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CASE # 2646

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

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

-vs.

I R V I N G K A P L A N .

Before:

. HON. JOHN F. McINTYRE, J,

. and a jury.
-----X

Indictment filed April 9, 1919.

3175

Indicted for rape in the second degree.

New York, June 11, 1919.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY WILLIAM J.A. CAFFREY

FOR THE DEFENDANT: MR. SAMUEL LANGSUR.

Peter P. McLoughlin,

Official Stenographer.

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JENNIE KESSLER, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states she resides at present at the Children's Society, 297 Fourth avenue.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q You are now residing in the rooms of the Society for the Prevention of Cruelty to Children? A Yes, sir.

Q How old are you? A I was sixteen the third of April.

Q 1919? A Yes, sir.

Q That is your birthday? A Yes, sir.

Q April 3rd? A Yes, sir.

Q On the 13th of March, where were you living? A I was living nowhere; I had no room.

Q Where was your home? A I was at 137 Starr street, Brooklyn, N.Y.

Q Did you leave your home at any time on the morning of that day, the 13th of March? A Yes, sir.

Q 1919? A Yes, sir.

Q Now after that did you meet this defendant any place. Look at the defendant? A Yes, sir.

Q Did you meet him any place? A Yes, sir.

Q Where did you meet him? A In the subway.

Q What subway? A The Lexington avenue subway.

Q In the Borough of Manhattan? A Yes, sir.

Q Did he have any position on the subway? A As a guard.

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Q He was working there as a guard? A Yes, sir.

Q Now before I overlook it-- are you married to the defendant? A No, sir.

Q Ever married to him? A No, sir.

Q What hour of the day or night did you meet the defendant on the subway train? A About 8 o'clock,-- about ten o'clock.

Q In the evening? A Yes, sir.

Q What day? A The 16th day of March.

Q 1919? A Yes, sir.

Q At what station had you gotten on? A 125th street.

Q After you got on the subway tell these gentlemen what happened -- I mean as far as you and the defendant are concerned. Tell the jury what happened between you and the defendant after you got on the subway. (No answer.)

Q How long after you had got on did the happening occur?

A I came on the subway in the train and as the train windows were open, and it was cold I waited for the next train, sat down and didn't sit there for five minutes when he came up and spoke to me.

Q Who? A Irving Kaplan.

Q The defendant? A Yes, sir.

Q Tell the jury what he said? A He came over to me and said, "Where are you going? At first I did not answer him, but then he asked me again and I told him I didn't have any place to

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go. He says, "Well, don't worry", he says, "if you stay on this train all night I will get a room for you tomorrow morning" So I did. I stayed there till his time was up about 8 o'clock the next morning.

Q At that time, at ten o'clock, or five minutes after you got on the defendant came up and talked to you? A Yes, sir.

Q And had the conversation you have just related? A Yes.

Q You stayed on that train till 8 o'clock in the morning, was it you said? A Yes, sir.

Q Did you have any other conversation with him? A No, sir; he told me to stay there until he was through.

Q During the time did he talk to you at all? A Well, he had to open the gates at each station; he had hardly any time.

Q Well, then, he didn't talk to you between that time and 8 o'clock in the morning? A No, sir.

Q What happened at 8 o'clock in the morning? A He took his hat and coat.

Q At what place? A Where he got off. He stopped working and he took me to 117th street.

Q What station did you get off the subway at? A 117th street.

Q Lexington avenue and 117th street? (No answer.)

Q We won't be particular about the avenue? A Yes, sir.

Q Did he get off too? A Yes, sir.

Q Well, now, what happened? A He said he knew a place where he used to live about three years ago, he had a room up

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there and he said, "I think that woman will give me a room". He took me around to that place, 117th street, I stayed outside while he went inside and spoke to the woman; she told him she had no room.

Q Did you hear he said to the woman? A No, sir.

Q He went into this rooming house in 117th street? A Yes

Q All alone? A Yes, sir.

Q Then he came out? A Yes, sir.

Q Is that right? A Yes, sir.

Q Where did you remain while he went in at 117th street?

A On the outside, near the stoop.

Q The defendant came out, did he say anything to you?

A Yes, sir.

Q Tell the jury what he said. A He told me she had no room but gave him another address where this woman knew this other woman and she thought she would give him a room; that was 1883 Lexington avenue. I remained downstairs while he went up. In about ten minutes later he came down and told me he had a room. I walked up with him. When I came in he introduced me as being his wife.

Q That is 1883 Lexington avenue in the County of New York? A Yes, sir.

Q Then he took you upstairs and whom did you meet? A The landlady.

Q Is the landlady here? A Yes, sir.

Q What is her name? A I don't know her name.

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Q I ask you to look at this woman and state whether or not this is the woman to whom you have just referred to as the landlady? A Yes, sir. (Pointing to Mrs. Felice Griffin.)

Q Now the defendant said what to Mrs. Griffin? A That this is my wife, he said to her. I was standing beside him.

Q Referring to you? A Yes, sir.

Q Go on. A He paid her three dollars, and told her he would give her two dollars tonight. She walked out of the room; she fixed up the bed because there was another man living there. She fixed up the bed and walked out.

Q Where was this conversation held about the five dollars? A In the room.

Q That she selected for you two? A Yes, sir.

Q How much did she say she would charge you a week?

A Five dollars.

Q The defendant paid her three dollars? A yes, sir.

Q And said he would pay her two; that night? A Yes, sir.

Q Well then what happened? A She went out of the room.

Q And left you two in? A Yes, sir.

Q Go ahead now. A He didnt take five minutes when he threw me down on the bed and then started in taking my clothes - I started in to kick. Then he overpowered me and tore down my underclothes and started at my bloomers again and took his privates out and put it into mine. He didnt let go of me until I bled; until he seen the blood there. Then he let go of

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me.

Q What do you mean he didn't let go of you. A Well, he had hands over my mouth and wouldn't let go of me until he seen that my clothes were stained.

Q Was he lying on top of you? A Yes, sir.

Q He put his private parts into your private parts?

A Yes, sir.

Q Now what was done then? A Well, then he got up, and dressed himself and I got up and dressed myself and I went away. I went downstairs.

Q Where did the defendant go? A He was upstairs.

Q Did you go out before he did? A Yes, sir.

Q You went downstairs where? A I went downstairs and I had some money so I had something to eat and then I went into a show and spent the rest of the day.

Q What do you mean by saying you went downstairs, where?

A No special place.

Q Did you go outside in the street? A Yes, sir.

Q You don't mean you went downstairs in Mrs. Griffin's?

A No, sir; outside.

Q Did the defendant pay you for what you did that morning? A No, sir.

Q Give you any money at all? A No, sir.

Q Positive about that? A Yes, sir.

Q Did you come back to the house? A Yes, sir.

Q What time was it you went out of the house that morning?

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A About ten o'clock.

Q Did you come back that night? A Yes, sir, at 5 o'clock

Q Was the defendant there then? A No, sir.

Q Did the defendant come back after that? A Yes, sir.

Q What hour? A About 7, between 7 and 8 o'clock.

Q What happened then?

MR. LANGEUR: I object to that to any testimony what happened after this time. The specific act charged is of the 17th of March. My friend is attempting to prove a different act, and I take it it is not within the pleadings.

THE COURT: He can prove continuous acts afterwards.

Exception.

BY MR. CAFFEY:

Q When the defendant came back at 7 o'clock that night what did he say to you or do to you? A He didn't say anything to me but he just did the same thing he did in the morning.

Q You mean he had intercourse with you? A Yes, sir.

Q Tell the Court and jury just exactly what he did.

A The same thing as he did in the morning won't do. Tell us what he did. A Well, he threw me down on the bed again and this time I was in bed at the time when he came in. I was in bed. He came in at 8 o'clock. I was lying in bed and he took his clothes off, top clothes off and he had intercourse with me again. He told me if I did not keep quiet, he said he would

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d something to me that would make me keep quiet.

Q Then what happened. Did he remain in bed? A Yes, sir

Q How long? A Only about an hour.

Q What hour was it that he came there? A 8 o'clock.

Q That was the 17th of March? A Yes, sir.

Q 1919? A yes, sir.

Q What did he do after that, after 8 o'clock. A we got up he was staying there until it was time to go to work.

Q How long did he remain there, that is what I want to know, after he got out of bed? A About three hours.

Q What time did he leave the house then? A About 12 o'clock.

Q Did you remain there all the time? A Yes, sir.

Q Were you in bed or were you up? A I was in bed.

Q Now, what happened after that. Did the defendant come back after that? A Yes, sir; he came back at 8 o'clock the next morning.

Q That is on the morning of the 18th? A Yes, sir.

Q Did he say anything to you the next morning? A Yes, sir.

Q Tell the jury what he said and what he did.

MR. LANGFUR: I object to that. The specific charge is the 17th of March.

Objection overruled. Exception.

Q On the morning of the 18th. A He tried to get hold of me and he told me that he did not take me up to that room for nothing. He tried to put me on the bed but he didn't put

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me down because I was kicking. I got up and he got so mad that he sat down and wouldn't touch me any more.

Q Were you in bed when he came in that morning? A No, sir; I was up.

Q What else did he do that morning? A He didn't do anything else that morning.

Q Howlong did he remain in the house that morning? A He remained in the house about four hours.

Q Did he go to bed? A No, sir.

Q Did he go to sleep? A No, sir.

Q How many beds were in that room? A One.

Q You didn't occupy the bed when he came in? A No, sir.

Q What time did he leave the house on the 18th? A At 12 o'clock.

Q 12 o'clock? A Yes, sir.

Q Did you see him after that? A Yes, sir.

Q When? A He came the next morning.

Q The morning of the 19th? A Yes, sir.

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

Q Did you see him in this apartment, the same apartment?

A Yes, sir.

Q What was done that morning, if anything?

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

Objection overruled. Exception.'

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Q What did he do the next morning, if anything, the 19th now? A Well, I told him I was unwell, and he went nearer to see for himself if I was telling the truth.

Q What did he do? A He pulled me over and pulled-- I told him I was unwell, he should not touch me; he didn't believe me and he just pulled me over and picked up my dress to see for himself.

Q You mean you had your monthly courses? A Yes, sir.

Q That is what you mean by saying you were unwell? A Yes

Q What happened after that? A The same day he left.

Q What day? A The 19th.

Q Did he come back to the house after that? A Yes, sir.

Q After the 19th? A No, sir.

Q How long did you remain there? A Until the 25th.

Q You were placed under arrest then? A No, sir, but I went to the police station.

Q On the 25th you went to the police station? A No, sir, around the 26th I went to the station.

Q When was your week up? A Monday the 25th.

Q The 25th? A Yes, sir.

Q From there that day you went to the police station?

A Yes, sir.

Q Of your own free will? A Yes, sir.

Q You were not placed under arrest? A No, sir.

Q Nobody told you to go there? A No, sir.

Q And there you made a statement to the police officers.

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Don't tell us what it was-- but you did make a statement to the officers in charge of the police station? A Yes, sir.

Q Now at any time did the defendant give you any money during this time? A Yes, sir.

Q When? A He gave me one dollar.

Q When did he give you that dollar? A On the 13th:

Q What did he say when he gave you the dollar? A He didn't say anything; I told him I didn't have any breakfast and he said,-- he gave me this dollar to go down for breakfast.

Q Did you have any money at that time? A No, sir.

Q You had no money? A No, sir.

CROSS EXAMINATION BY MR. LANGEUR:

Q Up to the 13th of March, 1919, you lived at your home, did you not, 137 Starr street? A Yes, sir.

Q With your parents? A Yes, sir.

Q Up to the 13th of March, 1919, did you know Kaplan, the defendant? A No, sir.

Q Did you ever see him? A No, sir.

Q Or have a talk with him? A No, sir.

Q Up to this Sunday night, the 16th of March, 1919, you never saw Kaplan? A No, sir.

Q Nor did you ever have any talk with him? A No, sir.

Q From the 13th of March to the 16th of March, when you first saw him were you living with your parents at 137 Starr street? A No, sir.

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Q Where were you living during that period? A I spent my evenings riding in the trains; I didn't have any room.

Q Riding in the subway trains in the evening? A No, sir, the elevated trains.

Q During the day between the 13th and the 16th, what did you do? A I went into a show for about two hours.

Q Now where did you sleep during that period from the 13th of March to the 16th of March? A I slept nowhere.

Q You mean to say you stayed awake from the 13th until Sunday the 16th at 10 o'clock, when you testify you met Kaplan for the first time? A Yes, sir.

Q Didn't get any sleep at all? A Well, I fell asleep when I went into a show, but that was only for a few minutes.

Q But you had no place between the 13th and the 16th where you slept in the evenings? A No, sir.

Q Now what shows did you see between the 13th and the 16th do you remember? A I seen one show up at Proctor; I don't exactly remember the name of it.

Q What other show did you see besides the one at proctor's? A That is the only place I went to was Proctor's.

Q How many times did you go into Proctor's between the 13th and the 16th? A Four times.

Q The same show each time? A No, sir.

Q Was that a moving picture show or a vaudeville? A Vaudeville.

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Q From the 13th to the 16th you went up into Proctor's?

A Yes, sir.

Q How many times did you sleep in Proctor's? A No time.

Q Did you sleep at one time from the 13th to the 16th?

A No, sir.

Q You testified a moment ago that you slept while you were at the show? A Not while in Proctor's.

Q Where did you sleep? A I went into a moving picture show at night.

Q Where? A On 14th street.

Q 14th street near where? A Near University Place.

Q You slept there at one time? A Yes, sir.

Q That is the only time you slept from the 13th to the 16th? A Yes, sir.

Q What time did you see Irving Kaplan? A 10 o'clock in the evening.

Q Sunday evening at 10 o'clock? A Yes, sir.

Q Sure of that? A Yes, sir.

Q What time did he leave you on the 17th at night, to go to work? A 12 o'clock.

Q Do you know what his hours were as a guard upon the subway, from when to when? A From 12 to half past seven.

Q And the first time you saw him was Sunday, the 16th at 10 o'clock? A Yes, sir.

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Q Although you knew his hours were from 12 until the morning? A I don't know what his hours were; I never asked him what his hours were.

Q You saw him go to work Monday night? A Yes, sir.

Q The 17th of March? A Yes, sir.

Q You saw him go to work Tuesday night, the 18th of March? A Yes, sir.

Q You knew his hours were 12 until morning? A I didn't know them; I didn't know what his hours were.

Q But you are sure you saw him at 10 o'clock Sunday night the 16th of March? A It wasn't 10 I seen him.

Q What time did you see him now? A About half past 11.

Q Sure of that now, you saw him at half past 11? A Yes.

Q Where did you see him, what station? A 125th street and Lexington avenue.

Q Which direction was the train going at that time?
A Downtown.

Q Now were you in the train at that hour? A I don't understand you.

Q How long had you been in the train before you first saw Irving Kaplan? A Five minutes.

Q Were there other people there besides you? A Sure.

Q Was the train crowded at that time? A No, sir.

Q How many people in the train about? A I did not count them.

