spoke to a man that I knew as Corrigan, but I could not identify Corrigan by name.

Q Was there a Mr. Lord there? A Mr. Lord was there.

Q Was Mary Miller there? A Mary Miller--

Q (Interrupting) Yes or no. A Yes, I think.

Q Was Emma Bergquist there? A Emma Bergquist, I think, was not there. Some of those persons--

Q (Interrupting) You identified her at the last trial, did you not? A No, sir, I did not. I identified a woman who came up to the stand as one that looked like one I saw there.

Q At that time, and in that room, did you see the woman now approaching the bar by the name of Emma Bergquist? A I can only give you the answer that I gave you last time, that she looks like the woman I saw there.

Q That is the best answer you can give? A That is the best answer I can give.

Q Don't you know that one of the decorators in that house was arrested at that time and brought into the room? A I did not see that, that I remember.

Q What? A I don't remember that.

Q Why did you say you did not see that? A I said I did not see it, as I remember, sir.

Q When all these men had come in after you say you blew the whistle three times and you went in last, in what way did you go into the room? A I walked in the door leading from the hall.

Q In a leisurely manner? A Yes, sir.

Q When you arrived in the defendant's office, after all

this had happened, do you state that the woman patient Annie was still there with her private parts exposed? A Yes, sir.

Q She was? A Yes, sir.

Q Do you remember seeing this person in the room at the time (indicating) when you went back there after you had walked back leisurely, having blown the whistle three times and walking back leisurely into the defendant's office? A He looks like a man I saw in there.

MR. Le BARBIER: Indicating a man by the name of George Williams, who approaches the bar.

Q After all this had happened, upon your return, and at this particular moment, what was the position of the defendant when you came in, after your leisurely walk? A He was sitting in a chair next to the desk, right next to the eastern window in the room.

Q Who was near him? A Fritchman and Mr. Lord.

Q Any one else there that you saw with a gun in his hand?

A I don't remember that anybody had a gun in his hand.

Q You do not remember that? A No, sir, I don't.

Q Do you remember whether there was anybody holding a revolver or gun in his hand upon your return? A No, I do not.

Q Well, to the best of your recollection, what is it, yes or no, was there or was there not?

MR. TRAIN: He said no.

Q Well, your answer is no, then, is it, Mr. Witness?

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A It is the best of my recollection now, no, I cannot picture that.

Q Do you remember this question being put to you and making this answer at the last trial: "Who, if anybody, had a revolver? A One of the party that came in, he had the revolver, as I remember it." Did you make that answer? A Yes.

Q Is that true or not true, under what you have just said now? A Well, sir, I must say--

Q (Interrupting) True or not true?

MR. TRAIN: Let him answer.

A I must say that I don't know.

Q Well, then, why did you say a moment ago that nobody had a revolver? A I did not remember anybody having a revolver.

Q Was this question put to you at the last trial and did you make this answer: "Q What was he doing with the revolver? A Just holding it in his hand"? A Yes, sir, I made that answer.

Q Now, was that true or not true? A Well, I don't know--

Q (Interrupting) Was it true or not true? A I would say that--

Q (Interrupting) Can you answer that? A Yes, sir, I will answer that.

Q Was it true or not true? A Yes, sir, it was true, as I recall it now.

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Q Although, as you said a moment ago, that when you came back there, nobody had a revolver in his hand? A Yes, sir, but I recall the incident now, but I considered it a minor one and at the time had forgotten it.

Q Is that as true as anything else you testified to in this case? A Yes, I remember it distinctly now, that one of the officers had a revolver in his hand, which was said-- well, that doesnot belong to the question.

Q It does not belong to the question? A No.

Q Was he pointing it at anybody? A Not that I remember.

Q Well, at this particular moment, do you state that the defendant was in a chair? A Yes.

Q Did you, after your leisurely walk back into the defendant's office, see any money in the defendant's room there? A Yes, sir.

Q Who had the money? A As I remember, Mr. Lord had the money.

Q Did you see anybody take any money from the defendant? A I did not see him take it from him. Mr. Lord had the money in his hand when I came back.

Q Altogether, in that room at the time when you came back, how many people, do I understand you to say, there were in that room? A Well, I should say Dr. Blinn and the woman Annie.

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Q Two. A The codefendant Mary Miller.

Q Three. A Fritchman.

Q Four. A This negro man.

Q Five. A And about five men who came in from the outside.

Q Ten? A Yes, sir, people who I remember were in the room.

Q And while they were all in the room, Annie was there with her parts exposed? A Yes, sir.

Q Still on the table? A As I remember it.

Q Can you answer the question, Mr. Witness, yes or no, was she or was she not on the table?

MR. TRAIN: I object to that.

THE COURT: Well, Mr. Le Barbier, he says that is his best recollection, and you are speaking, from how long a time back?

THE WITNESS: Four years and a half, sir.

MR. Le BARBIER: Surely, your Honor, I think I may pres. that. It is a very vital point. I ask this then, with the permission of this Court:

BY MR. Le BARBIER:

Q When you went back into that room, do you now state under oath whether that woman was or was not on the operating table with her parts exposed? A I can say that I remember that she was.

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Q Is that the best answer you can give? A The very best of my recollection, and the best answer I can give, that I remember that she was.

Q Yes, as a paid detective, deceiving this defendant, and there for the purpose of getting evidence and of preserving it and of remembering it, is that the best answer you can give us? A Who said I was a paid detective?

BY THE COURT:

Q Now, just answer, Mr. Witness.

BY MR. Le BARBIER (Interposing):

Q Is that the best answer you can give? A Your Honor, I cannot answer that question when he puts it that way. He says I was there as a paid detective, and I was not.

THE COURT: Well, the witness denies part of your question. You assume a great deal in that question, Mr. Le Barbier, and he objects to some part of it as not being a statement of fact. It seems to me, at any rate, it is sort of summarizing, and argumentative. The witness has given you his best recollection.

MR. Le BARBIER: Very well, your Honor.

THE COURT: And I should have to sustain an objection to the question, had it been made.

MR. Le BARBIER: Exception, your Honor.

Q Describe, if you will, the condition of that room at the time; what was in it? A At what time?

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Q At the time you had walked leisurely back, after blowing the whistle, and all these people were in it, and you were in it?

MR. TRAIN: He has just done that once. If he was asked to describe the condition of the room during each separate moment of time that he was there, we would be trying this case for six weeks.

THE COURT: What do you mean, the location of the furniture?

MR. Le BARBIER: Yes, sir, I mean to say the table and the furniture.

THE COURT: Well, I will take it.

A The operating table was situated a little bit east of the middle of the room, and and the woman was on this table in a lithotomic position, with her parts exposed.

Q Why, I have just asked you that.

THE COURT: Now, you have asked him. Let us get an answer to the question as he understands it.

MR. Le BARBIER: Very well, sir.

A And next to the table was a small stool. On the north side of the table; on the north side of the table immediately adjacent to it was a large instrument cabinet. There was a window on the eastern side, or north side, the northeast side of the room. There was a chair near that window. Dr. Blinn was sitting in that chair. Just west of that was a

writing desk, and at that writing desk was standing Mr. Lord and Mr. Fritchman, and just east of that writing, or just west of that writing desk there was another window, and on the western side of the room there was an article of furniture which I remember was a mantelpiece, and another chair near that mantelpiece, and the disposition of the various other people is not clear to me. They were all in there moving about, between the door leading in from the hall and the prisoner.

Q Where was the wash closet? A I don't remember where that wash closet was.

Q Was there a Yale chair in that room? A I don't remember that there was a Yale chair in the room.

Q Will you say there was not? A The best I can say, Mr. Le Barbier, is that I don't remember that there was.

Q When you came back into the room after blowing the whistle, and all the others went in there, was the sheet still upon the patient? A I don't remember what became about that sheet.

Q Do you state here you do not remember whether the sheet was over the patient or not? A I think it was, but I could not-- I think that sheet was over her. That is the best I can say.

Q Do you remember this question put to you at that same time at the last trial: "Q Do you know what became of the sheet? A No, I don't know anything about the sheet."

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A Yes, sir.

MR. TRAIN: Well, what has that to do with this question? I object to it as not in any way tending to contradict him.

Q Did you make that answer? A I did.

Q Do you know what became of the sheet? A Not then, but the sheet I can say that I remember now something more about that sheet; it has just come to me. I remember that that sheet was picked up by one of the officers. That is, I think it was taken up by one of the officers with the other articles, the instruments. I think that is so, sir, but I cannot swear to it, but that is all I know about the sheet.

Q When you came back that time, did you take the patient off the operating table? A I helped her off.

Q Now, at that time, when you went up there, remembering how you were in this case, do you remember anything about the sheet at that time? A As I came back into the room?

Q Yes, and went to assist her off the operating table, as you say? A I believe that the sheet was over the patient and that I took it off.

Q Was this question put to you at the last trial and did you make this answer: "Q When you went towards her"--

MR. Le BARBIER: Question withdrawn.

Q "Q You went towards Annie, didn't you? A I went towards her. Q You went towards her for what purpose?

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A To get her off the table.

"Q When you went towards her for that purpose, did you observe that she had the sheet on her? A I don't remember anything about the sheet." Now, did you make that answer?

A Yes, sir.

Q Was that true or not? A It was true at the time.

Q Well, is it differently true now? A (No answer.)

BY THE COURT:

Q Has your recollection been refreshed by any questions asked you by Mr. Le Barbier to-day with reference to the sheet?

A Yes, sir, I remember more things now than I did before; as occasions arise I think of little details, more than I did before, and since the last trial I have thought of it a great deal, and I have thought of things that I did not think of at that time.

MR. TRAIN: If your Honor please, I have a witness who states that he has got to go to Florida this afternoon, or he says he has got to leave this afternoon; whether he means his train goes or not I do not know, but he says he has absolutely got to go to-day, and that being so, I should very much like to do all I can to facilitate him.

THE COURT: And withdraw this witness for the time being? Why cannot that be done, Mr. Le Barbier?

MR. TRAIN: You see, if I do not swear him and begin to examine him, I really won't be in position as if he

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were being examined.

MR. UNGER: Well, we will never finish with him this afternoon.

MR. TRAIN: I can finish with him in fifteen minutes.

THE COURT: Oh, well, the defense are vitally interested here, and they are entitled, of course, to the fullest investigation as to the witness.

MR. TRAIN: Yes, sir, but if I should call him and swear him and get through with him in fifteen minutes, and certainly a man going such a distance as that--

THE COURT (Interposing): But it is not nearly so important as the issues involved here. Gentlemen, I believe the jury have some rights here, and I do not propose, as long as I am sitting in this court, to keep jurors after 4 o'clock, because I think it is a great hardship to them, and at the same time if the learned counsel for the defendant tells me that he cannot finish without doing injustice to his client this afternoon, I am not going to compel them to rush the cross examination.

MR. TRAIN: No, sir, I have no desire to do that. I wish merely to make my own position with the witness as strong as possible. If he was sworn and merely asked one question he would be in process of examination.

MR. UNGER: We have no objection to that. Anything to secure his attendance, but a witness who is as important

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to the case as this witness is--

MR. TRAIN (Interposing): He has just sent word that he wants to leave at 3 o'clock.

THE COURT: Well, he cannot do it. That is the answer to that.

MR. TRAIN: Well, may I call him and have him sworn?

THE COURT: Yes, there is no objection to that, is there, gentlemen?

MR. Le BARBIER: No, sir.

(The witness Edwin D. Watkins is temporarily withdrawn.)

H A R R Y    W .    F R I T C H M A N , being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Fritchman, where do you reside?    A 116 West 94.

Q You have been subpoenaed as a witness in this case?

A Yes, sir.

Q And as I understand it, you desire to leave for Florida?    A Yes.

Q When does your train go?    A Well, I had not decided on the train. I wanted to go to night.

BY THE COURT:

Q Well, Mr. Witness, you must stay here. Your examination cannot be concluded to-day, probably, so you will have to make other arrangements. A Yes, sir.

Q You stay here and report to morrow morning. A Yes, sir.

MR. TRAIN: I can call you this afternoon and probably your cross examination will take longer than that.

(The witness Harry W. Fritchman leaves the witness stand temporarily.)

EDWIN D. WATKINS, M. D., a witness for the People, resumes the witness stand.

CROSS EXAMINATION CONTINUED BY MR. Le BARBIER:

Q You say it was at the age of 15 you commenced the study of medicine? A Oh, I commenced earlier than that.

Q Earlier than that? A yes.

Q Well, you have answered here to this Court and jury several times to-day that it was at the age of 15, if I recollect, that you said you commenced the study of women's diseases and ills? A Oh, I commenced the study of medicine before that; that is, I commenced working with the doctor when I was 13.

Q Well, what do you understand by gynecological studies?

A What is the pronunciation?

Q Gynecological. A You mean gynecological?

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Q Gynecological; pardon me. A Yes, studies which relate to the generative organs of women,

Q When did you commence the study of that? A About 15 years old.

Q Now, do you recall this question being put to you at the last trial and making this answer, upon re-direct examination by Mr. Train: "Q I do not think I made myself clear. Well, in regard to what? A With regard to the time that I began my gynecological studies.

"Q Well, I will ask you on re-direct a few questions as to that. When did you commence any preparatory study of medicine? A When I was 13 years old."

MR. TRAIN: Now, that is objected to, because it is precisely what he says now.

MR. Le BARBIER: With reference to the gynecological studies.

MR. TRAIN: That is precisely what he said.

Q Did you say that? A Yes, I said that.

Q Is that correct? Now, then, when you went into the back room there at this moment and assisted Annie off the operating table, was it then or after that that you saw money in that room? A I saw the money just as I went into the room.

Q You say Mr. Lord had the money? A Mr. Lord had the money, as I recollect it.

Q Well, do you recollect it? A Yes, sir.

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BY THE COURT:

Q What you are testifying to, Mr. Witness, is your best recollection? A Yes, sir, the best I can remember.

Q (Continuing) Of transactions four and a half years ago? A Yes, sir, exactly.

Q Well, just say so. A Yes, sir.

BY MR. Le BARBIER:

Q What happened then, after you saw the money? A I helped Annie off the table.

Q Then, where did you go with her? A I took her downstairs.

Q And where did you leave her? A At the basement door.

Q Is that where you said good by to her? A Yes.

Q Is that the last you saw of her? A That is the last I ever saw of her.

Q At any time throughout anything that you have had to do with this case, was there anything more than what you had said you, to the defendant, that this woman was pregnant? A I don't understand that question.

Q Was it simply your word to the defendant that this woman was pregnant? A (No answer.)

BY THE COURT:

Q Did you discuss the question of her pregnancy with the defendant? A Yes, sir.

Q And what discussion did you have with him? A I said

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to him that she was pregnant.

BY MR. Le BARBIER:

Q I mean to say, he took your word for that, as far as you know? A Yes, sir.

BY THE COURT:

Q What did he say? A He said all right, he would do the job.

BY MR. Le BARBIER:

Q Did you then return upstairs, Mr. Witness? A I went into the back room first.

Q Downstairs or upstairs? A Downstairs.

Q Did you subsequently come up into the defendant's office? A Yes, sir.

Q And was it not when you came up into the defendant's office, after you had said good by to Annie, after the arrest, when you came back into the office, that you went to the wash closet and there took out a tray and put instruments on it?

A No, sir.

Q That is not so, is it? A No, sir.

Q Did you go into the wash closet at all? A No, sir.

BY THE COURT:

Q Did you see a wash closet there? A I remember indistinctly that there was a wash closet, but that is very hazy in my memory. I do not remember where it was.

Q But you did not go there? A No, sir.

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BY MR. UNGER:

Q One single question with respect-- have you ever been examined before the Medical Board of the State of New York as a preliminary to your practicing medicine in this state? A No, sir.

MR. UNGER: That is all.

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Do you intend to practice medicine in this state?

MR. Le BARBIER: Objected to.

MR. UNGER: He says he is a licensed practitioner.

THE COURT: In view of the cross examination I will take an answer to the question.

Exception.

Q Do you intend to practice here in New York, or in Chattanooga? A No, sir, I intend to practice in Tennessee.

Q You stated on your cross examination that you misunderstood Mr. Le Barbier's question in relation to filing papers. Have you anything to say in regard to that? A Yes, sir.

Q Well, what is it? A I misunderstood Mr. Le Barbier in the office; I was too hasty in my answer. I filed my recommendation with the Board of Health last summer, as I was instructed by the hospital authorities, and I was registered at the Board of Health as a practicing hospital interne, and registered my name in their book, and I am licensed to practice

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in the hospital, and to attend calls that are sent in the hospital for a surgeon.

Q In other words, as long as a call comes to the hospital, you can go outside? A I can go outside, and I misunderstood Mr. Le Barbier, and I did not stop to think which office he meant.

Q Well, the difference is that his question was as to the County Clerk and you thought it was the Board of Health?

A I just registered, went down to the Board of Health this one day, and registered. I did not pay much attention to where I registered. The man just told me to go down and register, and that was all.

Q Now, do you know whether or not in point of fact Annie did give birth to a child? A I have been told that she did.

MR. Le BARBIER: Objected to, and I move to strike it out.

THE COURT: Objection sustained. Strike it out.

Q Mr. Le Barbier asked you if you thought it was important to preserve this woman's address, and I believe you said no.

A Yes, I thought it was very important not to preserve it.

MR. Le BARBIER: Objected to, and I move to strike it out.

THE COURT: Objection overruled. In view of the cross examination, I will take it.

Exception.

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Q Why did you not preserve the woman's address? A Because we promised her she would never be brought into the trial.

MR. Le BARBIER: I move to strike it out and the jury be instructed to disregard it.

THE COURT: In view of the cross examination, I will allow it in.

Exception.

Q Now, something was said about the nurse making dressings. At the time these dressings were being made up, where was this nurse? A Sitting on the stool right near the operating table.

Q And how near to Dr. Blinn? A Within two or three feet of him.

Q Was there any other case being attended to in that office except that of Annie? A Not in that office.

Q I believe you stated you had a conversation with regard to preliminary treatment, with the defendant, and that that occurred in the hall between the time you waited and the time you actually went into the rear office, is that so? A Yes, sir.

Q You were also asked if you were not a paid detective; is it not a fact that your services were purely voluntary?

A My services were purely voluntary, and I was promised that whatever it cost me, that I would be reimbursed.

Q Well, I mean, Mr. Andrews was quite a friend of yours?

A Mr. Andrews was an old friend of mine, and we had worked together on several cases.

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MR. Le BARBIER: I object and move to strike that out.

THE COURT: In view of the cross examination, I will receive it.

Exception.

Q Now, Mr. Le Barbier asked you something about smelling chloroform and read a question to you, and this was the question read to you: "Q And you had to go up to the table and pick it up and smell it?"-- and your answer was, "Oh, yes, I picked up the bottle just as soon as this happened, right after it happened, and smelled it to see that it was chloroform"-- then he did not ask you these questions and I will ask you if they were asked you and if you made the following answers: "Q Do you mean to say you went as far as the bottle and yet, before picking it up to smell it, you could not detect the odor of chloroform? A Oh, yes, I could detect the odor of chloroform from the inhaler.

"Q How far did you have to go before you could detect the odor of chloroform? A I don't remember that.

"Q Well, about how far? A Well, I must have been about two feet from it before I could smell it."-- did you make those answers? A Yes, sir.

Q Now, Mr. Le Barbier has asked if, when you visited the doctor the first time, you received any literature from him, and you said yes, you received a letter, and he asked you where it was, and you said it was in your pocket. Is it still in

your pocket? A Yes, sir.

Q Will you produce it? A Yes, sir.

MR. TRAIN: I offer this for identification.

(Marked People's Exhibit 8 for Identification.)

Q Now, is this People's Exhibit 8 for Identification, which you have referred to as literature, the agreement or paper which you say Dr. Blinn signed in your presence, and wrote out on your first visit to him? A Yes, sir.

MR. UNGER: Objected to. The paper speaks for itself.

MR. TRAIN: Then we offer it in evidence.

MR. UNGER: We object to it as incompetent, immaterial and irrelevant, and no part of the issues in this case.

THE COURT: Show it to the other side. Is there any objection?

MR. UNGER: We press the objection.

THE COURT: Let me see it.

BY MR. TRAIN:

Q You say the defendant wrote that in his own handwriting?

A Yes, sir.

Q And you saw it? A Yes, sir.

THE COURT: I will receive it and give you an exception.

MR. UNGER: Exception.

(Marked People's Exhibit 8 in evidence.)

(Mr. Train reads the exhibit to the jury.)

Q Mr. Le Barbier asked you how it was that you could

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remember so very positively about the chloroform bottle, and yet were hazy in regard to other things, and I ask you if, immediately after this transaction, you reduced to writing everything you recollected about it in the office of the District Attorney?

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A Yes, sir.

MR. Le BARBIER: I move to strike out the answer upon the same grounds.

Motion denied. Exception.

Q I show you a statement and ask you if that is your statement, to which you refer?

Objected to on the same grounds. Objection overruled. Exception.

(The paper is marked People's Exhibit 9 for Identification.)

Q Now, I show you a paper--

(Marked People's Exhibit 10 for Identification.)

Q (Continuing) People's Exhibit 10 for Identification, and ask you whether, having seen the defendant write, whether or not in your opinion the paper which you held in your hand is in the defendant's handwriting?

MR. Le BARBIER: Objected to as incompetent.

THE COURT: I think he has only seen him write once.

Q Now, will you state whether or not you received the

paper in your hand and the envelope in your hand at the same time and place? A I did.

Q Where was it? A This was sent me--

BY MR. UNGER:

Q (Interposing) No, did you receive it; that is the question. A Yes, I received it.

BY MR. TRAIN:

Q It came into your possession? A It came into my possession.

Q Did you ever speak to the defendant at any time in relation to People's Exhibit 10 for Identification?

Objected to as incompetent, immaterial and irrelevant, and as calling for a conclusion.

Objection overruled. Exception.

A Yes.

Q When? A On my second visit in October. This letter had just been received.

Q What did you say to him about the letter? A I told him I had received the letter from him and came in to tell him.

Q Did you get any response to that letter in his house?

A Yes, sir.

MR. TRAIN: I offer it in evidence now.

THE COURT: Show it to the other side. They may not object to it.

MR. UNGER: Objected to as incompetent, immaterial and

irrelevant.

BY THE COURT:

Q Upon receiving this People's Exhibit 10 for Identification, did you go to the office of the defendant? A Yes, sir.

Q Did you have the letter with you? A I don't remember that I did.

Q Did you talk with him upon the subject of a letter that you had received? A I told him that I had received his letter and had come to explain why the case had not come in.

Q You had some conversation with him upon the subject matter, did you, of the letter? A Yes, sir.

THE COURT: I will exclude this evidence. You may perhaps inquire as to the subject of that conversation.

BY MR. TRAIN:

Q Well, state in full, doctor, what the conversation was?

MR. UNGER: Objected to.

