

**START**

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**CASE**

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Esther Zelkowitz

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#294

COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York.

----- x  
THE PEOPLE

against

BERNARD HOHENBERG, indicted  
with Mary Kurjava and Philip  
Blumstein.  
----- x

Indictment filed December 15, 1906.

Indicted for abortion.

For the People, ASSISTANT DISTRICT ATTORNEY APPLETON.

For the Defendant, RUDOLPH CHERURG, ESQ., and LEONARD A.  
SNITKIN, ESQ.

Tried before HON. THOMAS C. T. CRAIN, Judge, and a jury on the  
17th day of March, 1908, &c.

Jury duly empanelled and sworn.

Mr Appleton opened the case for the People.

The Court admonishes the jury in accordance with  
section 415 of the Code of Criminal Procedure, and takes  
a recess until two o'clock.

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AFTER RECESS.

MR. CHERURG: Will your Honor exclude all witnesses from the court room except the experts on both sides.

THE COURT: So ordered.

MR. CHERURG: The District Attorney in his opening address to the jury has stated that he would be unable to prove pregnancy in this case. Relying upon that statement, and as part of the record, I now move that the failure to prove pregnancy will place this case in such a condition that the prosecution cannot prevail, and that they will not have complied with the requirements of the law, and on that ground I move for the dismissal of this indictment against the defendant. Pregnancy being the especial feature, in order to make an abortion, the failure of the prosecution to prove pregnancy cannot then, under any circumstance secure a conviction, and I therefore move the Court for the dismissal of this indictment and the discharge of the defendant.

THE COURT: I will deny your motion upon the ground that if the indictment stands, under the rules of law, the case may be submitted to the jury as an attempt, in which event pregnancy is not a prerequisite.

MR. CHERURG: I take an exception. Then I move that the indictment and the specific charges under the indictment be withdrawn from the jury, and that the District

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Attorney then proceed to trial under the attempt to commit the crime of abortion.

THE COURT: I will let the indictment stand unchanged. I understand from the opening of the District Attorney, that he proposes to try the case as though the indictment had originally been an indictment as for an attempt to commit the crime of abortion.

MR. APPLETON: That is correct.

MR. CHERURG: I take an exception.

ESTHER ZELKOWITZ, called as a witness in behalf of the People, being duly sworn, testified through the official interpreter Mr Fisher, as follows:

MR. CHERURG: I understand this girl speaks English.

MR. APPLETON: I know the girl cannot conduct a conversation in English, because I have tried to talk to her in English, and been unable to do so.

THE COURT: I think it is desirable that the testimony of this witness should be given in as clear a way as possible. I think you will get the evidence of the witness better through the medium of an interpreter than otherwise. Oftentimes a witness may understand and yet be unable to express himself or herself properly.

MR. CHERURG: At times a witness takes advantage

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of that fact to stop and consider.

THE COURT: I shall apply the same rule to your witnesses; if there is any doubt of their being able to understand, the interpreter will be used.

DIRECT-EXAMINATION BY MR. APPLETON:

Q How old are you now? A Seventeen.

Q On the 30th day of September, 1906, were you employed anywhere? A Yes.

Q By whom and where? A Blumstein, baker store, in Monroe street, I have forgotten the number.

MR. APPLETON: Is the defendant Blumstein in court-- call him in.

MR. CHERURG: What is the purpose of bringing the defendant Blumstein in; in what way do you connect him with this defendant?

THE COURT: It is entirely proper. The District Attorney wants to show where this girl was employed.

MR. CHERURG: I will admit that she was working for Blumstein at that time.

THE COURT: The prosecution is not obliged to take any admission.

(A man is now brought into the court room.)

BY MR. APPLETON:

Q Is that the man you were working for? A Yes.

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THE COURT: Is it conceded that his name is Blumstein?

MR. CHERURG: Yes.

MR. APPLETON: And he is codefendant in this case.

MR. CHERURG: Yes.

It is conceded that the person who came to the rail  
is named Philip Blumstein and that he is a codefendant in  
this case.

BY MR. APPLETON:

Q How long had you worked for Blumstein? A Three years.

Q Now about two months or six weeks before the 30th day  
of September, did the defendant Blumstein say anything to you?

MR. CHERURG: I object as incompetent, irrelevant and  
immaterial, not pertinent to the issue and not binding  
upon this defendant as to anything that Blumstein did to  
this witness, and as not calling or bringing out any facts  
that are charged in the indictment.

THE COURT: Do you not think, Mr Appleton, that we  
can make the case somewhat shorter, by getting right down  
to the fact that this defendant was once in the presence  
of this witness, and then the statement of what was done.  
I think it will shorten the case.

MR. APPLETON: Very well.

BY MR. APPLETON:

Q On the 30th day of September, 1906, in the house of  
Blumstein, did Blumstein say anything to you?

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Objected to as incompetent, irrelevant and immaterial.

MR. APPLETON: I will connect that.

MR. CHERURG: It is not pertinent to the issue and not binding upon this defendant.

THE COURT: I will allow her to answer the question, yes or no, that he said something, in consequence of which she probably did something.

Exception.

THE WITNESS: A Yes.

BY MR. APPLETON:

Q After he said something to you, did you go anywhere with Blumstein? A I went to a doctor.

Q Do you see the doctor in the court room now to whom you went with Blumstein? A Yes.

Q Where is that person? A Here (pointing to the defendant).

Q Now, where was that doctor when you and Blumstein saw him on the 30th day of September, 1906? A In his office.

Q Where was his office? A In Sixth street. I cannot tell the number.

Q What? A In Sixth street, I cannot tell the number.

BY THE COURT:

Q New York County.

BY MR. APPLETON:

Q In New York County? A Yes.

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Q Will you tell the Court and jury what happened there?

MR. APPLETON: I withdraw that question.

BY MR. APPLETON:

Q Did the defendant Hohenberg, the doctor, do anything to you on that occasion? A Yes.

Q State to the Court and jury what the defendant Hohenberg did to you on that occasion? A He examined me with instruments and he gave me medicine.

Q When you say that the defendant Hohenberg examined you with instruments, describe what instruments he used upon you?

A Yes--I cannot describe it, but if I would see the instrument I could tell you whether they were the ones.

Q Can you tell the jury what kind of a looking instrument it was? A It was an instrument that looked like two spoons.

MR. CHERURG: I think I can assist you. I will do all I can. Ask her if this was the instrument.

(Mr. Cherurg produces an instrument and hands it to the District Attorney.)

BY MR. APPLETON:

Q I show you this instrument that the attorney for the defendant has just given to me, was it an instrument like that?

A It was an instrument--it was made different from the one you show me.

Q But it looked something like this article I have in

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my hand? A Yes, it was in a different style--it was made in a different style.

Q Did it have two things on it?

Objected to as having been already answered.

THE COURT: Let her describe the instrument as well as she can.

THE WITNESS: There was a long handle to it, and then he talked to the baker about the money, how much he charged, and he gave an address--

MR. CHERURG: I object to that as not responsive and as calling for a conclusion.

MR. APPLETON: I consent that it be stricken out.

THE COURT: Strike it out.

BY MR. APPLETON:

Q Where did the defendant put that instrument that you have described? A He placed it into my body where it belonged.

Q What part of your body was that? A He placed it in the part where a child comes from.

Objected to as calling for a conclusion and motion made to strike out.

Objection overruled; motion denied; and exception.

Q Were you standing or sitting or lying down at the time?

A I was lying down on a chair.

Q After Hohenberg had placed the instrument into the part

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of your body that you have described, will you tell me what the next thing was that happened? A He gave me some medicine. He gave me medicine to take.

MR. CHERURG: She said he packed her with some gauze and then gave her--

MR. FISHER: Mr Dollin understands the dialect better than I do. She is Russian-Poland.

THE COURT: Which of you speaks the language.

MR. FISHER: Mr Dollin understands the language better.

MR. DOLLIN: I know the language.

THE COURT: Will you translate just what she says and nothing else.

MR. DOLLIN: Yes.

THE COURT: (To the interpreter Dollin:) Do you speak her language?

MR. DOLLIN: Yes.

THE COURT: We might as well understand each other; you speak her language, and after she has said something to you, you listen to her and without talking yourself, and then put in English what she says.

The witness now gives her testimony through the official interpreter Mr Dollin.

BY MR. APPLETON:

Q Now, then, after the defendant Hohenberg placed the

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instrument in the part of your body that you have indicated, what was the very next thing that Hohenberg did to you if anything? A He out with scizzors.

Q Where? A Inside.

Q I talk about the first time that you saw Hohenberg at his house?

MR. CHERURG: I move to strike out the answer as not responsive and as incompetent, irrelevant and immaterial.

THE COURT: I deny your motion.

Exception.

THE COURT: As far as the record now shows, it is responsive.