Q You can remember can't you, approximately? A About

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ten people.

Q Where were you sitting at that time? A In the corner near where the doors open.

Q Did you see him open the doors? A Yes, sir.

Q Did you see him close the doors? A Yes, sir.

Q When was the first time he spoke to you? A What do you mean.

Q When was the first time that he spoke to you at what station? A It was at the next station that he spoke to me.

Q At 116th street? A Yes, sir.

Q Or 114th street. What station was it he first spoke to you? A I don't know the stations there I never was in the subway so I don't know the stations.

Q Do you know what train it was? A An Atlantic avenue train.

Q Going to Atlantic avenue in Brooklyn? A Yes, sir.

Q Do you know which division of the Lexington avenue train it was? A No, sir.

Q Do you know whether it was a Jerome or a Lexington avenue train? A No, sir.

Q You did not notice that, did you? A No, sir.

Q Were there any other girls on the train besides you? A Yes, sir.

Q Sitting near you? A Not exactly near me; a little bit away from me.

Q Did he speak to any of the other girls? A No, sir.

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Q Did he leave his post at any time to speak to you?

A Yes, sir.

Q What position did he occupy in the train, do you know?

A I don't know exactly.

Q He was the first man in the train, was he not, what is commonly called a guard, is that right? A Yes, sir.

Q Did he come and sit by you? A Yes, sir.

Q Sat alongside of your? A Yes, sir.

Q Tell us everything that he said to you. A He said to me, "Where are you going?" I said, I wasn't going any special place; I had no place to go.

Q Did you smile at him? A No, sir.

Q Did you call him? A No, sir.

Q He just came over to you, and sat by your side, and said, "Where are you going? A Yes, sir.

Q You answered at once? A No, sir.

Q Did you refuse to answer? A I refused to answer.

Q What happened after you refused to answer? (No answer)

Q How much time elapsed between your refusal to answer and his putting the question? A About ten minutes.

Q He sat at your side for ten minutes? A Yes, sir.

Q That was from 125th street? A Yes, sir.

Q How many times did he get up during those ten minutes to open and close gates? A He did not get up.

Q He sat there continuously and the train went continu-

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ously? A Yes, sir.

Q This was from 125th street -- for ten minutes he sat alongside of you? A Yes, sir.

Q During the ten minutes all he said, "Where were you going?" A Yes, sir.

Q What else did he say? A "I shouldn't worry if I should stay on that train that he would get a room for me next morning"

Q Did you ask him to get a room? A No, sir.

Q Did he ask you where you lived? A No, sir.

Q Did he ask you why you left home? A No, sir.

Q Did he ask you when you left home? A No, sir.

Q He simply said, "Where are you going", and he sat by your side for ten minutes? A Yes, sir.

Q That is all he said to you? A Yes, sir.

Q This was at 11.30 at night? A Yes, sir.

Q Did he ask you how old you were? A No, sir.

Q Did he ask you your name? A No, sir.

Q Did you ask him his name? A No, sir.
that

Q After you had reached Atlantic avenue, had you not?

A Yes, sir.

Q And stayed on the train? A Yes, sir.

Q Came back again? A Yes, sir.

Q How many trains were you on with Irving Kaplan that night? how many express and local trains were you on with him that night? A I remained on the same train.

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

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Q How many trains were you on expresses and locals? A I don't know.

Q How many trips did you make in all? A I didn't count them; I don't remember.

Q How many trips did you make on an express train that evening? A I don't know.

Q How many trips did you make on a local train that evening? A I don't know.

Q Did you change from an express to local trains? A I remained on the same train all the time.

Q On this one train? A Yes, sir.

Q In the same car all the time? A No, sir, because he went from one car from the last car to the first car after the trip was over.

Q Did you go with him? A Yes, sir.

Q Each time? A Yes, sir.

Q During all this time he never said a word to you?

A No, sir.

Q Never spoke one word about getting a room? A No, sir.

Q Or your name or anything else? A He told me about the room; that is all he told me.

Q The first time? A Yes, sir.

Q So then he never mentioned during those hours from 11:30 until 8 o'clock in the morning anything at all about a room? A He told me to stay on with him; that is all he told

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me.

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Q How many times did he tell you to stay on? A He told me that a couple of times.

Q So you did speak with him between 11.30 and 8 o'clock in the morning? A No, sir; I didn't speak to him; he spoke to me.

Q He said, "Stay on" each time? A Yes, sir.

Q That is all he said? A Yes, sir.

Q Where did you stop at 8 o'clock in the morning with this train, where did you get off, what station? A It was either at 117th street or 118th street; I don't exactly remember.

Q Did you go to the end of the line with him? A I don't understand what you mean.

Q Did you go to the depot with him? A He was still his work in the morning.

Q Was he dressed in his uniform? A Yes, sir.

Q Did he undress? A No, sir.

Q Put on civilian clothes? A No, sir, he had a coat on top of it.

Q Was his hands or face? A No, sir; I don't know. I was not in the room with him.

Q What room do you refer to now? A On the station where he stopped off.

Q The last stop of the train? A Yes, sir.

Q After that you went on another train with him? A No, sir.

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Q How did you get to 117th street? A Yes, sir, we came down to 117th street.

Q You did get on another train? A Yes, sir.

Q You made the last stop at 117th street? A Yes, sir.

Q How long did it take you from 8 o'clock to get to 117th street on this last train? A About fifteen minutes.

Q You saw him go into a house at that time? A Yes, sir.

Q You stayed outside? A Yes, sir.

Q He came out and told you he couldn't get a room? A Yes

Q You walked did you not? A Yes, sir.

Q Where? A Around the corner.

Q To where? A To 1883 Lexington avenue.

Q Did he go up? A Yes, sir.

Q How long did he stay there? A About fifteen minutes.

Q He came down again? A Yes, sir.

Q You went up, did you not? A Yes, sir; with him.

Q You say you saw him give the woman three dollars?

A No, sir.

Q Had he given the woman the three dollars before you got there? A I suppose he did.

Q You testified upon the direct examination that he gave the woman three dollars? A So he told me but I wasn't there.

Q You didn't see him give her three dollars? A No, sir.

(At this point the Court admonished the jury and took a recess until two o'clock.)

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AFTER RECESS. (2 p.m.)

JENNIE KESSLER, the complaining witness resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. LANGFUR:

Q Did you see him give the three dollars to this lady?

A Yes, sir.

Q Were you there at the time he gave the three dollars to her? A yes, sir.

Q Were you there at the time he had the talk with her?

A I don't know what you mean.

Q Did you hear him speak to this landlady? A yes, sir.

Q You testified this morning that you didn't see him give the three dollars to this landlady. Do you remember testifying to that? A Yes, sir. I did see him give her the money.

Q Do you remember testifying this morning that you didn't see Kaplan give the landlady three dollars? A No, sir; I do not remember.

Q You do not remember testifying to that at all? A No sir

Q Did you hear any conversation between the landlady and Irving Kaplan about the room? A Yes, sir.

Q All of it? A No, sir.

Q Did you hear any conversation with respect to wife? A Yes, sir.

Q You were a witness in the Magistrates' Court, were you not, and testified there? A Yes, sir.

Q Do you remember when the Court in the Magistrates'

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Court, asked you "Did you hear any conversation between him and the landlady", and answering, "No, sir, I was downstairs. When he came down he told me that he rented a room and I seen him give her three dollars". Do you remember testifying to that in the Magistrates' Court? A I heard the conversation--

Q Do you remember that? A I don't understand it.

Q If you don't understand be kind enough to tell me. Do you remember testifying, in substance, to what I just read to you "Did you hear any conversation between him and the landlady?

A. No, sir, I was downstairs. When he came down he told me he rented a room and I seen him give her three dollars". Do you remember testifying to that? A I remember it now.

Q You didn't say anything about hearing Kaplan mention you as his wife to the landlady in the police court? A Yes, sir; I did.

Q You did testify to that? A Yes, sir.

Q Do you remember testifying to this "Did you have any conversation with the landlady at all", and you answered "None at all."

A I said none.

Q You didn't tell the landlady that you were the wife?

A No, sir.

Q Mr. Kaplan said you were his wife? A yes, sir.

Q Now what time did you arrive at that room there on the 17th of March? A Between 8 and 9 o'clock.

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Q You said he had intercourse with you between 9 and 10 o'clock that morning? A Yes, sir.

Q Quite positive of that, are you not? A Yes, sir.

Q You made an affidavit, did you not, in this case in support of an affidavit by William Garland on the 17th of March, 1918, that at about 9 o'clock in the morning, the defendant, Irving Kaplan, had intercourse with you? A Yes, sir.

Q You are quite positive of that? A Yes, sir.

Q Are you not? A- yes, sir.

Q I read from this testimony which I have before me and ask you whether you remember testifying to this effect: "By the Court: Q. What time was that? A. 10 o'clock in the morning."

A I said between 9 and 10.

Q Did he leave the place at 10 o'clock? A No, sir.

"By the Court: Q. Why did he tell you to go to bed at 10 o'clock that morning. Were you up all night? A. Yes."

(No answer.)

Q Do you remember testifying to this effect--^A I was not-- I didn't go to bed of my own free will.

THE COURT: Strike that out.

Q Do you remember testifying to that effect. I will read it again: "Why did he tell you to go to bed at 10 o'clock that morning, were you up all night? A. Yes. "

A Yes, sir.

Q Do you remember testifying to that effect? A yes, sir.

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Q Now listen please very carefully. "Tell us what took place in that room? A. When I came up into the room he said 'Go to bed'." I refused to do it, and first he didn't take his clothes off, he laid on the bed and he called me over. I refused to go over. I sat there a little while and I made up an excuse I had a cousin living uptown in Harlem. I didn't go there. I told him I was going there to get away from him because I seen he was bothering me. He went downstairs. I went to the landlady and got a key to the front door. I was out all that day. I didn't have anything to eat. He didn't ask me anything at all." Do you remember testifying to that effect? A Yes, sir.

Q Do you remember testifying to this effect "Up to this time had you had any intercourse with the defendant? A.No, sir".

(No answer.)

Q You didn't testify in the Magistrates' Court that he had any intercourse with you up to 10 o'clock on March 17th, 1919. Didn't you testify, as a matter of fact, that you went to Harlem because he was bothering you, and stayed out all that day? A No, sir.

Q I will read to you from the testimony and ask you whether you remember testifying to this effect: "That night I came home it was about 5 o'clock. I went home; he was not there;" Do you remember testifying to that in the magistrates' Court? A Yes, sir.

Q Do you remember testifying to this effect "You said he

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pulled your clothes down? A. Yes.

Q. What clothes? A. He pulled my under bloomers down. I tried to get away; he tore them from me.

Q. Then what did he do? A. Then he lay on me; I got up and he remained in bed.

Q. Did you go out of the room? A. Yes.

Q. You dressed yourself and went out? A. Yes."

Do you remember testifying to that effect? A. No, sir.

Q Then the question follows,-- do you remember being asked this question "Up to this time had you had any intercourse with the defendant? A. No, sir."

A Up to what time?

Q Up to 5 o'clock March 17th, 1918? A Yes, sir, I did.

Q Now do you remember testifying? A No, sir.

Q Do you remember testifying that he pulled your clothes off? A yes, sir.

Q Between nine and ten o'clock in the morning? A yes, sir.

Q And that because he bothered you you made an excuse of a relative in Harlem and went away till 5 o'clock? A No, sir.

"Q. And up to that time he had no intercourse with you".

Do you remember testifying in substance to that? A No, sir.

Q Now, do you remember testifying that you arrived at the room at 10 o'clock in the morning? A yes, sir.

Q Did he have intercourse with you at 9 o'clock on St. Patrick's day, March 17th? A yes, sir.

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Q Can you explain to the jury how he had intercourse with you at nine o'clock when you say you did not arrive there till 10 o'clock that morning, the 17th of March? A I said I arrived between nine and ten o'clock.

Q Can,t you tell the jury when you arrived? (No answer)

THE COURT: I see Dr. Gibbs in the room. You may call him now.

D.R. WILLIAM TRAVERS GIBB, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he resides at 42 West 75th street.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q You are a physician and surgeon duly licensed to practise in the State of New York? A Yes, sir.

Q How long have you been practising in this City? A 33 years.

Q Are you an examining physician for the Society for the Prevention of Cruelty to Children? A Yes, sir.

Q How long have you been acting in that capacity? A 29 years.

Q On the 28th of March, 1919, did you make an examination of the person of one Jennie Kessler? A Yes, sir.

Q The complainant in this case? A Yes, sir.

Q Is that the girl (Pointing to the complainant) A Yes,

Q (Indicating the complaining witness, Jennie Kessler.)

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Q Will you tell the jury what the result of your examination was?

MR. LANGFUR: I object to that on the ground that it is incompetent, irrelevant and immaterial, too remote, and indefinite. There may have been a number of intervening events between the 17th and 18th of March and the 28th of March, the date of this examination.

THE COURT: I will allow it.

Exception.

A I examined her. I will have to consult a record made at the time-- on the 28th of March at the rooms of the Society, 297 4th avenue at half past 10 in the morning. I examined her private parts and I found her Hymen completely ruptured indicating complete penetration of her genital organs by some blunt object.

Q From your examination could you form an opinion as to how recent that penetration was? A No, sir, it was impossible to say. The parts were entirely healed.

Q You could not tell? A No, sir.

CROSS EXAMINATION BY MR. LANGFUR:

Q That was the first time you saw her, March 28th? A Yes.

Q You didn't examine her on the 18th or 17th of March?

A No, sir.

Q You were not called in to examine her until the 28th?

A Yes, sir.

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Q Can you tell, Doctor, from your examination whether or not the complaining witness had intercourse with other people, other men? A No, sir.

Q Or how many times she had intercourse? A No, sir.

Q You didn't see her condition prior to the 17th or 18th of March? A I did not see her prior to the 28th day of March.

Q Can you say whether or not that condition which you saw there was a condition which existed prior to the 17th of March, 1919? A Impossible for me to say. The parts were entirely healed. I could not tell anything about that.

Q Can you say whether or not the condition might have existed there from the first of March? A I couldn't say; impossible to say.

Q Or February 1st, 1919? A No, sir.

Q Or January, 1919? A Impossible for me to say.

Q The condition that you saw there and which you just mentioned was entirely healed, as you described? A Yes, sir.

Q This was on the 28th of March at 10 o'clock? A Yes, sir; halfpast ten, in the morning.

Q Will you be kind enough to tell the jury what you mean by healed? A In so far as that term applies-- when the parts are not healed the edges of the Hymen are raw; they were covered with mucous membrane and were entirely healed.

Q That is on the 28th of March, the edges of the Hymen were entirely healed? A yes, sir.

Q Can you give an opinion, Doctor, how long it would

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take the edges of the Hymen to heal after an act of intercourse. Are you in a position to say that, Doctor? A Well after an act of intercourse that would tear the Hymen the parts usually heal in from three to ten days in my judgment.

Q No less than three or more than ten days? A From years of experience that I have had in the examination of these cases it takes from three to ten days to heal.