THE COURT: I refuse to receive the letter, because of the fact that the witness only saw the defendant write once, but a conversation was had with reference to a letter which he received, and the conversation is pertinent, and germane, in view of the cross examination.

MR. UNGER: Your Honor will allow us an exception.

THE COURT: Yes.

BY MR. TRAIN:

Q Well, did you state what the contents of the letter were

to him, or how was the letter mentioned? A I told him that I had received his letter, and that I had come in response, to tell him why the case had not come in.

Q What case? A He asked why the case had not come in; the case referred to in the letter.

MR. Le BARBIER: I move that that be stricken out.

THE COURT: Yes.

BY THE COURT:

Q Just so far as you can, Mr. Witness, tell the jury the conversation, and in the language of the speakers, yourself and the defendant? A I said, "Dr. Blinn, I have come in response to your letter and want to explain why the case has not come in," and at that time told him that the people had decided to be married, and that the miscarriage would be unnecessary.

Q What did he say? A He said that he was sorry, and then I told him that I had other cases that I would bring.

MR. TRAIN: Well, now, in view of what your Honor knows the letter contained--

THE COURT: I will exclude it.

MR. TRAIN: Very well; that is all.

RE CROSS EXAMINATION BY MR. UNGER:

Q Just a few questions. Dr. Watkins, did the agreement received in evidence, marked People's Exhibit 8, refer to the parties whom you told Dr. Blinn subsequently had married?

A Yes, sir.

Q It did? It did not relate to this case? A No, sir.

Q One other question. Did you yourself tell this girl Annie that she would not be required to appear as a witness, and that her name could not and would not be used in this case?

A Yes.

Q You, personally, did? A I told her.

Q Where, when and under what circumstances? A I told her when I first saw her, a week before the arrest, that we would do everything, that I myself and the rest of us would do everything to keep her from appearing in court, as she said that she could not do that, and I told her that, so far as I was concerned, that I would not want to know her name, I would not want to know where she lived, and that I would make my arrangements to meet her through a third party whose name I also did not know, but I knew where I could meet him, and I met her the second time at the 50th street Elevated station, Sixth avenue, through arrangement with this third party whose name I don't know, but I knew then where I could get him.

Q The single question is, when, where and under what circumstances did you tell her that she would not be required to appear and would not need to appear, and that is your answer, is it? A Yes, sir.

Q And do you know what was the reason why she should not be required to appear and did not want to appear? Was that

discussed in your conversation? Was it a matter of modesty on her part? A Her modesty.

Q And she allowed herself to stay in that exposed condition when ten or fifteen men came in the room, did she? A Yes, sir.

Q That is all? A I would like to state something.

THE COURT: No, no.

BY MR. TRAIN:

Q Well, you will have an opportunity to explain any testimony that you have given. Now, you have been asked if you knew the reason why this young lady was not to appear. Do you know any other reasons than what you have suggested? A Yes, I have just thought of them. She told me that she did not want her husband to know about it, and that if she appeared in court that her husband would have to know about it.

MR. TRAIN: That is all.

MR. UNGER: That is all.

H A R R Y W . F R I T C H M A N , a witness for the People,  
resumes the witness stand.

DIRECT EXAMINATION CONTINUED BY MR. TRAIN:

Q Mr. Fritchman, in the year 1903 and the month of November--

MR. TRAIN: First, I offer this for identification.

(Marked People's Exhibit 11 for Identification.)

Q (Continuing) Were you a member of the Police Force of

the City and County of New York? A Yes, sir.

Q And did you afterwards go to 165 West 47th street?

A I did.

Q And is that in the City and County of New York? A yes.

Q Were you attached to the office of any particular Assistant District Attorney? A I was attached to Mr. Lord's office.

Q When did you first see Dr. Watkins? A I think I first met him at Pabst's. I am not sure whether I first met him at Pabst's or at the District Attorney's Office.

Q Well, you met him shortly before the Sunday upon which Dr. Blinn was arrested? A Yes.

Q Had you met the other parties, this woman Annie and various other persons connected with the case from time to time in Mr. Lord's office and elsewhere? A I never met the woman Annie until that morning.

Q You did not see her until the morning at Columbus Circle? A No.

Q I will come right down to that morning. When did you get to Columbus Circle? A We went up there around 9 o'clock; somewhere around that.

Q And did these various parties meet there? A Yes.

Q And who produced this money?

MR. UNGER: We renew our objection to this testimony upon the grounds stated with respect to the questions to

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the other witness, as incompetent, immaterial and irrelevant, and not forming part of the issues in this case.

Objection overruled. Exception.

Q Who had the money? A Mr. Lord had the money.

Q Were you present when it was marked? A Yes.

Q Do you know how it was marked-- I do not ask you what; if the defense want it, they can ask. Do you know how it was marked? A Yes.

Q Now, after the money had been marked and preparations made, did you go down with Dr. Watkins and somebody else to the residence of Dr. Blinn? A Yes.

Q At that time what was your position in the Police Department? A I was a patrolman detailed as a detective at the District Attorney's Office.

Q What was your rank? A Patrolman.

Q And did you have some special billet at that time with the Commissioner? A Yes, I was confidential man to Commissioner Greene.

Q Commissioner Greene was then Commissioner of Police?  
A Yes, Commissioner of Police.

Q Now, in connection, or in giving the rest of your testimony, speak as loudly as you can, so that all the jury hear without any difficulty. When you went into the house, where did you go? A We went in the parlor first.

Q And who was in the parlor? A I don't remember that

Miscarriage both in law and in philology means bringing forth the foetus before it is perfectly formed & capable of living & is rightfully predeceasing of the woman because it refers to the act of premature delivery. The word "abortion" is synonymous & equivalent to "miscarriage" in its primary meaning. It has a secondary meaning, in which it is used to denote the offspring. It is a flagrant crime at common law & is so regarded under the statute of this State to attempt or procure the miscarriage or abortion of a woman because it interferes with & violates the mysteries of nature in that process by which the human race is propagated & continued. It is a crime of a nature which obstructs & destroys the fountain of life & is punished as a crime.

Disorderly means unruly - lawless  
factions, turbulent

midwife - A woman who makes a business of assisting at child-birth (Standard)

anyone was in there.

Q Well, who was in your party? A There was Watkins and the woman Annie.

Q And the woman? A Yes.

Q And after you had sat in the parlor, what was the next thing happened? A Dr. Blinn came in and said he would be ready for us in a little while.

Q And then what happened? A He went out again.

Q Yes? A And we waited there and then Watkins went out to see him, I believe.

Q Well, did you see where he went? A Yes, he went out into the back office.

Q Then, what? A We were told that things were ready, and Blinn took me downstairs and gave me a drink of whiskey.

Q Where did he take you? A Down in the basement.

BY THE COURT:

Q Who did this? A Dr. Blinn, the defendant.

BY MR. TRAIN:

Q Gave you a drink of whiskey? A Yes.

Q Did you have any conversation with him down there?

A I told him I was very nervous, that it was the first time I did anything like this. He says, "That's all right", and that I must not be nervous.

BY THE COURT:

Q Anything else said? Was that the end of it? A Well,

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I don't remember anything else, your Honor.

BY MR. TRAIN:

Q Well, after you had had the drink of whiskey, what was the next thing happened? A Watkins came down, and he and Blinn went upstairs together.

Q Yes? A And in about a second I followed them up, went up the same stairs, and Blinn and Watkins were standing on the landing on the parlor floor.

Q Yes, we will just go right on; tell what you remember of this Sunday morning. A Well, I remember then of seeing Blinn put the money back in his pocket. I did not see Watkins give it to him, but I saw him put this money in his pocket and he said, "I will see you later." Then we went back in the back room.

Q Well, what room did you go to? A We went in the office, like. I suppose it was his office. It is something like what the back parlor would be of a house.

Q Well, it was the back of the parlor you had been in before? A It was the back of the first room, yes.

Q Who went into that room? A Watkins and Annie and myself, and a woman dressed as a nurse, and Blinn.

Q Well, what happened, roughly speaking? A Well, there was some conversation about the operation with Blinn and Watkins. The woman was about to get on the table when Blinn made some objections about my being in there, and Watkins called me out and

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he said, "The doctor objects to you being present." So we had a talk with the woman and she was told not to allow the operation unless I was present.

MR. UNGER: I object to that, what she was told.

THE COURT: Sustained. Strike that out.

Q Well, go right on. A Well, she said she would not have the operation performed unless I was there, and I said it could not be performed unless I was there.

Q What happened then? A Then they prepared us for the operation and Blinn took this wire business that we have here.

Q Just a moment. We want to take this thing step by step. You say the woman was prepared for the operation? A Yes.

Q Now, in what way; describe to the jury? A She was placed on the table, and there was a sheet there, and Dr. Blinn placed her feet in two iron brackets, or whatever they were, on the side of this table, and shook some stuff in that thing and placed it over her nose. (Indicating)

Q What thing are you talking about? A This here, (Indicating) only this cloth was over the top of it.

Q Well, you say you saw Blinn shake something on that?  
A Yes.

Q And before he did that, or at that time, did he do anything else?

THE COURT: That is referring to some exhibit, is it, in the case?

MR. TRAIN: yes; People's Exhibit 6 and People's Exhibit 5.

Q Now, at that time, did you see him take hold of anything else or do anything else? A Yes, he took hold of this (indicating).

Q Well, pick out whatever it was. A This thing here (indicating).

Q The thing you have got in your hand? A Yes.

Q People's Exhibit 1; well, did you notice what he did with that? A Why, I don't just remember. I know that he adjusted it. He was working with these things here (indicating).

Q With the screw? A With the screw.

Q Well, you do not remember what he did with it? A No, I don't remember now.

Q Was there some signal upon which you arrested him?

A Yes. Watkins was to tell me the proper moment.

Q Well, what was this signal? A He punched me in the ribs.

Q Well, did he punch you in the ribs? A Yes.

Q Then, what did you do? A I placed the doctor under arrest.

Q What did you say? A I said, "That is enough, doctor; you are my prisoner."

Q And did you do anything at the time? A Well, he walked

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towards me, and we had been told--

Q (Interrupting) Never mind what you had been told.

A Well, he walked towards me and I kind of pushed him away, and he jumped to the other side of the room, and I pushed him into the Morris chair.

Q Did you take a gun? A Well, I took a gun out of the desk. He tried to go to the desk there and I pushed him away from the desk and opened it and took this gun.

Q Took a gun which was in that desk? A Yes.

Q Did you draw your own gun? A Yes.

Q You had your gun during this time you were pushing him?

A Yes.

Q In the meantime, what had become of Watkins? A I gave Watkins my police whistle to go outside and blow it for the rest of the men that were out there, the two Assistant District Attorneys and some officers. He went outside and blew the whistle.

Q Well, now, what was the next thing you did with Blinn?

A Why, I kept him there until Mr. Lord came in, and took the money out of his pocket in the presence of Mr. Lord.

Q Where did you get the money? A Out of his vest pocket.

Q And in what form was it? A Five \$100 bills.

Q And did you examine with Mr. Lord the marks on the bills?

A Yes, we compared them.

Q And were they the same bills which you had marked in

the Pabst Cafe a short time before? A They were, yes, sir.

Q Did you have any conversation with Blinn at this time?

A Why, he asked me if he could use the telephone, and I allowed him to use the telephone.

Q And then these other men all came in? A They came in.

Q Do you remember a colored man, this one in court here, was he there? A No.

Q When did you first see him; where did you first find him? A My recollection is that Rappolt brought him up out of the basement, and I handcuffed him to the doctor.

Q You did not see this colored man until another officer brought him upstairs? A No.

Q Then you made him a prisoner and put cuffs on him and Blinn at the same time? A Well, we released him. We did not take him to the station house. We found out he was only a servant.

Q Well, you let him go? A Yes.

Q And you mean to say you did not see him until he was brought upstairs by Rappolt? A No.

Q Now, this woman, this Bergquist woman, when did you first see her? A First saw her in the hall when we started to take the doctor out.

Q Was she in the room at any time? A No.

Q You saw her in the hall when you were taking the doctor out? A In the hall, her and another girl.

Q Her and another woman? A Yes, two nurses upstairs.

Q Did you take this nurse, this Mary Miller to the station house too? A Yes, locked her up, yes, sir.

Q Well, now, you took the defendant to the police station; that was on Sunday? A Yes.

Q When did you arraign him? A Monday morning.

Q Where? A At the Tombs Police Court, in this building.

Q And was there any hearing on that occasion? A No.

They asked for an adjournment.

Q Now, was the defendant admitted to bail, or was he locked up? A The Magistrate continued the bail that had been furnished at the station house.

Q And when was the hearing adjourned to? A Until the following Wednesday.

Q Now, on Wednesday morning, or at the time of the hearing, did the defendant appear? A No, he did not show up.

Q Did you look for him? A I did.

Q Where did you look? A Well, I went up there to his house, and looked all around the city, got around among his friends.

Q Did you make any trips out of the city to look for him?

A Yes.

Q Where did you go? A Philadelphia.

Q Where else? A That is all.

Q How many trips did you make to Philadelphia? A Two.

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Q How long did you look for him? A I looked for him for about six weeks.

Q How many years was it before you saw him again?

A Nearly five.

Q And where was the next time you saw him? A Jersey City.

Q How did you come to see him in Jersey City? A I was telephoned to, to meet him there.

Q When?

MR. Le BARBIER: Objected to as incompetent and immaterial and irrelevant, and I ask that it be stricken out.

THE COURT: I will take it.

MR. Le BARBIER: Exception.

MR. UNGER: We move that the answer of the witness be stricken out.

MR. TRAIN: I consent that the contents of the message be stricken out. Perhaps that is somewhat irregular.

THE COURT: Yes. Strike that out.

Q You got a telephone message? A Yes.

Q Where was it you got this telephone message? A At my house.

Q In New York? A Yes.

Q When was it you got it? A I think it was of a Monday or Tuesday. I am not sure which now.

Q Well, was it after this case had been set for trial the last time? A Yes. I didn't know the case was up for trial. I had not been subpoenaed yet.

Q Well, you got a telephone message? A Yes.

Q What time of day or night was it you got this message?

A In the morning.

Q What time did you go to Jersey City? A Around 10 or 11 o'clock.

Q In the morning? A Yes.

Q You went over on the Pennsylvania boat? A Yes.

Q And did you land at the Pennsylvania terminal? A Yes.

Q And when you got off the boat, where did you go?

A I went down in the station, and looked around the station.

Q Where is the station? A Well, it is right there at the end of the ferry.

Q Well, it is at the other end of the building, is it?

A The other end of the building, yes.

Q And did you see Blinn? A Why, I did not see him until I had walked around the place there. Then I saw him in the Jersey City entrance.

Q Well, it was in the entrance? A Yes.

Q Was he downstairs or up? A He was on the stairs.

Q Did you start to go out? What we want to get is, how you came to find Blinn? A I was going to walk down into Jersey City.

Q And you met him on the stairs? A Yes, I saw him there.

Q What happened? A There was another man with him.

Q Who was the man? A Mr. Stevens.

Q The counsel for the defendant? A Yes.

Q Where was Mr. Stevens? A Right there with Blinn.

Q When you say that, where were they? A They were right on the stairs, right at the head of the stairs, coming down into Jersey City.

Q Were they coming up or standing there? A No, they were standing there.

Q What happened? A I walked downstairs, and they walked down after me. Then Blinn-- I was going to take the ferry and go back again, and Blinn, when he came out there alone, I spoke to him, and he says, "Are you Fritchman?", he says, "I did not recognize you," he says; "wait a minute," and he went back to Mr. Stevens, and then Mr. Stevens walked over to the glass and looked at me.

Q How do you mean, the glass? A The glass in the door there.

Q Were you separated from Mr. Stevens by a door? A Yes.

Q Then, what happened? A And he looked at me, and there was one or two others there that looked at me. So I thought it was some kind of a--

MR. Le BARBIER: I object to his thoughts.

THE COURT: Yes, strike that out.

Q Well, when you went downstairs there you had to pass Blinn? A Yes.

Q Well, at that time, did you accost him? A No.

Q Or did he speak to you? A No, he did not know me.

Q Oh, he did not recognize you? A He did not recognize me.

Q But when you went downstairs, you found he had come down too? A Yes.

Q Well, did he say anything about why he wanted you over there? A He said nothing at all.

Q What did you say, anything, to him? A No.

Q What did you say to him about not knowing him? A He said, "You have lost a lot of flesh; I would not recognize you." I said, "Yes, I have lost a lot of flesh." He said, "Wait a minute," and went in and had Mr. Stevens look at me.

Q Then, what was the next thing happened? A The next thing happened, I went outside and got a policeman there to look at Stevens and Blinn.

Q You brought a policeman in? A Yes.

MR. Le BARBIER: I move that that be stricken out as incompetent.

THE COURT: Strike it out.

Q Well, did you bring him in, in their presence? A Yes, they saw him right there.

MR. TRAIN: Well, why is not that part of the

transaction?

Q Well, that was all there was to it?, A That was all, yes.

Q And your telephone message had no further result than that you had a trip over and a trip back? A Yes.

MR. UNGER: probably they had a trip over and back too.

MR. TRAIN: Yes, perhaps so.

CROSS EXAMINATION BY MR. Le BARBIER:

Q When you were appointed to the Police Force of the City of New York-- when was it? A I think it was on September 11th, 1903.

Q And is the City of New York still favored with your services as a police officer?

MR. TRAIN: Objected to as trivial.

THE COURT: As to form it is improper. Objection sustained.

Q Are you still on the Police Force? A No.

Q Have you been dismissed from the Police Force? A No, sir.

Q In order to get the issue squarely and sharply, is it not a fact that as a police officer of this city of New York, you have been dismissed from it? A No, sir.

Q How long was it after your appointment in the Police Force of this city, that you made the arrest in this case?

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A I just forget the date of the arrest.

Q Well, November 20th, 1903.

MR. TRAIN: November 22nd.

Q November 22nd, 1903. A The September previous to that.

Q Is it not a fact that you were appointed to the New York Police force on September 11th, 1903? A Yes, sir.

Q Is it not a fact that you were dismissed from the Police Force on July 1st, 1906? A It is not.

Q Is it not a fact that the reason of your dismissal was five days absence without leave?

MR. TRAIN: That is objected to. He says he was not dismissed.

MR. Le BARBIER: Well, we want to take issue with him.

THE COURT: I will permit the question to be answered.

A My understanding--

Q (Interrupting) Now, is it, yes or no? A Give me the question again?

Q (Question repeated by the Stenographer.) A Not that I know of.

Q Are you able to answer that question categorically, yes or no? A No.

THE COURT: Counsel, he said that he was not dismissed. That comes pretty near covering it.

THE WITNESS: May I explain it, your Honor?

THE COURT: No. If there is anything to be brought out, counsel for the people will bring it out.

Q Did you look for the defendant anywhere outside of the State of New York? A Yes.

Q I understood you to say you went to Philadelphia?

A Yes.

Q And that was the only place? A No.

Q You went to other places? A I did not go to other places.

Q What? A I did not go to other places, but I looked for him at other places without going there. I knew he was in Canada.

Q Did you yourself go to any place outside of the City of New York and Philadelphia to try to find the defendant?

A No.

Q Was this question put to you, and did you make this answer at the last trial, page 168: "Q Where did you look for him? A I went to Richfield, New York." A Oh, pardon me, yes, I did go to Richfield.

Q That refreshes your recollection? A Yes, it does, but not alone.

Q But you did go to Richfield? A I did go to Richfield. I had forgotten that.

Q Well, have you forgotten any other place you went to?

A No.

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Q On the morning of November 22nd, 1903, did you go to the premises of the defendant? A Yes.

Q How long did you remain in the--

MR. Le BARBIER: Question withdrawn.

Q Who was in company with you? A The woman known as Annie, and Watkins.

Q Where did you go?

MR. Le BARBIER: Question withdrawn.

Q Into what room did you go when you entered the defendants premises the first time? A We went in the parlor, in the front room.

Q How long did you remain in there? A Oh, I don't quite remember. I think it was twenty or thirty minutes, maybe longer; I don't know.

Q Then, did you go into the doctor's room? A I think I went downstairs first with the doctor.

Q If Dr. Watkins says you went into the room with him, he is mistaken, is he? A I don't say that. I may have went in. I say I think I went downstairs first with the doctor.

Q Had they gone in the doctor's office when you went downstairs for the drink? A I think they were, yes-- no--

Q What is it, yes or no? A Blinn was downstairs with me. I don't know where Watkins was at the time.

Q After you had gone into the doctor's parlor and remained there for some time, what was the first thing then that happened?

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Did you all go into the back office, or what did you do?

A Well, Blinn came in first and then we went out. The woman went into the back office, and I don't remember whether I went in there with Watkins at that time or not, but I know that I did go downstairs with the doctor almost immediately after I left the parlor.

Q Will you say that you did or did not go into that back office with the doctor at that time? A I don't remember.

MR. TRAIN: Objected to. He says he does not remember.

THE COURT: I will take it.

Q (Continuing) And the woman? A I don't remember. It is a long while ago.

Q Did you go downstairs then? A I went downstairs shortly after I left the front room.

Q When you left the front room, did you leave Annie and Dr. Watkins in the front room? A No, I think they were in the back room.

Q But you are positive, if I understand you correctly, that you did not go into the back room at that time? A I did not say so, no, sir.

Q Well, what is it? A I don't remember whether I went in there before I went downstairs or not.

Q Then, you went downstairs, didn't you? A I did, yes.

Q Who came down then? A Well, Dr. Blinn-- after I

finished drinking, Watkins came down.

Q When you went downstairs, was there anybody down there besides you two? A No.

Q Into what room did you go downstairs? A What would be known as the dining room.

Q Who served the whiskey? A Dr. Blinn.

Q You are sure about that, aren't you? A Yes.

Q That is not a case of you don't remember for that answer, is it?

MR. TRAIN: That is objected to.

THE COURT: Sustained. The form is improper.

Q Are you positive that it was the defendant who gave you the drink of whiskey? A I am.

Q Did you ever see this colored mar before (indicating)? A Yes.

Q Did you see him on the premises that day? A After I had arrested the doctor.

Q Isn't it a fact that when you went down into the dining room he was there? A It is not.

Q That you remember very well, don't you? A Yes.

Q But isn't it a fact that it was he who served you with the whiskey? A It is not.

Q And that you remember well too, don't you? A Yes, sir.

MR. Le BARBIER: Indicating George Williams, who comes to the bar.

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Q How long did you remain down there? A A few minutes.

Q Who was the first to leave? A Dr. Blinn, or Watkins and Dr. Blinn together.

Q Well, which was it? A Well, they went up together.

Q Did you follow them up? A About a second after, yes.

Q Did Dr. Watkins get out of your sight? A He did.

Q And did Dr. Blinn? A He did.

Q And you have read your testimony over since the last trial, haven't you? A No, sir.

Q You have not? When you came upstairs, where did you go?  
A Into the back office.