MR. CHERURG: Then I will move to strike it out as calling for a conclusion.

Denied, and exception.

BY MR. APPLETON:

Q I am talking to you about what the defendant did right there at his office on Sixth street, not what he did afterwards to you, but right there in Sixth street? A I am talking about Sixth street.

Q Then what did the defendant do to you? A Then he took medicine with gauze and put it in.

Q Put it in where? A Put it into my privates.

Q Then what happened next? A Then he gave me pills.

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Q What happened next? A Then he sent me to that woman.

Q Did he give anything to Mr Blumstein, when you say he sent you to the frau? A He gave to Blumstein the address.

Objected to as calling for a conclusion.

MR. APPLETON: I consent that it be stricken out.

THE COURT: Strike it out.

BY MR. APPLETON:

Q When you say he gave Blumstein an address, did he give him anything, a piece of wood or a piece of iron or a piece of paper? A A piece of paper.

Q The defendant Hohenberg gave Blumstein a piece of paper--now, what did Blumstein then say to you, if anything, when the defendant Hohenberg gave to Blumstein a piece of paper?

MR. CHERURG: Will you bring out as to whether the conversation was in the presence of the defendant Hohenberg at that time.

MR. APPLETON: No.

MR. CHERURG: Then I object.

THE COURT: You mean in the defendant's office?

MR. CHERURG: If he will say in the presence of the defendant I will not object.

THE COURT: Yes.

MR. APPLETON: I will withdraw the question with the permission of the Court.

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BY MR. APPLETON:

Q When Hohenberg gave Blumstein the piece of paper, did Blumstein say anything to you? A Yes.

Q When Blumstein said something to you on that occasion, was Hohenberg right there? A Yes, sir.

Q Now state what Blumstein said to you? A He said-- Blumstein said that the doctor attended to me and gave an address to go to that woman.

Q Did Blumstein say what the doctor said was the matter with you?

Objected to as incompetent, irrelevant and immaterial.

MR. APPLETON: I will withdraw it if you object to it.

BY MR. APPLETON:

Q Have you told us everything that Blumstein said to you on that occasion when the doctor gave Blumstein a piece of paper?

MR. APPLETON: I ask your Honor to instruct this interpreter that he is not to amplify the question, not to explain the question, but that he is to say in the native language of this girl what the counsel says in English.

THE COURT: You understand that, Mr. Interpreter?

MR. DOLLIN: That is what I do.

THE COURT: Sometimes, but not always.

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THE INTERPRETER: I talked to her and she started to say something and I repeated the question to her again.

THE COURT: Just translate the question of the District Attorney. Repeat the question, Mr Stenographer.

The question is repeated by the stenographer as follows:

Q Have you told us everything that Blumstein said to you on that occasion when the doctor gave Blumstein a piece of paper? A Not yet.

Q Please tell us everything that Blumstein said to you on that occasion? A Blumstein said to me that the doctor will attend to me so I shall not be pregnant any more.

Q What else was said? A Then he said that we should go to that woman and we went to the woman.

THE COURT:

Pardon me for a moment. I do not want to interrupt you.

BY THE COURT:

Q The defendant's office was on the ground floor of the house? A Yes.

Q Whom did you go to the office with? A With the baker.

Q Philip Blumstein? A Blumstein, yes.

Q When you went in the doctor's office, was anybody else there except the doctor, the defendant here, and Philip Blumstein and yourself? A Nobody else.

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Q When you got inside the office, did you sit down?

A I sat on a chair, and then he told me to go into the other room.

Q What kind of a chair did you get into last? A An outlying chair, open.

Q When you got in that chair what was your position?

A I lie down with my face up.

Q When you were lying down with your face up, where was the defendant? A He stood at my legs.

Q Were you then fully dressed? A Yes.

Q What if anything was done with your skirt? A Blood, and then he pulled up the dress.

Q After he pulled up the dress what did he do next?

A Then he put instruments in.

Q Where was the instrument that he first used before he first took it in his hand, if you know? A In a wardrobe, a closet.

Q Did you see him take it out of the wardrobe? A Yes.

Q Did you see him take out more than one instrument?

A Yes.

Q How many? A He took a long one with two spoons, and then he had a scissors.

Q Which did he take first? A The one with two spoons.

Q What did he do with that? A He put it in my privates.

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Q What did he do after that? A He tore something with the scissors.

Q What did he do then? A Then he put some medicine into it.

Q What did he do then? A Then he wiped it out with medicine and then he put medicine in again.

Q About how long were you in the defendant's office on that first occasion? A About an hour and a half.

Q Was Blumstein there all the time? A Yes--Blumstein was in the office in the other room.

BY MR. APPLETON:

Q Now, did this defendant Hohenberg do that to you in his office on the Day of Atonement, the 30th of September?

A Yes.

Q Is not this the first time you have ever said that?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A Yes.

Q You testified in the Magistrate's Court, did you not?

A Yes.

Q You came to see me in my office and made a statement there to me, last September or October? A Yes.

Q Did you tell me in my office that Hohenberg did that to you, put something in you and cut you in his office?

A Yes.

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MR. CHERURG: I move to strike that out.

BY MR. APPLETON:

Q You told me that there in my office? A Yes.

Q Did you testify to that in the Magistrate's Court?

A Yes.

Q What is the next thing that you did, after Blumstein told you we would go to the frau's house--did you go out from Hohenberg's office? A Yes, we went to that woman.

Q Where did you go? A In Attorney street.

Q Do you remember the number in Attorney street? A I can't read numbers. I cannot remember.

Q That house in Attorney street was in the county of New York? A Yes.

MR. APPLETON: Is Mrs Kurjava in Court.

MR. CHERURG: I am the attorney for her and told her she could remain away until to-morrow.

MR. APPLETON: You concede that the woman this witness will call Mrs Kurjava is the Mrs Kurjava in this case who resides in Attorney street.

MR. CHERURG: Yes.

MR. APPLETON: Then that is conceded.

BY MR. APPLETON:

Q Did you see Mrs Kurjava in this house on Attorney street? A Yes.

Q Did Blumstein say anything to Mrs Kurjava? A Yes.

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Q What did he say?

MR. CHERURG: I object to it as incompetent, irrelevant and immaterial and not binding upon this defendant, anything this witness said with another defendant, does not in any way affect this defendant.

Objection sustained.

MR. APPLETON: These three defendants are indicted in the same indictment for acting in concert to procure an abortion of this girl. Now, any statement that is made by any one of the conspirators during the course of the conspiracy is admissible against any one of them.

THE COURT: I do not think there is any element of conspiracy in this.

MR. APPLETON: They are acting in concert, in that the defendant Blumstein aided and abetted the procurement of this abortion. That is, he induced Hohenberg to perform it.

MR. CHERURG: There is no proof as to that; no testimony in that respect and we deny it.

THE COURT: I think Mr Appleton we better confine ourselves to what this defendant actually did. We will be leaving out then possibly a debatable element.

BY MR. APPLETON:

Q Where did you sleep that night, the night of the 30th of September? A Was it on Sunday?

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Q It was Saturday, I think--where did you sleep the night you went to Dr Hohenberg? A With the woman.

Q In Attorney street? A Yes.

Q Mrs Kurjava? A Yes.

Q Now the next day, October 1st, 1906, did you go anywhere? A Yes.

Q Where did you go? A To the doctor.

Q That is Hohenberg, this defendant at the bar? A Yes.

Q You went to his house again? A Yes.

Q His office? A Yes.

Q Where you had been the day before? A Yes.

Q Now, what did Hohenberg do on that day, the first day of October when you went to his office? A He also did with instruments.

Q What? A He also did with instruments.

Q What did he do with instruments? A He opened it and he did with medicine something.

Q Tell us what he did? A A long thing looking like a hook, he tore with it.

Q On the first day of October in the morning when you went to his house with the girl? A Yes, that was it.

Q Tell us what he did besides that? A He put some medicine in again and then he gave me pills, and he said to me he will be at the woman's house to-morrow.

Q On the 2d day of October, which was Tuesday--

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BY THE COURT:

Q Pardon me again, before we leave that point--what was your position while these were being used?

THE INTERPRETER: The second time?

THE COURT: Yes.

THE WITNESS: A I was lying down again.

BY THE COURT:

Q On what? A On the same chair.

Q What was the first thing the defendant did to you that day? A He put instruments into it.

Q Did he do anything to you before he put the instruments in, on the second day? A No, sir, not before.

Q When you got on this chair the second day and were in it, did you have your dress on? A Yes.

Q Was your dress down or up? A Up.

Q Who put your dress up? A The doctor.

Q Did you see any towels there that day? A Yes.

Q Where did you see them? A Right on the chair.

Q Where were they, what part of the chair? A On the side, one side of the chair.

Q When you were on the chair what was the position of your legs? A Up, put my legs up.