Q Would the fact that the complaining witness have her menstrual period during that time delay the healing of the Hymen or the dges? A No, sir.

Q Was she unwell at the time you examined her? A No, sir; she was not unwell, at the time I examined her.

Q She was past her mens truation period at that time? A Yes, sir.

Q Did you ask her at that time, Doctor, when she had her last menstruation? A Yes, sir.

Q Have you the record here? A Yes, sir; she told me she was just over it.

Q Did she tell you when she became un well? A No, sir; I did not ask her that.

JENNIE KESSLER, the complaining witness resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. LANGFUR:

Q Now do you remember testifying to the Court in response

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to the Court's question "What time was that? A. 10 o'clock in the morning."

A I said between nine and ten.

Q Do you remember testifying it was 10 o'clock? A No, sir.

Q When the Court asked you what time did you arrive in the room you said 10 o'clock in the morning? A I said between 9 and 10.

Q You don't remember testifying to that at 10 o'clock, do you? A No, sir.

Q When the Court asked you why did he tell you to go to bed at 10 o'clock that morning, were you up all night, did you answer "yes". Do you remember answering ten o'clock at that time? (No answer.)

Q So up until 10 o'clock you had no intercourse with him, is that right? A No, sir.

Q Until 10 o'clock you had no intercourse with him?
A Yes, sir, I did.

Q So that the answer which you made then in response to the Court's question "Why did he tell you to go to bed at 10 o'clock that morning, were you up all night? A. Yes." is not correct? A No, sir.

Q You did not go to bed? A No, sir.

Q You did not have intercourse until you went to bed?
A No, sir.

Q "So you had intercourse after you went to bed, is that

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right? A No." That is the answer that you gave before the Magistrate on the first of April, 1919. Was it not? A Yes.

Q That was within two weeks after this act which you complain of? A Yes, sir.

Q These facts were clear in your mind at that time, were they not? A Yes, sir.

Q Clearer than they are at the present time? A No, sir, not quite as clear as they are at the present time.

Q What makes them clear in your mind now? A Because I have been thinking over more.

Q What is that? A I have been thinking them over up there in the custody of the Children's Society three months.

Q You have been thinking it over in the Children's Society who with? A With myself.

Q With whom have you been speaking about this case? A Nobody.

Q Mentioned it to nobody at all? A No, sir.

Q Did you mention it to William Garland, who makes the affidavit in this case? A No, sir.

Q Do you remember making a corroborating affidavit for Mr. William Garland that at 9 o'clock on March 17th Irving Kaplan forced her on to a bed, pulled her drawers off and had intercourse?

MR. CAFFREY: I object to that.

THE COURT: She may make any explanation that she may think clears that up.

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Q When he was bothering you at 10 o'clock did you say anything about going to Harlem, about a cousin living uptown in order to get away? A I did say that, but after the intercourse.

Q You are sure? A Yes, sir.

Q After having intercourse you told the defendant about a cousin in Harlem to get away, is that right? A Yes, sir.

Q Is that what you mean to tell the jury. Do you understand my question. After you had intercourse you say you told him about this cousin in Harlem in order to get away because he was bothering you? A He was through bothering me, and the reason I went down--

Q What did you tell him about a cousin in Harlem? A I just simply told him --

Q Why? A He asked me where I was going, and I told him I was going to a cousin; I didn't go away because he bothered me -- because it was all through.

Q Do you remember now this question put to you and making this answer to the question "Tell us what took place in that room? A . When I came up in that room he said "Go to bed". I refused to do it, and first he didn't take his clothes off, he laid on the bed. He called me over. I refused to go over. I stood there a little while and I made up an excuse I had a cousin living uptown in Harlem. I didn't go there I told him I was going there to get away from him because I

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seen he was bothering me. He went downstairs. I went down to the landlady and got a key for the front door. I was out all that day. He didn't have anything to say. I didn't ask him anything at all." Do you remember testifying to this which I have read to you now? A No, sir.

Q Do you remember testifying you told him you had a cousin in Harlem? A Yes, sir.

Q To prevent him from bothering you? A No, sir.

Q Did you mention the word bothering at all? A No, sir.

Q "That night I came home, it was 5 o'clock. I went home and he wasn't there.

Q. When you say you went home you mean you went to this furnished room house? A. Yes.

Q What time did you return to that furnished room.
A. About 5 o'clock in the evening.

Q. Was the defendant there? A. No, sir.

Q What did you do then? A I went up there. I laid on the bed. I was so tired I went to sleep and slept. I heard somebody open the door to come in, I was so sleepy I didn't pay any attention to him; I didn't think he was going to lay down beside me." Do you remember testifying to those facts?
A Yes, sir.

Q That at 5 o'clock you went to sleep, laid down because you didn't think he was going to lay down beside you. Do you remember that? A yes, sir.

Q. What time did he come in? A. He came in about a

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quarter after seven in the evening.

Q. Where were you when he came in? A. In bed.

"By the Court: Q. Asleep? A. Yes, sir.

Q. How did you know the time? A. Because he told me he came home about a quarter after seven.

Q. Up to this time had you had intercourse with the defendant? A. No, sir."

Do you remember testifying to those facts? (No answer.)

Q Did you give that testimony in the police court? A. No, sir.

Q Do you remember this question put to you on cross examination "Q. What time did you return to the place? A 4 o'clock in the afternoon.

Q. From the time the defendant took you to that house was there anything said or done to you? A. No, sir.

Q Absolutely nothing? A. No, sir.

Q. You came back there at 4 o'clock? A. Yes, sir."

Do you remember testifying to that? A No, sir.

Q Is this testimony incorrect? A Yes, sir.

MR. LANGFUR: I will consent that this be marked in evidence.

THE COURT: That must be shown to be a correct transcript of the testimony given in the Magistrates' Court, and then you will have to go a step further and show that it was taken by the stenographer and was correctly trans-

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crimed and correctly reported by him.

BY MR. LANGFUR:

Q Do you know how much the landlady asked him for the room? A Yes, sir.

Q How much? A Five dollars.

Q Do you know how much the landlady asked for the key of the room? A Yes, sir.

Q How much? A Fifty cents.

Q Do you know how much Irving Kaplan had with him at 10 o'clock on March 17th, 1919? A Yes, sir.

Q How much? A \$3.50.

Q What did the landlady say about giving the room to Kaplan until the \$2 balance was paid and the 50 cents was paid?

A I don't know what you mean.

Q You went into the room, did you not? A Yes, sir.

Q There was a man there who had occupied the room?

A Yes, sir.

Q Was the man sitting there? A No, sir.

Q Moving his clothes out? A No, sir.

Q What was he doing? A He was out in the hall.

Q How was the landlady there at the time? A Yes, sir.

Q What was she doing? A He was paying her the money.

Q After he paid the three dollars what did the landlady do to the room? A Fixed the sheets on the bed.

Q How long did she fix those sheets there? A About ten minutes.

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Q Did you see him pay the balance of \$2.50 for the keys?

A No, sir.

Q Do you know where he got the balance, the \$2.60?

A No, sir.

Q Do you know where he went to get it? A He said he was going home; I don't know how far it is.

Q Do you know where his home was? A No, sir.

Q How long was he away getting the \$2.50 for the balance of the room rent? A He had paid for the keys; it was only \$2.00

Q How long was he away for the \$2.00? A He didn't come back until he got through his work about a quarter past seven.

Q Do you mean to tell the jury he worked on the 17th of March, St. Patrick's Day? A I don't know what he did. He was away that time.

Q He was away getting the \$2.00 for the balance of the room rent? A Yes, sir.

Q He went away at that time? A He went out and told the landlady he would give her the \$2.00 that night; I don't know what he did during the day but he brought the money at night.

Q He didn't come back until 7 o'clock that day? A No.

Q He being away from 10 to 7 where were you, in the room? A No, sir.

Q Where were you? A I was away from ten to 5.

Q You left him in the room there at 10 o'clock? A Yes.

Q To go to Harlem to your cousin? A No, sir.

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Q Where did you go? A Into a show.

Q A moving picture show? A No, sir.

Q Go to sleep? A No, sir.

Q You returned at what time? A 5 o'clock in the afternoon.

Q Then you went to sleep? A Yes, sir.

Q When you got there at 5 o'clock was the bed made?

A Yes, sir.

Q Sheets on the bed? A Yes, sir.

Q Any blood on the bed? A No, sir.

Q You say Kaplan came home at 7 o'clock in the evening?

A Yes, sir.

Q Then did he also pull your bloomers off at that time?

A Yes, sir.

Q The second time he pulled your bloomers off? A Yes.

Q Pulled them off in the morning and tore them? A Yes.

Q Then in the evening pulled them off again and tore them?

A He tore them once; he couldn't tear them twice after they were torn.

Q Will you please describe to the jury how he tore your bloomers in the morning, in what way, rip them in half? A No, he just --

Q What did he tear on the bloomers? A We just tore one part of the bloomers.

Q What part did he tear? A The upper part.

Q Describe what he tore on those bloomers? A I don't

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how to describe he tore them.

Q Rip them in half? A No, sir.

Q Was any part of the top torn? A The top part.

Q At the right or left side? A I can't describe how they were torn; I don't know; they were torn; that is all I know.

Q Tell the jury where you saw the blood? A On the blouse

Q What blouse? A It was up in the furnished room when I left.

Q The blouse? A Yes, sir.

Q What part of the blouse? A I didn't see any special part of the blouse.

Q Can't you tell the jury what part of the blouse? A No sir, I cannot.

Q Was it in the upper part? A It was in the center of the blouse.

Q In the center of the blouse? A Yes, sir.

Q What kind of a blouse was this? A A blouse that buttoned in the front.

Q And comes down? A Yes, sir.

Q Comes to the waist? A Yes, sir.

BY THE COURT:

Q Was it underneath your dress? A No, sir; I had that blouse off.

Q Where was it? A Right near me.

BY MR. LANGFUR:

Q When he tore your blouse did you make any outcry? A No

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sir, he didn't tear no blouse on me.

Q When he tore tore your bloomers? A Because he had his hand over my mouth I could not.

Q How long did he hold his hand over your mouth, all the time? A No, sir.

Q How long? A Until he was through.

Q Did you make any outcry after he was through? A No.

Q Tell the landlady anything about this tearing of the blouse and holding his hands over your mouth? A No, sir.

Q Did you go to any policeman on the beat? A No, sir.

Q Any policeman or person on the street? A No, sir.

Q That he had his hand over your mouth? A No, sir.

Q That happened in the morning? A Yes, sir.

Q Did he put his hand over your mouth in the evening?

A No, sir.

Q Did you tel any person or make a complaint to any person until after Irving Kaplan left you as you testify on Wednesday the 19th? A No, sir.

Q On Wednesday the 19th of March Kaplan came to the place again. Did he give you the key? A He just left it there; I didn't see him.

Q You were unwell on that day? A Yes, sir.

Q Did he come there Thursday? A No, sir.

Q Didn't show up at all Thursday? A No, sir.

Q Was he there Wednesday night? A Yes, sir.

Q March 19th, he left me the 20th. The day after I got

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unwell, the 20th.

Q You testified this morning you became unwell on the 19th? A Yes, sir, I did.

Q What time on the 19th did you become unwell? A I don't exactly know the time.

Q Was it in the morning? A No, sir.

Q He had no intercourse with you Wednesday the 19th, did he? A No, sir.

Q You say he came there Wednesday night? A Yes, sir, he came there Thursday. He left me on Thursday.

Q He came there Thursday night? A Yes, sir.

Q Sure of that? A He was standing downstairs looking up in the window, but he did not come up.

Q Did you testify to this in the magistrates' Court

"Q. Was he with you Wednesday morning? A. Yes.

Q. Continuing down Wednesday night, Thursday, Thursday morning and Thursday night? A. Yes."

Do you remember testifying he was with you Thursday night? A Yes, sir.

Q Well, you were unwell Wednesday and Thursday and although he had no intercourse with you Wednesday you tell the jury that Mr. Kaplan was with you Wednesday and Thursday until Thursday night? A Yes, sir.

Q Your statement this morning that he left you on the 19th is not correct, is it? A No, sir.

Q After you returned to the room Monday night after you

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say that he had torn your bloomers and put his hand over your mouth and had intercourse with you why didn't you go home?

A Because I was ashamed to go home again after a thing like that.

Q You didn't go into the subway again? A Yes, sir.

Q Ride in the subway that day? A Yes, sir; after he left me.

Q How long after did you go into the subway? (No answer.)

Q Was that after he left you on Thursday? A Thursday.

Q From the 19th to the 25th did you go home? A No, sir.

Q Ride up and back in the subway? A No, sir, only once.

Q You had no money did you? A Yes, sir.

Q You had one dollar on Sunday? A I had some money left from the dollar that he gave me.

Q A dollar on Monday he gave you? A He gave it to me on Wednesday, not Monday.

Q You lived on this dollar from the 19th to the 25th?
A Yes, sir.

Q When you went to the police station? A Yes, sir.

Q Did you speak to any other men during that time from the 19th to the 25th? A No, sir.

Q Speak to any other guards in the subway? A No, sir.

Q Stop in any other furnished room? A No, sir.

Q Until the 25th? A No, sir.

Q You spoke to no person at all? A No, sir; nobody.

Q At the time he got the room and gave the woman to this

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woman you heard his name was Irving Kaplan, did you not? A Yes.

Q You knew he was a guard on the sub way? A Yes, sir.

Q During that whole time from the 16th till the 25th did you meet any other person? A No, sir.

Q That you knew? A No, sir.

Q Did you give the name of any other person between the 16th and the 25th? A No, sir.

Q Did you give the address of any person or any relative between that time other than Irving Kaplan a guard on the sub-way? A No, sir.

Q At the time you met Kaplan for the first time you showed him a paper did you not? A No, sir.

Q A paper as to your age? A No, sir.

Q Do you remember this question being put to you "Did you have any paper in your pocketbook at the time you met the defendant? A. Yes."

A I did take it out; I didn't give it to him.

Q You had a paper with you? A Yes, sir.

Q That paper spoke of your age? A Yes, sir.

Q In that paper there was a statement made that you were over eighteen? (No answer.)

BY THE COURT:

Q Where were you born? A Russia.

MR. CAFFREY: I object to any further questioning along this line.

Objection overruled.

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A No, sir, it wasn't that I was over eighteen.

Q It was not? A I had a paper but it didn't state that I was over eighteen years of age.

Q Do you remember testifying to this? (No answer.)

BY THE COURT:

Q When you met the defendant, did you have a short dress on you? A Just the same as I have now.

Q Were your limbs then exposed as they are now. Your dress now I notice comes down to a point somewhat above the tops of your shoes. Was the dress you wore on that occasion about the same length? A No, sir, it was even shorter.

MR. CAFFEY: May the girl stand up so that the jury may see her dress.

(The witness stands up.)

BY MR. LANGFUR:

Q Did you have a middy blouse on? A No, sir, the same--

Q Where did you get this dress? A My mother bought it.