Q Who were in the back office at that time? A Dr. Blinn, Mrs. Miller, Annie, Watkins and myself.

Q Describe generally, the objects in that room, will you, please? A Well, there was a Morris chair, a desk, this table, the operating table, a screen, a case of instruments; I think there was another chair. That is about all I remember.

Q Wasn't there a Morris chair in that room? A Yes.

Q In what part of the room was that? A In the northeast corner.

Q Was anybody on that chair? A No.

Q When the defendant came up with Dr. Watkins and went into the inner office, how long after they had gone in was it that you went in? A What is that?

Q (Question repeated.) A The three of us entered together.

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Q Then, what happened; please state? A Well, he placed Annie on the table, fixed her clothes up over her, and fixed her feet.

Q Who did that? A Dr. Blinn, shaking out this chloroform, put it on her face, over her mouth and nostrils.

BY THE COURT:

Q Did he do all this himself, or did he ask anybody to assist him? A He did. The nurse assisted him in placing her on the table. He fixed her feet himself, and she assisted him in pulling her clothes up.

Q Apart from the clothes, nobody else had anything else to do with the table or with Annie? A No, your Honor.

BY MR. Le BARBIER:

Q Just before I continue on that; then, from where did you enter the back room for the first time, from coming up from downstairs? A I don't remember whether it was when I first came out of the parlor, or whether the first time I went in was the time I came up from having the drink.

Q Did you go into the back office from the parlor?

A I don't remember. I know that-- I cannot say whether I went in there first when I came out of the parlor, or when I came up from the basement.

Q Was this question put to you at the last trial, and did you make this answer to it: "At the time that you entered the room--" I mean the operating room; I mean the question before.

MR. Le BARBIER: Question withdrawn.

Q (Reading) "By the court: Did you assist in placing the patient on the operating table? A No, sir, no, your Honor, I did not. By Mr. Le Barbier: Q At the time that you entered the room for the first time, at the time you entered this inner office, the office, that back room for the first time, with whom did you enter? A Watkins--" did you make that answer?

A If it is there I must have made it.

Q Well, did you? A I did.

Q Well, why do you say now you don't recollect? A Because I don't.

Q Do you mean to say that at a trial had here only about a month or so ago you don't remember now what you said? A I do.

Q You do say that, seriously, to this Court and jury?

A Yes, sir.

Q I will continue: "Q Dr. Watkins? A Yes, and Annie." Now, do you remember adding that? A Dr. Watkins, what? I don't understand that. Do not shout so.

Q You, Watkins and Annie going in there together?

A That we went in there together?

Q For the first time, yes. A Well, at the time I testified--

Q Now, did you make that answer? A If it is there, I did, yes.

Q Well, what do you say; is that true or not true?

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A For this reason--

Q (Interrupting) Is it true or not? A Yes, it is true.  
At that time I had read some of my testimony. Since the trial  
I have not read it.

BY THE COURT:

Q What do you mean, you read some of your testimony?  
Did you take something down to refresh your recollection?

A No, your Honor. I refreshed my recollection when the trial  
first came up, your Honor, by reading a statement I had made.

Q A statement you had made at the time? A Yes, at the  
time the arrest was made, and that was when I testified the last  
time. Since then I have not seen it, your Honor.

BY MR. Le BARBIER:

Q Then, it is not a fact, if I understand you correctly,  
that the first time you went into that inner office, that you  
went in there with Watkins and Annie? A No, it is a fact, the  
first time I went in there.

Q It is a fact? A Yes; you have refreshed my memory  
from that testimony.

Q (Reading) "Q And at that time you could see the  
operating table, could you? A Yes." A Yes.

Q (Reading) "Q At that time there was a tray there of  
instruments? A Yes." A Yes.

Q Is that right? A That's right.

Q (Reading) "Q And you saw the instruments on the tray?"

A Yes." A Yes.

Q Now, that there will be no mistake about it, that is when you went into that back office the first time? A That is right.

Q With the doctor and with Annie? A That's right.

Q And it was then, Mr. Witness, that you saw the instruments there? A<sup>th</sup> Yes. I saw them when I came up from downstairs too.

Q That is not the question. Did you see them then, when you went in? A When I went in that room the first or second time, no matter what time it was, the instruments were there.

Q Always were there, were they? A Always, any time that I was in the room, yes.

Q Now, let us get back to where you came up from downstairs, after having had your drink, as you say; when you went in the room there then, with the people whom you have mentioned, what did you see the doctor do? A Just as I told you, he put Annie on the table, and the nurse helped him, assisted him. He arranged her clothes up over around her waist and fixed her feet, and shook out this chloroform on that arrangement there (indicating).

Q And took out chloroform? A He shook chloroform, took the chloroform bottle and shook the chloroform.

Q And then you arrested him? A No, I did not.

Q You did not arrest him then? A No.

Q Now, what did you do? A I arrested him when he came back from the head of the operating table.

Q With the chloroform? A No.

Q Well, what, under what circumstances? A I don't know what he did with the chloroform bottle then. He came back and picked an instrument off the tray.

Q Did you see him make use of the instrument? A (No answer.)

BY THE COURT:

Q Did he have the instrument in his hand when you put him under arrest? A Yes, your Honor.

BY MR. Le BARBIER:

Q What is that, did he? A He did.

Q What instrument was it? A (Witness indicates.)

This one, I think.

Q This instrument? A Yes.

Q Now, about the chloroform, Mr. Fritchman? A Well, I don't remember what became of this, (indicating) but this was over her face (indicating).

Q Well, the instrument you picked out, he had in his hand at the time you arrested him, is that so? A Yes, people's Exhibit 3.

Q That is the uterine probe; that is the one he had in his hand? A Yes.

Q Do you know what had become of the chloroform bottle?

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A No, I don't remember what had become of that.

Q Did he have it in his hand? A Well, I saw it in his hand once, but he did not have it in his hand when I arrested him.

Q Now, when you saw him with the chloroform bottle in his hand, where was the defendant? A Where was he? He was right at the head of the operating table.

Q You saw him with the bottle there? A Yes.

Q What did you see him do with the bottle? A Saw him shake it on that, what you call it, this thing here. (Indicating-)

BY THE COURT:

Q What is the number of the exhibit? A People's Exhibit 6.

BY MR. Le BARBIER:

Q You were watching him, were you not? A Yes.

Q You were there to watch him? A Yes.

Q Now, when you were there to watch him, what did he do with the chloroform bottle? A The chloroform bottle, I don't remember what he did with it.

Q Don't you recall what he did with the chloroform bottle?

THE COURT: He says he does not, counsel.

Q Then, what did he do? A He placed that thing over her mouth and nose. (Indicating)

Q Just left it there? A Yes.

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Q Then, the defendant went where? A He came down to the end of the operating table.

Q Then, what did he do? A Picked up that instrument (Indicating).

Q And what did he do? A Just turned towards the patient, when Watkins punched me in the ribs.

Q And is that you say when you arrested him? A Yes, he wiped that off with a towel.

Q And is that all he did? A Well, that is about all I remember, yes.

Q Now, do you recall this question being put to you at the last trial and this answer being given: "Q Now, the speculum, one of the exhibits here--" page 197-- "did you see the defendant make any use of it? A Is this the speculum? (Indicating)"

MR. Le BARBIER: Indicating in that case People's Exhibit 9.

Q (Continuing reading) "Q Yes. A Why, he fitted it, if I remember it rightly". Did you testify that way? A What do you mean by the speculum?

Q Well, you evince great ignorance at this trial.

THE COURT: Now, counsel, just ask questions and do not scold the witness.

Q Well, I will ask you first, before I show you the speculum, did you make that answer? A If it is there, I did.

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Q Now, will you kindly pick out the speculum? That is the speculum, showing you People's Exhibit 1 in this case, and People's Exhibit 9 in the other case. A Well, I testified a little while ago that he had adjusted that. I meant by that that he had fitted it. That is what I meant, for adjusting and fitting are the same thing.

Q Now, when was that? Let us get at that? A It was during the time we were there.

BY THE COURT:

Q Was that prior to the chloroforming? A Yes, sir, it was prior to the chloroforming.

BY MR. Le BARBIER:

Q Did he leave it in her? A I believe he did, if I remember rightly, he did.

Q Will you state to the Court and jury that he did?

A I cannot state positively, because I don't remember.

Q But you saw him fit it, as you say? A I saw him fit it and adjust it, yes.

Q To the woman? A Yes, to the woman.

Q And did he have his coat on or off at the time? A He had it off.

Q Do you recall testifying at the trial the last time when you were asked about it, that you did not know whether he had his coat on or off? A I did not testify to that.

Q Was Dr. Watkins there all during this time? A All the

time.

Q Right there? A Right there.

Q By the operating table, as you say? A Yes.

Q By the woman, near the woman? A Yes.

Q And near the defendant? A Yes, sir.

Q And was Dr. Watkins there when the defendant adjusted that exhibit, People's Exhibit-- near to the woman? A Yes, this, you mean? (Indicating)

Q Yes. A He was.

Q He was there? A Yes, sir.

Q And you saw that, as you state? A Yes.

Q And Dr. Watkins saw it? A Yes.

BY THE COURT:

Q You mean, do you not, Mr. Witness, that he was there?

A He was in the room.

Q Were you observing Dr. Watkins, whether he was looking at this or not? A He was there in the room. I don't know whether he was looking at this or not.

BY MR. Le BARBIER:

Q Well, what did you mean just a moment ago when I asked you if Dr. Watkins saw it, and you said yes? A Did you ask me that?

Q At the time when the defendant went downstairs and gave you the drink, did he have his coat on or off? A He had it off.

Q When he went downstairs? A Yes.

Q When he came upstairs and then received the money from Dr. Watkins, he had his coat off? A Yes. That was the best of my recollection.

Q Now, you have answered yes; do you qualify that now?

A Yes.

Q And when you and Watkins and the defendant went into the office, his coat was off? A I think it was, yes. I know his coat was off when I arrested him.

Q It was? A Yes.

Q When was it he put his coat on? A When I went to take him to the station house.

Q You are positive about that, Mr. Eritchman, are you?

A I know he had his coat on when I took him out.

Q No, a coat off when he was in there? A Yes.

Q Was this question put to you by the Court at the last trial and did you make this answer: "Q Now, have you any recollection whether at any time between the time you arrived at the premises of Dr. Blinn and the time when you left, that the defendant had his coat off? A I cannot state positively at any one time. I cannot remember." Did you make that answer? A Will you read the rest of that?

Q Did you make that answer? A I did. Will you read the rest of it?

MR. Le BARBIER: I ask that that be stricken out.

BY THE COURT:

Q Now, Mr. Witness, the cross-examiner has a right to get an answer to his question. A Yes, sir, your Honor.

Q And do not get into any controversy with him. A Very well, sir.

Q He is strictly within his rights, and when you say something as you have said now, you are not within your rights, and do not offend again. A All right, sir.

BY MR. Le BARBIER:

Q You said, Mr. Fritchman, that you remember more positively now about it when you have not refreshed your recollection. A Because I have been thinking it over more.

Q Have you been thinking about the case? A Yes. I had not heard anything of the case in almost five years until I was called here to testify one morning, and I came here at an hour's notice.

MR. Le BARBIER: I move to strike that out as not responsive.

THE COURT: Yes, strike it out.

Q Did you see the defendant put any money in his pocket?

A I did.

BY THE COURT:

Q What pocket did you see him put it in? A In his vest pocket.

BY MR. Le BARBIER:

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Q At that time, the defendant, had his coat off? A He did.

Q Which side, vest pocket? A I think it was the left vest pocket.

Q What was the position of the defendant at this time?

A He was standing with his back towards 47th street; Watkins had his back towards 48th street.

Q That is, after they came upstairs from downstairs?

A Yes, sir.

Q Before they went into the operating room, the defendant went down the hall a little ways, did he? A Yes.

Q And then turned around, so that his back would be towards 47th street? A Turned around and faced Watkins.

Q And Dr. Watkins went down the hall a little ways?

A With the defendant, yes.

Q And you were coming up from below at that time?

A Yes.

Q And at that time you saw Dr. Watkins hand the money--

A (Interrupting) No, I did not.

Q I withdraw that. And at that time, you then saw Watkins facing the defendant and the defendant facing Watkins?

A Yes.

Q Then, where were you just at that moment? A I was just coming upstairs, with my eyes just above the level of the floor, looking through the banisters.

Q Had Watkins turned around at that moment to go into the operating room? A He had not, no. They did not turn around until they saw me.

MR. Le BARBIER: That is all.

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Just one question. Mr. Le Barbier asked you in relation to your testimony on the previous trial, about the doctor's coat, and I ask you if your answer to the question was this:

"Q Have you any recollection whether at any time between the time you arrived at the premises and the time when you left the defendant had his coat off? A I cannot state positively at any one time. I cannot remember." A Yes.

Q Then, in relation to the speculum, whether you did not testify as follows: "Q Now, the speculum, did you see the defendant making use of it? A Is this the speculum? (Indicating people's Exhibit 9.)

"Q Yes. A Why, he fitted it, if I remember rightly.

"Q Put it in the girl? A Yes.

"Q You saw him put it in the girl? A He went close there. I don't know whether he put it in or not. I would not swear to that.

"Q Well, I would like you to answer it if you can.

A Well, I cannot. I know he adjusted it." Did you make those answers to those questions? A Yes.

MR. TRAIN: That is all. Now you can go to Florida.

RE CROSS EXAMINATION BY MR. UNGER:

Q No, just a moment. But you do swear now that he did adjust it to the woman--

MR. UNGER: Well, never mind. You can go to Florida now.

BY MR. TRAIN:

Q In view of that question, I ask you whether your testimony is that you saw him adjust it and put it inside the girl, or whether you saw him adjust it?

MR. Le BARBIER: Objected to as already answered.

THE COURT: No, I will take it.

MR. Le BARBIER: Exception.

A I really could not say positively that he put it in the girl. I am pretty sure that he did, but at this late date I cannot remember whether I saw it inside of her or not, but I know he was very close there, and in the excitement I don't know whether it was taken out of her or whether she took it out herself, or even whether it was in there. It is too long.

MR. UNGER: That is all.

THE COURT: Gentlemen, we will take an adjournment until half past 10 o'clock tomorrow morning.

In the meantime, do not discuss the case, or form or express any opinion on it, but keep your minds open until

it is finally submitted to you.

(The Court thereupon adjourned the further trial of the case until tomorrow, Wednesday, April 8th, 1907, at 10:30 o'clock a. m.)

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New York, April 8th, 1908.

TRIAL RESUMED.

LOUIS RAPPOLT, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q You are a member of the Police Force of the City of New York? A Yes sir.

Q And you are now a probation officer attached to Judge Kernochan, one of the City Magistrate's? A Yes sir.

Q You were a policeman on the 22nd of November, 1903? A Yes sir.

Q And at that time you were a patrolman, or what was your position? A Yes sir.

Q You were a patrolman? A Yes sir.

Q And were you assigned, or how did you come to be one of the men connected with this arrest? A I was --

MR. UNGER: We object to that as incompetent, immaterial and irrelevant.

MR. TRAIN: I will withdraw it.

Q You were one of the persons who went to the premises 165 West 47th Street? A Yes sir.

Q And you went as a member of the Police Force? A Yes sir.

Q And who was the person who directed you there?

MR. UNGER: We object to that as incompetent, immaterial and irrelevant.

MR. TRAIN: I merely wanted to know under whose orders he went. He went there as a private.

THE COURT: I will allow it and give you an exception.

MR. UNGER: Exception.

A Mr. Frank A. Lord.

Q You went with him and others? A Yes.

Q Now, what did you do there? A I was stationed in the vestibule in an unoccupied building on the opposite side of 47th Street, from 165.

Q And what happened, just in a word; what was the first thing happened? A Well, on the blow of a whistle, I ran across the street and entered the premises 165 West 47th Street, and entered a room and I found officer Fritchman with the defendant up against the wall, alongside of a chair, standing in front of him with a gun in front of him.

Q Well, this is five years ago? A Yes sir, about that.

Q And did you see any -- well, that is practically all you know about the case? A Yes.

Q There were a lot of people in the room? A Yes.

Q Oh, I will ask you this: There was a colored man here yesterday, and also on the last trial, George Williams;

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do you remember him? A Yes, I remember him.

Q Now, on that morning, Sunday morning, did you see that colored man? A I have not any recollection of seeing him.

Q Well, do you remember that individual? A Yes.

Q Do you remember seeing a colored man in the premises? A Yes sir.

Q Where was that colored man when you saw him? A The first I saw of the colored man was when he stood alongside of the defendant. He was handcuffed to the defendant.

Q You did not see, or did you see him when you went into the room? A I did not.

Q And do you know how long you were in the room before the colored man was brought in, or came in? A Well, I should judge about all of ten minutes.

Q Well, do you know who brought him in? A I have not the slightest idea.

Q I ask you that because Fritchman thought you --

MR. UNGER: No.

THE COURT: Now, I want to ask counsel if they have any motion or remarks to make, that they will rise in their place, and address the Court. The Court considers it impolite to the Court and impolite to the jury to address remarks to the counsel or witnesses from their chairs.

Q Well, you do not know how the colored man got in

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there? A No sir.

Q Well, as far as you remember it, who were the people -- did you go in with the end of the crowd? A I was the first in the building.

Q When you went in there, do you remember who was in there? A Yes sir.

Q Well, who were in there? A Officer Fritchman, the defendant, Dr. Watkins, Mrs. Miller, and a woman known as Annie.

Q And then you came in? A Yes sir.

Q And behind you there were others? A Yes sir.

Q And do you remember -- well, there was Corrigan and Lord, and who else do you remember? How many officers were there? A I think there were three.

Q Well now, did you stay there until the colored man was brought in there? A I was in there all the time, but I don't know how he got up there.

Q Well now, when you left the room, where did you go? A Well, I did not leave the room until we started to go to the station house.

Q Well now, this woman Bergquist, have you seen her in court, that woman in a blue suit and a hat with plumes sitting in the back of the room here, at the right? You saw her at the last trial? A Yes sir.

Q Did you see her there at all, and, if so, where?

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A Well, I have a slight recollection that she was brought downstairs, but I cannot just recall.

Q Oh, did you see any money? A No sir, I did not.

Q You did not see any of that? A No sir.

CROSS EXAMINATION BY MR. UNGER:

Q Were you the first man who got in there? A Yes sir.

Q You are quite positive of that? A Yes sir.

Q And Mr. Lord, before he or anybody else got in there? A Yes sir.

Q As you got in the room, what did you notice, what did you see? A Well, as I stated before, the defendant was up against the wall with Fritchman standing in front of him with a gun in his hand, and Dr. Watkins and the nurse in the room, and this woman known as Annie, standing alongside of an operating table.

Q Annie standing alongside the operating table? A Yes sir.

MR. UNGER: That is all.

BY MR. UNGER:

Q Nobody else was in the room then except these people you have mentioned and yourself? A As I entered.

Q As you entered, and Annie was standing alongside the operating table? A Yes sir.

MR. TRAIN: Is there any objection to my calling these

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two witnesses, Mr. Corrigan and Mr. Lord, when they arrive, and have you go on with your case?

MR. UNGER: We have no objection to your reserving the right to call them later.

MR. TRAIN: Well then, that is the People's case.

THE COURT: What disposition have you made?

MR. TRAIN: The defense agrees that when Mr. Lord and Mr. Corrigan come, they may be put on.

MR. UNGER: But we have assumed that the evidence is practically all in, and that this constitutes your case. I intend to address a motion to the court to advise an acquittal on this case as it stands.

MR. TRAIN: I do not think that on that motion their evidence would make the slightest difference.

MR. UNGER: If your Honor please, I move that your Honor advise the jury to acquit, upon the ground that all the evidence, taken together, is insufficient to warrant a conviction by this trial jury. It is not my purpose to sum up the evidence, nor go into any extended analysis of it, because, while I do feel that upon the whole state of the facts as presented, whatever result the jury may reach with respect to it, if the case ever went to them, yet, as a matter of law even, I question whether upon the state of facts as here presented such proofs are in evidence as would ever justify or warrant a conviction.

I will not dwell, if your Honor please, upon what I feel, within the bounds of reason I may justly characterize as the fearful mass of contradictions involved in this case. For instance, with respect to the testimony of Watkins and Fritchman, that at the time that they returned, when Watkins returned to the room, and when this raiding party entered the place, the woman was there on the operating table in an exposed condition; whereas, we have the testimony of this officer Rappolt, flatly contradicting or presenting a state of facts, which are probably within the bounds of reason and probability, that she was standing alongside of the chair and not in that condition. I will not dwell upon the other vital phase of the proof in this case, to-wit, where Dr. Watkins swore that he and Fritchman and the woman Annie first entered the office of the doctor together, at which time Watkins swore positively that there were no instruments at or near the operating table, but that he did afterwards find certain instruments there, which must have the impression on the jury's mind that the instruments were brought out for the purposes of this operation; whereas, we have Fritchman's absolute and positive testimony that at all times, and from the first time he went in there, there were the instruments lying there. Nor will I dwell upon the phase of the case, vital and important to this, for an at-

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tempt at abortion, by the use of instruments, where Fritchman swears that there was the speculum used, and inserted in the woman, and that she may have herself taken it out, for all he knew; whereas, you have the sworn testimony of Watkins, for what it is worth, a doctor who would have noticed anything of that kind, swearing that he did not see an instrument even in the hands of Dr. Blinn, let alone its use upon the person of the woman; but my motion we will base upon those grounds, and the general trend of the testimony, as more particularly directed to what is purely a legal proposition, from which, in my humble judgment, there could be no escape in this case.

The indictment, as your Honor is well aware, is one for an attempt at abortion, based upon the "attempt" section of the Code, and for the consummated offense, as set forth in Sec. 294. Your Honor will observe likewise that this indictment specifically is for an attempt at abortion by the use or attempted use of instruments; not by the administration of any medicine, drug or substance; and, while it might be from the proofs presented in this case, assuming the jury would believe them, there might have been some suggestion or pretense of a claim of an attempt at abortion by means of a medicine, drug or substance, in connection with the use of chloral, while that was merely incidental to the matter, yet, they had not the hardihood to claim it, and

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they felt, if they had any claim for an offense here, it would be means of an instrument.

Now, in that connection, whatever the reason of the law may be, and no doubt our Legislature was <sup>guided</sup> guarded by good and sufficient reasons in prescribing and laying down the law as we understand it, they do make this very substantial difference between abortion by means of a medicine, drug or substance, and by means of an instrument or other means, that is, means, separate, independent and apart from medicine, drug or substance. Your Honor will observe that the abortion Section is subdivided into two parts. It prescribes generally: "A person who, with intent thereby to procure the miscarriage of a woman, either (1) prescribes, supplies or administers to a woman, whether pregnant or not" -- your Honor will observe the importance of that limitation -- "whether pregnant or not; or advises or causes a woman to take any medicine, drug or substance" -- that would make it possible to commit the attempt at abortion by means of a medicine, drug or substance, where the woman might not be pregnant; that is, it might be in one of the earlier stages of conception; but when it comes to an abortion by means of instruments, there, the woman must be pregnant. Your Honor will observe subdivision 2: "Or who uses or causes to be used any instrument or other means" -- not, whether the woman be pregnant or not, but necessarily imply-

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ing and carrying with it, as appears by the first clause of the Section under which this indictment is found, that the woman must be pregnant.