Q What was the position of your feet? A I had them up, high up.

Q Did you have your feet in anything? A He had some-

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thing on the chair, something of iron.

MR. CHERURG: I must insist upon the literal translation of what this prosecuting witness states, and the interpreter asks and persists in telling something else.

THE COURT: I know when you are right about that, and I know when you are wrong. I understand what she says. Just translate.

THE WITNESS: I was lying and my legs were standing a little crooked.

MR. CHERURG: She did not say the legs at all, she said feet, and she spoke of the feet of something connected to the chair, and there is a difference between that and what the interpreter said.

THE COURT: We will find out.

BY THE COURT:

Q Describe as best you can the chair you were put into or that you got into? A It is leather on it, and there you lay down behind, and then there is something of iron where he puts your legs on.

Q In other words, there are stirrups that your feet go into? A It is even.

Q Where do you say the towels were? A On the side of the chair.

Q And on that day where were the instruments when you first saw them? A In the same place.

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Q By the same place you mean where? A The same place where he took it when he examined me the first time.

Q Did you see the defendant take out of that place any instruments on the second day? A Yes, sir, it was with blood, and he had standing a dish at his hand, with water, and he put it in.

Q Where was the dish? A Near the chair.

Q About how long were you in the defendant's office on October 1st, that is the second time you were at the office?

A About an hour.

Q Anybody with you there on that occasion, except the defendant? A Well, he was alone in the office, but I came to his office with the daughter of the woman.

Q When the defendant was in the office, did he have his coat on? A No.

Q In his shirtsleeves? A He had his shirtsleeves and vest on.

Q Any apron on? A No.

Q Did he have a coat on the first time that you went to the office? A Yes.

Q Did he keep it on all the time while you were in the office? A No, he took it off.

Q When he had the instruments in his hand, was his coat on or off? A No, sir, he did not.

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Q Which was it, on or off? A He took it off.

BY MR. APPLETON:

Q Where did you sleep that night? A At the Christian.

Q Where is that? A In Attorney street.

Q That is whose house? A Mary Kurjava.

Q The next day, the 2d day of October, what happened, that is Tuesday? A He was in the morning and he gave me pills.

Q Who is he? A The doctor.

Q This defendant Hohenberg? A Yes.

Q He came to Mrs Kurjava's house? A Yes.

Q Did he come again that day? A Yes.

Q When did he come again that day? A After dinner.

Q Where were you on Tuesday night the 2d of October, 1906, when the defendant came to the house in the evening after dinner--do you mean after dinner at noontime or after dinner at night? A In the afternoon.

Q Now, do you recollect what time it was in the afternoon when the defendant came to Mrs Kurjava's house? A I cannot say.

Q Where were you when the defendant came to the house in the afternoon? A I sat in the second room.

Q When the defendant Hohenberg came to Mrs Kurjava's house in the afternoon, what did he say to you first? A He said that I should lay on the bed and he <sup>will</sup> make the operation.

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Q Did you take off any of your clothes? A Yes.

Q How much of your clothes did you take off? A I took off the skirt and waist and remained with the petticoat on.

Q Was Mrs Kurjava there? A Yes.

Q Now, when you took off all but your undervest and petticoat, did you have your drawers on? A No.

Q Then when you had only your undervest and petticoat on, did you lie on the bed? A Yes.

Q Then what did the doctor do if anything? A He gave me medicine to drink, and then he had chloroform and a sponge.

Q He put the chloroform on the sponge? A Yes.

MR. CHERURG: I object as calling for a conclusion. The witness does not know what it is.

MR. APPLETON: I consent that the word "chloroform" be stricken from the record.

THE COURT: Strike it out.

BY MR. APPLETON:

Q You say the doctor put something on a sponge, a liquid? A Yes.

Q After the doctor put liquid on a sponge, what did he do, if anything, with that sponge? A He put that to my face.

Q What happened to you after the doctor had put the sponge with that liquid on it to your face? A I was then mixed up, everything was turning around me, and I felt that he



was tearing something in me.

Q Whereabouts in you, will you please stand up--whereabouts in you feel that something was being torn, put your hand on that part of you?

(The witness arises.)

A There. (The witness points to her abdomen.)

THE WITNESS: Above my privates.

BY MR. APPLETON:

Q Before the doctor put the sponge to your face, did you see anything around there, any instrument of any kind?

A He brought a satchel and he laid out the instruments.

Q Will you tell me what instruments the defendant Hohenberg laid out on that occasion? A I saw that he took a long instrument with something sharp that you stick with.

Q About how long was that instrument? A About that length (indicating).

MR. APPLETON: Will the Foreman please estimate the length of that?

THE FOREMAN: About a foot and a half.

BY MR. APPLETON:

Q About how big around was that instrument that you describe? A It was thin. It was not thick.

Q Was it as big around as a lead pencil? A Yes.

Q About that size (indicating)? A Yes.

Q Was it perfectly straight or was it bent? A It was

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bent.

Q Whereabouts was it bent? A Near the point, there it was bent.

Q What other instrument besides this long slim instrument that you have described, did the doctor take out? A He took out a big scissors.

Q Big scissors, and what other instrument, if any, did the defendant have? A There was one with two spoons on it.

Q Was it similar to this article that I hold in my hand? A It was of a different make.

Q But similar to that? A No.

Q Did it look anything like this? A It looked like that, but it was a different make.

Q But it looked like that? A Yes.

Q Now, then, you say the doctor, after he put those instruments out, he put a sponge to your face?

THE COURT: Pardon me a moment. For the purposes of the record, when you say it looked like that, you are referring to an instrument.

MR. APPLETON: That is produced by the defendant, and I will consent that this instrument go into evidence.

THE COURT: Just mark it for identification.

The instrument referred to is marked for identification People's Exhibit 1.

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MR. APPLETON: Technically known as a speculum, is that right?

MR. CHURURG: Yes.

BY THE COURT:

Q Who, if anyone, was in the room besides yourself and the defendant, on the occasion that you have last been describing? A The woman with whom I was.

BY MR. APPLETON:

Q What was her name? A Mary Kurjava.

Q Now, then, after the doctor laid these instruments out, as you say, and had put the sponge to your nose, and you felt dizzy, and felt the feeling inside of you, did you then come out from that feeling of dizziness? A Yes, sir.

Q What was the next thing you saw when you came out from that feeling of dizziness? A I saw pieces of blood and I was full of blood.

Q Go on and tell what happened then? A Then he put some medicine into my privates, and he was sitting.

Q Where was he sitting? A He was sitting in the bedroom near the bed.

Q You say he put medicine in, do you mean he put medicine in your private parts? A Yes, with gauze, he put it in.

Q Did you ever smell anything before that--

MR. APPLETON: I withdraw the question.

Q Did you smell anything when the defendant was putting



medicine on gauze in your private parts? A Yes.

Q Did you ever smell that odor before in your life?

A Yes.

Q What was that the odor of?

Objected to on the ground that she has not been qualified to state.

THE COURT: I will allow her to say, if she knows.

Exception.

BY MR. APPLETON ;

Q What was the odor if you know?

THE COURT: If you know.

THE WITNESS: When he put the first time the instrument, he put the same thing in.

MR. SNITKIN: I move to strike it out as not responsive.

MR. APPLETON: I consent.

BY MR. APPLETON:

Q Did you ever smell that odor, before you smelled it in the doctor's office on the 30th of September? A No.

Q Have you ever smelled that odor since that time?

A No.

Q What happened after the defendant put the gauze with this odorous stuff that emitted this odor into your private parts, what else did he do? A He said to leave it inside and he will be to-morrow morning--in the morning he will be

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in again.

Q Did the defendant go away then? A Yes.

Q Did he come again the next morning, the morning of the 3d of October? A Yes.

Q To Mrs Kurjava's house? A Yes.

Q Where were you when the defendant came on the morning of the 3d day of October? A I was in bed.

Q Had you been out of bed since the defendant put you in bed the day before? A No, sir.

Q Did the defendant speak to you when he first came into the room where you were? A He asked me if blood is coming.

Q And what did you say? A I said yes.

Q Then did the doctor do anything then? A He took out the gauze and then he syringed me.

Q Where did he syringe you? A In bed, in my privates.

Q In your privates? A Yes.

Q And then what did he do, if anything? A After he syringed me he saw pieces of blood.

MR. SNITKIN: I object as not responsive to the question.

THE COURT: Strike it out.

BY THE COURT:

Q What did he do? A Then he put gauze back into it with the medicine and he prescribed a medicine for me and he brought the medicine himself.



BY MR. APPLETON:

Q When did he bring the medicine himself? A The same day.

Q At what time the same day, in the forenoon or afternoon or evening? A In the afternoon.

Q Did this defendant at the bar do anything to you in the afternoon of the 3d day of October, when he came with the medicine? A He came Thursday again, in the morning.