Q Lift up your blouse. How much shorter was the other skirt? A This is the skirt I had on.

Q This is the one? A Yes, sir.

Q Did you change your skirt? A No, sir.

Q This is the same skirt you wore all the time. You said a few minutes ago it was even shorter? A I had it up further but the same skirt.

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Q. You wore it all the time? A Yes, sir.

Q. How did you wear your hair? A The same as it is now.

Q. Did you have this question put to you. Q. Did you have any papers in your pocketbook at the time you met the defendant? A. Yes.

Q. In which it was stated you were over eighteen years of age? A. Yes."

A No, sir.

Q. You did answer yes that you had a paper which stated you were over eighteen? A No, sir.

Q. You answered yes. You didn't say yes. You didn't give that testimony? A No, sir.

Q. Sure of that? A Yes, sir.

Q. "Q. What was that paper? A That was in school. The principal gave me that instead of a working paper.

Q. That you were over eighteen? A Yes."

Q. Do you remember testifying, having that question put to you? A No, sir.

Q. Do you remember testifying that the principal gave you a paper? A yes, sir.

Q. Instead of a working paper? A Yes, sir.

Q. Where were you born? A Russia.

Q. Have you any brothers or sisters? A Yes, sir.

Q. What is the name of the brother that is next older than you? A Louis.

Q. How old is Louis? A 21.

Q. You are the next to Louis? A Yes, sir.

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Q He is 21 years of age? A Yes, sir.

BY THE COURT:

Q Where did you go to school? A Brooklyn. I went first when I lived in Harlem, I went to public school 150.

Q Do you recall how old you were when you were in the Harlem School? A My birthdays was all mixed up in the school; it was two years older than I was or about a year and a half older than I really am.

BY MR. LANGFUR:

Q What was that paper that you had. Where is the paper?

A He took it from me.

MR. CAFFREY: May I ask counsel for the defense to produce that paper.

MR. LANGFUR: If I had the paper I would produce it. We would only be too happy if we had it. We say she has it and refused to produce it. The defendant would produce it gladly.

BY MR. LANGFUR:

Q You testified he took it away from you? A Yes, sir.

MR. CAFFREY: I move to strike out the testimony as to the contents of that paper.

THE COURT: That which has been testified to concerning the paper I will allow to stand.

Q You volunteered the statement a moment ago that upon the school records you were a year and a half older? A Yes, sir.

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Q Would that make you more than eighteen according to those records?

MR. CAFFEY: I object to that.

THE COURT: She said she was sixteen in April.

THE WITNESS: April 3rd.

MR. CAFFEY: Adding a year and a half to that she would be yet under eighteen years of age.

BY MR. LANGFUR:

Q You had some four sisters, did you not, who died? A I heard of them; mother told me.

Q Those four sisters all came after you? A I don't say four; I don't know the correct number; I don't know how many

Q Do you remember mentioning you had four sisters? A No, sir, I don't remember saying four; I heard about sisters, but I don't remember about four.

Q Those sisters that you had were in between you and your present sister? A I never heard anything about them.

Q How old is your sister, the one next to you? A 13.

Q At the present time? A yes, sir.

Q When was she thirteen? A I don't know the date; it was on Halloween.

Q It was last Halloween she was thirteen? A Yes, sir.

BY THE COURT:

Q Are you a Jewish girl? A Yes, sir.

Q Did you go to the temple in Brooklyn? A No, sir.

Q Did your parents send you there? A No, sir.

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Q Did you ever hear part of Russia you were born in?

A No, sir.

Q What is that? A No, sir.

Q You don't know whether you were born in Odessa? A No.

Q How long did you attend school? A Up until the last grade.

Q How long? A Eight years.

BY MR. LANGFUR:

Q You went to the last grade? A Yes, sir.

Q In Public School? A Yes, sir.

BY THE COURT:

Q Do you mean in the Grammar Department? A Yes, sir.

Q When did you graduate? A I didn't graduate; I left school February 2nd, 1918.

Q Were you ready to go into High School? A No, sir; I was left back in the last class, and I left.

Q Had you taken the examination for High School? A No..

BY MR. CAFFREY:

Q When did you leave school? A February 2, 1918.

BY THE COURT:

Q How many grades were there in that school? A 16.

Q You went through the grades of the primary department as well as in the grammar department? A Yes, sir.

Q There are about six months in each grade, are there not? A Yes, sir.

Q You went through from one to 16? A Yes, sir; I went

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from the first class to the last .

Q Running back to what we call the Kindergarten? A No, sir, I didn't go to the kindergarten, I went in A and B.

Q You got to the grammar Department? A Yes, sir.

Q How long were you in the grammar Department? A About four years.

Q When you got in the last class in the grammar grade what were you taught? A Algebra, metaphysics, algebra, compound interest and bank discount.

Q Were you taught in that grade advanced English grammar?
A No, sir.

Q Were you taught that at all? A No, sir.

Q How far did you go in algebra, as far as equation?
A Yes, sir.

THE COURT: The reason I asked those questions is that they have a bearing on the question of age. If there is going to be a contest as to the question of age I think it is proper for the jury to know how long she attended school. You say there will be a contest on the question of age?

MR. LANGFUR: Yes, sir.

BY MR. LANGFUR:

Q How long have you been working? A One year.

Q Did you work until the 16th of March? A No, sir.

Q 1919? A No, sir.

Q When did you stop working before the 16th of March?

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A The 13th.

Q Did you receive any money on the 13th of March? A Yes

Q For your wages? A Yes, sir.

Q How much was that? A \$6.56.

Q Who did you work for A The Boulevard Dress Company.

Q You didn't go home on the 13th? A No, sir.

Q Were you home on the 12th? A Yes, sir.

Q Where did you go on the 13th of March? A I worked until 12 o'clock, and then I got the money and I did not go home.

Q Did you go to any theatre? A Yes, sir.

Q What theatre? A Proctor's.

Q Did you have any other money except this \$6.56 in your clothes at that time? A Yes, sir.

Q What other money? A Just only about 50 cents.

Q And about \$7? A Yes, sir.

Q Have your dinner out of that money? A Yes, sir.

Q Bought the theatre tickets at the time? A Yes, sir.

Q Have your supper that night? A No, sir.

Q The next day did you go to the theatre again? A No.

Q Did you go to Proctor's in the afternoon again? A Yes.

Q What do you mean no or yes? A I said yes-- I don't mean no.

Q You said a moment ago no and then you said yes? A I said yes.

Q Did you go to sleep in Proctor's place on the 14th?

A No, sir.

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Q Have breakfast? A Yes, sir.

Q Pay for it? A Yes, sir; they wouldn't give it to me for nothing.

Q You went into Proctor's and you paid for the ticket?
A Yes, sir.

Q How much did you pay for that ticket? A I think 33 cents.

BY THE COURT:

Q Where was this? A 125th street.

BY MR. LANGFUR:

Q In the evening did you go to any moving picture place?
A No, sir.

Q To any theatre? A No, sir.

Q Get your supper? A Yes, sir.

Q On the 14th? A yes, sir.

Q Did you go into a theatre again? A No, sir.

Q Did you go to Proctor's? A No, sir.

Q Go to a moving picture show? A No, sir.

Q What did you do all day the 14th? A Just kept walking around.

Q Walking all day? A Yes, sir.

Q Visit any store? A No, sir.

Q Go into any house? A No, sir.

Q Of any kind? A No, sir.

Q What streets did you walk on do you remember on the 14th-- from where to where approximately? A I walked from

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125th street down but I don,t know what streets.

Q Go into any museum or public building? A No, sir.

Q Have your dinner and supper that day? A Yes, sir.

Q And breakfast, paid for it? A That,s a funny question, did I pay for it? The man wouldn't give it to me for nothing.

Q When you met him you had no money at all in your clothes ?

A No, sir.

Q Not a penny left? A No, sir.

Q Anybody give you any money? A No, sir.

Q Between the 13th and the 17th? A No, sir.

Q Did you speak to any other guard between the 13th and the 17th? A No, sir.

Q Speak to any men on the street? A No, sir.

Q Telephone home? A No, sir.

Q Communicate by letter or in any way with your home?

A No, sir.

BY THE COURT:

Q Why did you leave home? A I went to work for this company, the Boulevard press Company, and they said they would give me about twelve dollars a week. I worked there, and at the end of the week they gave me \$6.56. So I was afraid to go home with the \$6.56. So I didn't go home that day.

BY MR. LANGFUR:

Q How much were you getting before you worked for the Boulevard? A That was the first -- you mean for that com-

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pany. That was the first pay I got from that company.

Q Who did you work for before you worked for the Boulevard? A Carmen & weldman.

Q How much did you get there? A \$10.

Q How long did you work there? A Six months.

Q Before that time where did you work? A Meyer Bros.

Q How much did you get there? A I got about \$8 a week.

Q When was your week, from what day to what day? A It begins on Tuesday.

Q Worked until what day? A Saturday.

Q Do you know what date Saturday was? A No, sir; I dont remember the date.

Q Can you by looking at this calendar refresh your memory as to the day you stopped working. You can read the calendar, can't you without all this trouble? (No answer;)

Q Look at March, will you and tell the jury what date Saturday was, the Saturday when you stopped working? A It was on the 15th.

Q The 15th? A yes, sir; I am not quite sure.

Q What is the Saturday before the 15th? A The 8th.

Q Did you work until the 8th or the 15th? A I don't remember that.

Q Can you tell the jury how many days you walked around and went on the sub way before you met Kaplan? A Three days.

Q Sure of that? A Yes, sir.

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Q You say you met him on Sunday night? A Yes, sir.

Q The 16th of March? A Yes, sir.

Q Will you tell the jury until which date you worked the 8th or the 16th? A Till the 8th.

Q When did you leave home, the 8th or the 13th? (No answer.)

Q Where were you between the 8th and the 13th? A Home.

Q Did you get your pay on the 8th, Saturday the 8th?

A No, sir.

Q Understand you are under oath now. Did you get your pay on the 8th of March? A Well, I don't remember.

Q You worked only from Tuesday until Saturday? A Yes, sir.

Q You got \$6.56 for part of a week? A Yes, sir.

Q How long were you out of employment before you started to work for this place? A About four weeks.

Q During that time had you been around looking for employment? A Yes, sir.

Q Riding up and down in the subway? A What do you mean?

Q Riding in the subway during the day time and going to picture shows in the afternoon? A When I went, looking for a position I didn't go looking for a moving picture show.

Q During the four weeks you didn't go into a picture show and didn't ride in the subway? A No, sir.

Q Meet any men? A No, sir.

Q You got the \$6.56 on Saturday the 8th of March. Did you go home with it? A Yes, sir.

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Q Tell your mother you got \$6.56 pay? A No, sir.

Q Stay home Monday? A Yes, sir.

Q Did your mother ask you why you stayed home Monday?

A No, sir.

Q The 10th of March? A No, sir.

Q Why you didn't work the 10th of March? A No, sir.

Q Stayed home the 11th of March? A No, sir.

Q Did your mother ask you for wages why you didn't go and get your wages, if you worked from Tuesday until Saturday?

A I told her they were going to pay me Thursday.

Q You had your money in your possession already? A Yes.

Q \$5.65? A \$6.56.

Q Wednesday you told her the same thing? A Yes, sir.

Q They will pay you Thursday? A yes, sir.

Q Did your mother ask you why they didn't pay you when they stopped work on Saturday? A No, sir.

Q Did your mother know where you worked up until that Saturday? A Yes, sir.

Q Knew the concern? A Yes, sir.

Q You had turned over to her your salary on Saturdays?

A Yes, sir.

Q Before this time? A Yes, sir.

Q Why did you keep the \$6.56 without turning it over to your mother as was your custom? A Because I was supposed to get more and I only got \$6.56.

Q You were supposed to go there Thursday and get more

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money? A No, sir.

Q You couldn't give your mother any more money that \$6.56? A No, sir.

Q Still you held on to the \$6.56 Monday, Tuesday and Wednesday? A Yes, sir.

Q Do you remember the day you left your house, your home?
A The 13th.

Q Sure of that? A The 13th I left home.

BY THE COURT:

Q Were you a pure girl before you met the defendant?
A Yes, sir.

Q Sure of that? A Yes, sir.

Q Did your mother send you down to get your pay-- did anybody drive you out of the house to get your pay? A No, sir.

Q Anybody tell you not to come home until you got your pay? A No, sir.

Q You went away of your own free will? A Yes, sir.

Q What made you go away from home? A The money that I got, \$6.56.

Q What was your intention, did you intend to stay away altogether? A No, sir.

Q What was your intention when you left the house? A I expected to go to my brother's house.

Q Did you go to your brother's? A No, sir.

Q Why didn't you go to your brother's or to that cousin in Harlem? (No answer.)

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Q Why didn't you go to your cousin's house? A I didnt want my mother to know it.

Q To know what, about the wages? A Yes, sir.

Q Did you have any other relatives in New York City? A No

Q Besides the cousin? and brother? A No, sir.

Q Nobody else? A No, sir.

Q No married relatives you could have gone to? A No. sir.

Q Is your brother married? A No, sir.

Q You didn't ask him for a few dollars to add to the wages? A No, sir.

Q Did not telephone to him? A No, sir.

Q Did not go to his place of business? A No, sir.

Q Did you ask Irving Kaplan for a dollar? A yes, sir.

Q Have a talk with him about this dollar? A I simply told him I was hungry and he took this dollar out and he gave it to me.

Q That was Wednesday morning? A Yes, sir.

Q Who bought your meals Tuesday morning? A I went without it.

Q Who bought your meals Wednesday morning? A I went without it.

Q Who bought you dinner on Monday noon? A Nobody.

Q Who bought your supper Monday night? A Nobody;

Q Who paid for the picture show or theatre Monday March 17th? A I had six cents left.

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Q When? A The 17th of March.

Q During the time you left there from ten o'clock in the morning until four o'clock in the afternoon you say you had six cents in your clothes? A Yes, sir.

Q With that six cents you paid for what? A Moving pictures.

Q Did you go into ^{or the} Proctor's/moving pictures? A Yes, sir, moving pictures.

Q Where was the ,moving picture you went into on March 17th? A 118th street, I think, I don't remember.

Q Did you see a picture there? A Yes, sir.

Q Do you remember the name of the picture? A No, sir.

Q Did you see anybody else there? A I seen people but I don't know them.

Q Know the name of any person you saw there? A No, sir.

Q You had not eaten Monday anything? A No, sir.

Q Neither noon or night? A No, sir.

Q When Kaplan came there at 7 o'clock Monday night did you tell him you hadn't eaten anything? A No, sir.

Q Ask him to take you out for supper? A No, sir.
After

Q As you say he had intercourse with you Monday night, did you ask him to take you out for supper? A No, sir.

Q Tell him you hadn't eaten anything Monday morning?
A He didn't ask me; he never asked me.

Q Did you ask him for Monday? A Wednesday morning.

Q Not Monday night? A No, sir.

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Q You say you had intercourse with him on Tuesday the 18th?

Objected to.