Independently of this plain mandate and requirement of the statute, your Honor will observe that the indictment necessarily realizes the necessity of this class of proof, where the attempt or crime of abortion is claimed to have been executed by means of instruments, and does affirmatively set forth that at the time the woman claimed to have been attempted to be operated upon, while then and there pregnant with child. Further, even by any possibility I were wrong in my conception of the statute, which, however, I have no doubt, we have the recital in the indictment that the woman was pregnant with child.

That is not a mere naked matter of description, but even it has been held, and it is an elementary rule in cases of indictments that matters descriptive of a material averment in the indictment, must be proved as laid, and cannot be rejected as surplusage. For example if A were indicted for the larceny of a horse, they could prove upon the trial they he stole a bay horse or a sorrel horse or a chestnut horse. But if the indictment sets forth that he did steal a chestnut horse, they have to prove it upon the trial, and could not prove the larceny of some other horse, which might be the subject of some other charge or indictment.

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So that, we have it here, in this case, it is absolutely vital and essential and a necessary part of their case to demonstrate or satisfy the jury and the court beyond a reasonable doubt that the woman was pregnant with child.

Now then, what are the proofs on that proposition?

It is not my purpose in the presentation of the legal questions, to dwell upon the qualifications, ability and status of the person whom they bring as their only expert, under the dubious circumstances which he himself sets forth in the examination, as to whether the woman was pregnant or not; but I challenge the learned District Attorney to point out in this record anything in the nature of clear, positive proofs on the part of the physician, their own expert, where he mentioned as matter of reasonable certainty that the woman was pregnant.

On that proposition, in all confidence, without unduly taking up the time of the court or making any speech which might more or less affect this jury, I respectfully submit, your Honor, there is absolutely nothing to go to the jury here, and we ask that the jury be advised to acquit this defendant.

THE COURT: By the current of authority, and on principle, I am obliged to deny your motion, and give you an exception.

MR. UNGER: May I respectfully ask your Honor wheth-

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er the conclusion you reached is in reference to the peculiar nature of the indictment here for an attempt, rather than for the consummated offense?

THE COURT: Upon all grounds.

MR. UNGER: Well then, your Honor will allow me an exception?

THE COURT: Yes. Open to the jury.

MR. UNGER: Will your Honor allow us a few moments for consideration?

THE COURT: Of course.

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OPENING ADDRESS OF CHARLES E. LE BARBIER, ESQ.,  
COUNSEL FOR THE DEFENSE.

May it please the Court, and gentlemen of the jury, we trust during the course of this trial that, by the anxiety that we have shown or by the desire that we have shown to make objections and fighting technically, it has in no way created an impression one way or the other in your minds.

Counsel for the defense, Mr. Stevens, Judge Unger and myself, are convinced, as far as our opinion goes, which can only be borne out by the facts, that there is and there never was anything to this case; but that at the same time a case of this kind, having such a name, is an ugly case, and counsel has felt that from the very first question put, they ought in every way to attempt to confine the whole case down, just as one of my associates said, in a circle, concerning any operation or attempted operation in these premises nearly five years ago, or four years ago.

Dr. Blinn, the defendant, was and is an entirely reputable physician, and we may state that with safety. Whether differences arose between him and the Medical Society, the New York County Medical Society, is a question that might serve you gentlemen to find whether there was or was not any reason on one side or the other

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for what has happened. When he was arrested and brought down to court here and did not appear, the answer is a very simple one. If anyone by chance is put in a most trying and awkward position, and knows that a case has been framed up, and that the moment and time, as it was at that time, were ripe to press it, on false testimony, without any chance of overcoming it, as he thought, he preferred going away, but in his sober moments he thought over the monstrous arrest here, and the changes of the New York County Medical Society with Andrews out, and Fritchman off the Police Force, and he determined that he could come back here and get a fair trial. He surrendered himself. He was admitted to bail and has been, as intimated here, immediately upon his surrender, tried, with no effective results; and again we are brought to the bar here to answer for this crime of some time ago, or alleged crime.

I state that in order to show our disposition, our mind, which is not a guilty mind, on the subject. Now, I want to make another suggestion, because I am not given to opening cases. I think witnesses can say what they are going to say without counsel getting up and telling you first, but if ever there was a volunteer, infant, we might say, who desired to succeed, and did

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what he could, that was this young gentleman here, the complainant.

MR. TRAIN: I object to that statement. That is not part of an opening for the defendant.

THE COURT: No, it might be proper matter for comment at the conclusion of the case, but it is not in the nature of an opening.

MR. LE BARBIER: Very well, your Honor. I do not wish to comment on the witnesses. We will try and hold ourselves in upon that point. Let us get down then, to the day of the 22nd of November, 1903. Dr. Blinn was occupying the premises No. 165 West 47th Street, here in the County of New York, and there had his medical office. He had the whole house and was there practicing his profession.

Some time during the month of November, and for some time before that, he was making alterations and decorations in that house, and these decorations had been going on continuously. The carpenters were at work, the electricians were at work, and on the Saturday before this operation, as alleged in this case, the men had been at work as usual. The house was all upside down with repairs. There was not a room in the house for any patient. There was not a bed in the house for any patient, and on Sunday, with the magnitude of the work that

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was going on, workmen also came on that day to do work, and they were at work, and in the morning this Dr. Watkins and the woman and the man named Fritchman called, and they had some talk with the doctor. The defendant remembers that a gentleman by the name of J. Sterling Loomis called upon him, who now proves to be Dr. Watkins. He remembers, as far as I can understand, that there was some talk, but he was not aware that there was to be any call there that morning. He had received no notice that anybody was to be there that morning. His house absolutely forbade making any appointments for anybody to come there that morning, and on that particular morning when these people did come there, there was no operation, as we will show by the people in the house, not ourselves, but simply probably our own mouths will speak for the defendant. You might say we have a great interest there, but there are a number of witnesses for the defendant, fortunately, and unless they all will be accused, as they probably will be, of committing perjury, still, if you gentlemen think a whole number of people can be so accused, why, it is within your power to act that way, if that is your judgment. But there was no operation. There was no attempt at an operation; no woman was put on an operating table,

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and when a whistle was blown, and they all rush-216  
ed in, it seems to us, and we submit it most confident-  
ly to you, and it is a question whether we need put in  
any defense, in view of the testimony even of the offi-  
cer, Rappolt, whether it is believable that the woman  
was on the operating table. They do not say so, and  
Rappolt distinctly says that the woman was not.

Now, as to the money. Having endeavored to frame  
up, as we call this job, Fritchman, who had been on the  
force two months, went downstairs with the doctor, and  
while there -- and we will show you how, when he was  
downstairs, people who were in the house saw him there.  
I think one was one of these workmen, an honest man,  
gaining a livelihood by his day's work, and paid prob-  
ably extra for working on Sunday. He was there. In ad-  
dition to that, there was another witness there. There  
never was any question, there never was any question of  
any operation. There never was any question of any  
money.

So, they go up stairs, and suddenly, when they get  
into the operating room -- they call it the operating  
room -- the defendant's office -- Fritchman makes an  
arrest.

Indifferent witnesses will tell you that they saw  
Fritchman go over to the doctor in the room, not plac-

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ing his hand in his pocket, but fumbling around it this was (indicating), and dramatically taking out this money that he has in his hand, which money by witnesses is seen in his hand, and dramatically exclaimed "Count the money". Then, all these people rushed in. So that, upon the whole case as you hear it developed by witnesses who, as far as we have been able to obtain, were workmen and people in the house, if ever there was a frame-up on the part of the New York County Medical Society against a man, this was it -- or rather by Andrews -- this was it, and I think we can readily satisfy you by evidence that we will adduce here in this case, that we never, understand, that we never committed that morning an operation; that we never even attempted that morning to commit an operation; that no five hundred dollars was paid us that morning for an operation, and that the facts as they actually are will prove, in our opinion, conclusively, as we will submit them to you, that the truth is as is now sought to be laid before you and will be so testified to out of the mouths of witnesses.

MR. TRAIN: Mr. Lord is here now.

THE COURT: Are you through, Mr. le barbier.

MR. LE BARBIER: Yes sir.

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F R A N K A. L O R D, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Lord, you are now a practicing lawyer in the City and County of New York? A I am.

Q In November, 1902, you were attached as a Deputy Assistant District Attorney of this County? A Yes.

Q And as such had charge for the District Attorney of his end of this so-called trap or plant, to ensnare Dr. Blinn? A I did.

Q Now, I called you because you were one of the persons who were present at the house 165 West 47th Street, on the morning of the 22nd of November, 1903, and if you remember anything about what occurred there, after this lapse of time, I should be very glad to have you state to the jury what it is? A Mr. Train, do you want me to begin when I first came into the case?

Q I do not think it is necessary.

BY THE COURT:

Q (Interposing) Right at the house, on this day? A I went there on Sunday morning, the exact date I cannot recall. I went there immediately after a police officer by the name of Rappolt entered the building, in consequence of some signal that I heard him give. As soon as I got in there I went into the back room, a room in the rear of the

building, and in that room were the defendant, Dr. Blinn, and a police officer by the name of Fritchman. Those people I am certain were there. My recollection is that there was nobody else there except such people who went in at the same time I did. Fritchman was standing up near the defendant, Dr. Blinn. As I stood there, Fritchman took five hundred dollars from some part of Dr. Blinn's person. Now, my recollection is that it was the waistcoat pocket, but I am not certain. It is a long while ago. I did not make notes on the subject, and he handed these five hundred dollars to me, and I looked at them and identified them as five hundred dollars that I had previously given the police officer.

BY MR. TRAIN:

Q Well, those are things that out of this dim mist of long ago come back to you? A Yes, the prominent features.

Q Well now, did you know a girl named Anne, or did you know a girl that figured in the case? Was she brought to your office? A That went up with Fritchman?

Q Yes. A The girl had previously come to my office with officer Fritchman. I had of course various conversations with Fritchman and the girl. On Sunday morning I saw Fritchman and the girl depart, presumably for Dr. Blinn's house. When I entered the house I did not see this woman.

Q Well, you do not recall seeing her?

MR. LE BARBIER: pardon me. He said he did not see

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her.

MR. TRAIN: Well, I am trying to find out.

MR. LE BARBIER: Well, we object.

MR. TRAIN: My question is withdrawn.

MR. LE BARBIER: In a vital matter like that, where every purpose has been defeated, we object to the question being withdrawn; we object to the remarks by the District Attorney concerning the question. When it comes to a vital point, immediately he withdraws the question.

THE COURT: Now, what is your motion?

MR. LE BARBIER: My motion is that the question be allowed to remain.

MR. TRAIN: Yes, all right. I understood you objected to the question. First Mr. Le Barbier objects and then wants the question to remain.

THE COURT: Now, go on.

BY MR. TRAIN:

Q Well, now, they want you to answer. You do not remember any such woman when you got into the room? A No, I did not see her.

Q Well, where do you first remember seeing Annie, if at all, on the morning of November 22nd, after you got to the house? Do you remember anything about it? A My recollection is I did not see her at all.

Q You did not see her at all? you do not know what

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became of her? Did you see any other woman, the Miller woman? A Yes, there was a woman who was placed under arrest on the same day.

Q Well, do you remember where she was, or anything about that? A In what room?

Q Well, where did you first see her? A She was -- officer Rappolt put her under arrest there. Now, whether that was on the same floor or in the same room which we have been speaking of, or down in the parlor downstairs, I cannot remember.

Q Well, do you remember after Fritchman had taken the money from Blinn, as you think, out of his waistcoat pocket, do you remember what was the next thing done to Blinn? Do you remember when they put the cuffs on him? A Now that you speak of it, yes, I had forgotten it.

Q Well, where was that, in the room? A I think that was in the room.

Q Well, do you remember a colored man at all? A There was a colored man in the house, but he was not in that room. He was down in the hall, down near some stairs, kitchen stairs, I suppose you call it.

Q How was he dressed, do you remember? A I could not recall that.

Q Well, do you remember how that colored man came to

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be brought up and shackled to Blinn? A No, I could not do that.

Q But he was not in the room? A Not at the time I speak of, when I entered the room.

Q Did he come into that room -- when he did come into the room, do you remember who brought him in there? A I think officer Rappolt brought him in under duress. I am not certain.

Q Well, anyhow, what I want to get at is this: Was this colored man, and I want you, Mr. Lord -- you have been very careful to state exactly whether your recollection was distinct or vague, or whether you had none; kindly tell the jury whether you have any recollection as to whether or not this colored man was in the room when Fritchman removed the money from the waistcoat pocket of Dr. Blinn? A He was not in there.

Q Now, are you positive about that, or are you guessing? A No, I am certainly not here to do any guessing. The same thing applies to everything I say. It was a long time ago, and I did not make notes.

Q What I want to know is, whether that is one of the things that is clear in your mind? A Yes.

THE COURT: Oh, he said it was.

MR. TRAIN: Well, I want him to state so again, so

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as to make it plain to the jury.

Q Now, do you remember how you left the house?

THE COURT: How is that important?

MR. TRAIN: I do not think it is.

CROSS EXAMINATION BY MR. UNGER:

Q Just a very few questions, Mr. Lord. I have no doubt you are giving your very best recollection.

THE COURT: Now, just ask questions.

Q Well, when you say you are so clear in everything you do testify to, I understood you to testify here that the colored man was downstairs. Now, as a matter of fact, you do not know whether he was or not? A I saw a colored man downstairs at the time when I was in that house.

Q But the question is, before he was brought into the room, where was he, if you know? A No, that I cannot say.

Q Then you say that you saw Fritchman, as you say, take money from the waistcoat pocket of Dr. Blinn, could you say that Fritchman did not have the money in his hand before he went to or felt at the pocket? A Why, no, I could not say that. It appeared to me that he took it out of his pocket.

Q Well, go ahead. Have you finished? One other single question. I understood you to say, when you came in the room, you did not remember seeing the woman Annie? You knew

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her, of course? A Oh, yes, I had seen her in my office.

Q But was she in the room when you came in there?

A No sir, she was not.

Q You are quite positive of that, are you not? A Yes, that is my very best recollection.

Q Well, in any event -- A (Interrupting) I might be more certain had the same thing taken place yesterday. I am giving you the best recollection that I have.

Q Well, let me put this one question to you: If she was there on an operating table, in an exposed condition, and ten men in the room looking at her, you would have remembered it, wouldn't you, Fr. Lord? A I have no doubt that I would have.

Q And you do not remember any such thing? That is all. (No answer.)

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Now, in regard to whether Fritchman could have had the money in his hand before he pretended, as Mr. Unger says, to take it from Dr. Blinn's pocket, you say he may have, as far as you are concerned? A No, I did not quite say that.

Q Well, what I want to know is, what your answer is to that? A Well, on that, I suppose I can give my opinion?

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Q Yes. A Well, my opinion --

THE COURT: No, we do not care about that.

Q Well, in other words, you are asked whether Fritchman could not have worked that slight of hand trick on you and everybody else. Now, it is possible that he could have.

A There is no doubt about it, that he could have done it.

Q Now, did he do it, to the best of your belief, knowledge and recollection? A No, he did not do it.

MR. UNGER: Objected to.

THE COURT: There was no objection to it, and there was very good objection to the question of Mr. Unger.

MR. LE BARBIER: Mr. Unger was just making an objection, if your Honor please.

THE COURT: Well, what is sauce for the goose, is sauce for the gander.

MR. LE BARBIER: Well, we respectfully object to that question and ask that the answer be stricken out.

THE COURT: Then I will sustain it and strike out the answer.

BY MR. TRAIN:

Q Is there any other part of your testimony, Mr. Lord, that you want to correct, modify or explain? A No.

MR. LE BARBIER: We object to that.

THE COURT: Objection sustained.

RE CROSS EXAMINATION BY MR. UNGER:

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Q One question, please, whether or not officer Fritchman might have worked some flim flam game on you, or anyone else, will you state to this jury that he did not have in his hand money, before he started to fumble at Dr. Blinn's pocket?

BY MR. TRAIN:

Q (Interposing) Answer that question that he asks you?

MR. UNGER: Now, I object to this interruption.

THE COURT: Now, Mr. Train, the cross examiner has the witness.

A Will you repeat the question?

Q (Mr. Unger's question is repeated by the stenographer)? A No.

MR. TRAIN: Will you repeat that question again?

(Mr. Unger's question is repeated again by the stenographer.)

THE WITNESS: The answer is no, I won't state.

BY MR. TRAIN:

Q Does that answer correctly give your state of mind in regard to the question? A He asked me if I would state, and I answered no, that I would not make the statement that he contrived.

Q He asked you to make the statement? A Yes.

Q Well now, I will try and put the question that the

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defendant intended to put.

MR. LE BARBIER: Well, we object to that.

THE COURT: Strike that out.

MR. TRAIN: Well then, I move that the question be stricken out as put by the defense.

THE COURT: No, I will allow it to stand for what it is worth.

MR. TRAIN: Well, no one knows what it means.

MR. UNGER: Well, that is a question.

THE COURT: Now, we are losing time here, gentlemen.

BY MR. TRAIN:

Q Now, I ask you a perfectly simple question: Did Fritchman, when he went up and removed this money from the waistcoat pocket of Dr. Blinn previously have it in his hand? A Why, that I am unable to say. He apparently took it from Blinn's pocket.

Q And you believe he did? A Certainly.

MR. UNGER: I move that his belief be stricken out.

THE COURT: Yes, it is very speculative and remote and vague. Stricken out.

J O S E P H E. C O R R I G A N, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Judge, you have been rudely dragged from the judi-

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cial ermine to be put upon the witness stand. State your recollection of the --

THE COURT: Strike that all out and put a question. This is not a matter of levity, Mr. Train.

Q Please state what you now recollect, Judge Corrigan, of the events connected with the arrest of the defendant? A Mr. Lord and myself went to the Pabst Circle on Sunday morning, where we met officer Fritchman.

MR. UNGER: Pardon me a moment. The question, I assume, is limited to what took place at the house?

A (continuing) I thought you wanted the whole story.

BY THE COURT:

Q No, direct yourself to the house on that day? A On some signal, I don't remember now whether it was given by the officer or whether it was given by a doctor, who was in the house, Mr. Lord and I crossed the street and entered the house in West 47th Street. We went to the back room, which was fitted up as an office. That is to say, there was an operating table and one or two cases of instruments there. I saw Dr. Blinn and officer Fritchman in the room, and I really think that is about all I can tell about the case. There is nothing else that I saw happen. I don't think I saw the money passed at all. My best recollection is that I did not see the money passed. My recollection is that I did

see this woman in the house at some time, but just when or where I cannot state now positively. I did see Dr. Blinn, whom I see here now. My recollection is that at the time I saw him he was under arrest. I know that either just when I got in the house or shortly afterwards, I saw him with a handcuff on. He was handcuffed to a negro man.

BY MR. TRAIN:

Q Do you know where this negro came from? Where did you first see him? A Why, I am not absolutely certain about that, but I think the first time I saw him he and Dr. Blinn were handcuffed together. I am not positive.

Q Well, do you know where he came from? Was he in the room when you went in there, do you remember? A I am not absolutely sure. You see it is about four or five years ago. I never expected to be a witness, and I did not pay very much attention to the matter. It was not my case.

Q Do you remember a woman named Bergquist, a Swedish woman? A Yes.

Q Now, was she in the room when you went in there? A I think not. In fact, I am quite clear that she was not.

Q When did you first see her? A I don't remember whether I first saw her in the large waiting room, or in the hall, but there were three women there in nurses' uniform. One was a large, stout woman, a woman of some age, I should say thirty five or forty, and the other two women

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were apparently younger. They were all, I believe, put under arrest, but my recollection is that if any one of those three women was in the back room where the defendant was, where the operating table was, it was the large, stout woman and not the other Bergquist woman or the other woman whose name I have forgotten.

CROSS EXAMINATION BY MR. UNGER:

Q Just a few questions. You went in the room in answer to a signal at the same time as Mr. Lord? A I think Mr. Lord preceded me, Mr. Unger.

Q But it was almost instantaneous, the entry of both of you in the room, wasn't it? A Yes.

Q And your opportunities for observation were as good as his? A Well, I dare say my opportunities were as good, but I did not take the same advantage of them.

Q You knew the woman Annie, didn't you? You had met her the morning, I think, before? A I had met her that morning, and I had seen her once in the corridor upstairs.

Q When you entered Dr. Blinn's apartments, was she in that room? A My impression is that she was sitting in the corner, but I am not absolutely certain about it.

Q And was she sitting in an operating chair in an exposed condition? A She was not on any operating table or chair.

THE COURT: Mr. Unger, I will consider your motion as having been made at this point, and an exception reserved to you, to the denial.

MR. UNGER: We offer in evidence, may it please the Court, two papers which I would like to submit to your Honor.

THE COURT: Yes, show them to the other side first.

MR. LE BARBIER: It is the official record from the Police Department.

MR. TRAIN: Objected to as absolutely incompetent, immaterial and irrelevant.

THE COURT: I suppose, for the purposes of the record, you want to have them marked for identification, because I am going to exclude them and give you the benefit of an exception upon the ground that it is collateral matter.

MR. UNGER: The objection does not go to any question of competency by reason of our omission to produce the officials of the Police Department?

THE COURT: No, it is collateral matter.

MR. UNGER: Your Honor allows us an exception?

THE COURT: Yes. I take it the purpose is to impeach the witness?

MR. UNGER: yes, to discredit the witness Fritchman.

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THE COURT: Upon the ground that it is collateral matter to the inquiry, it is excluded and I give you an exception.

MR. UNGER: Yes sir.

THE COURT: Mark them for identification.

(Marked Defendant's Exhibits A and B for identification.)

GEORGE W. WILLIAMS, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q What is your business or occupation? A I am a cook.

Q Where have you been employed as cook lately? A At the Bachelor Apartments in 45th Street, the Century Bachelors Apartment, 119 West 45th.

Q Before that, where were you? A I was before that at the Choate School, Wallingford, Connecticut.

Q The Choate School For Boys, Wallingford, Connecticut? A Yes sir.

Q How long had you been employed there? A I was three years at the Choate School.

Q Are you a married man? A Yes sir.

Q Were you ever employed by the defendant, Dr. Blinn?

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A Yes sir.

Q For how long a time? A Well, I was employed by Dr. Blinn two different times; altogether I guess about five years.

Q Were you employed by Dr. Blinn in November, 1903?

A Yes sir.