Q What did he do on Thursday, the 4th day of October, when he came? A He took out the gauze then, and then he put other gauze in, and he said that I should come in the evening to his office.

Q Did you go in the evening, the 4th day of October, 1906, to the office of Dr Hohenberg? A Yes, I went.

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

Q Did Hohenberg do anything to you in his private office? A Yes.

Q Where were you when the defendant Hohenberg did something to you? A I was in the office on the chair.

Q Were your feet and legs in the air the way they had been before? A Yes.

Q Where was your petticoat or skirt? A Up, raised up.

Q And what did the defendant then do to you? A He put in instruments and syringed me and he put medicine in with the instruments.

Q On the 5th day of October, Friday, did you see the doctor on that day, Friday the 5th? A Yes.

Q Whereabouts did you see him on that day? A At Mari Kurjava's place.

Q You had slept at Mari Kurjava's the night before?

A Yes.

Q Then Friday what did the defendant do to you at Mari Kurjava's house? A There was no gauze any more and he brought some gauze.

MR. CHERURG: I am going to object to this line of testimony. I have permitted it to go far enough and I will ask your Honor to strike out all the evidence that has been adduced of anything that happened at any other time than the time specified in the indictment, namely, on the second day of October.

Motion denied and exception.

THE WITNESS: He took the gauze out and he smelled it.

BY MR. APPLETON:

Q Did he say anything when he smelled of it? A He said it is better.

Q Then what did the defendant Hohenberg do to you?

A He put in gauze again and he gave me medicine to drink.

Q Did you see the defendant Hohenberg again after that?

A Yes.

Q When did you see him again? A Saturday.

BY MR. CHERURG:

Q What date?

THE WITNESS: Saturday, after Friday.

BY MR. APPLETON:

Q Where did you see the defendant on that Saturday?

A In Mary Kurjava's house.

Q What time, afternoon, forenoon or evening? A It was in the morning.

Q Where were you, in bed or sitting up, when the defendant came to Mary Kurjava's house? A I was sitting on a chair.

Q Did this defendant do anything to you on Saturday?

MR. CHERURG: I object as not within the indictment, and as incompetent, irrelevant and immaterial and not binding upon this defendant.

Objection overruled. Exception.

A He told me to lie on the bed again and he took the gauze out and he syringed me and he put gauze in again.

Q Did you see the defendant again after that? A Sunday, after that Saturday.

Q Whereabouts were you when you saw the defendant on Sunday? A At Mary Kurjava's house.

Q Was it in the morning or afternoon or evening? A In the morning.



Q Where were you when the defendant came to Mary Kur-Java's house on Sunday? A I was in bed and he told me to remain in bed.

Q Did the defendant Hohenberg do anything to you on that Sunday? A Yes.

MR. CHERURG: I object as being incompetent, irrelevant and immaterial, and not binding on the defendant and not within the issues and not within the crime mentioned in the indictment.

Objection overruled. Exception.

THE WITNESS: He took out the gauze when I was in bed, and he syringed me and put gauze in again.

Q That is, put gauze in where? A In my privates.

Q Did you see the defendant again after that Sunday?

A Monday, after that Sunday, he came in the morning, and he took the gauze out, syringed me and put other gauze in.

MR. CHERURG: I move to strike that out.

THE WITNESS: (Continuing:) Then I asked him if I may go--

MR. CHERURG: One moment. I move to strike it out.

MR. APPLETON: There is no answer yet, so it cannot be stricken out.

MR. CHERURG: To the previous question. I did not want to interrupt. I want to object and move that your Honor strike it out, and strike out the answer as being

incompetent, irrelevant and immaterial and not within the crime charged in the indictment and not binding upon this defendant, and in conjunction with that I wish to say to the Court that every act is a specific and independent crime, if it is any, and one should not be confounded with the other, and I object.

THE COURT: I understand your position, and I think it is erroneous. I overrule your objection and give you an exception.

MR. CHERURG: I except.

BY MR. APPLETON:

Q What is the answer? A Then I asked him if I may go home to Blumstein's house, and he said yes, you may.

Q This defendant said, "Yes, you may go home to Blumstein"? A He said I may go home, that I feel better now.

Q That was on Monday a week after you had gone there?  
A Yes.

Q During all that time where had you been sleeping?  
A At Mary Kurjava's house.

Q Had you been at Blumstein's house at all during that time? A No, sir.

Q Had you been at your own house, your mother's house?  
A No.

Q You had been at Mary Kurjava's house in Attorney streetvall that time? A Yes, sir.



Q Now, on that Monday did you go anywhere? A When he told me to go home that Monday, to go to Blumstein's house, he asked me if I have a syringe at Blumstein's house, and I said no; and he said, If you have no syringe there, you may come to my office.

Q What did you say to the defendant Hohenberg when he said that to you? A I said all right.

Q Did you go to Hohenberg's office? A I could not go because when I came to Blumstein's house it was evening.

Q Did you go to Blumstein's house with anybody from Mrs Kurjava's house? A I went alone to Blumstein's house.

Q You say that Blumstein took you to Mrs Kurjava's house on the 30th day of September, 1906; did you see Blumstein at any time while you were at Mrs Kurjava's house?

Objected to as incompetent, irrelevant and immaterial and not binding upon this defendant.

Objection sustained.

Q Now, do you recollect what time it was in the day on Monday when you got to Blumstein's house? A About six o'clock in the evening.

BY THE COURT:

Q Where was your home on September 30th, where did you live on September 30th?

MR. APPLETON: I will come to that.

THE WITNESS: A In Blumstein's house.

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Q You were living there in that house? A Yes, I worked for him.

Q You worked for him, but where was your home? A In his house.

Q In Blumstein's house? A Yes.

BY MR. APPLETON:

Q After you reached Blumstein's house, as you say, about 12 o'clock in the evening of Monday, did anybody come there to Blumstein's house that you had ever seen before? A My mamma came for me.

Q About how long after you had reached Blumstein's house was it that your mother came to Blumstein's house?

A As soon as she was informed she came.

MR. CHIEF JUSTICE: I move to strike that out.

MR. APPLETON: I consent that it be stricken out.

THE COURT: What time.

BY MR. APPLETON:

Q That is not the question--I beg your Honor's pardon-- About how long after you reached Blumstein's house was it that your mother came there that Monday night? A About a quarter of an hour after I reached Blumstein's house she came.

Q Now, did you go anywhere with your mother that night?

A I went to my mother's house.

Q Where was that? A In Henry street.

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Q Now, after you reached your mother's house, did anybody come there to your mother's house? A Philip Blumstein, the baker, came.

Objected to.

MR. CHERURG: I move to strike it out as not responsive. The answer should be yes or no.

THE COURT: Yes, strike it out.

BY MR. APPLETON:

Q Answer yes or no? A Yes.

Q Who was that person?

Objected to as incompetent, irrelevant and immaterial.

THE COURT: Do you intend to show it was the defendant?

MR. APPLETON: No, it was Blumstein, the codefendant. I do not press it.

THE COURT: I think I will sustain the objection.

MR. APPLETON: I wanted to bring out everything about it and let it be ruled upon.

THE COURT: I will not say it is wrong, but I will sustain the objection.

MR. APPLETON: Dr Mantinband, please stand up.

(A gentleman arises in the court room.)

BY MR. APPLETON:

Q Do you see that gentleman? A Yes, sir, Dr Mantinband.



Q Did he come to see you at your mother's house? A Yes.

Q About how long after you left Blumstein's house was it before Dr Mantinband came to your house where your mother lived? A I cannot tell if it was the second day or third day. I don't remember.

Q Did Dr Mantinband do anything to you when you reached your mother's house?

Objected to as incompetent, irrelevant and immaterial, and not binding upon this defendant.

Objection overruled. Exception.

A Yes.

Q What did Dr Mantinband do to you when he reached your mother's house?

Same objection, ruling and exception.

THE COURT: I will allow her to state in general terms that he made an examination.

THE WITNESS: He put his hand into my privates to see what was the matter with me.

Objected to.

MR. APPLETON: I consent that the words "to see what was the matter with me" be stricken out.

THE COURT: Yes.

MR. APPLETON: May the rest of the answer stand?

THE COURT: Yes, it can stand.

Exception.

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BY MR. APPLETON:

Q Do you consent that Dr Mantinband be permitted to testify here in the court room as to the examination he made of you on that occasion?

Objected to.

THE COURT: This witness can waive the privilege if she sees fit.

BY MR. APPLETON:

Q Do you consent that Dr Mantinband testify in the court room what he did to you over at your house on that occasion?

A Yes, sir.