THE COURT: She didn't have intercourse with him on the third occasion she said. Objection sustained.

Q When he came there, Tuesday morning the 18th, did you ask him to buy you breakfast? A No, sir.

Q He never at any time refused to buy you any meals? A No, sir.

Q When he came there Wednesday did you ask him to buy you anything? A Yes, sir.

Q He gave you a dollar? A Yes, sir.

Q Before this time did you ever go without food for three days?

Objected to.

Objection sustained.

RE DIRECT EXAMINATION BY MR. CAFFEY:

Q Now, little girl, you say that you left your place of business on March 8th? A It was on a Thursday. Thursday is the 13th.

Q Now that is what I want to know. See if you can clear up your memory on that and be able to state to the jury whether you left your work on March 13th, as you say you did say this morning, or whether you left it on March 8th as you said you/this afternoon. March 13th you said this morning, and March 8th you said this afternoon. A March 13th.

Q On Thursday you left the place of business? A Yes, sir

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Q How much money did you have at that time? A \$6.56.

Q This employer paid you \$6.56? A Yes, sir.

Q Did you have any money of your own? A Yes, sir.

Q Now, between the time you left your place of business with \$7 at least in your possession up to the night of the 16th that you met the defendant you did not go home, did you?
A No, sir.

Q How did you live during that time; how did you obtain your food and drink? A With the money I had. I had \$6.56 or \$7.

Q You had \$7, and you paid out of that for your meals during those three days? A Yes, sir.

Q Is that correct? A Yes, sir.

Q How did you obtain your meals Monday and Tuesday? A I didn't have any meals Monday.

Q How much money did you have on the night of the 17th? when you met this defendant. You had \$7 on the 13th, now the 16th is three days afterwards. How much money did you have?
A I had some small change: I didn't have much; I had about thirty five cents.

Q About thirty five cents? A Yes, sir.

Q What did you do with the \$7 during those three days?
A I paid for breakfast, dinner and supper and to go in the shows.

Q You say during those three days that you spent all of

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the \$7, and had you had thirty five cents? A Yes, sir.

Q Is that right? A Yes, sir.

Q What had you left then on Monday, this was Monday the 17th? A Thirty five cents, that is all.

Q What did you mean by telling counsel a few minutes that when you met the defendant you had six cents? A I had thirty five cents.

Q Thirty five cents on Sunday night? A Yes, sir.

Q Sunday night when you met the defendant you had thirty five cents? A Yes, sir.

Q When did you leave home? A The 13th.

Q You got your pay on the 13th? A Yes, sir.

Q And not on the 8th as you told counsel? A No, sir.

Q Sure of that? A No answer.

Q Why did you say the 8th? A He got me mixed up.

Q You were all mixed up? A Yes, sir.

Q You didn't mean to say that. Now, if you wait a minute. When you told counsel that you left your work on March 8th you were mixed up, and you did not mean that? A No, sir.

Q Do you now state positively that it was the 13th of March that you left your work? A Yes, sir.

Q Are you mixed up now? A No, sir.

Q Do you understand my question? A Yes, sir.

Q You left home on the 13th of March? A Yes, sir.

Q Now that is correct? A Yes, sir.

Q When you met the defendant Sunday night you had thirty

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five cents instead of six cents? A Yes, sir.

Q You spent all of that \$7 with the exception of thirty five cents? between the 13th and the 16th? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Counsel asked you if you asked your brother or any relative uptown for any money? A No, sir.

Q You said no? A No, sir.

Q Why didn't you go to your brother and ask for money?
A My brother lives up in the Bronx.

Q Why didn't you call on him? A I had no reason for not calling on him.

Q Or for not calling on your aunt? A I have no aunt; I have got a cousin, but I wouldn't go to her house for any money. In the first place she wouldn't give it to me, and in the second place I wouldn't want to ask her for money.

Q What was it you didn't want to let her know, is it the same reason you didn't ask your brother? A Yes, sir.

Q Didn't want to let them know what you were doing?
A Yes, sir.

Q Some questions were asked this morning and this afternoon as to whether you did not testify to certain things in the Magistrates' Court. When you entered the premises with the defendant, 1883 Lexington avenue on the morning of the 17th after you had obtained admission to the room, did the defendant lie on the bed and did he call you over to where he was? A No, sir.

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Q He did not do that? A No, sir.

Q Did he attempt to pull you out of the bed? A Yes, sir.

Q He did do that? A Yes, sir.

Q What did you do then? A How do you mean?

Q Well, did the defendant attempt to pull you out of the bed? A Yes, sir.

Q What did you do then? A I couldn't do anything.

Q Well, what did you do at that time? A He got in on top of me.

Q Did you tell him you wanted to go downstairs and go away? A No, sir.

Q To see your cousin? A No, sir.

Q Did you tell this man, the defendant that you had a cousin uptown, and that you wanted to go up there to see him. Did you tell him that at any time? A Yes, sir, I told him that because he was bothering me.

Q That is what I want to get at. You did tell him that? A Yes, sir.

Q When did you tell him that? A Monday.

Q What time of day, what part of the day? A It was in the morning.

Q What time in the morning? A About ten o'clock; perhaps about a quarter after ten.

Q Now what did you say that to him then? A I just simply wanted to go down and I told him.

Q Well that was about 10 o'clock in the morning? A Yes.

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Q You said to him you had a cousin uptown, and that you wanted to go up there to see that cousin? A yes, sir.

Q Up to that time had the defendant done anything to you?
A Yes, sir.

Q What had he done to you at that time? A He had intercourse with me.

Q He had intercourse with you? A Yes, sir.

Q And then had you gotten up out of the bed? A Yes, sir.

Q Where had you gone? A I went downstairs.

Q Did you come back again? A Yes, sir.

Q Now how long after you had intercourse with the defendant was it that he tried to pull you over towards the bed? A I don't understand.

Q You said that around about a quarter past ten and after you had intercourse with the defendant that he tried to pull you again over towards the bed. Is that right? A No.

Q Are you mixed up now. I don't want to mix you up. You say about between nine and ten o'clock that the defendant had intercourse with you? A Yes, sir.

Q That he threw you on the bed, and put his hands over your mouth, and had intercourse with you? A Yes, sir.

Q Now was it before or after that that the defendant pulled you over on the bed and you got away from him and told him that you were going uptown to see your cousin? A It was after.

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Q After the defendant had that intercourse with you?

A Yes, sir.

Q How long after? A About fifteen minutes.

Q This was the second time? A Yes, sir.

Q Is that right? A Yes, sir.

Q I mean the second time that morning. Tell the jury how he got you on the bed? A I don't know what you mean.

Q You said fifteen minutes after the defendant had intercourse with you that he called you over and tried to pull you on the bed. What did he do? A He didn't do anything after he had intercourse with me.

Q Well, fifteen minutes after he had intercourse with you did he do anything to you? A No, sir; I just told him I was going to my cousin in Harlem.

Q Did he call you over? A No, sir.

Q Was he lying on the bed and did he call you over to where he was? A He was lying on the bed, but he didn't call me over.

Q What did he say to you? A He didn't say anything to me.

Q What did he say to you? A He didn't say anything to me.

Q When he called you over what did he say to you? A He didn't say anything to me at that time either.

Q Certain questions were put to you from the record ask-

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in you if you testified to certain facts in the Magistrates' Court. You returned to the defendant's room and your room at what hour? A 5 o'clock.

Q Now, I ask you directly up to that time, 5 o'clock that day, did the defendant have any intercourse with you?

A Yes, sir.

Q Then if you testified that up to that time you didn't have intercourse with the defendant you were mistaken, were you not? A Yes, sir.

Q You said you had no conversation with anybody about this case, is that correct? A Yes, sir.

Q You did talk with me about the case, didn't you? A Yes

Q You have been in my office, haven't you? A Yes, sir, I have been.

Q Before the case came to trial? A Yes, sir.

Q You talked over the case with me, didn't you? A Yes.

Q Before the complaint was made in the Magistrates' Court, you talked with Mr. Garland? A Yes, sir.

Q You talked with him about the case, didn't you, the Children's Society man? A Well, when he asked me; he didn't show me any paper or anything.

Q Didn't you talk to him about what this defendant did to you? A Yes, sir.

Q So that you did talk with somebody? A Yes, sir.

Q Now when you went to the police station that night--

I am not going to ask you what you said because I am not al-

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lowed to-- but when you went to the station house that night of the 20th was it? A The 26th.

Q You talked to them about the case, didn't you, the police officers? A Yes, sir.

Q It was on what you said, after you had talked with these men, that this defendant was arrested, wasn't it? A Yes, sir.

Q After you had talked with somebody? A Yes, sir. I didn't understand him.

Q You didn't understand the question-- so when you said to him that you hadn't talked to anybody about the case, you didn't mean that? A No, sir, I didn't know what he meant. I didn't understand the question.

Q What time did the defendant return that night? A Monday night?

Q Yes? A A quarter past seven.

Q What time did he have intercourse with you? A Just as soon as he came in.

RE CROSS EXAMINATION BY MR. LANGFUR:

Q You understand the English language don't you? A Yes, sir.

Q You have attended the public schools for eight years? A Yes, sir.

Q Lived in this country a long time? A Yes, sir.

Q You were not mixed up when I asked you whether you had this money on the 8th of March, \$6.56? A Yes, sir.

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Q You were mixed up? A Yes, sir.

Q Didn't you understand that that meant whether you had the money \$6.56 on March 9th, Sunday? A No, sir.

Q You didn't understand it? A No, sir.

Q Did you understand me when I asked you whether or not you had this \$6.56 on Monday, Tuesday and Wednesday? A No.

Q You were mixed up, you say? A Yes, sir.

Q You say you were mixed up when I asked you whether you told your mother about having this \$6.56 in your possession from Saturday until Wednesday. You were also mixed up? A Yes

Q Now you are not mixed up? A No, sir.

Q You got this money on Thursday, the 13th? A Yes, sir.

Q Were you mixed up when you said you worked from Tuesday till Saturday? A No, sir.

Q Who discharged you on Saturday? A The man.

Q Gave you a pay envelope? A Yes, sir,-- no, sir, he didn't give me a pay envelope until the 13th of March.

Q What did he say to you when he discharged you?

MR. CAFFEY: I object to that as irrelevant, incompetent. There is no evidence that she was discharged.

Q Then you stopped working on Saturday, did you not?

A Yes, sir, but I didn't get paid until Thursday.

Q Did you ask for your pay, did you ask for your money?

A Yes, sir.

Q He didn't give it to you? A No, sir.

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Q He gave you your money on Thursday. What was the man's name? A I don't know his name.

Q What time Thursday did he give you the money? A One o'clock.

Q Did the bokkeeper in that place give you the money?

A Yes, sir.

Q Do you know the bookkeep-r's name? A I don't know.

Q Sure it was the bookkeeper? A Yes, sir.

Q Give you a pay envelope? A Yes, sir.

Q With yourname on it? A Yes, sir.

Q How many more people were employed there besides yourself in this place? A About fifteen.

Q Girls and boys? A Two or three men-- there was only one young girl all the rest were married.

Q Who else got money on the 13th that you saw, if anybody? A I didn't see.

Q Did you see any other persons get pay envelopes at one o'clock Thursday? A No, sir.

Q Was there anybody else that stopped work on Saturday the 8th of March besides you? A No, sir.

Q You were the only one? A Yes, sir.

Q You tell the jury that you had thirty five cents in your possession on Monday the 17th-- why didn,t you get your breakfast when you went down at ten o'clock? A I was too excited; I couldn,t get no breakfast.

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Q Why didn't you get your dinner with this thirty five cents? A I didn't get no dinner; I only got a few cakes.

Q You did eat a few cakes? A Yes, sir.

Q Get any supper? A No, sir.

Q After spending six cents you had twenty nine cents left on Monday night; did you get any supper with that money?

A No, sir.

Q Get any breakfast with that money Tuesday? A No, sir.

Q With twenty nine cents did you get any dinner? A No.

Q Supper? A No, sir.

Q Breakfast on Wednesday or any dinner on Wednesday? A I took a cup of coffee and some cakes Wednesday.

Q Were you dressed in the blouse that you now have on?

A No, sir.

Q Have another blouse on? A No, sir.

Q What did you have on? A A sweater on.

Q Did you have a blouse underneath the sweater? A No, sir.

Q Have any blouse? A I did before he had intercourse with me.

Q Where is this blouse? A It was up in the room.

Q Did you go to the police the 25th of March? A No, sir.

Q Will you please tell the jury when you had your menstruation after the 19th of March, 1919? A I think it was the 28th.

Q Sure of that date? A Not exactly.

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Q Was it the first week in April? A It was the end of April.

Q When did you have it before the end of April? A In March.

Q What date? A The 19th.

Q You had no menstruation until April 28th, is that what you want to tell the jury? A I don't remember the date.

Q When did you have your last menstruation in this month or the previous month? A This month.

Q June when? A June 9th.

Q Are you unwell at the present time? A No, sir.

Q Please tell the jury when you had your last menstruation, today is the 11th of the month of June? A Saturday evening.

Q Last Saturday? A No, sir, this Saturday.

Q The 7th of June? A Yes, sir.

Q That was last Saturday you mean? A Yes, sir.

Q You are not unwell at the present time? A No, sir.

Q How long is it since you have been unwell?

Objected to;

THE COURT: You have gone far enough.

FELICE GRIFFIN, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states she lives at 1883 Lexington avenue.)

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DIRECT EXAMINATION BY MR. CAFFREY:

Q Do you live at 1883 Lexington avenue? A Yes, sir.

Q In the County of New York? A Yes, sir.

Q Did you live there on the 17th day of March, 1919?

A Yes, sir.

Q Do you remember the 17th day of March, 1919, do you not? A Yes, sir.

Q I want you to look at the defendant. On that day did you see this defendant at your rooming house? A Yes, sir.

Q By the way, you keep a rooming house? A Yes, sir.

Q At the address just given? A Yes, sir.

Q You did on that day? A Yes, sir.

Q Now at what time did you see this defendant at your rooming house on March 17th? A Between nine and ten o'clock.

Q In the morning? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, tell the jury what the defendant said? A He asked me if I had a large room. I told him yes. Then he said he wanted a room for him and his wife, that she was around the corner. He said the place where he had been -- he asked me if I would show him the room, and I said. He came up and looked at it, and said he liked it all right and would go and get his wife and when he brought this girl.

Q He left your house? A Yes, sir; he went and got this girl.

Q He came back with a female? A Yes, sir.

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Q Would you know this female if you saw her again?

A Yes sir.

Q He came back with a girl? A Yes, sir.

Q Now what did he say when he came back? A He said the room was -- that room would do him. I looked at the girl and I said, "You look young, how old are you," and she said "I am nineteen." Then I asked him I said, "How long have you been married", and he said "four months".

Q Go ahead? A That is all.

Q Did you tell him how much the rent would be? A Yes, sir, five dollars. I told him the room would be five dollars a week, and he gave me three dollars; he didn't have but three.

Q He gave you three dollars? A Yes, sir, and that he would give me two when he would come back that night; and he gave it to me.