Q Do you recall the occurrence at this house on Sunday, November 22nd, 1903? A Yes sir.

Q Kindly state to the Court and jury what you recall, and first of all, before stating that, will please say what the condition of the house itself was at that time, and the different rooms? A Well, at this particular time the house was being remodelled, like, parquet floors being put in, and paper hanging and painting the wood work and changing the carpets and such things. General overhauling of the house from top to bottom.

Q How long had that been going on? A Well, I can't remember just how long it had been going on. Must have been practically a month.

BY THE COURT:

Q prior to this day, prior to the day of the transaction? A Yes sir, it had been going on for about a month.

BY MR. LE BARBIER:

Q And was it going on this Sunday morning? A Yes sir. There were workmen in the house on that Sunday morning,

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painting and hanging paper.

Q How many stories in that house? A Why, there is three stories and a basement and cellar.

Q Please describe the condition of the basement?

A The basement?

Q On that day.

MR. TRAIN: How is that material, the condition of the place?

THE COURT: How is it?

MR. LE BARBIER: We are going to show the condition of every room, as bearing upon the whole case, that no such thing could have happened. We are going to show also that on that day in question there was a workman in the basement.

THE COURT: Well, if you think it is material, I will let you get the evidence.

Q Just describe then, quickly, and as hurriedly as you can, the condition of the basement? A Well, there was an electrician working in the basement on this morning, and carpenters had been working there on Saturday.

BY THE COURT:

Q This was Sunday morning, wasn't it? A Yes sir.

BY MR. LE BARBIER:

Q Do you recognize this man coming to the bar (indicating)? A Yes sir.

Q Was he the electrician there that day? A Yes sir.

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MR. LE BARBIER: Indicating a man by the name of Buchheister.

Q Proceed? A Well, on this morning, Sunday morning, Dr. Blinn and another man came downstairs, entering the dining room.

Q Who was the other man, do you know? A Why, I did not know at that time, but I have learned since his name was Fritchman, an officer.

Q Did you see them come down? A I did not see them coming down. I heard them come down. I saw them enter the dining room

Q Yes. A The doctor called me into the dining room and says "George, get me out a bottle of whiskey", and I got out a bottle of whiskey, as he gave me the keys, and unlocked the sideboard and taken out this bottle of whiskey and put it on the table, and two glasses, and the other man, who was Fritchman, poured out a glass of whiskey and drank it, and then and the doctor had some talk among themselves there, and Fritchman says to the doctor "Doctor, I want you to do this operation for us", and he and the doctor kind of looked as if they were sizing each other up, like; they looked at each other for a few moments and the doctor says "I can't do it".

Q What happened then?

BY THE COURT:

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Q (Interposing) I would like to get the end of this. Go on; is that all? A The doctor says "I can't do it". Well, Mr. Fritchman did not seem to make any reply, as I heard, and for the course of a minute more he says "Well, we will go upstairs and see the doctor", who was Dr. Watkins.

BY MR. LE BARBIER:

Q Well, at any time while Fritchman and the doctor --

BY THE COURT:

Q (Interposing) Is that all, Mr. Witness? A No sir.

Q Go on, then, tell us all about it?

MR. LE BARBIER: May I not put these questions, your Honor?

THE COURT: Let him finish first.

A (continuing) Then they went upstairs. Mr. Fritchman says "We will go upstairs and see the doctor", and they did go upstairs, and I still had the keys to the wine, the liquor, and to the sideboard, and I put this bottle of whiskey back in there, and wiped out the two glasses and put them away and, why, I guess about five minutes after they had gone upstairs, some one came out of the office door leading into the hall -- the tiling being loose in the hall, when you would walk on it it would kind of tittle tattle, make a noise or rattling like loose stones, would in a tile hall, and it came out with a rush, not with somebody walking on it; it

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was like somebody was running away, like, or running out of the back office. I start upstairs, and by the time I got about half way up the stairs, I hears some whistle blowing, some whistle, I didn't know at the time it was a police whistle, but I learned since that Dr. Watkins was blowing a police whistle, and the front door was open, and as I got up on the landing, almost opposite the office door, some one grabbed hold of me and said "We want that Coon", and I was pushed into the office, into a screen, that stood on the left hand side of the office as you enter; the screen stood on the left hand side, and I was pushed into that, and I was sent in with so much force that I jabbed a big hole through this screen, who I learned was officer Rappolt, and when officer Rappolt got me in there, I saw in there this same man who drank the whiskey downstairs, who was Fritchman standing kind of on an angle in front of the doctor, with a gun in his hand. I didn't know what that meant. So I stood one side, and still these people was coming in. Some man walked up and put up another gun then in the doctor's face, and Fritchman then did not hold his up in his face; he let his down, and he walks up to the doctor, and in his hand you could plain enough see that he had some money; it was yellow money; yellow back money in his hand, in a roll, a round roll in his hand, shut up like that (indicating) and this man walks up with this gun to him and told the doctor

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to hold his hands up, and the doctor stood up like that with his two hands up (indicating), and Fritchman goes up to the doctor and makes a pass at the doctor's side pants pocket, and he takes it up like that (indicating) and throws this money down on the desk, and said "Take the numbers on those notes". And after some man came up, I don't know who came up, and commenced to count or kind of string out this money. Then I could see it was money as he strung it all out, each piece for itself, and Mr. Fritchman then pulled out a big pair of handcuffs and put one on the doctor and put one on me, and we had to sit down together, and he says "Now, your address for the next twenty years will be Sing Sing".

BY THE COURT:

Q Was that to you, or to the defendant? A To both of us. We were both locked up, handcuffed together.

Q He said that to you, did he, too? A Yes sir, said it to me as much as he did to the doctor.

Q Go on? A "Your address for the next twenty years will be Sing Sing", and then after I sat there for a while and people coming in and coming out, and working men were brought down and brought up from the basement into the room. I had some dinner on, cooking downstairs, and I commenced to complain that I wanted to go down. I told the officer that my grub was burning up downstairs, and I wanted to go

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down to see about it. Fritchman came over to me and says "Are you the cook?" I says "Yes, I have got meat in the oven and it is burning up".

Q That is when you had the cuffs on? A Yes, I had the cuffs on. I could not go away, and he turned around to another man and said something, and afterwards he came over, he seemed to ask him to let me go, I don't know what else, and he come over to me and unlocked them things, that handcuff, and I was released then to go downstairs, and one of the -- somebody followed me down. I went down and went to the dining room into my kitchen again, and looked in the oven after my meat, and I goes back upstairs again, after I see that the meat was all right, and when I got into the dining room, I seen this same Dr. Watkins and the woman who was also in the office, down in the dining room. In fact, I saw Dr. Watkins when he had taken this woman out of the office, into the parlor there; I thought he went outdoors somewhere; I thought downstairs they was in the dining room, and after I went upstairs again, Dr. Watkins was in the office, and asked me for a match. He wanted to smoke a cigarette. I gave him a match, and then he commenced fussing around in the office, like he was looking for something, and into the northwest corner of the office there is a closet, and in that closet, there is just a plain panel door there, and inside of that there is a wash stand in there, a wash

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closet, and Dr. watkins taken up a pan that was in there, and taken some instruments, and took them out with him, and gave them to somebody that took them out in the wagon, where they were going to take the doctor, in the patrol wagon; he had taken these things out with him.

BY THE COURT:

Q Does that cover everything, now? A That is about what I can remember.

Q That covers it all, does it? A Yes sir.

THE COURT: Anything further, Mr. Le Barbier?

BY MR. LE BARBIER:

Q When you went into the room the first time, did you see anybody on an operating table? A No sir, there was nobody on the operating table, because it was behind a screen that I was shoved into, in a kind of an alcove.

Q What became of you then; what happened to you; were you left alone? A What, after the doctor was taken away, you mean?

Q Yes. A Yes, I was left in the house there all alone. Well, not all alone just at that time, because there were another officer there that took the two girls away.

Q Well, at any time that you were downstairs, did you see Dr. Watkins down there? A Yes sir.

Q Dr. watkins? A Yes sir.

Q When was that? A After Mr. Fritchman took the hand-

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cuffs off me and I went down to see about the meat.

Q Well, prior to that time, prior to the arrest, was Dr. Watkins at any time downstairs? A No sir, he was not.

Q Was he downstairs when Fritchman claims he got the whiskey? A No sir. I never saw Dr. Watkins until he came into the room, taking this woman out, this woman called Annie.

CROSS EXAMINATION BY MR. TRAIN:

Q Have you ever been convicted of crime? A No sir, I have not.

Q Where do you come from? A I came from Wilkesbarre, Pennsylvania.

Q Born there? A No sir, I was born in Tallahassee, Florida.

Q When did you come from Tallahassee? A Tallahassee, Florida when I was a kid about nine years old.

Q When you were nine? A Yes sir.

Q What have you been besides a cook? A Why, I have run elevators.

Q Ever been on the track? A What kind of track?

Q Ever been on the race track? A No sir, I have been on the railroad.

Q Never been a jockey? A No sir.

Q Never had anything to do with a stable? A Stable,

no sir. Only in our own family, a stable of horses.

Q Well, what do you mean by your own family? A This family that raised me, they had horses.

Q Down in Florida? A No, down in Wilkesbarre, Pa.

Q But you went from Florida to Wilkesbarre? A Yes.

Q How long did you stay in Wilkesbarre? A I stayed there until I came to New York, about 1896 or '97.

Q What was your work in Wilkesbarre? A Why, I didn't have any special work. I served the meals; I waited on table, and I did more playing than anything else.

Q Did more what? A More playing.

Q Do you mean on the piano or the cornet? A No, romping out in the yard with the kids. I didn't have any special work to do. Ran errands sometimes.

Q How old were you when you came to New York? A How old were I?

Q Yes. A Why, I was -- I don't know just how old I was.

Q How old are you now? A I am 29.

Q And you have been in New York since 1896? A Since '96.

Q Now, when you came to New York, how soon after you came to New York did you go to work for Blinn? A Oh, some little time after that. I don't know just how long it was. I was working for A. J. Barber first.

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Q What? A A. L. Barber, President of the Barber Asphalt Paving Company.

Q Oh, I thought you said Mr. Le Barbier. You were not working for Mr. Le Barbier? A Yes sir,

Q Well, this is Mr. Le Barbier (indicating); you were not working for him? A Oh no, not him; I never seen him before.

Q Well, you saw him at the last trial? A Well, I mean before that.

Q Well, you saw him down at his office? A Well, that is this trial. I didn't see him before I got mixed up with this case of Dr. Blinn's.

Q When did you go to work for Dr. Blinn? A I worked for Mr. Barber for about a year.

BY THE COURT:

Q That brings you to 1897. Now then, did you go into the employ of the defendant? A The next year I did.

Q The next year after serving one year with Mr. Barber? A Yes sir.

BY MR. TRAIN:

Q Well then, you went to Dr. Blinn about '97 or '98, didn't you? A Well, about '98, I think; I think it was the Fall of '98.

Q Were you there as cook? A Yes sir.

Q Where was the house? A 165 West 47th.

Q The same place? A Yes sir.

Q And you were there how long? A I was there about three years that time.

Q Now, did you know what business the doctor was in?

A No sir.

Q You were employed as cook? A Yes sir.

Q You were down in the rear room, in the kitchen? A Yes sir.

Q It was not part of your business to know what went on upstairs at all, was it? A No, only I had to take care of the stoop and the brass, and dust up the doctor's office.

Q Well, did you know what business the doctor was in?

A No. I knew he was a doctor, that is all.

Q Well, did you know anything else? A I just knew what I had to do, my work.

Q I did not ask you what you knew about yourself. I asked you whether you knew anything else, as to what the doctor did, what his business was? A No sir.

Q Besides being a doctor? A No sir.

Q Did you know what kind of doctor he was? A Why, yes sir, I knew what kind of doctor he was.

Q Well, what kind of doctor was he? A Why, he was a medicine doctor; that's what it said on the sign; it said "M. D."

Q And you knew he was not a dentist for that reason?

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A Yes.

Q Did you know what kind of medicine doctor he was?

A No sir.

Q Hadn't any idea? A No sir. If I got sick he used to give me medicine, and all such things.

Q Well, he never performed any operation on you, did he? A No sir.

Q Well now, do you mean to tell this jury that after working for Blinn since 1898, that you did not know what his branch of medicine was? A No sir, I didn't know.

Q You didn't know? A No sir.

Q Well, do you know now? A Why, I know that you --

Q (Interrupting) Now, do not tell me what I -- tell me what he? A No, I don't know now.

Q You say that with perfect solemnity, and expect the jury to believe you? A I certainly do.

MR. LE BARBIER: Objected to.

THE COURT: Sustained as to form.

Q You do not know now what branch of medicine Dr. Blinn practiced, when you worked for him?

Objected to.

Objection sustained.

Q Did you ever go into his back room? A Yes sir.

Q Did you see articles of furniture there? A Yes sir.

Q And of course, living in the house, you saw nurses?

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A Yes sir.

Q Did you ever see any of the patients? A Yes sir, I have seen patients.

Q Did you ever see any gentlemen patients? A Yes sir.

Q You did? A Yes sir.

Q Did you see any gentlemen patients being treated?

A No sir.

Q Where did you see the patients? A Why, very often I had to go into the door.

Q What door? A The front door, to let people in.

Q Oh, I see, so you saw sometimes people that came there? A Yes sir.

Q Well, were most of the people that came to the house ladies or gentlemen?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

MR. TRAIN: I can test his recollection and his credibility. I have a right to look into the question of whether this man has been an accomplice and search out his history and his mind.

THE COURT: I will take it.

MR. LE BARBIER: Exception.

Q Now, were most of them ladies or gentlemen? A Well, a good many of both. I never kept any account of them.

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Q Now, you tell the jury that you do not know which was most of the patients? A No, I don't know which was most of the patients, because there was lots of gents came there and lots of ladies.

Q You let in just as many gentlemen as you did ladies?

A I suppose so. I didn't keep count of them.

Q You did not know he was a lady's specialist, a female specialist?

MR. LE BARBIER: Objected to.

THE COURT: It is already answered, that he did not know what his specialty was, if he had one.

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Q Now, when you heard, as you say, Fritchman turn to your employer and say "I want you to do this operation for me", what kind of operation did you think it was?

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

THE COURT: Well, if he knew anything about it?

MR. UNGER: If he knew anything about it is one thing.

A Why, I didn't know anything about it.

Q No, what did you think about it?

MR. UNGER: Objected to.

MR. TRAIN: We have a right to find out how it is, that five years after this transaction occurred, this man suddenly walks in and recollects the precise words that Fritchman used to Dr. Blinn.

MR. LE BARBIER: How about your own witnesses?

THE COURT: Go on, now. Let us conduct this in an orderly way.

MR. LE BARBIER: May it please your Honor, we object to the the words. We are not brought in here suddenly, and we object to those words.

THE COURT: What is the question?

(Question repeated by the stenographer)

MR. TRAIN: As to what the operation referred to was, I asked what he thought about it.

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MR. UNGER: We object as incompetent, immaterial and irrelevant to this case.

THE COURT: I will sustain the objection.

Q What was there about this expression which Fritchman used to Dr. Blinn that led you to remember it so accurately, for so long a period of time? A Well, I did not particularly take in any way the question, or the way that he used the expression.

Q Well, do you remember what words he did use? A Yes, I remember.

Q You do? Now what was there about those words that caused you to remember? A Why, just that. After drinking this whiskey he says "Doctor, I want you to do this operation for us".

Q Well, what was there about the word "operation" that made you remember it? A Well, I know what operation means.

Q Well now, what kind of an operation did that refer to? A I don't know.

MR. UNGER: Objected to.

THE COURT: I will take it.

Exception.

Q Do you know? A What is that?

Q You know what operation means, all right? Now, what does it mean? A Why, it means, for a doctor to treat you in

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some way for ---

Q Why do you look at your hands? A I am not specially looking at my hands.

Q Do you mean to operate on the hands? A No, sir.

Q Now, what kind of an operation did you ever hear of Dr. Blinn's doing? A I never heard of any of Dr. Blinn's operations.

Q Had you ever heard the word operation used in the house before? A Why, I don't know as I had.

Q Well now, did you know what was referred to? A No, sir, I did not.

Q Had not any idea at all? A Not the slightest.

Q Had anything ever happened when you were cook at Dr. Blinn's to lead you to inquire what his business was?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant, and as already asked and answered.

Q Did anybody die in the house while you were there?

Objected to.

A No, sir.

Q You swear to that?

Objected to.

A Yes, sir.

MR. LE BARBIER: We respectfully submit our

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objection.

THE COURT: Yes, he has given you an answer to it. He says no.

Q Now, will you tell the jury everything, or rather during what years you worked for Dr. Blinn at 165 West 57th Street? A About that October, to this raid, in Dr. Blinn's house, it made me been working for him for two years, for him.

Q What month did you begin? A The latter part of October.

Q What year? A Two years prior to that time.

Q You came in 1901, and this was in 1903, is that right?

A Yes, sir.

Q How long after the raid did you work there? A About a month.

Q Were you working there in March, 1902? A No, sir.

Q Well, if you came in October, 1901, and left in November, 1903, why weren't you working there in March, 1902?

A March, 1902?

Q And two, yes? A (No answer)

BY THE COURT:

Q (Interposing) Were you or not working there in March, 1902? You have heard the question. A Why, I had been there two years.

Q Were you there in March, 1902? Now, let us have an

answer? A Yes, sir, I was there in March, 1902.

BY MR. TRAIN:

Q Well, why did you say you were not there so quickly, when I asked you that question? A Well, I answered you a little quick.

Q You answered me a little quick? Well, why did you answer so quick, and wrong? A Well, it was a mistake I made.

Q Do you know what happened in March, 1902, in that house?

A No, sir.

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

Q Is that the reason you answered so quick?

MR. LE BARBIER: We press our objection.

Objection overruled. Exception.

Q Now, why, Mr. Witness, when you had just told this jury that you went to work in that house in October, 1901, and worked there for two years, and left in November, 1903, did you in the next breath tell the jury you were not there in March, 1902?

A I did not leave in November, 1903. I left around about Christmas time.

Q Well, why did you tell the jury that you were not there in March, 1902? A Well, I was there in part of 1902.

Q I know you were, but why did you say you were not there?

MR. UNGER: We respectfully suggest, he has

said he answered a little quickly.

A Why, I made a mistake in the year, that's all.

Q What? A I made a mistake in answering you, for the year, that's all. No reason at all.

Q Did you ever hear of Mary C. Norris? A Mary C. Norris?

Q Yes. A Yes, sir.

Q You have? A Yes, sir.

Q Now, do you tell the jury that while you worked for Dr. Blinn, there were no deaths in that house? A Well, I was not there at that time.

Q At what time? A At that time of this death there.

Q What death? A The death of Mary Norris, as it was said she died there. I was not here.

Q Where were you? A I were in Florida.

Q How did you come to be in Florida? A I went down there to cook at the Leland Hotel.

Q What? A I went down there to cook at the Leland Hotel.

Q After you knew Miss Mary C. Norris, or before? A No, I saw it in a paper down there. I got it in the New York paper.

Q How long did you stay in Florida? A I stayed there until about the middle of May.

Q Then you came back? A Yes. The season was over then.

Q Now, you came back in May, 1902? A Yes, sir.

Q Now, having refreshed your recollection on this subject, which is directly to the question of whether or not you know

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what is meant by the word operation --- you understand that, do you? A Yes, sir.

Q I ask you if any other deaths occurred in that house?

MR. UNGER: Objected to as incompetent, immaterial and irrelevant, and not the proper subject of cross examination.

A I don't remember any.

Q What is your answer?

THE COURT: How is it material?

MR. TRAIN: This witness has stated he did not know what branch of medicine Dr. Blinn practiced. If he is not telling the truth about that, his credibility is weakened. In order to show his credibility is not to be relied upon, I propose to ask him questions tending to show that he knew full well the business of Dr. Blinn, and that he had good reasons to know what Dr. Blinn's business was. It seems to me that is logical enough.

MR. UNGER: If your Honor please, he is a witness on cross examination, and there is a specific and concrete issue before this jury.

MR. TRAIN: The issue is whether he is lying or telling the truth. That is the only question now.

THE COURT: I will permit it to be received,

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simply for the purpose of testing the memory, accuracy and credibility of the witness's testimony, and to be considered by the jury for no other purpose.

MR. UNGER: Exception.

BY MR. TRAIN:

Q Now, answer the question? A Why, not to my knowledge.

Q Now, do you tell the jury ---

MR. TRAIN: I will withdraw that part of my question.

Q In view of your statement to the jury, that a woman named Mary C. Norris did die at Blinn's house, I ask you if you still state you do not know what the doctor's branch of business was? A No, sir, I did not know what the doctor's branch of business was.

Q Or what the word "operation" in connection with that house and his business referred to? A No, sir.

Q Do not know now? A No, sir.

Q Do you know what the doctor is charged with? A Yes, sir.

Q What? A An attempted abortion.

Q Well, is that connected in your mind with operations?

A Well, that might be one kind of operation.

Q It might be, yes. A Yes.

Q Well, did you know that in 1903, November?

Objected to. Objection overruled. Exception.

A No, sir.

Q When you read, as you say about Miss Mary C. Norris, didn't you see what the cause of her death was?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant and outside of your Honor's instruction heretofore, a moment ago, to the jury.

THE COURT: I will exclude it.

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Q Did you never read anywhere <sup>^</sup>any book or paper about a criminal operation on a woman?

Objected to as incompetent, immaterial and irrelevant.

A No, sir.

THE COURT: Sustained. Strike out the answer.

Q At any rate, do you now recollect the precise words this stranger used this Sunday morning to Dr. Blinn? A Yes.

Q You do, exactly? A Yes, sir.

Q Had you ever seen Fritchman before? A No, sir, never had.

Q Had you ever poured out whiskey for people on Sunday morning, or any other morning, with Dr. Blinn? A Well, I don't say Sunday morning.

Q Well, was there anything unusual about your pouring out whiskey? A No, sir.

Q Nothing at all? A No, sir.

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Q Now, you say the doctor had the keys to the liquor chest? A Yes, sir.

Q And you were in the kitchen? A Yes, sir.

Q What were you doing in there? A I was attending to my work there.

Q And you were cooking a steak, I believe you told us?

A A leg of lamb.

Q That was on the fire? A In the oven.

Q And you were dressed in your cook's clothes? A Well, I did not wear a full uniform.

Q Well, you were in half uniform? A Half uniform; an apron on and a shirt.

Q And the doctor had his own keys? A Yes, sir.

Q And the chest was in the front room? A In the dining room.

Q That was in the front room? A Yes, sir.

Q And the kitchen was cut off, and in the rear? A Yes.

Q And the glasses were all clean and ready for use in the front room? A Yes, sir.

Q And you say that the doctor called to you from the kitchen, from your leg of lamb, in your half uniform, to come out and unlock, with his keys the liquor chest that was in the front room; is that right? A Yes, sir. He and this gentleman were talking there, and he handed me the keys.