MR. CHERURG: If your Honor please, I request the favor of the Court. Mr Snitkin, who had previously been associated with me in the case, has been engaged in another part, in another case, and the arrangement was such that he was to conduct certain parts of the examination and I the other. The arrangement also was that this witness was to be cross-examined by Mr Snitkin, and during his absence a great part of this testimony was given. We have ordered the minutes from the stenographer, and I would ask that your Honor adjourn, if you will, until to-morrow for the purpose of securing the minutes and going over and comparing them, not only these minutes but the minutes taken in the Police Court.

THE COURT: The request is denied. I ask you to proceed with the examination.

Q You speak English? A No. (Through the interpreter)

MR. SNITKIN: I did not ask you to interpret. I addressed myself to the witness --

Q You speak English? A No.

Q How did you know what I asked you?

THE COURT: We may as well understand at the threshold that the court has reached the conclusion that this witness speaks English so imperfectly that the ends of justice can be best subserved by the intervention of an interpreter.

MR. SNITKIN: I will take your Honor's suggestion.

BY MR. SNITKIN:

Q How long are you in this country? A Four years.

Q How long have you known Blumstein? A Three years.

Q That is you knew him three years before the second of October, is that right, 1906? A Yes, I was three years in his service.

Q When was the first time that you made the acquaintance of the present defendant, Dr. Hohenberg? A It was after Yum Kipur, Jewish Holiday, on a Sunday.

Q Yum Kipur is the Day of Atonement, is it not? A Yes, fasting that day.

Q What month was that, do you remember? A No sir.

Q You don't remember the Jewish name of the month or the Christian name, do you? A No sir.

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Q Well how many days or how many weeks before you had gone to the doctor's office, was the Day of Atonement -- just a moment, I want to amend that question -- how many days before you had met the doctor was the day of Atonement?

MR. APPLETON: I object. She said it was on the Day of Atonement that she went to the doctor's office.

THE COURT: I think also that you had better, in speaking of this defendant, use the word defendant, because there will be another doctor who will give evidence in the case.

BY MR. SNITKIN:

Q You said a minute ago that you could not tell the name of the month, that is to say the Jewish name or the calendar name; is that right? A No sir.

Q Was it before or after the Yum Kipur or the day of Atonement, that you went to the doctor's office?

MR. APPLETON: I object to the question in that form. It is too indefinite.

Q Well, the defendant's office, Hohenberg's office?

A After Yum Kipur.

Q How many days after the day of Atonement? A It was so, today was Yum Kipur and the next morning I went to the doctor's.

Q What day of the week was that? A On a Sunday.

Q So that Sunday was the first time that you visited

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the defendant Hohenberg? A Yes sir.

Q Do you know that the Day of Atonement fell on the 5th of October? A No sir.

Q Do you know that the Day of Atonement fell on a Monday?

THE COURT: What year are you looking at?

MR. SNITKIN: 1907.

THE COURT: This is 1906.

MR. SNITKIN: It will probably be a difference of a day.

MR. APPLETON: There is no probability about it. We want to know. I object to the question.

MR. SNITKIN: She said she did not know the day of the month and that is all I want to get at.

BY MR. SNITKIN:

Q Now when you came into the defendant's office, Hohenberg's office, who was there besides yourself?

THE COURT: This is the first time?

MR. SNITKIN: The first time.

THE WITNESS: Dr. Hohenberg, this defendant here, I and Blumstein.

Q Blumstein is a married man, isn't he? A Yes.

Q And you had intercourse with Blumstein before you went to the defendant's office?

MR. APPLETON: Sexual intercourse you mean?

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the defendant Hohenberg? A Yes sir.

Q Do you know that the Day of Atonement fell on the 6th of October? A No sir.

Q Do you know that the Day of Atonement fell on a Monday?

THE COURT: What year are you looking at?

MR. SNITKIN: 1907.

THE COURT: This is 1906.

MR. SNITKIN: It will probably be a difference of a day.

MR. APPLETON: There is no probability about it. We want to know. I object to the question.

MR. SNITKIN: She said she did not know the day of the month and that is all I want to get at.

BY MR. SNITKIN:

Q Now when you came into the defendant's office, Hohenberg's office, who was there besides yourself?

THE COURT: This is the first time?

MR. SNITKIN: The first time.

THE WITNESS: Dr. Hohenberg, this defendant here, I and Blumstein.

Q Blumstein is a married man, isn't he? A Yes.

Q And you had intercourse with Blumstein before you went to the defendant's office?

MR. APPLETON: Sexual intercourse you mean?

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MR. SMITH: Yes, sexual intercourse.

THE WITNESS: Yes.

Q What kind of a place does Blumstein keep? A In Monroe Street.

Q What sort of a business does he carry on? A He is a baker.

Q The family of Blumstein live to the rear of the bakery? A No, in the rear of the baker there is no room, but upstairs are rooms -- in the street there is a store and he made a bedroom and then there is a kitchen.

Q Where did you sleep? A In the kitchen.

Q Who slept there besides you? A No one else.

Q Where was Blumstein's wife and children? A In the bedroom.

Q What part of the apartment, on the first floor, where the store is, or the floor above, the second floor? A In the rear of the store. He did not live above.

Q So you slept to the rear of the store and besides yourself there also slept Blumstein's wife and children?

A Yes.

Q When was the first time that you had intercourse with Blumstein? A Only once.

Q I ask you when it was? A It was in the afternoon, in the daytime.

Q Where was Blumstein's wife? A She went away with a

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little girl.

Q Where was the other children? A He has only two children -- one boy was in the kindergarten in the school.

Q What month was that? A I can't tell that. I cannot read.

BY THE COURT:

Q About how long was it before you went to the defendant's office? A Two months before.

BY MR. SNITKIN:

Q Now you say this act of intercourse that was perpetrated upon you by Blumstein was in the daytime?

Objected to as repetition.

A Yes.

Q When Blumstein's wife returned, did you make any complaint to her as to what her husband had done to you, yes or no? A No sir.

Q How far from Monroe Street where you had worked for Blumstein, did your mother live? A Two blocks away in Henry Street, my mother lived.

Q Did you make complaint to your mother that night as to what this man Blumstein had done to you? A No.

Q When did you last menstruate?

MR. APPLETON: Let us have a definite time.

BY MR. SNITKIN:

Q After the first act of intercourse.

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THE WITNESS: I did not have any blood after that.  
BY MR. SNITKIN:

Q When before the first act of intercourse did you menstruate? A About a week before.

Q Now at the time you say Blumstein had sexual intercourse with you, did you have drawers on? A No.

Q You did not sleep in Blumstein's house every night, during the summer of that year, did you? A I always slept there. I didn't have other place to go.

Q Now you say you had menstruated a week before the intercourse. Now when next did you expect your periods?

A I waited until the month was over.

Q Now you found at the expiration of the month that you did not menstruate? A I did not have my courses and I did not know.

Q You knew that a girl of your age has her courses, as you put it, every month, didn't you? A I was not so clever then as I am now, because I did not understand it so well.

Q You profited by experience -- before you went to the defendant's office, did you take any medicines? A Yes he brought medicines.

THE COURT: You must limit your questions to taking medicines between the time she had intercourse with Blumstein and the time she first went to the defendant's house.

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MR. SNITKIN: Modifying my question to conform to the suggestion of the Court.

BY MR. SNITKIN:

Q Had you taken medicine between the act of intercourse that you claim you had with Blumstein and the time that you found you did not have your periods? A No sir.

Q Finding that you did not have your courses at the expiration of the month, did you make any complaint to your mother? A No sir.

Q When Blumstein had intercourse with you, where did it take place, on a bed or a cot or on a sofa?

THE COURT: I think you have been over that sufficiently. You have the fact. I do not see that it serves any useful purpose.

MR. SNITKIN: Except so far as it attacks her credibility.

THE COURT: Very well. I will allow this one question.

MR. APPLETON: The place does not attack her credibility. It is the same.

THE WITNESS: On the bed -- he covered my face with a pillow.

BY MR. SNITKIN:

Q Now you had Blumstein arrested didn't you? A No sir, not I.

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Q. Didn't you make a complaint against Blumstein in the Magistrate's Court?

MR. APPLETON: She said not I, and it may be somebody else. I will concede any of these things about that, if you will state them, and we will then save time.

BY MR. SNITKIN:

Q. Didn't you appear as a witness in the Third Magistrate's Court, before Magistrate -- at that time -- Whitman, against Blumstein on a charge of rape?

MR. APPLETON: I concede it.

MR. SNITKIN: Let me get her answer without a concession.

THE WITNESS: No sir.

Q. Do you remember that Blumstein was discharged on your complaint? A. No I do not.

Q. Do you mean to state now that you never appeared as a witness in the Magistrate's Court against Blumstein on the charge of rape? A. No.

Q. You have testified here that the first time you paid a visit to the defendant's office was on a Saturday?

MR. APPLETON: That is not the testimony.

THE WITNESS: It was on Sunday.