Q But he only gave you three? A Yes, sir, he only gave me three first and he came back that evening and he gave me two

Q Was the girl present when the defendant gave you the three dollars? A Yes, sir.

Q She was there? A Yes, sir.

Q Where was that, what part of the house? A The top floor front.

Q Was that in the room that you had assigned to them?

A Yes, sir, in the room that I rented them.

Q When you left the defendant and the girl where were they?

A They were in the room. I went downstairs.

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Q Now did you see the defendant after that? A I saw him in the evening when he came to bring me the money, Monday evening he gave me the money.

Q The same evening? A Yes, sir, Monday evening.

Q That was the evening of March 17th? A Yes, sir.

Q What time did he give you the other two dollars? A He gave me the three dollars in the morning and then in the evening he gave me the two dollars.

Q That is what I mean, he came back in the evening and he gave you two? A Yes, sir.

Q What time in the evening was that? A Around about I guess half past seven, something like that.

Q Now, did you see him in the room that night? A No, sir; not that evening.

Q Monday evening? A No, sir; I didn't see him in the room at all after the morning.

Q Now after that night where did you see him? A I saw him on Tuesday, I don't remember just about the time that he went away that Tuesday.

Q Did you see him go into the room in the morning you rented it? A Yes, sir; he was in the room.

Q Did you go in with the girl? A Yes, sir.

Q How long did he stay in it? A Well, to my knowledge he was there something more than half an hour. When I went up I didn't have the keys with me, and he asked me if I would

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give him a front door key. He said I am going to Brooklyn and my wife is going to her cousin's.

Q Did you leave him in that room? A It must be then near 10 o'clock.

Q Did you see him going out that day? A I didn't see him going out but the youngwoman came down and got a key.

Q This young woman? A Yes, sir.

Q Now did you see the defendant again that night?

A Yes, sir.

Q What part of the house did you see him in? A At the front door, that is when he came in.

Q In the street? A No, sir, just when he came in.

Q You mean the front door leading from the street into your premises? A Yes, sir, in the front hall.

Q Now did you see the defendant again after that? A I did on Tuesday, around noon again at that time going out.

Q The 18th? A Yes, sir.

Q When did you see him after that? A No, sir, I didn't see him after that.

Q Look at that girl and state whether or not that was the girl to whom with the defendant you let the room? A That is the girl that I let the room to, but of course she was dressed different when she came into me.

Q How was she dressed? A She had on a longer coat than that with a collar up around her neck that came down over her

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dress.

Q Did you notice what kind of a dress she had on? A I did not see her dress it was a long coat.

Q But you did not notice the height of the dress? A No, sir; I did not see the dress; I could not see it because it was a long coat buttoned up.

Q Of course you couldn't see the dress? A No, sir.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow, Thursday morning, June 12th, 1919 at 10.30 o'clock.)

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New York, June 12, 191.

FELICE GRIFFIN, a witness for the People, resumes the stand.

CROSS EXAMINATION BY MR. LANGEUR:

Q Mrs. Griffin, at the time that this girl came there she said to you what her age was? A I asked her.

Q What age did she give at that time? A 19.

Q You are very sure of that, she said she was 19 years of age? A I am very sure.

Q You observed her dress and coat? A Her coat. I didn't see her dress.

Q And the coat did that reach down-how far? A It was a long coat.

Q To her shoe tops? A Yes, sir.

Q Could you see any part of her limbs? A I could not.

Q Now at the time that they came to see you was this particular room rented to some one else? A Yes, sir.

Q That person to whom this particular room was rented was in occupation of this room at the time that they applied to you for that particular room?

MR. CAFFEY: I object to that as incompetent and immaterial,-- to go into that. It has absolutely no bearing on this case.

THE COURT: I will allow it.

A I had a small room and a large room at the same time, and then I transferred to men from the large room to the

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small room so that this couple could take the large room because he did not intend to occupy it more than one day more.

Q This man was in the room at the time they first came to you? A He wasn't there in the room; the man went out.

Q Was the room made up at the time? A No, sir. I had to change the man's things from the room to the next room and make the room up.

Q Did you make the room up? A I did.

Q Was there some talk at that time about securing the room as they were going away, she to her cousin, and he to Brooklyn? A No, sir, he said that he would rent the room and that they would not be there very long because she was going -- I asked him at the time-- he said, "I am going to Brooklyn and my wife is going to her cousin's for today but we will be back this evening.

Q After that she came down alone? A After that she came down alone.

Q Did you see him go out? A No, sir; not that day I did not.

Q Did you tell him at the time that the room would cost five dollars? A I did.

Q Did you tell him at the time that he would have to pay fifty cents for a key? A I did.

Q You didn't know Kaplan before that time? A No, sir, I did not.

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Q He gave you his name? A Yes, sir.

Q He told you his name was Irving Kaplan? A Yes, sir, he told me his name was Irving Kaplan.

Q You saw he was a guard connected with the subway?

A Well, he told me he was, in uniform, that he was connected with the subway.

Q He didn't withhold any information as to what his business or his name was, did he at that time? A No, sir.

MR. CAFFEY: I object to that.

THE COURT: Her certainly did not withhold it if he told her who he was.

MR. CAFFEY: The woman cannot tell what he withheld.

It should be confined to what the man said.

Q You asked him for the full amount, five dollars, did you not? A I asked him but he didn't have it.

Q Did he tell you where he would go to get the balance?

A He didn't say where he was going to get it, but he said he would give it to me in the evening.

Q Did you see him on Tuesday? A Yes, sir, I saw him on Tuesday.

Q At what time? A Around noon; I couldn't say just exactly the time.

Q That was one day after St. Patrick's Day? A Yes, sir, the Tuesday after St. Patrick's Day.

Q You saw him Tuesday, did you not? A Yes, sir.

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Q You were there Monday? A I was.

Q Did you see him Wednesday? A I did not.

Q Did you see him there after Tuesday? A No, sir.

Q Did you see him coming in Tuesday? A No, sir; I didn't see him come in.

Q But you saw him go out about noon time? A Yes, sir.

Q In the evening he came back? A I never seen him after.

Q Were you in the building on Wednesday? A Yes, sir.

Q On Thursday? A Yes, sir.

Q Did you see him on Wednesday or Thursday? A I did not.

Q Either going in or going out? A I did not.

Q Can you tell his Honor and the jury-- if you don't mind-- whether or not he was there after Tuesday at 12 o'clock
A I did not see him..

Q If he had been there would you have seen him? A Well, it would not be -- I couldn't say that I would have seen him if he was there because the People go in and out and I would not have seen him unless some --

Q Did you observe the people going in and out? A Sometimes; and sometimes they go in and out --

Q You saw him Monday? A Yes, sir.

Q Saw him Tuesday? A Of course, I seen him Monday, because he came to the door for the room, and Tuesday I was in

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the hall, working around and I seen him going out.

Q After that you never saw him? A No, sir, I did not see him.

Q Did you hear any noise in the room on Monday or Tuesday? A No, sir, I didn't hear any noise.

Q Did you hear any confusion? A I heard talking; they were talking but I didn't hear any confusion.

Q Any excitement or confusion or yelling out? A None whatever.

Q Any screaming or yelling? A None.

Q Any statement made to you about any crime being committed there? A Nothing.

Q Either by her or by anybody else? A No, sir, nobody.

Q Who gave you the keys, who returned the key to you?

A The young woman.

Q When did she return the key? A The following Tuesday.

Q Stayed over her time? A She told me she left on Monday night, I think she said, I cannot be sure about it, she said she left Monday, and she came back Tuesday morning with the key.

Q Returned the key to you? A Yes, sir.

Q He was not there at that time? A No, sir, he was not.

BY MR. CAFFEY:

Q You heard voices in conversation in that room, is that it? A Yes, sir.

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Q You heard voices? A Tuesday morning.

Q You said you heard talking, you heard voices in conversation in the room? A Yes, sir.

Q That was on Monday? A Tuesday.

Q What time was it? A Well around, about, I guess it was near noon time, something like that, a little before he was going out.

Q What time about? A I couldn't tell you exactly, but somewhere, maybe 11 or noon, something like that.

Q Now, on Monday night -- you saw him Monday rather after you let the rooms to these two people and you said afterwards the girl came down to your apartment? A Yes, sir; Monday morning.

Q Monday morning? A Yes, sir.

Q The girl came down to your apartment? A Yes, sir.

Q How long was that after you had let the room to them that you let both of them upstairs in the room? A I presume it would be around three-quarters of an hour? A Yes, sir.

Q From half to three-quarters of an hour? A Yes, sir; something like that.

BY MR. LANGFUR;

Q You didn't hear any voices Monday the 17th of March?

A I did not.

Q Hear any voices between nine and ten o'clock after you had spoken to them about the room? A No, sir; I didn't hear any commotion whatever.

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Q Any voices or was there any noise in the evening of Monday, March 17th? A No, sir, I did not.

Q Did you personally attend to the room upstairs, clean it? A I did.

Q Did you clean it on Monday, and fix it on Monday, Tuesday and Wednesday of the week? A I fixed it Monday.

Q What time Monday? A Well, after they were gone out.

Q You saw no blouse there? A I did not.

Q Did you see a blouse there with blood on it? A No, sir.

MR. CAFFREY: I object to that. If she she did not see any blouse she could not have seen a blouse with blood on it.

Q Was there any blouse left there? A No, sir.

Q At any time? A At no time.

BY MR. CAFFREY:

Q Did you look for any blouse? A No, sir, I did not look for it, there was nothing there for me to look at; I didn't see anything.

Q You didn't look for anything? A Never seen anything. I cleaned up the room, but I didn't see anything.

MORRIS KESSLER, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 412 South 5th street, Brooklyn.)

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DIRECT EXAMINATION BY MR. CAFFREY:

Q Mr. Kessler, where were you born? A Russia.

(Through Official Interpreter Landau.)

Q Where were you born? A Russia.

Q What part of Russia? A In the Government of Volhyn.

Q Are you the father of Jennie Kessler, the complaining witness in this case? A Yes, sir.

Q When was Jennie born? A April 3rd, 1903.

Q Where was she born? A In Russia.

Q What part of Russia? A The same part where I was born, Volhyn.

CROSS EXAMINATION BY MR. LANGFUR:

Q Have you any papers in your possession which shows the date of the birth of Jennie Kessler? A No, sir, I have not, but I got proof that a man was present at the party at the time the child was born.

Q What date were you born, Mr. Kessler? A The date of my birth I do not remember; but I know I am fifty years of age.

Q What year were you born in? A I am not educated enough to remember the year but I know how old I am.

Q Who is your oldest son and what is his name? A Charlie Kessler.

Q What is the date of his birth? A The month of July I don't remember the year.

Q What year? A I don't remember the year, but I know he

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is 22 years of age.

Q What is the name of your second son? A Sam.

Q How old is Sam? A 23.

Q What was the date of his birth? A Born in the month of July, I don't remember what year.

Q Do you remember the year? A I am not a bookkeeper; I have no record.

Q What is the name of your next son? A Louis.

Q Give us the date and year of his birth? A 21 years in July next.

Q Do you know what date in July? A No, sir.

Q Do you know what year? A No, sir.

Q Who is the next? A Jennie.

Q That is the complaining witness, your daughter, Jennie Kessler? A Yes, sir.

Q She is the next one after Louis whom you say is 21 years of age? A No, sir, she is not the next; she was not the next; the next child to Louis, there were two miscarriages and one child who died.

Q Can you give us the year of these miscarriages you now speak of? A No, sir.

Q Can you give us the year of the birth of the baby which you say died? A I don't remember; I remember she was six weeks in bed; she was sick-- not six weeks, six months in bed.

Q Will you tell the jury where she was sick, where your

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wife was sick with this baby for six months? A After giving birth to the child she was sick.

Q Where? A In Russia.

Q Where did this baby die that you speak of? A In Russia.

Q How long are you in America? A Since 1903.

Q What date in 1903, did you come to America, and what month? A August 18th or 19th.

BY THE COURT:

Q About how old was the complaining witness when you came to this country? A About a year I believe. When I left the other side, Russia, she was a few months old.

BY MR. CAFFEY:

Q How many months old was Jennie when you came left the other side? A You can see yourself she was born April 3rd, you can figure out yourself she was born in April, and I came here in August.

Q Before you left the other side did you have a group picture taken of the family in which group was Jennie? A Yes.

Q How long before you left the other side in 1903 was this picture of which you speak taken? A The same day I left my family.

Q When was that? A 12 years before I landed here.

Q How old was Jennie then? A I tell you I can't figure it out. You understand how old she was.

Q I ask you to look at this picture and state whether or

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not any one there -- any one of the persons in this picture represents Jennie? A Yes, sir, right here.

Q Who is the person who is holding the baby whom you say is Jennie? A That is me.

Q The man with the beard? A Yes, sir.

Q Who are the other people in the picture? A This is the oldest son, this is Sam and this is Louis.

Q All your family? A Yes, sir.

Q Is that picture a true and faithful representation of each member of your family included in that picture especially Jennie as they were at the time this picture was taken? A Yes, sir.

MR. CAFFREY: I offer it in evidence.

BY MR. LANGFUR:

Q Who are the persons besides yourself and your wife who are represented upon this photograph? A Only myself and my family.

Q Is Charlie there? A Yes, sir.

Q Sam there? A Yes, sir.

Q Louis there? A Yes, sir.

Q Jennie there? A Yes, sir.

Q Is the baby that died there? A No, sir.

Q In Russia? A No, sir; she was dead at that time. How could she be on the picture.

Q How long before this picture was taken did that baby die? A About two years before; I don't remember exactly.

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Q When was this picture take, do you remember what year?

A When I left Russia the same day, my wife asked me to take the picture.

BY MR. CAFFEY:

Q When you left Russia in August, 1903, did your wife and family come with you, come to this country with you? A No.

Q You came then alone? A Yes, sir.

Q When did your family arrive in this country? A About nine months later.

Q Who of your family came then? A Charlie, my wife, Sam, Louis and Jennie.

Q They rejoined you here in New York? A Yes, sir.

Q You have lived with them here ever since? A Yes, sir.

MR. CAFFEY: I offer the photographs in evidence, to show the little baby there on her father's knee.

Objected to; objection overruled; exception.

(Marked People's Exhibit 1.)

MR. LANGFUR: I submit that is isn't proper proof.

THE COURT: You are going to contend as I understand it from your line of cross examination that the girl was over 18 at the time of the alleged intercourse. The jury have a right to take into consideration all the circumstances in evidence in this case to determine whether she was over eighteen at the time of the alleged intercourse. I will receive it.

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(The jury inspect the photograph.)

BY MR. LANGFUR:

Q Under what name did you arrive in this country? A Under the name of Kesselman.

Q What was your first name? A Morris.

Q Did you tell them you were married when you came here?

A Sure.

Q Tell them you had a wife and children in Europe? A Yes.

Q Tell them how old you were? A I suppose so.

Q How old did you tell them you were at the time you arrived here? A I could tell them my right age, whatever it was.