Q Yes, sent for you so you could hear what was going on

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between him and Fritchman? A Well, I don't suppose the doctor even knew I heard. I did not pay any attention to him.

Q Well, was there any reason why the doctor should not open his own liquor chest and pour out his own liquor? A Well, the doctor likes to be waited on, anyhow, as a general thing.

Q Is that the only reason? A Well, that's the best reason I can give.

Q Now, you say that, having secured your presence at this important conversation ---

MR. LE BARBIER: May we object to the qualification?

THE COURT: Yes, the form is bad.

MR. TRAIN: I will withdraw it.

Q The next thing you testified to is the fact that you saw Fritchman pretend to take money out of the doctor's pocket; that is right, is it? A Yes, sir, I saw him with money in his hand.

Q Yes, that is the next thing, and whoever it was that arrested you --- Rappolt, who was a police officer --- A (Interrupting) Rappolt did not arrest me.

Q Well, some one threw you into the room? A That was Rappolt.

Q Well, now, whoever did that, did it at such time and in such a way that you were right in front of the money when

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it was being pretended to be taken out of the doctor's pocket, is that right? You got there just right, to shoot into the room, and there was Fritchman pretending to take money out of the doctor's pocket? A No, not as quick as that.

Q Well, how soon afterwards? A Well, I was pushed into the room, into this screen, off to one side.

Q What? A Off to one side.

Q And you got there just in time to see the money in Fritchman's hand? A Yes, when this ---

Q (Interrupting) It did not fool you a bit?

MR. LE BARBIER: I object. May the witness finish the answer?

BY MR. TRAIN:

Q Well, finish, if you have anything further to say.

MR. LE BARBIER: I object to the remark of the District Attorney. We submit the witness has a right to make a proper answer.

THE COURT: Yes, let him complete his answer.

A I was pushed in by Rappolt against the screen, which jabbed a hole in the screen, and to be in the office to see anything you must be off to one side, because Fritchman stood over to the west window.

Q Well, you did see? A I did see.

Q You could see the bills all rolled up in Fritchman's hand? A Why, a little roll.

Q Well, you could see them? A Yes.

Q You saw them? A Yes.

Q Not what they were? A I saw them.

Q Answer my question. A Yes, sir.

Q You saw them? A Yes, sir.

Q Did not fool you? A No.

Q Not a bit? A No.

Q And they were in Fritchman's hand all the time. Then you saw Dr. Watkins go and get the instruments, and take them out of the wash closet? A Yes, sir.

Q And did Dr. Watkins arrange to have you see that, or did Dr. Blinn? A Why, Dr. Blinn had handcuffs on. He was in the telephone booth outside of the office.

Q Well, how was it this man Watkins whom you know now to have planned this unholy trick upon your master, how was it he had you right there to see him take these instruments out of the closet?

MR. LE BARBIER: I object to the form of the question.

THE COURT: Objection sustained.

Q Well, how did you come to be there; how did Watkins come to do this thing right in front of you, do you know?

A Well, I was in the office while the doctor and Fritchman was in the telephone booth, of course, and I was trying to see

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what was going on, and what it was.

Q Well now, answer the question; you saw Watkins come in?

A I saw him open the wash closet and take out a pan with the instruments.

Q Now, at that time you were shackled to Blinn? A No, sir, Fritchman was.

Q Fritchman was shackled to Blinn? A Yes, sir, Fritchman had released me.

Q Where were you? A I was in the office.

Q What were you doing there? A Rubbernecking around in there.

Q Rubbernecking around, yes. Now, did Watkins see you?

A Sure he did.

Q And you say, right in front of you, rubbernecking around, Dr. Watkins went and got the instruments out of the closet and put them somewhere? A No, he got this pan out that had them instruments on.

Q Oh, with these instruments; you saw that right in front of you? A Yes, I gave him a match at the same time to light his cigarette.

Q I see, and that is about all, isn't it? That is all you saw? That is all that you told Mr. Le Barbier down in his office? A That ain't quite all.

Q Well then, you did not tell Mr. Le Barbier? A Well,

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I did not tell him about --- I did not tell you all yet.

Q Well, I don't want you to tell me anything. A Mr. Rappolt took ---

Q Now, wait. I did not ask you for anything more. Now, you made no memorandum of what had occurred, did you? You did not write it down? A Mr. Le Barbier did.

Q Yes, I know he did five years later, but you did not at the time?

MR. LE BARBIER: I object to that. We object to the form of the question.

THE COURT: Yes, sustained.

Q Did you make any memorandum at the time, of what occurred? A No, sir.

Q And you pursued your vocation as cook in various parts of the country? A Yes.

Q Until five years had elapsed?

MR. LE BARBIER: We submit it is not a vocation. It is an occupation.

THE COURT: Well, go on.

Q Well, occupation, and then, after five years had elapsed --- I do not suppose you had correspondence with the doctor, had you? A No, sir.

Q You received a subpoena to come to Mr. Le Barbier's office? A Yes.

Q And that was some time in January this year, or February?

A February, this year.

Q Well, had you ever been to Mr. Le Barbier's office before that? A Never; never seen him before.

Q And you had never told anybody about this, had you?

A No, sir. I had not been where anybody was that knew about it.

Q Of course not, and when you got to Mr. Le Barbier's office there, you saw your old friend Dr. Blinn, is that right?

A Yes, he was there.

Q And you saw Mr. Jackson, or Mr. Stevens? A I don't remember that, if Mr. Stevens was there.

Q And Mr. Le Barbier was there? A Yes.

Q And Emma Bergquist was there? A Yes.

Q And I suppose you ~~were~~ then, for the first time, did tell somebody what you observed that Sunday morning five years ago, is that right? A Yes, sir.

Q How many times have you been to Florida in the last six or seven years? A Why, I go to Florida about every two years.

Q What? A About every two years I go to Florida.

Q Now, we have got you at Dr. Blinn's between October, 1901, and November, 1903, or December. Now, before that, when did you work for Blinn? A I worked for Dr. Blinn, I was with

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him the first time about three years.

Q Well, when was the first time? That's what we want to know. A About three years.

Q When was it? A What year did I go to him?

Q Answer the question. When did you first work for Dr. Blinn? A Why, about 1907 or eight or 1897 or '98; something like that.

Q Well, what is it? A Well, I came to New York in 1906.

Q Do not give a history of what you did. Tell this jury the date you went to Dr. Blinn's, the first time, before you left? A Well, I must figure out the time.

Q Well, you know perfectly well? A Why, no, Mr. Train, I do not.

BY THE COURT:

Q Go on and tell us, if you know? A About '97, or '98, I first went with Dr. Blinn.

BY MR. TRAIN:

Q 1898, at the same place? A Sir?

Q The same place, 165 West 47th? A Yes.

Q What month? A It was late in the fall some time.

Q How long did you stay that trip? A I stayed there about, well, about three years. It was going on to three years.

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Q Three years steadily? A Yes.

Q Did you stay until 1901? A No.

Q Well, if you went there in 1898 and stayed there three years, how long did you stay? A I stayed there, well, it was into the third year. I don't know. I don't think I was quite finished the year up.

Q Well, how long a time elapsed between these two times you worked for Blinn? A Oh, about, let's see, I left there it was in March when I went away, and I came back to work for the doctor that following year, some time during that year.

Q How long were you at the doctor's in all? A Well, about five years.

Q Between 1898 and 1903, is that right? A Yes, sir.

Q How many times did you leave? A Why, I left two or three times, for a short time.

Q Why? A Why, I used to go to see my folks.

Q Did the doctor use to go with you? A No, sir. You know, the doctor some times went away himself.

Q What? A The doctor would go away sometimes himself, and that would give me a chance to get away.

Q Well, when was it the doctor went away? While this woman Norris was there was one time?

MR. LE BARBIER: We object to that.

THE COURT: There is no evidence as to that.

Q Where was Dr. Blinn at that time? A I was in Florida at that time.

Q Where was Dr. Blinn? A I don't know where the doctor was.

Q Well, did you go to Florida because he was going away too? A I don't know anything about that.

Q You just told the jury that when the doctor went away that gave you a chance to go away? A I just said sometimes the doctor went away and that gave me a chance to get away.

Q Well, this was not one time, then? A Well, I didn't know anything about the doctor being away or anything happened at the doctor's house at the time.

Q Well, when did the doctor go away in such a way that he gave you an opportunity for a little trip off home? A Well, once the doctor went down to see Mont Pelee.

Q When was that? A Right after the eruption of Mont Pelee, some time after that happened down there, I got a chance then to go away.

Q And you seized that opportunity? A Yes, and the doctor went to Europe once, and that gave me a chance.

Q When was that, do you remember? A When he went to Europe? It was shortly after I was with him, I think, the next year.

Q Now, Williams ---

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MR. LE BARBIER: George, please.

THE COURT: Williams is his name?

MR. LE BARBIER: Well, he did not put the "s" on it.

Q (Continuing) Do you say you had never heard about operations in that house? A I don't remember ever of hearing of operations in the house, until I heard Mr. Fritchman say so.

Q Do you remember telling us at the last trial in answer to this question "Well, you had heard about operations in the house, hadn't you?", and answering, "Oh, yes, I heard about operations" --- did you say that at the last trial? A Why, I remember being asked if I had heard of operations.

Q Did you say that at the last trial? Answer the question. A Well, if it is there I must have said it.

Q Well, did you? A Did I what?

Q What do you think I am talking about? A Did I say so?

Q Yes. A I say, I must have said so if it is down there.

Q I ask you if you did say so? A Yes, sir, I guess I said so.

Q Well now, then, why did you say to-day that you had not heard about operations in the house? A Why, I didn't say in the last trial that I had heard of operations in the house. I may have answered the question in this way, that if I had ever heard of operations, why, I certainly have, yes.

Q I will read you the question and answer. "Well, you had heard about operations in the house, hadn't you?" "A. Oh, yes, I heard about operations". Now, do you say that in answering that question you did not refer to operations at Dr. Blinn's house? A Well, I was referring to ---

Q (Interrupting) What, speak up? A I said so.

Q I know you said so. I want to know whether you referred in your answer to operations in Dr. Blinn's house or not?

MR. UNGER: If your Honor please, we object to this as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A I said that I heard of operations, but I did not mean to say that I heard of operations in the house.

Q Well now, the question was "You had heard about operations in the house, hadn't you?", and if you did not mean operations in the house, why didn't you say so in your answer, instead of saying "Oh, yes, I heard about operations"? Have you any explanation to that? A Why, I said so, that's all.

Q What? A I said so.

Q I know you said so. Now, what explanation have you got to give the jury, in regard to your answering this question "Oh, yes, I heard about operations", when the question was "You heard about operations in the house, hadn't you"? A Yes, I heard of operations.

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Q In the house? A Yes, that is what I answered there.

Q Oh, you meant to refer to operations in the house?

A I say I had heard of operations.

Q Well, what operations had you heard of in the house?

A Why, I didn't refer to any operations particularly.

Q What? A I didn't refer to any operations, that I know anything of. I have heard the word operations.

Q Oh, you were not assistant operator, we know that; you were cock. I want to know what operations you heard about in the house.

MR. UNGER: We object to the form of the question.

MR. TRAIN: I withdraw it.

THE COURT: Yes, the form is bad.

Q What operations had you heard of in the house?

A Why, I have heard of lots of talk of operations. I read things about operations.

Q Oh, you heard lots of talk about operations in the house? A Not in the house, no, sir, I didn't say that.

Q Didn't you say a minute ago that you heard about operations in the house? A Well, when I was there, I say I heard of lots of talk of operations.

Q Well now, what operations did you hear about in the house?

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MR. LE BARBIER: Objected to as incompetent,  
immaterial and irrelevant.

Objection overruled. Exception.

A The word operations was not any strange thing.

Q What is that? A The word operations is not a strange  
thing. You hear that word.

Q Oh, it was a familiar thing, wasn't it, in that house?

A You see it in the newspapers and see it in books.

Q Yes, all kinds of operations, operations on the feet  
and on the hands and on the ears. Well now, what kind of  
operations did you hear about at Blinn's?

MR. LE BARBIER: Objected to as incompetent,  
immaterial and irrelevant.

Objection overruled. Exception.

A There was talk among ourselves, the servants, of an operation  
on a man's ear drum, being taken out.

Q Oh, that was a man, and he had his ear drum taken out?

A Yes.

Q And who performed that operation? A Some doctor in  
a sanitarium in 43rd Street, I believe it is, Dr. Wiley's.

Q What other operations did you hear about? A Well, I  
can't remember. I ain't paying any attention to it.

Q Well, did you ever see that peculiar looking table  
up in the doctor's office? A The operating table, the table

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they call the operating table?

Q Yes, the operating table, exactly? A Yes, I know there was a table there called an operating table.

Q Well, what did you think that was for, for the removal of ear drums? A I didn't pay any attention to what it was for.

Q Didn't you ever ask anybody what it was? A No, sir, I did not ask.

Q You did not take any interest? A No, sir, I didn't think anything about it. I didn't bother with it.

Q Now, you say that from downstairs you could hear moving on the tiles upstairs? A Yes, sir.

Q Were you in the kitchen when you heard that tile moving? A No, sir.

Q You were outside, somewhere in the front room? A I was out ---

Q (Interrupting) Did you ever hear groans and shrieks in that house?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant. Well, no objection.

Q Well, answer the question. A No, sir.

Q Never did? A I never heard any groans or shrieks in that house.

Q You never did, of any sort? A Nothing that I can re-

member.

Q Well, don't you think that if you can remember the words that Fritchman used to your employer, when they were taking a drink five years ago, that if you had heard any groans from the doctor's back room, you would remember them? A No, I never heard any groans from the doctor's back room.

Q Did you ever talk with Emma Bergquist as to whether she had heard groans?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained.

RE-DIRECT EXAMINATION BY MR. UNGER:

Q Just a moment. You were handcuffed that morning, weren't you? A Yes, sir.

Q You were flung into the room with such force that you broke through the screen?

MR. TRAIN: Now, that is not re-direct. That is objected to.

Q That is, that reminded you of the occurrences that took place that morning? A Yes, sir.

Q Had that experience ever happened you before in your lifetime? A No, sir.

Q And you are apt to remember what took place that morning, don't you think so? A Yes, sir, after being arrested and

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handcuffed.

THE COURT: We will take a recess now until two o'clock.

Gentlemen, do not discuss the case or form or express any opinion upon it, but keep your minds open upon it until it is sent to you.

(Recess until 2 o'clock p. m.)

AFTER RECESS. TRIAL RESUMED.

J A C O B H E P P E L, being called and duly sworn as a witness on behalf of the defense, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q What is your business, Mr. Heppel? A Painter and decorator.

Q What was your business in 1903? A Painter and decorator.

Q Did you do any business for the defendant in that year? A Yes.

Q What month? A The month of November.

Q On or about November 22nd, 1903, were you doing work?  
A Yes, on a Sunday.

Q Were you familiar with the premises of the defendant?

A What do you mean?

Q Were you familiar with the premises of the defendant?

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A Not at all.

Q What? A I was not.

Q Well, did you know the premises of the defendant?

A Sure, I did.

Q That is what I say, you were familiar with them?

A Yes, yes.

Q Will you kindly ~~say~~<sup>state</sup> to this Court and jury what the condition of those premises was on or about November 22nd, 1903? A The whole house at that time, it was upset. I was working in every room, on the second and third floor. I started work on the top floor. There was two rooms, and I divided two rooms and made three rooms out of them. I painted the ceilings, walls and woodwork of the rear room, I fixed them all up; the second floor front I fixed all them rooms, the ceilings, walls and woodwork in the rear room. There was one room I made of that room I made two rooms, a bathroom and another room, and in the front basement<sup>I</sup> done the ceiling, and every room at that time was upset, and all the furniture was packed in the middle of the rooms, so I could get around. We had painters and plasterers and carpenters and floor layers working at that time.

CROSS EXAMINATION BY MR. TRAIN:

Q Well, you testified at the last trial, didn't you?

A Yes.

Q And at the last trial you testified to a whole lot of things about what happened, when a whistle blew? A Yes, that's right.

Q You were not asked about that this time? A All right.

Q I don't ask you about it. A Do you want to know that now?

Q Oh, no. Mr. Le parbier may want to. Now, on this Sunday you were at work there? A I worked there on Sunday, yes.

Q How long had these alterations or improvements been going on? A Well, I was working there about two weeks and a half, something like that.

Q Two weeks and a half? A About that, yes.

Q And during that time you had fixed up some of the rooms? A Yes.

Q What rooms had you personally done? A It was all the rooms on the top floor and the floor below, and the front basement I done the ceiling.

Q How much, how long after that Sunday did you work there? A Well, there was about another day and a half to do.

Q And then you were through? A Then we were through.

Q Oh, by the way, were you paid for your work?

MR. LEE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained.

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MR. TRAIN: Well, I may show ---

MR. LE BARBIER: I object to any remarks.

MR. TRAIN: Well, you cannot object to my addressing the Court.

THE COURT: Go on, what is it?

MR. TRAIN: My proposition is this, that any pecuniary relations between parties to the case are proper for examination, to show bias. Now, if the defendant owes this man money, it is certainly material.

THE COURT: Yes, that is true.

BY MR. TRAIN:

Q Now, were you paid?

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A No.

RE-DIRECT EXAMINATION BY MR. LE BARBIER:

Q Does the fact that you were paid affect you in your recollection of things as they existed at that time?

MR. TRAIN: Objected to.

THE COURT: I will take it.

Q Does the fact whether you have been paid or not for your work affect you in your recollection as to the condition of things as they existed at that time? A Well, I thought the

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doctor was good enough ---

BY THE COURT:

Q That is not the question, Mr. Witness.

BY MR. UNGER:

Q The mere question is as to the condition of the house at that time.

MR. TRAIN: We will concede that that does not affect his mind.

MR. UNGER: Well, all right, if you will concede that it does not affect it.

R I C H A R D B U C H H E I S T E R , being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q What is your business? A Electrician.

Q How many years have you been in the electrician business? A Up to now I have been 10 years.

Q In 1903, did you do any work for the defendant, Dr. Blinn? A Yes, sir.

Q In the month of November of that year, did you do any work for him? A Yes, sir.

Q On November 22nd, 1903, were you on his premises? A I was working in the basement on that day.

Q What were you doing in the basement? A I was putting in a bell, from the basement door to the dining room.

Q Do you recall anything that attracted your attention that morning? A I started to work that morning about nine o'clock, kept on working. I had to drill a hole through a brick wall there, to get my wires, and push button, and run wires to the annunciator, which was located in the dining room.

Q Did you see the defendant that morning? A Well, I was engaged at this work. It was necessary for me to work in the hall, and pass back toward the kitchen and to enter the dining room with these wires that I was running.

Q Who, the defendant? A This is the wires I was running that morning.

Q Did you see the defendant, Dr. Blinn, that morning?  
A Yes, sir.

Q About what time? A About a quarter after 11, I should think.

Q Was he alone? A He come downstairs from upstairs, with a tall gentleman, whom I didn't know.

Q Well, have you seen him since? A I believe I seen him here yesterday.

Q A man by the name of Fritchman? A Yes, sir.

Q Did the doctor have his coat on or off at that time?  
A I am pretty sure he had his coat on when I seen him.

Q What did they do downstairs? A Why, Dr. Blinn and this gentleman entered the dining room, and I heard the Dr. Blinn say to his colored man to bring some refreshments. This colored man brought a bottle of whiskey from the sideboard, located in the corner of that room, and set it on the dining room table.

CROSS EXAMINATION BY MR. TRAIN:

Q Did you ever testify before in this case? A No, sir.

Q Where is your place of business? A At present?

Q Yes. A 632 Sixth Avenue.

Q Whom do you work for? A John J. Finn.

Q Were you in this dining room? A Yes, sir.

Q In the dining room? A Yes, sir.

Q Were you there when the colored man was there? A Yes, sir.

Q While the doctor was there? A Not while the doctor and Mr. Fritchman were there.

Q Not while they were there? A No, sir.

Q Who were there when you were in the dining room?

A Who was there?

Q Yes. A I was in there myself at first, before the doctor and Mr. Fritchman.

Q Well, you say you were there when the colored man was there? A Well, I seen him there in the morning, yes.

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Q You said you were in the dining room when the colored man was there. Now, is that true or not? A That is true.

Q Who else was in the room? A That was all at present. I am speaking of previous, before ---

Q (Interrupting) Now, wait a minute. You have told us that you were in the room when the colored man was there. Now, is that true? A Yes, sir.

Q Now, was that the time when you say the doctor told the colored man to get the whiskey out? A No, sir.

Q Well, what time are you talking about? A Before the doctor came down with this gentleman.

Q How long before? A Early in the morning.

Q Well, did you think I was asking you about early in the morning, when I asked you if you were there when the colored man was there? A Well, I simply stated what I seen the colored man. I didn't think what you were going to ask me.

Q Well, were you in the room at all? A Yes.

Q When were you in the room? A I was in the room early in the morning. I was in the room probably a dozen times that morning.

Q Now, where were you when you say you heard the doctor tell the colored man to get out the whiskey? A I was at the annunciator. There was an annunciator in the southeast corner of the room, an annunciator they had for registering the numbers

there of all the rooms.

Q Well, then, you were in the room? A Not at that time, no, sir.

Q I ask you where you were when the doctor asked the colored man to get the whiskey? Now, what is your answer to that? A I was in the kitchen.

Q You were in the kitchen? A In the kitchen, near this annunciator. This annunciator sets on the wall against the kitchen. There is a hole bored through that wall, where I had to bring my wires through.

Q Now, I am asking you where you were when you heard, as you say, the doctor ask this colored man to get some whiskey? A I was in the kitchen then, at that particular time.

Q You were in the kitchen? A Yes.

Q Well, how could you hear the doctor ask the colored man to get the whiskey? A Well, I was on the step ladder, and the kitchen door has a transom over it. This transom was open.

Q You heard that through the transom? A This transom was open.

Q Did you hear it through the transom? A Yes, sir.

Q Did you hear anything else through the transom? A I heard a conversation between this Dr. Blinn and this other gentleman.

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Q What was that, that you heard? Let us have that too.

A Well, after Mr. Fritchman, after the doctor told this colored boy to bring in the whiskey, Mr. Fritchman helped himself to the whiskey, and then Mr. Fritchman asked the doctor in an excited manner, if he could perform an operation on his wife.

Q Yes, you heard that? A Yes, sir, and the doctor replied "What kind of an operation?".

Q Yes. A And then Mr. Fritchman said "I want you to bring my wife around".

Q What? A "I want you to bring my wife around".

Q Bring her around? A Yes.

Q Well, what did the doctor say to that? A Well, then the doctor and Fritchman started to leave the dining room.

BY THE COURT:

Q What did he say to that? A The doctor says "What kind of an operation?".