BY MR. SNITKIN:

Q. Was it in the daytime or night time? A. After dinner

Q. What if anything did the defendant do to you the

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THE WITNESS: No sir.

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Q Do you mean to state now that you never appeared as a witness in the Magistrate's Court against Blumstein on the charge of rape? A No.

Q You have testified here that the first time you paid a visit to the defendant's office was on a Saturday?

MR. APPLETON: That is not the testimony.

THE WITNESS: It was on Sunday.

BY MR. SNITKIN:

Q Was it in the daytime or night time? A After dinner

Q What if anything did the defendant do to you the

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Q. Did he bleed anything at all? A. He did with  
instruments.

Q. Before you went into his office had you been bleed-  
ing, bleeding from the womb? A. No sir.

Q. Did you state to the defendant that you were bleed-  
ing from the womb, before he made an examination of your  
private parts? A. No sir.

Q. Do you recall stating to the doctor that you were  
bleeding from your womb, and the defendant then replied that  
you had better go to a hospital?

THE COURT: You are referring to the first visit,  
Mr. Snitkin?

MR. SNITKIN: Yes.

THE WITNESS: I did not say anything to him.

Q. Do you mean to state that the defendant examined your  
private parts without your having said anything to him at  
all? A. No sir.

Q. And without having said anything to the defendant --

MR. SNITKIN: I withdraw the question.

BY MR. SNITKIN:

Q. After entering his office the first time, you say --

THE COURT: pardon me a moment. You have an answer  
to the last question which probably is ambiguous. I do not  
think it conveys the meaning of this witness.

MR. SNITKIN: Suppose we have the last question and

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very first time if he did anything at all? A He did with instruments.

Q Before you went into his office had you been bleeding, bleeding from the womb? A No sir.

Q Did you state to the defendant that you were bleeding from the womb, before he made an examination of your private parts? A No sir.

Q Do you recall stating to the doctor that you were bleeding from your womb, and the defendant then replied that you had better go to a hospital?

THE COURT: You are referring to the first visit, Mr. Snitkin?

MR. SNITKIN: Yes.

THE WITNESS: I did not say anything to him.

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Q And without saying anything to the defendant --

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THE COURT: Pardon me a moment. You have an answer to the last question which probably is ambiguous. I do not think it conveys the meaning of this witness.

MR. SNITKIN: Suppose we have the last question and

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answer said.

(The stenographer repeats the last question and answer as follows: Q. Do you mean to state that the defendant examined your private parts without your having said anything to him at all? A. No sir.")

THE COURT: What do you mean by no sir.

A. I mean that I did not say anything to him.

BY MR. SNITKIN:

Q. Not having said anything to him, didn't you consider it strange that the defendant would examine your private parts instead of any other part of your body?

MR. APPLETON: I object to what she considered.

Objection sustained; exception.

Q. Not having stated to the defendant anything at all, when you entered his office, and he examined your private parts, did you make any protest?

MR. APPLETON: I object. She said she went there with Blumstein.

THE COURT: I will allow the question, whether she made any protest.

THE WITNESS: I did not say anything to him.

BY MR. SNITKIN:

Q. Now at that time, that is the first visit, when you went into the defendant's office in the afternoon of Sunday, where was Blumstein? A. He was in the office, in the other

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Q When you say the other room, do you mean a room adjoining the office proper? A Yes sir, close to the office.

Q Now after he examined your private parts to which you say you made no objection, what next did the defendant do that day? A Nothing.

Q Now have you stated all that took place between the defendant and yourself, that is the defendant Hohenberg and yourself, on the first visit to the defendant's office?

THE COURT: Do you mean in answer to the questions put by you?

MR. SNITKIN: Yes.

THE WITNESS: No sir.

BY MR. SNITKIN:

Q After the doctor examined you, what next did he say to you or do to you, that is the first visit? A Nothing.

Q How long did you remain in his office? A About an hour and a half.

Q Where did you go after that? A To Meri Kurjava's.

Q After you left his office, did you go into the adjoining room? A I went from his office through that room and then into the street.

Q Who went along with you to the street? A Blumstein.

Q At that time had you stated to your mother as to



Q When you say the other room, do you mean a room adjoining the office proper? A Yes sir, close to the office.

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THE COURT: Do you mean in answer to the questions put by you?

MR. SNITKIN: Yes.

THE WITNESS: No sir.

BY MR. SNITKIN:

Q After the doctor examined you, what next did he say to you or do to you, that is the first visit? A Nothing.

Q How long did he remain in his office? A About an hour and a half.

Q Where did he go after that? A To Meri Kurjava's.

Q After you left his office, did you go into the adjoining room? A I came from his office through that room and then into the street.

Q Who went along with you to the street? A Blumstein.

Q At that time had you stated to your mother as to

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what had taken place in the defendant's office? A I did not see my mother and I did not say anything to her.

Q Now did you see what instrument or instruments the defendant inserted into your private parts the first visit?

A Yes.

Q I understood you to testify on your direct examination that at the first visit, or on the first visit, the doctor used a scissors, is that so? A No sir.

Q He did not use a scissors on you the first time?

A No sir.

Q Did you feel pain that first visit, after the instrument was inserted in your private parts? A Yes.

Q But you were able to go to Attorney Street, after leaving the defendant's office? A Blumstein took a car.

Q Is there a car turning on Attorney Street, yes or no?

MR. APPLETON: I think she just stated he interpreted to the court.

THE COURT: All right.

THE WITNESS: No.

MR. APPLETON: What did she say to you (to the interpreter.)

THE INTERPRETER: She said no.

MR. APPLETON: She said something about Six Strasse.

THE WITNESS: When you come out into sixth Street

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Q. What took place in the defendant's office? A. I did not see my mother and I did not say anything to her.

Q. Now did you see what instrument or instruments the defendant inserted into your private parts the first visit?

A. Yes.

Q. I understood you to testify on your direct examination that at the first visit, or on the first visit, the doctor used a scissors, is that so? A. No sir.

Q. He did not use a scissors on you the first time?

A. No sir.

Q. Did you feel pain that first visit, after the instrument was inserted in your private parts? A. Yes.

Q. But you were able to go to Attorney Street, after leaving the defendant's office? A. Blumstein took a car.

Q. Is there a car running on Attorney Street, yes or no?

MR. APPLETON: I ask that what she just stated he interpreted to the court.

THE COURT: Yes.

THE WITNESS: No.

MR. APPLETON: What did she last say to you (to the interpreter.)

THE INTERPRETER: She said no.

MR. APPLETON: She said something about Six Strasse.

THE WITNESS: When you come out into sixth Street

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MR. SNITKIN: If she did say that it would not be responsive to the question.

THE COURT: I am going to allow what this witness said to be stated in English, and if it is found not to be responsive, the court will act upon it and not the interpreter.

THE WITNESS: When you come out in Sixth Street there is a car.

BY MR. SNITKIN:

Q When next did you see the defendant after the Sunday when you were in his office? A Monday I was there again.

Q Can you tell us the name of the month? A No.

Q Can you tell us the name of the year? A No sir.

Q Was it in the summer time or in the winter time?

A It was not in the summer. It was in the middle of the winter.

Q What if anything did the defendant do to you on the Monday succeeding the day when you had first visited his office? A These instruments and medicine.

Q Were you in bed when the defendant called?

THE COURT: Whereabouts.

MR. SNITKIN: At the Attorney Street house.

THE WITNESS: In the morning?

BY MR. SNITKIN:

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there is a car.

MR. SNITKIN: If she did say that it would not be responsive to the question.

THE COURT: I am going to allow what this witness said to be stated in English, and if it is found not to be responsive, the court will act upon it and not the interpreter.

THE WITNESS: When you come out in Sixth Street there is a car.

BY MR. SNITKIN:

Q When next did you see the defendant after the Sunday when you were in his office? A Monday I was there again.

Q Can you tell us the name of the month? A No.

Q Can you tell us the name of the year? A No sir.

Q Was it in the summer time or in the winter time?

A It was not in the summer. It was in the middle of the winter.

Q What if any doctor had the defendant call to you on the Monday succeeding the day when you had just visited his office? A These instructions and medicines.

Q Were you in the house when the defendant called?

THE COURT: The reports.

MR. SNITKIN: At the Attorney Street house.

THE WITNESS: In the morning?

BY MR. SNITKIN:

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Q How many times did the defendant call then on that Monday, at the Attorney Street house? A He was there in the morning.

Q Were you in bed at the time that he saw you in Attorney Street? A No sir.

Q Walking around? A I was sitting.

Q Were you dressed? A Yes.

Q By the Attorney Street house, you mean Mrs. Kurjava's house? A Yes.

Q How many rooms did Mrs. Kurjava occupy at that time? A Two rooms.

Q Now did you see, on the Monday, when the defendant came to Mrs. Kurjava's house, as you say, did you see the instruments that were inserted in your private parts? A No sir.