Q I show you this paper and ask you whether you have seen this paper before? A I cannot read nor write. How can I answer you.

Q Did you produce this paper in court this morning?

A Maybe my son brought it, if you read it to me I will tell you what it is.

Q Look at the age 24. You can read figures, can't you. There must be a misunderstanding. Look at the statement there that you are not married, that Morris Keselmann is not married. Did you make that statement at the time you arrived here? A I did not make such a statement.

Q Did you make that statement at the time you arrived here? A No, sir.

MR. LANGFUR: I offer the paper in evidence.

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MR. CAFFEY: I object to it on the ground that it has no bearing upon the case.

MR. LANGFUR: It is a document produced here by the District Attorney, and he has been good enough to let me see it.

MR. CAFFEY: I let counsel see it. It was among my papers but in no way affects the credibility of any one before the Court now.

MR. LANGFUR: It affects the credibility of this particular witness.

THE COURT: He said he did not make any such statement, and there is no proof here that he did. It is not signed by him.

MR. LANGFUR: It is a statement made to the Immigration authorities.

THE COURT: There is no evidence here to show that it was a correct statement.

MR. LANGFUR: Here is a document produced in court here.

THE COURT: I will exclude it. I don't see that it tends to prove anything at all that has any bearing on this case. It does not appear that this witness is a party to it in any wise.

BENNIE LISSENBERG, a witness called on behalf of the People, being duly sworn, testified as follows:

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(The witness states he lives at 13 East 113th street, New York City.)

DIRECT EXAMINATION BMR. CAFFEY:

Q How long have you been in this country? A Ten years.

Q Where were you born? A Russia.

Q What part of Russia? A Gitomir.

Q Did you live in Volhyn? A Yes, sir; that is the Government.

Q That is the Government, what is the plade? A it is the place where Kessler was.

Q Did you know the family of Morris Kessler? A Yes, sir; I know them for the last sixteen or seventeen years.

Q Did you know Jennie Kessler? A I remember when she was born.

Q When was she born? A My lady friend was living in their house. I remember she was born around the Jewish Easter, I don't know the exact date.

Q What year was that? A 1903.

Q Can you remember the month? A Before Passover, a few days before.

Q Now about what month would you say. Can you tell us what month in 1903 that was? A I think in April, a few days before Passover.

BY THE COURT:

Q Ask him if it was before the first day of Pentecost?

A Before the Passover --

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Q Have you any means of telling what date it is?

THE INTERPRETER: Yes, I have a Jewish Calendar right here. This shows that the holiday of Passover is in the month of April.

Q Do you know when Pentecost is? A That is seven weeks after Passover is Pentecost.

Q Is he able by that to fix the month? A The Passover falls in the month of Nisson.

Q What does that mean in English? A April.

BY MR. CAFFEY:

Q So this child was born, Jennie was born in April, 1903?

A Yes, sir, sure, I remember.

Q Where was she born? A In Gitomir.

Q Is that in Russia? A Yes, sir.

Q At her parents house? A Yes, sir, sure.

Q Where you saw them at that time. A girl that you were attentive to was living with the parents of Jennie? A Yes, sir.

CROSS EXAMINATION BY MR. LANGFUR:

Q How old are you? A 36.

Q What date, what year and what month were you born in?

A I was born in 1882, April 27th.

Q Do you know what date or what month Louis vessler was born in? A No, sir; they were small children at the time Jennie was born.

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MR. LANGFUR: I move to strike that out.

THE COURT: I will let it stand. He does not profess to have been at the place of birth or near the place of birth of the other children. It is only this girl's birthday he says he remembers, -- or rather the time of her birth, and his recollection of it is because he had a sweetheart there.

THE INTERPRETER: Yes, sir.

MR. CAFFEY: That would make an impression on him.

BY MR. LANGFUR:

Q How many children were alive at the time that Jennie Kessler was born? A She was the fourth, one girl and three boys.

Q How long are you married? A Fourteen years.

Q Did you know them at the time Louis was born? A All I knew them was about a year and a half, at the time I was betrothed to that girl of mine.

Q How long after Jennie Kessler was born were you married? A I did not marry that girl.

MICHAEL MURPHY, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is attached to the 43rd Precinct, Detective Division.)

DIRECT EXAMINATION BY MR. CAFFEY:

Q Now, Officer Murphy, you are a police officer attached

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to the Police Force of the City of New York? A I am.

Q You are a member of the Detective Bureau? A I am.

Q You were such in April, 1913? A Yes, sir, I was.

Q How long have you been a member of the Police Force?

A Going on thirteen years.

Q Did you place this defendant under arrest, Officer?

A I did.

Q On what date? A March 27th.

Q Where did you place him under arrest? A The subway station, 167th street and Jerome avenue, about between 7 and 7.30 a. m.

Q Previous to that time had you had a conversation with Jennie vessler, the complainant in this case? A I did.

Q Where did you see her? A I saw her in the 43rd Precinct station house on March 26th.

Q That is the station house to which you are attached?

A Yes, sir.

Q In the consequence of the conversation that you had with Jennie vessler, did you place this defendant under arrest?

A I did.

Q Did you have a conversation with him? A I did.

Q Will you tell the Court and jury what the defendant said to you?

MR. LANGEUR: I object to that upon the ground that it is irrelevant and immaterial. He asks for a con-

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versation after placing the defendant under arrest.

He brings out the fact that he placed him under arrest and then he asks for a conversation, asks what the conversation was.

THE COURT: I will allow it.

MR. LANGFUR: I respectfully submit that this is incompetent and improper. The defendant was not properly advised of his rights or that he was under arrest at that time.

THE COURT: I will take the testimony.

Exception.

A I informed the defendant who I was -- that I was a police officer-- on the subway station at 167th street and Jerome avenue on March 27th around 7 a. m. I asked him if he knew a girl by the name of Kessler, he says "yes, I know her" I said, "What did you do with her"? He says, "I took her to a furnished room". I said, "Where was the furnished room", he said "1883 Lexington avenue".

Q Is that what he said? A Yes, sir. I said, "How much did you pay for the room", he said, "\$5." I asked him if he had anything to do with the girl, he said "yes". I said "do you know there is a complaint made against you", he said "no". "Well," I says "there is a complaint of rape made against you", and he said, "I know what rape is". I says, "What is it", "Well", he, "if I am the first fellow had anything to do with the girl I

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am charged with rape", and I said, "You are away off on that". That is all.

Q What else did he say? A Well, I asked him how many times he had went with her, and he said twice.

Q Any further conversation? A I had a conversation with him in reference to a slip of paper with her age. I think he told me he found the slip of paper saying she was born in 1901 in April, if I am not mistaken, I think that is what he told me.

Q Did he show you any slip of paper? A No, sir; I asked him where the paper was, and he said he had lost it.

CROSS EXAMINATION:
BY MR. LANGFUR:

Q Officer, did you tell him at that time that he was under arrest? A I told him who I was.

Q And this conversation that you have now testified to is exactly the same conversation, word for word that you gave in the Magistrates' Court? A To the best of my recollection at the present time I am testifying to what I remember.

Q In the Magistrates' Court you testified that he said "I hired a furnished room."

MR. CAFFEY: I object to this.

THE COURT: Call his attention to the question and to the answer, and ask him if he so testified.

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

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BY MR. LANGEUR:

Q I call your attention, Officer, to this answer in which you say or in which it says rather, "What did you pay for the furnished room". He said, "five dollars."

MR. CAMFREY: I object to the form of the question. Counsel is quoting from what purports to be a paper. He is not asking the witness if he testified to so and so giving the question and answer.

THE COURT: Ask the questions as the law requires.

Q Did you testify in response to the question "What did he say to you, and what did you say to him? A. I told him who I was." I asked him "if he knew anything about the girl," and he said "yes". I said "Where did you take her", he said, "I hired a furnished room on Lexington avenue." "What did you pay for the furnished room". He said, "Five dollars". I said, "Did you have anything to do with her" he said "sure". I said, "Do you know a complaint is made against you", he said, "no". I said "of rape". He said, "I know what rape is". I said, "What is it?" He says, "If I am the first one fellow that had anything to do with the girl I am charged with rape". I said, "You are away off on that." I said, "Did you have anything to do with her". He says, "Yes". I said, "How many times". He said "twice".

THE COURT: Isn't that substantially what he swore to here.

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MR. LANGFUR: Yes, sir, word for word, in the language taken in the police court.

THE COURT: Suppose it is. I am afraid you have in mind what Mr. Wellman in his work published called "The art of cross examination".

Q Did you so testify? A Yes, sir, as I repeated to you a moment ago to the best of my recollection I testified that way in the Magistrates' Court, and testified here to the best of my recollection.

Q That was word for word identically the same language?

A I don't know whether it is or not.

Q As I just read to you you testified a moment ago.

A I am testifying to the best of my recollection, counsel.

Q You did not advise him of his rights before you had this talk? A It isn't necessary.

Q You didn't do it? A It isn't necessary.

THE COURT: What were his rights. You asked him did he advise him as to his rights.

MR. LANGFUR: I respectfully submit that he should have been told that he was under arrest charged with rape. I take it that he should be advised of his rights.

THE COURT: The officer is not bound to say that "anything you may say may be used against you". If this were a proceeding in the Magistrates' Court and he was called there, of course, it would be obligatory upon the Magistrate to inform him.

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MR. LANGFUR: I understand that after a man is arrested that any statement made by him is inadmissible. That is my impression.

THE COURT: Did you say that anything he might say could be used against him.

A No, sir, I did not.

SAMUEL OPPENHEIMER, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAFFREY:

Q Where do you live? A 127 East 122nd street.

Q Mr. Oppenheimer, what is your occupation? A I am a butcher by trade, but I am at present employed in the subway as a rear guard.

Q How long employed in the subway? A Almost a year.

Q That is the Lexington avenue subway? A Yes, sir, the Interborough.

Q Now, Mr. Oppenheimer, will you turn to the jury and elevate your voice so that all can hear you? A Yes, sir.

Q Were you employed on the subway on the 13th day of March, 1919? A Yes, sir.

Q Were you employed there on the 16th of March, 1919? A Yes, sir.

Q As a rear guard did you say? A Yes, sir.

Q What were your hours on that day? A I went out on my first trip at 12.15.

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Q Is that in the morning? A Yes, sir, up to midnight, the first midnight that leaves 167th street terminal at 12.15.

Q Did the defendant work on that same train with you?

A He was my conductor on that eventful evening.

Q He was your conductor? A Yes, sir.

Q That train ran from 12 midnight until what time?

A From 12.15 until 7.31 the next morning.

Q Were you working all night on the train? A Yes, sir, I was; I haven't lost one minutes since I have been on the road.

Q Were you working all the time between those two hours on the morning of the 17th of March, 1919, is that correct? A Yes.

Q Now on that morning did you see the complaining witness Jennie Kessler get on the train? A We left 167th street at 12.15, and we struck 125th street station about 12.23.

Q Now keep up your voice. A I was employed on the rear car of the three car train, three cars, and my conductor was on the front of the car.

Q Who was your conductor? A Mr. Kaplan.

Q The defendant? A Yes, sir.

Q Say the defendant when you mean the defendant? A Yes, sir, he was on the front of the car. I was on the rear and at 125th street this little girl got on my train. I had very few passengers on my last car, it was cold that morning, the windows were open. She had ridden with me several stations, and finally she left my car and went to the center car, near

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the front of the second car, and sat down. I did not take any notice until we were down on the line quite some distance. Then I seen my conductor sitting down alongside of this little girl, speaking to her. The reason I took notice of that little girl was she came on the train, she had no gloves, it was cold that night, and I thought it peculiar for a little girl of her age to get on and we certainly do take notice of a girl of that age getting on a train.

Q By the conductor you mean the defendant? A Yes, sir. So we went along with this local, stopped at every station going down. When we strike Nevins street, Brooklyn, we generally change places, the conductor in the front car comes in the back of the car, and the rear guard in the back of the car goes in the front, so when the car comes back again to New York the conductor is on the front of the car and I am on the rear. Understand?

Q Did you do that on that occasion? A Yes, sir, I did that. I always do it.

Q Did you do it on that occasion? A I did it on that occasion.

Q Did the defendant go to the front of the car then when the change was made? A He came to the back of the car and I went to the front.

Q Now tell us then what happened? A The young lady in question got off the car at Atlantic avenue, and my conductor,

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she walked down with my conductor who was then in front of the car and they both went on the front car together and I seen no more of them until we struck 167th street. I seen no more of her until we got to 167th street station, and we were through with that trip. The next trip was 2.15. We go down at 2.15.

Q How many trips did you make? A Three locals and one express, that is the local stops at every station.

Q Three locals? A Yes, sir.

Q And one express? A Yes, sir.

Q How long a time did that take from 12.15 until when?

A From 12.15 to 7.31.

Q Was that girl on the car all the time? A All the night long.

Q Which one of the cars was she on at that time? A Well, in the first trip she was coming on my car and then went in the centre car and then she went in the front, a ten car train, that is the last trip in the morning, a ten car train, express cars, I did not see her actually when she got on there; she got on with him, and he took her right on the front car.

Q Was she on the same car that the defendant was on during those trips? A Yes, sir she was.

Q Was she always on the same car with the conductor, the defendant? A Yes, sir, she was.

Q Now did you see her at 7.30 in the morning or whenever it was that you finished your route? A I didn't see

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her when I got through.

Q Did you see her after that? A No, sir, I didn't see her after that.

Q Did you see him after that? A Yes, sir, I did.

Q Where did you see him? A I saw him in the morning, that morning when he got through. He had already changed his hat and he ran down some place, I don't know where he went to, but he got away from me because I had intended to go after him.

Q Where was it you saw him when he changed his hat? A He is on the first car of the ten car train coming into the 167th street station, and I am on the last car, and by the time I closed my door--

Q Where was it you saw the defendant? A The one hundred and sixty-seventh street station.

Q Then he had changed his clothes? A No, sir; when the car pulled in, the train, he is on the front of the train.

Q Where was he when he changed his clothes? A He was in the 167th street station in the locker.

Q Now, then, what happened did you have any conversation with the defendant or talk to anybody? A I hadn't spoken a word to him since.

Q Did you hear anybody talk to him? A No, sir, I did not.

Q Did you hear him talk to anybody, any of the men around the yard? A No, sir, I did not.

Q After the defendant reached 167th street did he say

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anything to you at all?

MR. LANGFUR: I object to that. The witness said he hadn't spoken to him since.

THE COURT: I am going to let the District Attorney inquire.

Q Did the defendant say anything to you? A He spoke to me that night, not when he got off first that night.

Q What night? A The night that this occurrence happened.

Q What did he say to you? A On my first trip nothing happened between us but when we got back on the second trip we generally warm our coffee, we used to go fifty-fifty when we brought any lunch it amounted to sixty cents or thirty cents.

Q Tell us what was said. A He sat down and he took a cup of coffee out to the young lady standing between the locker.

Q Now the young lady that might apply to any woman in the world or to this girl in particular. You mean Jennie Vessler, the complainant? A Yes, sir, I have seen her.