Q We have had that. A Yes, sir.

BY MR. TRAIN:

Q Do you mean he repeated that, said that wice, or said it once? A Well, the doctor said "I don't do that kind of work".

Q Well, didn't he say "What kind of an operation?"?

A Yes, the doctor said "What kind of an operation?".

Q Now, what did Fritchman say to that? A Just what I

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said before, "I want you to bring my wife around".

Q What **did** the doctor say then? A "I don't do that kind of work".

Q He said "I don't do that kind of work". Now, what was the next thing that was said? A The doctor said that his house was all upset, and he was practically incapable of doing any sort of operation at that special time.

Q What other explanations did he give? A That he had mechanics to attend to, he had some business upstairs with painters, and he had to look after people who were coming in, to figure on work, and that's all I heard. They passed upstairs.

Q Oh, you must have heard more than that. A No, sir.

Q Didn't you hear anything else? The doctor explained that his house was all upset and people were coming in to give figures on work, and **that** he had other things to do upstairs? Didn't you hear anything else? A I didn't hear nothing else then, no.

Q Well, of course, this made a great impression on your mind? A It did, naturally.

Q And what did you do then? A I then went to the front door to connect my button. I was pretty near finished with my work then.

Q Yes, and did you speak to the colored man? A No.

Q And how long did you stay around there? A I went to the front door to connect this button, and I was practically just getting my tools ready to do this work when I heard a whistle outside, and I walked out to the areaway to see what the trouble was, and I seen three men running upstairs, and another man came toward me and pushed a gun in my face, and backed me up into the house again, up the basement stairs.

Q Well, you were not arrested, were you, at that time? A I was not taken to the station house, no, but I was under arrest at that particular moment.

Q Did you make any memorandum of this conversation that you heard? A I made some memorandums, yes.

Q You did, where? A I have a habit of making memorandums.

Q Where did you make the memorandum? A In a notebook which I keep.

Q Oh, you have a notebook? A I have a notebook?

Q Yes. A Not with me, no.

Q Well, you have it at home? A Yes.

Q Was this conversation all written out? A No.

Q Well, what have you written out? A I have the date of different events that occurred in various employment I was in, to that effect.

Q Well now, I ask you if you made any memorandum of this conversation? A Of this particular conversation, no.

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Q Well, did you make a memorandum of any conversation that you heard that morning? A No.

Q Then, why did you ask me if I meant this particular conversation? A Well, what I meant by memorandum, I meant that I jotted down in a little book I keep all these dates and things that occur.

Q Well, what have you jotted down in your little book about this? A Simply what happened on that Sunday.

Q You did jot down in a little book at the time what happened, did you? A Yes.

Q At that time? A Yes.

Q Where did you jot it down? A Right after that, probably a week after.

Q A week afterwards? A Yes.

Q Well, why did you jot it down? A Not for any particular reason. I only have a habit of doing that.

Q You keep a sort of diary? A Yes.

Q Now, tell us what you jotted down about this occurrence?

A About what?

Q Tell us what you jotted down about this occurrence?

A I simply made a memorandum of the date, and then I had a few newspaper clippings pasted in.

Q What memorandum did you make in regard to this occurrence? A The only memorandum I have got is the date; that

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is all, practically.

Q The date? Well, do you call that a memorandum?

A Certainly.

Q What do you mean, you just wrote down November 22nd?

A November 22nd.

Q Yes, did you write that down in that book? A Yes.

Q What else did you write down? A What happened there that day.

Q You did write it down? A Yes.

Q Now, tell us what you wrote down? A Well, that's all I did write down.

Q Well, what? A Just the date, that's all.

Q You told us you wrote down what happened there that day. Now, I want to know what you wrote down that happened there that day. A Well, by my writing the date down, I know what happened.

Q I see, all you need is to see a date, and your mind does the rest? A Anything that concerns me, yes.

Q Well now, what have you got in that book, anything but dates? A Dates.

Q Just dates? A That's all.

Q It is a book of dates? A Yes.

Q You say you have not got anything in the book but dates?

A That's all.

Q Well, we would like to see that book, full of dates?

A I have got in that book different things concerning my business, people I have worked for and different happenings in the course of time I have been in business.

Q Well, do you write down happenings? A Yes.

Q Well, then, in some instances you do need more than the date to remember what happened? A Not very much more.

BY THE COURT:

Q Mr. Witness, did you not say a few minutes ago that you wrote down what happened there that day in that book?

A Yes, sir.

Q Now, tell the counsel what that was. You say you wrote down what happened; now, what was it, so far as you can recall? A Well, I simply wrote down in this book that a raid took place that day.

BY MR. TRAIN:

Q You wrote that down? A Yes.

Q Now, didn't you just tell the jury that all you put down was the date? A On this date, yes, but I did not write down all this conversation that I am giving now.

Q You have just told the Judge that you wrote down the fact that the raid took place. Now, did you write that down in your notebook? A Yes, sir.

Q You have got the book? A Yes, sir.

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Q And that is there written out that this raid took place? A Yes.

BY THE COURT:

Q Anything else upon that subject? A That is all I wrote on that subject.

BY MR. TRAIN:

Q Well now, why did you tell the jury that all you put down was the date? A Well, I meant to tell them that.

Q Meant to tell them what? A That I wrote down this date, and what happened that day.

Q Well now, do you tell the jury that you wrote down what happened? I am trying to find out, you know, that's all? Did you write down in that book what happened at Dr. Blinn's that morning? A Not the entire happenings.

Q Did you write down anything that occurred? A Just the date, and the raid occurred on that date.

Q Well, when you say raid, what do you mean by that? A This raid happened on that Sunday, I wrote down.

Q Well, tell the jury what you wrote down? A Raid occurred at Dr. Blinn's on November 22nd, 1903.

Q Raid occurred at Dr. Blinn's? A yes, sir.

Q Now, that is all you wrote down? A. That's all, yes, sir.

Q Now, you have never been convicted of a crime, have you? A No, sir.

Q And where were you born? A Germany.

Q How long have you been in this country? A 21 years.

Q Where do you live? A 1201 Simpson Street, Bronx,  
Bronx Borough.

Q 1200 and what? A 1201 Simpson Street.

Q Simpson Street? A Yes, sir.

Q Did you correspond with Dr. Blinn during his absence  
from the city? A No, sir.

Q How long did you work at Dr. Blinn's after that Sunday?

A About one day.

Q Did you go back to the house for anything? A I went  
back to finish my work.

Q Well, after the work was finished did you go back?

A No, sir.

Q Now, do you know, outside of the fact that they were  
employed with Dr. Blinn at that time, any of the persons who  
were in this house? Do you know this colored man? A I only  
knew him from seeing him there while I was working there.

Q Well, I didn't ask you how you knew him, but did you  
know him outside of the house? A No, sir.

Q Have you ever seen him outside of the house? A No,  
sir.

Q You have not seen him at all, then, or spoken with him  
since the raid occurred? A I seen him at Mr. Le Barbier's

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office recently.

Q Oh, recently, while at Mr. Le Barbier's office? A Yes, sir.

Q When you were going over what you knew about the case?

A I did not go over it with him.

Q Not with the colored man, but when you were going over what you knew about the case? A yes, sir.

Q And you told Mr. Le Barbier all these things that you have told me? A Yes, sir.

Q Now, who invited you down to Mr. Le Barbier's office?

A Dr. Blinn wrote me a letter.

Q Dr. Blinn wrote you a letter? A Yes, sir.

Q From where? A From this city.

Q What? A From this city.

Q Well, do you know how he had your address? A He looked it up, I suppose.

Q Well, you do not know? A I don't know.

Q Had he ever written you before? A No, sir.

Q When did he write to you? A After this last trial; he was trying to find me for the first trial, and he couldn't reach me.

Q And you got a letter? A Yes.

Q After the last trial? A Yes.

Q Now, had you told anybody about what happened at the

doctor's house five years ago, in the meantime? A No, sir.

Q Had you thought much about it in the meantime? A I forgot all about it practically.

Q Well, when you got this letter from Dr. Blinn, did you remember what occurred? A Yes, sir.

Q Did you remember this conversation? A Yes, sir:

Q And remembered it all distinctly, just as you have given it here? A Yes, sir.

Q How the doctor asked "What sort of an operation?"  
A Yes, sir.

Q You remembered that? A Yes.

Q After you got the doctor's letter --- and that Fritchman said that he wanted to bring his wife around? A I remember those very words distinctly.

Q Well, you remembered that, and remembered it without going to Mr. Le Barbier's office? A I told him that before ---

Q (Interrupting) You remembered it before you went to Mr. Le Barbier's office? A Yes, sir.

Q And you remembered each and every other part of the conversation the minute you got Dr. Blinn's letter, is that right? A Yes.

Q Well, is your memory a good memory? A Fairly good.

Q Do you remember other things that occurred five years ago with equal distinctness? A I think I do, yes.

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Q You think you do? Well, can you give us any conversation that occurred five years ago? A I remember things 15 years ago.

Q Well, can you give us a conversation that occurred 15 years ago, between any other parties at which you were present? A I suppose I could.

Q Well, try it? A I can remember things that happened in school, that happened between me and boys, and that is longer than five years.

Q All right, now, give us an example of your memory?

MR. UNGER: Is it worth while going into that?

THE COURT: It is testing his memory.

MR. UNGER: Well, that is all it amounts to.

MR. TRAIN: Well, what more do you want?

Q Now, give us some conversation that occurred, even only five years ago, between any other parties than Fritchman and Dr. Blinn? A Well, I can remember 10 years ago, when my father took me downtown to procure employment for me, a conversation between my father and the boss, that I started to work with, because that don't amount to anything much, but I can remember words that was spoken then.

Q Well now, what was this boss's name? A What was his name?

Q The boss's name? A Charles Ackerman.

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Q You worked for him afterwards? A Yes, sir.

Q Can you remember a conversation that occurred between the boss and your father when you went there? A Yes, sir.

Q Well, let's have it? A My father asked him to put me ---

Q (Interrupting) What did he say? Give us the words?

A I am telling you.

Q What? A My father asked this Charles Ackerman to put me to work to learn the trade.

Q Well, what words did he use? A Well, he talked German.

Q Well, do you remember the German? A The German?

Yes.

Q Well, what did he say? What words; give us either English or German, if you remember the exact words? Do you remember the exact language? A Pretty nearly exact, yes.

Q Well, do you remember it as well as you remember this conversation that you heard between Fritchman and Blinn?

A In my own memory I do.

Q In your own memory? A Yes.

Q What do you mean by that? A In my own way I mean, my own way.

Q Well, you have given us, you must appreciate, the exact language that Blinn and Fritchman used together on that morning, haven't you? A Yes.

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Q Now, did you see them at the time they had this conversation? A yes.

Q You were looking at them? A Yes, sir.

Q Through the transom? A Yes, sir.

Q Well, how far away were you? A About eight feet.

Q You were on the other side of the door? A Yes, sir.

Q Was the door open or closed? A Open.

Q Of course you were not looking through the door?

A No, sir. I was up on a ladder.

Q You were looking through the transom? A Yes, sir.

Q And where was this machine or hole or wire, or whatever it was that you were working upon? A In the dining room.

Q What were you doing up on the ladder? A I was running the wire, I had to run two wires to reach this machine.

Q Where were you running the wire? A On the top of the picture moulding.

Q Were you taking it through the transom? A Right over the transom.

Q You were taking it over the transom? A Yes, sir.

Q Now, when you got down to Mr. Le Barbier's office, of course you told him what you remembered? A Yes, sir.

Q All about it? A Yes, sir.

Q Did you write it down? A No, sir.

Q Did anybody write it down? A I don't know.

Q Did you see anybody taking it down, or writing it down?

A No, sir.

Q Have you seen anyone in regard to the case, except on your visit to Mr. Le Barbier; has any one been to your house?

A No, sir.

Q Have you talked to anybody about the case at all?

A Simply told my boss that I had to come down to court, that's all.

Q Well, I mean, apart from that, has anyone been up to see you? A No, sir.

Q Did you ever talk with George Williams? A I have talked to him, yes.

Q Where have you talked to him? A I seen him outside to-day. I had lunch with him.

Q You had lunch with him? A Yes, sir.

Q How many times have you lunched with him? A To-day, that's all.

Q Did you talk about the case at all? A No, sir.

Q Not a word? A No, sir.

Q Were you in court here this morning when he testified?

A Yes.

Q You heard everything he testified to? A Yes, sir.

Q Had you ever talked to him before about the case?

A No, sir.

Q Well, was he present when you told Mr. Le Barbier what you knew about the case? A No, sir.

Q He was not? A No, sir.

Q Do you know whether you saw Le Barbier first, or Williams? A I don't know who saw him first.

Q You do not know? A It is evident that George saw him first, because he was on the first trial.

Q I am referring to this occasion, when you say you went down to Mr. Le Barbier's office, who was there? A I simply seen Mr. Le Barbier's clerk at first. Then I seen Mr. Le Barbier.

Q Was anything at all suggested to you about what Williams knew about the case? A No, sir.

Q Weren't you told that Williams was in the room? A No, sir. I know he was in the room, but nobody had to tell me.

Q What? A I know he was in the room, but nobody had to tell me.

Q No one told you that? A No, sir.

Q Well, weren't you told anything about the case at all? A I simply said what I knew, and that was all about it.

BY THE COURT:

Q Now, answer the question. A Yes, sir.

BY MR. TRAIN:

Q Weren't you told anything about the case at all?

A No, sir.

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Q Well, did you know that Dr. Blinn had returned? A I didn't know he went away.

Q You did not know he had gone? A No, sir.

Q Did you know he was under indictment? A No, sir.

Q You did not know that at all? A No.

Q Well, when you got down to the office, weren't you told that? A No.

Q When did you first find out that Blinn was charged with a crime? A I found out he was charged with a crime, being on this last trial, I read an article in the newspaper, previous to the letter Dr. Blinn sent me.

Q But you said that previous to going down to Mr. Le Barbier's office you did not know he was charged with a crime. A I understood you asked me if they told me.

Q You knew then, when you went down there, that you were wanted as a witness in a criminal trial? A Yes.

Q And you knew what the charge was? A Yes.

Q, But you did not know what your testimony was desired for? A No, sir.

Q You did not know whether the conversation that you had overheard was important or not? A No, sir.

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Q But you mean to say you were not asked whether you overheard any conversation or not? A I simply stated these facts.

Q Were you asked whether you overheard any conversation?

A No, sir.

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Q Were you asked whether you saw Blinn on that morning?

A By Mr. Le Barbier?

Q Yes. A I don't think he asked me that.

Q Well, did he ask you any questions, or did you just tell him? A I simply told him what I knew.

Q And he did not ask you any questions at all? A No, sir.

Q And you said that you were up on this stepladder?

A Yes, sir.

Q And he knew all about that then, when you first took the stand this afternoon? A Who knew that?

Q Mr. Le Barbier? A He must have known it, if I told him.

Q Because you told him? A Yes, sir.

Q Now, was there anyone present when you had this conversation with Mr. Le Barbier? A No, sir.

Q Now, in addition to the raid that occurred at Dr. Blinn's house, what else is there in that book about November 22nd? Now, why do you hesitate? A I did not quite understand what you said.

Q You say you have got a book in which you have got an entry --- raid occurred at Dr. Blinn's November 22nd?

A Yes.

Q Now, what else is there in that book about what occurred

at Dr. Blinn's, anything? A Nothing else. Well, yes, there is.

Q Well? A I have a little entry of materials and fixtures and so forth.

Q Well, is there any entry about this conversation?

A No, sir.

Q What was there about the conversation that made such a great impression on your mind? A Well, that was, this conversation occurred immediately before I went outside, and had this gun put in my face, and I was brought upstairs, and saw this raiding going on, and that was the first time and last time I ever was caught in a raid.

Q Now, if this conversation made such a very great impression on your mind, was there any particular reason why you either did or did not write it down in a book? A Well, I never thought it would be necessary to write it down.

Q I see, and since you found it was necessary, you remembered? A Yes, sir.

Q Now, you are quite positive that you told Mr. Le Barbier in his office all the things that you have told me on my cross examination? A Yes, sir.

Q You did not confine yourself, when you were with Mr. Le Barbier, to simply what you stated on your direct examination? You know that you told Mr. Le Barbier when you were

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sworn on your direct examination, that you heard Blinn ask the colored man to pour out some whiskey, or something of that sort?

A Yes, sir.

Q And that that is all you told us? Mr. Le Barbier did not get any other information from you? A Well, I told him what occurred afterwards.

Q Now, you had told him? A Yes.

Q (Continuing) The things that you have told me, in his office? A Yes.

Q You are sure of that? A Yes.

Q Just as sure as you are of anything else that you have testified to? A Yes.

Q You swear that you did? A Certainly.

Q Answer the question. A Yes.

Q Well, have you any doubt about it? A No, sir.

Q Now, will you bring that book to-morrow morning?

A All right.

MR. UNGER: We have other witnesses, but we will save the learned District Attorney the trouble of calling them. That is all. The defendant rests.

THE COURT: Is there anything further?

MR. TRAIN: Nothing further, except that, as a matter of curiosity, I would like to see that

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little book.

MR. UNGER: In the same way, if we can see what became of this Officer Fritchman, outside of the court, from the records.

MR. TRAIN: No, I call on this witness to produce this book. It appears that it bears on whether he is telling the truth or not. It is not collateral matter at all. He says he made an entry by which his recollection is to a certain degree refreshed.

THE COURT: Well, sum up.

MR. UNGER: Before we sum up, if your Honor please, upon all the testimony as presented, I renew the motion made at the close of the People's case, that your Honor advise the jury to acquit, upon the grounds stated.

THE COURT: Motion denied.

MR. UNGER: And I may request that your Honor will kindly admonish the jury that the denial of the motion is not to be considered by them as <sup>in</sup> any way affecting the case one way or the other? And that we have an exception to your Honor's denial?

THE COURT: You may have an exception to the denial.

MR. TRAIN: Do I understand your Honor, by directing counsel to sum up, does not consent to

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having the witness come back and bring this book with him?

THE COURT: Well, I hardly think, as it is 20 minutes of three, that he can be back in a short time?

MR. TRAIN: He lives in 1201 Simpson Street.

THE COURT: Well, I know where that is. That is a good distance from this point.

MR. TRAIN: All right, sir.

THE COURT: Then the case is closed. Sum up.

MR. TRAIN: If your Honor please, it appeared in the opening of the defendant's counsel, that he stated certain things that the defendant thought, and what he intended to do and why he returned, and why he went away, and of course it was not proper for me to object, because I supposed that he would attempt to substantiate that. I ask your Honor to admonish the jury at this time that the statements of Mr. Le Barbier as to what the defendant thought, why he returned, and so on, are not evidence, and were proper only if he expected to substantiate them.

THE COURT: The Court will charge the jury upon the law when it comes to that point. Go on.

(Mr. Le Barbier summed up the case for the defense.)

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THE COURT: Gentlemen of the jury, it is now five minutes of four, and in view of the fact that counsel for the defense has occupied about an hour and a half of your time, and the Court assumed that counsel for the People may require perhaps an hour of time, we will take up the consideration of the case to-morrow morning.

I should like to ask counsel on both sides to submit to me, to-morrow morning, such propositions as they would like to have the Court charge, because I desire to pass upon them during the summing up of counsel for the People.

Gentlemen of the jury, do not discuss the case, or form or express any opinion upon it, but keep your minds open and free, until it is finally submitted to you.

We will take an adjournment until half past ten o'clock to-morrow morning.

(The Court thereupon adjourned the further trial of the case until to-morrow, Thursday, April 9th, 1908, at 10.30 o'clock a. m.)

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New York , April 9th, 1908.

T R I A L     R E S U M E D .

(Mr. Train summed up the case on behalf of the People).

THE COURT'S CHARGE.

Gentlemen of the Jury, you are concerned this morning with the consideration of a very important case; important to both parties to the controversy; to this defendant Francis Gray Blinn, whose liberty is involved in the determination of your verdict; to the People of the State, that the law may be properly administered.

The case has been presented on the part of the People with great care and ability. Every bit of evidence has been presented on the part of the People that was in their possession, and it has been argued with great ability by the learned Assistant who represents the County. The case has been defended equally well. Nothing has been left undone that able, earnest and devoted counsel could do for the defendant, charged with the commission of a serious infraction of the law. Everything has been done on both sides and well done.

It now remains for the jury to perform its duty; and you will perhaps recall that every time the Court relieved

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you from the consideration of the case, it admonished you not to discuss it, not to form or express any opinion upon it, but to keep your minds open, and free, until this moment. That was an important injunction. Jurors might well, prior to the trial at all, form some impression upon the merits of a controversy; during the progress of a trial, impressions might have been created; but this prisoner at the bar is entitled to have you keep your minds open and free until the last and the best word has been said.

The Court's duty is much minimized on account of the able presentation of the case by both of the learned counsel. The Court's duty is to state to you, gentlemen of the jury, the law of the case; to guide you, so far as it is able, in the application of the law to the case; to determine during the trial what is competent evidence, so that when you retire to your jury room, you may take that evidence and marshal it and weigh it, and then by your verdict do the right thing by it.

If the Court has been of any assistance during the trial, in that respect, it has, so far as the Court conceives the duty of the Court, performed its duty. At any rate, the Court has endeavored to aid the jury, to aid both parties, to allow every particle of evidence which, in the conscientious judgment of the Court, was proper evidence, and to exclude every particle of evidence which the Court thought was not competent and relevant to the

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issues involved.

Now, what is your duty? It is to take this evidence, to weigh it, analyze it, and then render a verdict upon it. Now, a verdict is a declaration of the truth. That is your duty. Not hastily, but deliberately, sift this evidence, and then, after sifting it, declare the truth. You are not concerned with the policy of the law or with what is the law. That power is lodged in the lawmakers, the Legislature of the State, who make the laws and define what crimes are, and prescribe for the administration of justice the penalties that follow the clear, unmistakable proof of the commission of crimes.

So, you see that your duty is not difficult. If the jury keeps in its proper place, if the Court does not exceed its proper boundary, and the jury declares the truth, then everything will have been done that can or should be done in the interest of both of these parties, the State of New York and the prisoner at the bar.

A criminal trial is, perhaps, the most important trial that ever enlists the attention of jurors. It is required, in the humanity of the law, that a defendant should not lose his liberty unless it has been clearly proven that he ought to lose his liberty, that he has been guilty of an infraction of the law, and has brought himself within the prohibitions of the criminal statutes. He owes no burden. He comes here under indictment pre-

presented by the Grand Jury, but he comes here, so far as you are concerned, an innocent man until the contrary be established. His record heretofore, the fact of his arrest, of his indictment, must not for a moment be considered by you in the determination of your verdict. Whatever of guilt is placed upon his record, must be placed there by the sworn evidence in this case that the Court has permitted you to hear. All the presumptions are in favor of a defendant charged with a crime independent of the evidence. The burden rests upon the People of satisfying your judgment beyond a reasonable doubt that he is guilty, and that is a sensible doubt born of reason and flowing from the rational exercise of reason. As I stated to you, he owes no burden to you at all; he carries none. The burden rests where it properly should rest, upon the one who makes the accusation, and that is the People of the State.