MR. APPLETON: That was Monday.

MR. SNITKIN: Yes she said Monday he came to Mrs. Kurjava's house.

MR. APPLETON: She said he did not use any instruments that day. I object to the question and move that the question and answer be stricken out. It is entirely ambiguous and it is a catch question and she cannot answer it yes or no -- it is like a question "after you stopped beating your mother -- did she see instruments on Monday -- there was none on Monday and therefore she could not see them.

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THE COURT: She said she did not see them. proceed.

MR. SNITKIN: I do not know where we stand.

THE COURT: She said she did not see any instruments on Monday.

BY MR. SNITKIN:

Q Were there any instruments inserted in your private parts on Monday?

MR. APPLETON: I object until the time and place is specified.

THE COURT: Yes, if you want the examination of this witness to be of any value, you have got to state the time and the place, because this is the Monday, according to this witness, in the first -- I am not sure of the date, but it is Monday, at least.

MR. SNITKIN: I am not sure of the date.

THE COURT:

BY MR. SNITKIN:

Q You said that the day succeeding Monday, the day succeeding

MR. SNITKIN: I am not sure of the date.

THE COURT: I am not sure of the date.

BY MR. SNITKIN:

Q You said that the day succeeding Monday, the day succeeding the first time? A Yes.

Q You also said that after leaving his house on that

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THE COURT: She said she did not see them. proceed.

MR. SNITKIN: I do not know where we stand.

THE COURT: She said she did not see any instruments on Monday.

BY MR. SNITKIN:

Q Were there any instruments inserted in your private parts on Monday?

MR. APPLETON: I object until the time and place is specified.

THE COURT: Yes, if you want the examination of this witness to be of any value, you have got to name the time and the place, because there are two Mondays, according to this witness, in question -- in other words there was a certain Monday when she was at the office.

MR. SNITKIN: Sunday was the first time.

THE COURT: Sunday the first time, but a certain Monday when she was also at the office of his defendant.

MR. SNITKIN: I am addressing her now as to the day succeeding the first visit, that is the very question.

THE COURT: Keep that in mind -- endeavor to locate the time and place.

BY MR. SNITKIN:

Q You said that on a Sunday you were in his office for the first time? A Yes.

Q You also said that after leaving his house on that

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Sunday you went to Mrs. Kurjava's house? A Yes.

Q You have also said that on the next day, being Monday, that the doctor called at Mrs. Kurjava's house in the morning of that day? A Yes.

Q Now you have also said that on that day, on that Monday, following the Sunday, when you first paid a visit to the defendant's office, that no instruments were used on your person, is that right?

MR. APPLETON: I object to the form of the question. Here is an ignorant girl who cannot read and does not speak the language and Mr. Snitkin says you have testified so and so. That is not fair.

MR. SNITKIN: We have an intelligent interpreter here.

MR. APPLETON: If he asks what is the fact on that?

THE COURT: I think you better ask her whether any instruments were used at that time:

BY MR. SNITKIN:

Q Were any instruments used in your private parts or inserted in your private parts by the defendant on the Monday morning that you speak of, following the Sunday that you first paid a visit to the defendant's office? A Monday morning he came there and he said I should come to him to the office. I said I don't know the way to his office and then Kurjava, the Christian woman said --

MR. SNITKIN: I object to that.

THE COURT: I am going to allow the whole thing to be translated.

THE WITNESS: The Christian woman said she will send her daughter with me to the office.

THE COURT: Strike out the whole answer as not responsive. Now repeat the question to the witness.

(The question is repeated to the witness as follows: Were any instruments used in your private parts or inserted in your private parts by the defendant on the Monday morning that you speak of following the Sunday that you first paid a visit to the defendant's office?)

A No sir.

BY MR. SNITKIN:

Q Now have you stated all that the defendant did to you on the Monday succeeding the Sunday that you paid the first visit to the defendant's office? A When I went to his office with the girl --

Q When? A On Monday evening it was.

MR. SNITKIN: I ask that that be stricken out as not responsive to my question. My question is have you stated all that the defendant did.

THE COURT: I will let it stand.

BY MR. SNITKIN:

Q Have you stated all that this defendant did to you

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on the Monday at Mrs. Kurjava's house, the Monday being the day succeeding the Sunday that you first paid a visit to the defendant's house? A Yes.

Q How many times did the defendant call at Kurjava's house on Monday which you speak of, being the day succeeding the Sunday? A All he was, in the morning he was there.

Q Did you receive anything from the defendant on the Monday morning at Mrs. Kurjava's house before you went to his office that day? A No.

Q You were a witness against this defendant in the Magistrate's Court, were you not? A No sir.

Q Didn't you appear as a witness in the Third District City Magistrate's Court before Charles S. Whitman then a Magistrate, on the 27th of October, 1906, against this defendant? A No.

MR. SNITKIN: At this stage I will ask for an adjournment for the purpose of subpoenaing Mr. Carleton Barnes, who appears to be the stenographer who took these minutes.

MR. APPLETON: Does this girl understand it -- can it be made clear to her what is meant by the Magistrate's Court?

THE COURT: We will see.

BY THE COURT:

Q Have you been a witness before to-day? A No sir.

MR. APPLETON: Do you know what it means to be a wit-

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MR. SNITKIN: I object.

THE WITNESS: I do not know.

MR. APPLETON: There is the whole thing.

BY THE COURT:

Q Have you told any Judge about this defendant before?

A No sir.

MR. SNITKIN: Now it is evident that she cannot understand me now, but she did appear as a witness and here are the minutes.

MR. APPLETON: I concede that.

BY THE SEVENTH JUROR:

Q Would your Honor mind asking her if she has ever been in any court a couple of years ago.

BY THE COURT:

Q Were you in a court about two years ago? A No sir.

Q Not in ~~this~~ room but in another room? A No.

Q Did you ever say anything to any Judge about this defendant before? A No sir.

BY MR. APPLETON:

Q Do you know Mr. Marshall in the District Attorney's office?

MR. SNITKIN: I object to this. I do not think it is fair.

THE COURT: We will get at it.

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BY MR. APPLETON:

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Q Do you know Mr. Marshall, a man with curly hair, a great big fellow in the District Attorney's office? A No.

Q Did you ever see this man right here, Mr. Snitkin, before to-day? A No.

Q What? A Oh, in Essex Market.

Q That is what we are talking about -- don't you know it -- have you seen Mr. Snitkin since you were in Essex Market Court?

MR. SNITKIN: That may be confusing. I appeared for Blumstein, but there were two proceedings there. He was arrested first and discharged and I did not appear for this defendant.

THE COURT: Were you in court at the time this witness --

MR. SNITKIN: No I was not.

MR. APPLETON: You say you did not appear?

MR. SNITKIN: I did not appear for this defendant.

MR. APPLETON: He asked you when this defendant was arraigned.

BY THE COURT:

Q Were you there when this defendant Hohenberg was arraigned?

MR. APPLETON: Those are the minutes, and you know that you conducted the examination yourself.

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MR. CHERURG: I beg your pardon. I conducted the examination.

MR. SNITKIN: It appears that my name is on the record and there is no doubt of my being there, but that was in the second proceeding. There were two proceedings, one against Blumstein for --

THE COURT: I think we have recalled the witness's recollection to the time; suppose you put the question to her again.

(The question is repeated as follows: Q Did n't you appear as a witness in the Third District Magistrate's Court before Charles S. Whitman, then a Magistrate, on the 27th of October, 1906?)

BY THE COURT:

Q In Essex Market? A I was in Essex Market.

Q When you were in Essex Market, did you say anything to anybody? A I didn't say much.

Q Did you say anything? A Yes.

Q Somebody asked you questions? A Yes.

Q Did you give some answers to some questions? A Yes.

Q Was this gentleman Mr. Marshall there at the time?

A Yes.

Q And was the defendant Dr. Hohenberg there? A Yes.

Q Mr. Snitkin, the counsellor, was he there? A Yes.

Q Now you remember the time, you remember it now? A I

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remember I was in Essex Market.

BY MR. SNITKIN:

Q Now do you remember being asked this question and did you make the following answer, "By Mr. Marshall -- I read from page 9 -- "What did you do there? A He came there Monday and gave me some pills and some medicine."

MR. APPLETON: I object to that question. It is not contradictory of anything and is directly in line with what she has testified to here.

MR. SNITKIN: She has testified here that -- I was very careful I believe in asking here to state if that was all the defendant did in Mrs. Kurjava's house, and she said yes.

MR. APPLETON: She did not say yes. She started to go on and tell something else that happened there and then Mr. Snitkin moved to strike it out and you granted that motion.

BY THE COURT:

Q Have you told us everything on the cross examination that this defendant did on the occasion of his first visit to Mrs. Kurjava's house? A Yes.

THE COURT: Now you can ask her the question.