It is frequently said, and has been asked of the Court, how it was possible, with all of the safeguards and bulwarks that have been put around a person charged with crime, how it was ever possible for the State to convict anyone of crime? What with the presumption of innocence in his favor, the doctrine of reasonable doubt, the ability to probe the consciences and the minds of the jurors, the ability without any reason for so doing of eliminating from

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the consideration of the case a certain number of jurors without cause, and, more than that, the necessity of the jury unanimously agreeing that the prisoner is guilty --- how is it ever possible to convict anybody under our system of jurisprudence?

The answer is, gentlemen, that the People who made our laws and who were responsible for them, believed that while you cannot put too many safeguards and bulwarks up in the interest of a person charged with crime, yet, after all, they had such confidence in the integrity, in the honesty, in the intelligence of twelve men who are to determine the issues, that notwithstanding all of these bulwarks, the People's interests would be safe, and if the proof be sufficient, and guilt be established, the eyes of the jury would not be blinded to the truth.

Now, this prisoner at the bar has been indicted by the Grand Jury for the crime of attempted abortion. Two things are necessary in every criminal case. There must be a good and sufficient indictment. You must have that preliminarily, and, secondly, the defendant's guilt must be established beyond a reasonable doubt. The sufficiency of the indictment is a matter for the Court, and not for you, and the Court does determine that in form this indictment is good and sufficient.

This defendant, Francis Gray Blinn, has been indicted

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for an attempt to produce the miscarriage of a woman, unknown to the Grand Jury, who was then and there a woman pregnant with child, by the use of instruments or other means.

Judging from some of the statements made here, it might appear to you that causing miscarriages among women was not an unusual thing, for the purpose of endeavoring to avoid the consequences of sexual intercourse, and at times often among people who had not even the excuse of trying to avoid disgrace, but simply owing to their unwillingness to submit either to the pains of child-bearing, or the trouble and annoyance of child raising. It is certainly, gentlemen of the jury, to be regretted, if there is any such morality prevalent in this community, and I, of course, know that it has no hold on anyone in this jury box.

The statute defines where the right to cause a miscarriage exists, and it is well for me to read to you the Section of the Penal Code on the subject of abortion, because the indictment is for an attempt to commit abortion, and the lawmakers have defined abortion in this wise:

"A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman or of the child of which she is pregnant, uses or causes to be used any instrument

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or other means, is guilty of abortion."

Another paragraph of the statute I have not read to you, because it has no application to the evidence in this case. The statute, you will observe, that I have read to you, defines where the right to cause a miscarriage exists. It must be done to save the life of the mother or the child. Otherwise, there is no right to destroy the foetus, or the undeveloped life in the mother's womb. Some religions have carried their belief so far as to regard the foetus as having the same right to existence as the mother, and therefore, that each ought to have an equal chance. That, however, is not the law, and there exists the right to destroy the foetus in certain contingencies, under the law, to save the mother. The mother has the superior and greater right to live; but it ought not to be done except for that purpose. To do it to avoid shame, to do it, still worse, to avoid annoyance of child-bearing or avoid the rearing of children, of course is a crime not only condemned by the statutes of this State, but a gross and immoral offense. At the same time, though it is a crime that is unhappily, perhaps, indulged in, and a crime that deserves great reprobation, and which ought to be severely punished, that is no reason why one ought to be convicted of the crime simply because of the charge. It is the best of reasons why, if a per-

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son is actually guilty, the jury should say so, that he may be properly punished, but it affords no grounds for allowing suspicion to take the place of proof, and to find a person guilty of anything except that which is shown by the evidence in the case. So, gentlemen, if a person causes this result through awkwardness or by lack of skill, if his negligence is sufficiently gross, he should be punished for manslaughter, but that does not constitute abortion. It is the intent to make a miscarriage. It is the intent to do away with the unborn child, or with the foetus, that bit of life that may develop into the human being, by compelling a woman to miscarry; that constitutes the offense. If a person does that, if he uses an instrument or prescribes drugs, or does both for that purpose, then, as a matter of fact whether the abortion follows and the woman does miscarry or not, the offense is complete. But unless the intent is to get rid of an undeveloped, unborn child, then no offense exists. The gist of the offense consists in the intent to procure a miscarriage by the use of, or by causing the use of any instrument or other means, and the law has the saving clause that the crime is not committed where it is necessary to preserve the life of the woman or of the child of which she is pregnant. It is not necessary, moreover, gentlemen of the jury, to use any particular instruments. Anything that will accomplish the offense would be sufficient. The law says, "Any instru-

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ment or other means which may be used to produce a miscarriage."

We are not called upon to determine the question of whether or not the defendant committed the crime of abortion, however. He is not on trial for that crime, nor has he been indicted by the Grand Jury for the commission of that crime. He has been indicted for an attempt to commit that crime, and it is upon the question of his guilt or innocence of an attempt to commit that crime that you are concerned with this case, and upon which your verdict must be rendered.

Bearing in mind, therefore, what I felt that it was necessary for me to state to you, the law with reference to abortion, and in what the crime of abortion consists, let us now for a moment consider what constitutes an attempt to commit the crime. The lawmakers have defined what an attempt to commit a crime is, as follows: "An act done with intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime."

The Court of Appeals in this State, in the case of the People against Moran, 123 N. Y. has construed what an attempt is in such a succinct and concise manner, that I feel it is well that I should read it to you, in the language of the highest Court of our State. We all stand under and are controlled by what is the law as defined by

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our highest Court, the Court of Appeals. Chief Judge Ruger of that Court said: "An attempt is made when an opportunity occurs, and the intending perpetrator has done some act tending to accomplish his purpose, although he is baffled by an unexpected obstacle or condition. Many efforts have been made to reach the North Pole, but none have thus far succeeded, and many have grappled with the theory of perpetual motion without success, possibly from the fact of its non existence, but can it be said in either case that the attempt was not made? It was well stated by Justice Gray in the Commonwealth against Jacobs, 9 Allen, 274"-- and this case has not only been cited with approval by Judge Ruger in the Moran case, but in several other cases upon cognate subjects --- " that whenever the law makes one step towards the accomplishment of an unlawful object with the intent or purpose of accomplishing it criminally, a person taking that step with that intent or purpose, and himself capable of doing every act on his part to accomplish that object, cannot protect himself from responsibility by showing that by reason of some fact unknown to him at the time of his criminal attempt, it could not be fully carried into effect in a particular instance."

Whenever, in other words, gentlemen, the criminal intent exists, followed by acts apparently affording prospect of success, and tending to render the commission of

the crime effectual, the person so possessed and so acting brings himself within the spirit and intent of the statute.

You will observe from what I have read to you, and the statute itself, that under it there must first be an act done; second, it must be done with the intent to commit a crime; third, the act so done must have a tendency to effect the commission of a crime, and fourth, the act must fail in accomplishing the purpose intended. These four elements must concur and be present. In other words, in this case, it is necessary for the People to prove first, that the defendant Francis Gray Blinn had in his mind an intention to produce a miscarriage on the body of the woman who is known to you as "Annie" in this case; and secondly, that he did some act with that intent, which tended to produce the miscarriage, and thirdly, that the act which he did failed to accomplish the purposes which he intended.

Now, frequently, gentlemen, it would be impossible to determine what was the intent of the person accused, unless you have recourse to the actions of the accused, and proceed to infer from those actions whether the intent be criminal or innocent. Intent may be inferred in different ways; in this case, in one of two ways; first, if you believe the witnesses for the People it may be ascertained by the declarations and statements of the accused himself, and secondly, by the acts which the accused did, by a rea-

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sonable and natural inference from those acts. It is claimed by the People and urged by the People, with what force it is for you to say, that from the conversations which passed between the defendant and Dr. Watkins and Fritchman, he declared his intent to produce a miscarriage upon the woman who is known as "Annie" in the evidence in this case, and in the second place, that from his act or acts in his office on 47th Street, and his equipment and appliances which he was found in possession of, and the uses of which have been explained to you, that the act or acts of the defendant himself manifested the intent that actuated him, and that that intent was to produce a miscarriage. Conduct is produced by certain motives, and if we find conduct as a rule we can reason back from conduct to a motive or inducement that dictated such conduct. Now, did the defendant at the bar do an act in the operating room of his apartments which tended to the commission of the crime of abortion, and did he do that act with the intent to produce a miscarriage? If he did, he committed an attempt to commit the crime of abortion. If on the other hand, he did it for any other purpose, such as treating her medically, then he did not commit any crime, no matter what instruments he had in his possession or what the surrounding appearances were.

Did Blinn do an act, and the act which he is charged

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with, voluntarily, and with a full knowledge of the subject and of the consequences that would flow therefrom?

Under such circumstances, gentlemen, setting a trap, by which he was caught, is not a defense, if that be established by the evidence to your satisfaction beyond a reasonable doubt.

The intent to commit a crime is not sufficient alone to justify a conviction for such offenses. It must be accompanied by some overt act, or the crime itself is not complete.

The question whether an attempt to commit a crime has been made is determinable solely by the condition of the actor's mind, and his conduct in the intent and consummation of the design.

An overt act is one done to carry out the intention, and it must be such as would naturally effect that result, unless prevented by some extraneous cause.

Placing a woman upon a table, an operating table, would be a circumstance, but it would be for you to say whether you believed that that was essential and necessary to accomplish a miscarriage. Subsequent acts done in turn and in the ordinary course would be means to an end; so, for instance, if you believed the evidence submitted on the part of the People, of Dr. Watkins and Frichman. Such facts, if they are facts, and it is for you to say, followed out to a final conclusion, would consummate the

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intended crime. If, therefore, you are satisfied that the intent to commit a crime existed, and that an overt act was done in the process of the consummation of the offense, and that in the ordinary course the crime would have been consummated had not the interruption by the arrest intervened, then the offense of an attempt to commit the crime was complete. Any one act, coupled with the intent to commit the crime, is sufficient to constitute the offense charged in the indictment in the manner alleged.

There has been something said to you about the character of some of the evidence that has been admitted here, called "a trap". The evidence was admitted by the Court because they were steps necessary to establish the trap. That is strictly within the law. Let me illustrate to you: If I suspect, for instance, an employe of stealing my money, I may mark my money and place it in such a position as to expose it, and if my employe steals it and he is subsequently indicted for it, the fact that I marked it and exposed it would be no defense to him. As the Court of Appeals said in the 178th N. Y. in People against Mills: "The Courts do not look to see who held out the bait, but to see who took it."

Some allusion has been made during this trial to the character of the testimony of the actors of this trap. The testimony of these witnesses, gentlemen of the jury, stands before you just like that of every other witness.

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The question for you to determine is whether you will believe them under oath, taking into consideration the explanation which they have given in reference to their methods of work. The testimony of a hired witness is always receivable, but should be scrutinized and examined with great care. It should not be rejected for that reason. It is sometimes absolutely necessary, in the administration of the criminal law, that such persons be employed, because crime frequently is committed with great secrecy; its ramifications are concealed, and persons who contemplate the commission of a crime do not generally speak and manifest to the public their intention to commit that crime. It certainly ought not to discredit any witness before a jury to have it brought out that he, as an individual member of society, has volunteered to detect crime without reward or without any official appointment; nor ought it to discredit a witness perhaps any more because he is an agent of some organization, or is an Assistant District Attorney, or a police officer of the City of New York, and employed to carry out the objects of their employment in the suppression of crime. The duties of the District Attorney and the Police Department are to aid in the suppression of all crimes, and the crime of abortion is included within that classification. If, therefore, it is part of their duty to aid in the suppression of

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criminal acts, as I charge you, such as abortion, you must say whether an individual acting with that view and toward that end is to be discredited while using methods allowable under the law.

All witnesses stand here entitled to equal consideration in your minds. The presumption of innocence which applies to a defendant is not his particular shield or exclusively his property. The presumption of integrity, of honesty, applies to all of us. The presumption is that witnesses tell the truth, rather than commit perjury. That presumption stays with them just as the presumption of innocence stays with the prisoner charged with crime, until the contrary be established. So that you must take this evidence and reconcile the testimony of all the witnesses with integrity, with honesty, if you are able to, and if not, you are to judge between them, and upon the subject of their credibility you are to consider and may consider their relations <sup>to</sup> different parties to the transaction, and the motives that they may have, their appearance on the stand; the frankness or lack of frankness which they exhibited upon the stand. All of these matters may be considered by you in determining the weight to be given to the testimony of the different witnesses.

I have intentionally, gentlemen, refrained from making any commentary upon this evidence. In a case of this character, tried without any waste of time on the part of

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the People and the defendant, where the attention has been so good on the part of the jury, and where it has been thoroughly argued, the duties of the Court in this respect are slight indeed. I prefer infinitely to allow this evidence to rest entirely in your recollection, without making any effort even to marshal its salient features. It is an important case, and ought to be carefully determined by you, uninfluenced by any suggestions even by the Court.

The defendant's counsel has handed me some requests to charge:

1 No person is authorized to practice medicine in this State unless he has successfully passed an examination before the State Board of Medical Examiners and received a license from the University of the State of New York, and is registered in the office of the Clerk of the County where such practice is to be carried on.

That I charge you.

2. Dr. Watkins not having passed such examination and not having received such license and not being registered in the office of the Clerk of the County of New York, was and is not a person duly licensed to practice medicine in this state.

Well, I decline to charge that, as it is immaterial.

MR. UNGER: May we take our exception when your

Honor is through or as you go on?

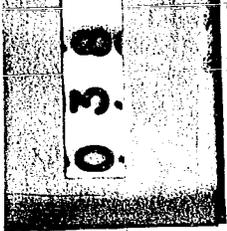
THE COURT: The Court declines to charge that except as charged. The evidence is for the jury and the jury alone.

MR. UNGER: Exception.

3. The general rule of law is that witnesses must state facts within their knowledge, and not give their opinions or their inferences. To this rule there are some exceptions, among which is expert evidence. Witnesses who are skilled in any science, art, trade or occupation, may not only testify to facts, but are sometimes permitted to give their opinions as experts. This is permitted because such witnesses are supposed, from their experience and study, to have peculiar knowledge upon the subject of inquiry which jurors generally have not, and are thus supposed to be more capable of drawing conclusions from facts, and to base opinions upon them, than jurors generally are presumed to be.

THE COURT: That I charge you.

4. The testimony of the witness Watkins as to the pregnancy of the woman Annie was received solely upon the ground that he was an expert. In determining the weight they are to give to such testimony, the jury must take into consideration the opportunities of the expert for examination and observation of the woman, the nature and extent



of the observation and examination he made, and the nature and extent of the special training, skill and experience of the witness in that branch of learning.

THE COURT: That I charge you.

5. A mere intent to commit crime, no overt act towards its commission being done, is not criminal. Mere preliminary preparation is not, however, such an overt act as to constitute the crime. There must be some act directed towards the particular party and towards the particular offense, the result of which would be the completed offense if not hindered by extraneous causes, to constitute the legal crime of an attempt.

THE COURT: That I charge you.

6. If the jury is not satisfied beyond a reasonable doubt that the defendant did, with intent to procure the miscarriage of the woman Annie, attempt to use the instruments referred to in the indictment upon her, they must acquit the defendant.

THE COURT: That I charge you.

7. If the jury are not satisfied beyond a reasonable doubt that the defendant, with intent to procure the miscarriage of the woman Annie of a child of which she was then pregnant, did attempt to use upon her the instruments referred to in the indictment, they must acquit the defendant.

THE COURT: That I charge you.

8. If the jury are not satisfied beyond a reason-

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able doubt that at the time of the alleged commission of the offense in question the woman Annie was then and there pregnant with child, they must acquit the defendant.

THE COURT: That I charge you.

9. Even if the defendant did attempt to commit an abortion upon the person of the woman Annie by means of any instrument, and even if the defendant did then believe that the said Annie was pregnant with child, nevertheless he cannot be convicted under this indictment for such offense unless the jury are satisfied beyond a reasonable doubt that the woman Annie was then and there pregnant with child.

THE COURT: That I charge you.

10. Even if the defendant did intend to commit the crime of abortion set out in the indictment, or did attempt to commit the crime as there set out, in the belief that the woman Annie was then and there pregnant, he cannot be convicted in this case unless the jury are satisfied beyond a reasonable doubt as matter of fact that the woman Annie was then and there pregnant.

THE COURT: That I charge you.

11. There can be no criminal abortion upon a woman by means of an instrument, under our laws, unless at the time of the commission of the act the woman is pregnant with child. If the defendant did attempt an act of abortion with an instrument upon a woman not then pregnant

with child, in law he does not intend to commit abortion or attempt at abortion, whatever he may erroneously suppose as to the woman's condition, and therefore unless the jury are satisfied beyond a reasonable doubt that at the time of the attempt alleged to have been committed by the defendant the woman was pregnant, they must acquit the defendant

THE COURT: That I charge you .

12. Any matters brought out upon the testimony of the defendant's witness Williams with respect to transactions or things not connected with the subject matter of this indictment are to be considered by the jury solely as related to the credibility and memory of such witness, and not as directly bearing upon the question of the guilt or innocence of the defendant of the crime charged in the indictment.

THE COURT: That I charge you.

13. If the jury believe that any witness has willfully testified falsely to any material fact, it is their right to reject and discredit all of the testimony of such witness.

THE COURT: That I charge you.

14. A witness may be discredited even when not contradicted.

THE COURT: That I charge you.

15. Even if there were no real conflict in the evidence in this case, there still remains the question of

credibility of the witnesses upon which the jury must pass?

THE COURT: That I charge you.

16. The jurors are the exclusive judges of all questions of fact.

THE COURT: That I charge you.

17. Even though a witness may appear to give credible, unimpeached and undisputed evidence in a criminal case such as this, it is exclusively within the province of the jury to determine for themselves the credibility of such witness and what degree of credence they should give to his testimony.

THE COURT: That I charge you.

In other words, I charge all of your requests except the second one.

MR. UNGER: And the 18th, your Honor has probably overlooked.. I will read it to you if you wish.

THE COURT: What is that?

MR. UNGER: The very last one.

THE COURT: Oh yes, I have it here.

18. The omission of the defendant to take the stand in his own behalf does not create any presumption against him, and it is the duty of the jury to determine his case without prejudice or inference against him by reason of his omission to testify.

THE COURT: That I charge you.

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MR. UNGER: That does cover it, and I desire to thank you, and I feel like apologizing for supplementing my requests, but there was one statement made by your Honor, I believe inadvertently, to which I desire to except, and in connection with which I desire to make a request. Your Honor stated at the outset of your charge that every bit of evidence has been presented on the part of the People that there was in their possession.

THE COURT: It is claimed by the People, I should have said. I gathered that from what the learned District Attorney stated.

MR. UNGER: Yes, the jury may have gathered the same, and in connection with the same, I therefore make this request: No promise or agreement on the part of Watkins to excuse the woman Annie from appearing as a witness would preclude the District Attorney from calling her as such.

THE COURT: Oh yes, I charge that.

MR. UNGER: And with that I desire likewise if your Honor will indulge me one moment, to take an exception to your citation from the Moran case, which was absolutely correct as far as it went, to-wit, that an attempt is determinable solely by the condition of the actor's mind. That has been distinguished and practically repudiated in the People against Jaffe, where there are other elements which necessarily go into the case, and to that I except; and I desire to except, with your Honor's kind indulgence, to

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the other statement, that attempt, or rather intent, an act coupled with intent to commit a crime is sufficient to constitute the offense in the manner alleged; my suggestion being, and I think your Honor probably would intend to charge so now, that there must be more than an act, there must be an act tending to commit the crime charged.

THE COURT: Yes, I charge that.

MR. UNGER: And in that connection I ask your Honor to charge the jury that a mere agreement to commit crime not followed by an overt act, would not constitute an offense.

THE COURT: Yes, I charge that.

MR. UNGER: And one further, that the jury must find in favor of the prosecution beyond a reasonable doubt upon each one of the four elements of the offense as laid down by your Honor.

THE COURT: Yes. Now, gentlemen, you have been selected by the law to determine the issues involved here of the guilt or innocence of the defendant. The People and the prisoner at the bar are entitled to have you determine this case upon the facts and the sworn evidence. A beneficent Providence has given you reasoning power, judgment and discretion. Use the best abilities of your minds. Weigh this evidence; winnow out the chaff from the wheat; analyze it and scrutinize it to the end that justice may here prevail. If you do your duty, as the counsel for the

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defendant have done their duty, as the counsel for the People have done their duty, as the Court has tried to do its duty, then justice assuredly will be done by your verdict, for such a verdict must and will satisfy the public mind.

Take the case.

MR. TRAIN: With regard to the Exhibits, is there any objection to the jury having the Exhibits?

MR. UNGER: Well, whatever the jury desire.

(The jury retired at 1:10 P. M.)

The jury returned at 3:50 P. M. and returned the following verdict: We find the defendant guilty.

MR. LE BARBIER: Will your Honor remand the defendant until next Thursday?

THE COURT: Yes, Thursday, April 16th, 1908.

The People etc. vs. FRANCIS GRAY BLINN:

New York, April 20th, 1908.

(The defendant is arraigned for sentence:)

MR. LEBARBIER: May it please the Court, the defendant at the bar, Francis Gray Blinn, respectfully moves for a new trial, upon the following grounds:

First: That the verdict is contrary to the law, and clearly against the evidence.

Second: That the verdict is contrary to the evidence and against the weight of evidence.

Third: Upon each of the exceptions taken by the defendant to the rulings by the Court, upon his objections to the admission of evidence offered by the Prosecution.

Fourth: Upon each of the exceptions taken by the defendant to the rulings of the Court, in passing upon questions of law and of fact, and in excluding testimony offered by the defendant.

Fifth: Upon each and every exception taken to the rulings of the Court admitting witnesses or testimony, and in deciding questions of law, and in charging and instructing the jury upon the law, upon the trial of the issues herein.

THE COURT: Motion denied.

MR. LEBARBIER: Exception. The defendant

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further respectfully moves in arrest of judgment herein, that no judgment can be rendered upon the verdict of guilty herein, upon the ground that the facts stated in the indictment and adduced at the trial do not constitute a crime.

THE COURT: Motion denied.

MR. LE BARBIER: Exception.

(Mr. Le Barbier then addressed the Court upon the matter of sentence.)

THE COURT: There are some letters that I have received in the interest of Doctor Flinn which I have not as yet had an opportunity of examining, and I am going to allow the matter to stand over until Thursday morning next, and if you will submit the letters that you have, I will dispose of it at that time, and it will not be necessary for Mrs. Flinn to see me.

MR. LE BARBIER: Thank you, your honor.

(The matter of sentence was thereupon adjourned to Thursday, April 23rd, 1908.)

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