MR. APPLETON: May I ask her one question?

MR. SNITKIN: I object to your interrupting me.

MR. APPLETON: I insist upon my right to ask the

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MR. SNITKIN: It is not a right, I am cross examining the witness now.

THE COURT: I think Mr. Snitkin is right.

MR. APPLETON: I insist respectfully that your Honor may hear the question that I have to ask, before this goes any further, to rule upon that, whether I am right in asking that question. May I ask one question? Your Honor can rule whether it is competent for me to ask it, after I have asked it.

THE COURT: The only point is whether you are in order in asking the question during the course of Mr. Snitkin's cross examination.

MR. APPLETON: Will you ask if she understands what is meant by cross examination.

THE COURT: I will put the question differently to her.

BY THE COURT:

Q In answering the questions put to you by Mr. Snitkin, have you told us everything that the doctor did to you on the first visit that he made to Mrs. Kurjava's house, namely, the visit on Monday? A In Kurjava's house, Monday morning, he did not do anything.

THE COURT: Very well/ now I will allow it.

BY MR. SNITKIN:

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Q Do you recall when called as a witness in the Essex Market Court -- so that you can identify the Court -- being asked this question by Mr. Marshall, and did you make the following answer -- I read from page 9 of the stenographer's minutes taken on the 27th of October, 1906, in the case of the People on the complaint of Esther Zelkowitz against Bernard Hohenberg, Meri Kurjava and Phillip Blumstein, before Hon. Charles S. Whitman, Magistrate, "By Mr. Marshall: Q What did you do there? A He came there Monday and he gave me some pills and some medicine".

MR. APPLETON: I object to the question upon the ground there is no time on Monday specified in the answer. It does not show who is meant by the word "he", and it is in evidence that the doctor was at Kurjava's house both in the morning and in the afternoon.

THE COURT: Not that Monday; only there in the morning on Monday, and only there once on that Monday; she saw him again, but not again on that Monday, is not that so?

MR. APPLETON: My recollection is that on Monday morning he came there and then the daughter of the woman took her to his house and on Monday afternoon the doctor came to the Kurjava woman's house and saw this girl again.

THE COURT: I think on cross examination she has testified that he was only there once on Monday, but we will find out.

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BY THE COURT:

Q Was the defendant, Dr. Hohenberg, at Mrs. Kurjava's house more than once on the Monday following the Sunday when you first saw him? A He was once in the morning in Kurjava's house and said I should come to his office.

MR. APPLETON: That does not cover it.

MR. SNITKIN: I ought not to be interrupted in my cross examination.

THE COURT: Mr. Snitkin, you are going to be given ample opportunity, but we are going to proceed, if necessary, with extreme slowness, so as to get at exactly what this witness means.

BY THE COURT:

Q Was this defendant Dr. Hohenberg at Mrs. Kurjava's house more than once on the Monday which followed the Sunday when you first saw him on that Monday? A Once.

Q Only once, and when you saw him the second time on Monday, it was at his office and not at the house? A Yes in his office but not in Kurjava's house.

BY MR. SNITKIN:

Q Do you recall being asked by Mr. Marshall the following question and did you make the following answer, "What did you do there? A He came there Monday and he gave me some pills and some medicine.

THE COURT: Ask her in German whether she remembers

do you remember?

THE WITNESS: (Through the Interpreter) Yes.

(The former question is now repeated by the interpreter.)

A In his office he gave me.

BY MR. SNITKIN:

Q So that when you answered Mr. Marshall's question that he came there Monday and he gave me some pills and some medicine, you meant by that that he gave you that in his office? A Yes.

Q Do you know Mr. Louis Cherry? A Yes.

Q What is his business? A At present I am in his service, in his employ.

Q Mr. Cherry is in the drug business, isn't he?

A Yes.

Q You did not cause the arrest of Hohenberg, this defendant, until after Blumstein was discharged?

MR. APPLETON: I object -- discharged when and where and what for.

THE COURT: I think so.

MR. SNITKIN: Only one case.

BY MR. SNITKIN:

Q Discharged on the complaint you made against him of rape? A Yes.

Q And after you had some talk with Mr. Cherry, was it

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not, that you caused the arrest of the defendant here? A No I did not know Cherry.

Q Hadn't you been working for Cherry?

MR. APPLETON: I object. She said so.

THE COURT: She has told us that. Now put your next question.

MR. SNITKIN: Suppose I put my whole question, Mr. Appleton, and then you object without interrupting?

BY MR. SNITKIN:

Q Haven't you worked for Cherry since Blumstein was discharged on the complaint that you made against him for rape?

MR. APPLETON: I object; no time set as to when Blumstein was discharged.

MR. SNITKIN: She said she could not tell days, weeks or months. If she can do it I should be pleased to have it.

MR. APPLETON: She has to fix the date.

BY MR. SNITKIN:

Q Do you know when it was you had Blumstein arrested the first time, the day of the week and the day of the month?

A I did not have him arrested.

Q Do you remember the day of the week that you appeared, or the day of the month you appeared as a witness against Blumstein on the charge you made against him for rape? A No.

MR. SNITKIN: That is the only way I can ask the

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question.

MR. APPLETON: I submit there is a way that will suggest itself.

THE COURT: Put the next question.

BY MR. SNITKIN:

Q Haven't you been working for Mr. Cherry since Flumstein's discharge on the complaint that you made against him for rape?

MR. APPLETON: I object. No time is set.

THE COURT: Ask her how long she has been working for Mr. Cherry.

BY THE COURT:

Q How long have you been working for Mr. Cherry?

A I cannot tell how long.

Q When did you go to work for Mr. Cherry -- how long ago did you go to work for Mr. Cherry.

MR. APPLETON: Can't the time be fixed with respect to the examination in Essex Market Court on this hearing -- there is something that is definite, that is what we want to find out -- did she know Cherry and did she work for Cherry before that or at that time?

I object to the question.

{The question is repeated as follows:

BY THE COURT:

Q How long ago did you go to work for Mr. Cherry?

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A I did not work anywhere before, after that evening, a few months, couple of months later I went to Cherry.

BY THE COURT:

Q So you began to work for Mr. Cherry about two months after you first saw this defendant in the defendant's office, is that so? A No sir.

THE COURT: We will have to try and fix the date by some means. It is important.

BY THE COURT:

Q You claim she had a certain conversation with a Mr. Cherry; is that so?

MR. SNITKIN: Yes.

THE COURT: Or Mr. Cherry had certain conversations with her?

MR. SNITKIN: Yes.

THE COURT: And she has been in the employ of Mr. Cherry -- now, we will try it another way.

BY THE COURT:

Q Where does Mr. Cherry live? A Where I am now.

Q Where is that? A In Pitt Street.

Q How long have you been in Pitts Street with Mr. Cherry? A I can't tell exactly how long.

Q About how long? A After all that, I was with my aunt and then I went to Cherry's.

Q How long did you stay with your aunt? A Two or

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three months.

Q. When did you first go to your aunt's? A. When I was taken out where they take the children -- I forget.

THE COURT: You may have some way of fixing the date. I cannot help you.

MR. SNITKIN: Will your Honor indulge me until tomorrow. I could not very well finish with her this afternoon?

THE COURT: I know you cannot, but if you think you can make any progress I will sit until five o'clock.

MR. SNITKIN: I could not do it, with thirty pages of testimony to go over -- thirty-one to be exact, besides interrogating her on the direct examination of this afternoon.

THE COURT: Is this witness in the custody of the Gerry Society?

MR. APPLETON: No, she is not.

MR. SNITKIN: She has appeared right along.

THE COURT: I will tell you what I will do. If there is any probation officer here I will parole this witness in the custody of Mrs. Burke or any representative of the Gerry Society who is here.

MR. APPLETON: Mrs. Doyle is here, a probation officer of the Police Court.

THE COURT: Mrs. Doyle.

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MR. APPLETON: Mrs. Doyle is here, a probation officer of the Police Court.

THE COURT: Mrs. Doyle.

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(Mrs. Doyle is now brought into the court room.)

THE COURT: Mrs. Doyle, the court is now about to adjourn until tomorrow morning at half past ten and I am going to ask you to take charge of this witness, and look after her until that time if you will. I place her in your hands and your care until that time. Tomorrow morning at half past ten you will produce her in court.

MRS. DOYLE: She is to stay with me?

THE COURT: Yes, she is to stay with you during that time, and during that time no one is to converse with her regarding this case and she is not to talk with anyone regarding this case, no matter who.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, March 18th, 1908, at 10:30 o'clock.



(Mrs. Doyle is now brought into the court room.)

THE COURT: Mrs. Doyle, the court is now about to adjourn until tomorrow morning at half past ten and I am going to ask you to take charge of this witness, and look after her until that time if you will. I place her in your hands and your care until that time. Tomorrow morning at half past ten you will produce her in court.

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