Q Tell us what happened? A When we got in on the second trip we sat down to have our meal, and I warmed the coffee and I brought the coffee in a can that night. He took a cup of this coffee and filled it out and brought it out to her; he had her standing between the lockers and he gave her a cup of coffee and she stood there and drank the coffee. When he had come back I asked him, I said, "Kaplan what do you intend to do", he

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says, "What do I intend to do, why I am going"--"that is only a little child" I says.

Q You said that? A Yes, sir. He says, "I am going to take her, she is twenty years of age. She told me she was 20 years old, I am going to take her when I get through and get a furnished room and I will keep her all for myself."

Q What did you say to him? A I immediately called him down. I said to him "The idea of a big loafer like you, ain't you ashamed of yourself. I have a girl fifteen years of age, and she looks to be five years older than that girl."

Q What did the defendant say to that? A He did not give me any answer. He turned as red as he could when I walked out.

Q Now is this the girl that was in the car (pointing to the complaining witness) A Yes, sir.

Q Is that the girl the defendant had with him? A Yes, sir.

Q The girl to whom he gave the coffee? A Yes, sir. That is the one who drank the coffee between the lockers.

CROSS EXAMINATION BY MR. LANGFUR:

Q Who was the first one you spoke to about this case?

A I spoke to nobody about the case.

Q Speak to the District Attorney about this case? A No, sir, I did not.

Q Speak to the officer about this case? A No, sir, I

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did not.

Q Nobody at all did you speak to about this case? A No, sir.

Q Never spoke to anybody before you came on the witness stand, is that right? A No, sir, I did not. Mr. Caffrey asked me if I was employed that night with Mr. Kaplan on the train.

Q Did you send your name to Mr. Caffrey? A I did not send my name to Mr. Caffrey.

Q Did you send in your name to any person in the District Attorney's office? A No, sir, I did not. I sent my name to the Gerry Society.

Q When did you send your name to the Gerry Society? A A couple of days after Kaplan was taken off the train.

Q After March 26th, 1919? A I don't really remember the date that I sent it.

Q Did you see this girl at 10.30 o'clock on the 16th of March, 1919? A I did not.

Q Were you with Kaplan at 10.30? A No, sir.

Q At 11 o'clock? A No, sir, I was not.

Q Were you with him at 11.30 on March 16th, 1919? A No, sir.

Q Do you know what time Kaplan began to work there?

A Yes, sir.

Q What time? A 12.15.

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Q Do you know what time this girl came into the car?

A About from 12.20 to 12.25.

Q That was March 16th? A Yes, sir.

Q How long did she ride in your car? A In my car-- I didn't take notice, twenty or twenty five minutes.

Q Fifteen or twenty minutes. How long did she ride in the centre car? A That I can't say.

Q How long did she ride in the front car? A I don't know how long she rode in the front car, but I know when she got down to Atlantic avenue I had to change places at Nevins street to go to the front car and she was sitting in that car when I got down there.

Q Now, did anybody follow her from one car to another car?

A No, sir.

Q Nobody made her go from the local to the express, or from the express to the local that you saw there, that is force her to go? A How is that please?

Q Nobody forced her to go from one car to the other?

(No answer.)

Q How long have you known Irving Kaplan? A I really don't know, I think I worked with him about nine or ten months ago.

Q During that time did you have occasion to see him every night? A I did.

Q Working there from twelve to seven-thirty? A Not every

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night but as long as I had this run he was my conductor.

Q Before this time did you have occasion to talk with him about the question of lunch, the money for the payment of lunch. Did you have some dispute about that? A No, sir, never had a word with him in my life.

Q Never had a word with him at all? A No, sir.

Q No trouble with him at all? A No, sir.

Q Isn't it a fact that before this time you had not talked with him because of a dispute of money for lunch? A I beg pardon. I spoke to him even the night of this occurrence until this happened, and I never spoke to him any more.

Q You saw him bring out coffee to the girl? A Yes, sir, I did.

Q Did you ask him why he was bringing out coffee to the girl? A I did.

Q What did he say? A She was hungry.

Q What is that? A She was hungry. He wants to give the kid a cup of coffee.

Q He went out and gave her the coffee? A Yes, sir, he did.

Q He had his coffee already at that time? A No, sir, he did not.

Q He came back to you? A He came back after he had given her the coffee.

Q What were you doing when he was out giving her the coffee? A Eating my lunch.

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Q Eating your lunch when he came back? A Yes, sir.

Q Who else was there besides you? A The switchman.

Q What is his name? A They call him Tony, I don't know his last name.

Q Did he hear this conversation? A I think he did.

Q Was he around near you? A Yes, sir.

Q The switchman, Tony? A Yes, sir.

Q Who else heard the conversation? A The motorman Vanderveer.

Q He was there? A Yes, sir.

Q Also heard the conversation? A Yes, sir.

Q Did you give their names to the Gerry Society? A I did not.

Q Did you tell the Society they heard this conversation or the District Attorney? A No, sir, I did not.

Q What are your duties as rear guard? A My duties as rear guard is to stand on the back, the rear at all times, and turn my lamps in the back red. When we leave Atlantic avenue coming back see that the front lights are turned red.

Q It is also a rule that you must not leave the car under any circumstances? A No, sir, under no circumstances.

Q After the car stopped it is your duty to go to the end, the rear car? A Yes, sir.

Q And give signals to the approaching train? A Yes, sir.

Q You are absolutely enjoined never to leave that rear

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car? A Exactly.

Q You didn't go into the front car? A I did not.

Q How far away were you at the time you first spoke to this girl? A Well, when he first spoke to her I did not but when I looked from my rear car I seen him sitting down speaking to the young girl.

Q When did you first see her, where was she sitting at that time? A In the middle car, near the end.

Q Uptown or downtown? A Downtown.

Q Many people going to Brooklyn Sunday night at 12 o'clock? A No, sir, there were not.

Q This car crowded? A No, sir.

Q Sure of that? A Positive.

Q Were there any other girls there besides this girl?

A Not in my car.

Q Any girls in the front car? A I couldn't see the front car.

Q Were there any other passengers in the front car?

A Yes, sir.

Q Men? A Yes, sir.

Q Women and girls? A I think a few couples.

Q A number of them? A A few.

Q Did you speak with her? A I did not.

Q Ask her why she was traveling, riding in the subway?

A No, sir.

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Q Ask her whether she was hungry or cold? A Asked her nothing.

Q Did she speak with any other guard that you saw? A I did.

Q Did she speak to any other guard? A No, sir.

Q Speak to any other man? A Not that I know of.

Q Saw her all the time, did you? A I was not--

Q You saw her leave the car when you reached Atlantic avenue to go to the front car-- did you talk to her? A I seen her leave the last car and walk to the front car.

Q Did you talk to her at that time? A No, sir, I did not.

Q Did you ask her why she was going from one car to the other car when she changed from a local to an express, and from an express to a local? A I did not. She did not change from a local to the express.

Q You synpathized with her, did you not? A I did not.

Q You felt sorry that she was cold? A Yes, sir.

Q You never went over and spoke to her? A No, sir, never spoke a word to her.

Q Saw that she had no gloves on and it was a very cold night? A Yes, sir.

Q Saw her there from 12 o'clock until 7? A Yes, sir.

Q Never had occasion-- never spoke to her? A No, sir; didn't have a chance.

Q Did any other guard say anything to her that you saw?

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A No, sir; not that I saw.

Q Any other guard give her any coffee or offer her money?

A No, sir; not that I seen.

Q You didn't see a guard cover over to her, did you, and sit down by her. You didn't see Kaplan come over and sit down alongside of her? A I didn't see him come over and sit down, but when I looked in the car I seen him sitting alongside of her.

Q On which side of the car was she sitting, the left hand side? A Going down on the right hand side.

Q How many cars was that away from you? A One car.

Q Were you on the platform at the time? A I was on the platform, yes, sir.

Q Were you on the rear car at that time? A I was on the platform of the rear car; on the front platform of the rear car.

Q The door closed at the time? A Yes, sir.

Q Look through the door? A Yes, sir.

Q Any police officer there? A No, sir.

Q Any special police on the platform? A No, sir.

Q Did you speak to any special police going up or back in the car? A Before that evening?

Q Speak to any special police or any man who has charge or supervision at 167th street and Jerome avenue? A At Jerome avenue and 167th street, I spoke about it. I told my despatcher it was a shame that my conductor was following up that little

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girl.

Q Was there any officer there at the time? A There was not.

Q Did the despatcher go over and talk to Kaplan? A He did not.

Q Did he say anything at all to him? A Not while I was there.

Q Tell you where he was going to take the furnished room? A He did not tell me.

Q Did you follow him after he left there? A No, sir, I did not.

Q Were you interested to know where he was going to take this furnished room? A I was certainly interested.

Q You didn't go after him? A I didn't have the time. By the time I left my tenth car up near the end of the station to walk to the front of the station to my locker he had already gone.

Q Will you please repeat that so that the jury may hear it. A By the time that I had left the tenth car to walk up to the locker at the other end of the station he had already gone.

Q With the girl? A That I don't know.

Q That is, you hadn't seen him any more? A I had not.

Q That was a ten car train? A That was one express train, one express in the morning, the last trip is an express

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train of ten cars.

Q Had you your coffee before you left your rear car to go to the front car for lunch? A When?

Q Just this time that you reached this station? A Only once a night, that is all. At the end of the second trip we eat whatever we got, that is about 3.55 in the morning when we come in for the second trip; we shut down to eat. We don't have anything at all to eat after that.

Q Do you mean to say this conversation happened at 3.15 o'clock in the morning long before closing your trip at 7.31 in the morning? A This conversation happened when we were through with our second trip.

Q At 3.15? A 3.53 or 3.55.

Q You didn't tell that to the District Attorney a moment ago? A I beg pardon.

Q You didn't mention 3.53 to the District Attorney, did you? A I didn't mention any special time.

Q Did you tell the jury a moment ago when you were through with the trip he had put on his hat or changed the band on his hat and you asked where he was going, and what his intention was with this girl? A I beg pardon, I never said any such thing.

MR. CAFFEY: Counsel is assuming facts not in evidence.

THE COURT: He said he said no such thing.

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Q Did you mention this change of hat before this conversation a moment ago? A Yes, sir, I did.

Q Isn't it a fact you said a moment ago to this jury that this man changed his hat? A Yes, sir.

Q Then he gave her the coffee? A No, sir.

Q How long before he changed his hat did he give her the coffee? A When I got off my 2.15 trip which was 3.53 in the morning. When we got in on the 2.15 trip which was 3.53 or 3.55 in the morning we sat down to have our dinner. There was no hats or anything.

Q Did he change his hat at that time? A No, sir, he did not.

(At the request of counsel for the defendant the stenographer reads the previous testimony of the witness.)

Q After that she went in different trains with you and with this guard Kaplan? A We had the same run for about a week, out and in for about a week after.

Q Was she on the train? A I did not see her.

Q Did you see her after this night? A I never seen her after this night until I saw her in court.

Q You didn't go over to talk to her? A Positively not.

Q Go over and ask her how old she was? A I never did.

Q Ask her whether she was twenty years or fifteen years?

A No, sir, never.

Q What kind of a coat did she wear at that time, was it a long coat? A When do you mean?

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Q March 17th? A When I seen her I think she had on a long coat.

BY MR. CAFFREY:

Q I ask you to look at this coat which I now exhibit to you, and state whether or not in your opinion, that was the coat that she had on, can you tell? A I think it was that color.

Q You think it was that color? A Yes, sir.

Q Now, I am a little confused. You said that you first ran an express, and then ran a local. You were on the same train? A Yes, sir, we first ran a local, and then an express the last trip in the morning.

Q You were on the same train all the time? A Yes, sir.

Q At one time you ran a local; and then the next time some other time an express? A Yes, sir.

Q You were on the same train all the time? A Yes, sir.

—JENNIE KESSLER, a witness for the people, resumes the stand.

BY MR. CAFFREY:

Q I ask you to look at the coat which I now exhibit to you, and state whether or not you ever saw that before? A Yes.

Q Whose coat is that? A Mine.

Q Did you wear this coat on the night of the 16th of March and the morning of the 17th of March, 1919? A Yes, sir.

Q I ask you to look at this. Is that what you girls call

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a sweater? A Yes, sir.

Q State whether or not you ever saw that sweater before?

A Yes, sir.

Q Is that your sweater? A Yes, sir.

Q Did you wear that on the night of the 16th of March, and the morning of the 17th of March, 1919? A Yes, sir.

Q Now stand up. Is the dress that you have on now the dress that you wore on the night of the 16th of March, and the morning of the 17th? A Yes, sir.

Q Now, I wish you would take off your coat with the Court's permission. Will you put on that other coat. (Witness complies.)

Q Is that the way you were dressed when you entered the car on the 16th or the morning of the 17th of March? A Yes, sir.

Q Is that the way you were dressed when you went into Mrs. Griffin's house? A Yes, sir.

BY MR. LANGEUR:

Q Did you have this sweater on at that time? A Yes, sir.

Q Did you have this coat on at that time? A Yes, sir.

Q Take the coat and button it. A Yes, sir.

Q Did you feel cold? A Not very much.

Q You weren't cold, were you? A Yes, sir, I was cold.

Q You were not shivering at that time? A Well, I was pretty cold.

Q Were you cold or not cold? A I was cold.

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Q Did you see any other guard there other than Irving Kaplan, notice any other conductor? A Of course there was one on the next train.

Q Do you know his name? (No answer.)

THE COURT: The jury have a right to determine the age of the complaining witness by a personal inspection of the child's general appearance in connection with the other competent evidence. I say, that the jury may, as the Court of Appeals has said-- they have the right to determine that by a personal inspection from the general appearance of the child in connection with all the other evidence in the case before them-- in passing upon the question of age. That is the reason why I wanted this girl to stand up before the jury.

Q How long did you have this coat that you are wearing now? A I don't exactly remember but it was quite some time.

Q How many years? A About three years.

Q More than three years ago? A Yes, sir; I am not positive, I say, I think it is three years, I am not positive about it.

Q How old were you when you got this coat? A Bout 13.

Q Will you just stand up before the jury and button that coat and turn around please. That is a pretty big coat, isn't it?

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Objected to.

MR. CAFFREY: I offer the coat and sweater.

(Marked People's Exhibit 2.)

THE PEOPLE REST.

MR. LANGFUR: I move to dismiss the indictment and for the discharge of the defendant upon the ground that the People have failed to make out a case and failed to prove the crime, and specifically upon the ground that the People have failed to show direct and specific corroboration of the act as required by the section of the law. The testimony here is absolutely barren of any evidence of corroboration of the specific act as alleged here in the indictment. All that your Honor has before you is the evidence of the little girl and besides that evidence there is absolutely nothing upon which the jury could predicate or your Honor could predicate corroboration of the testimony of this girl.

Motion debied.

Exception.

MR. LANGFUR: I move to dismiss on the ground that the testimony of the complaining witness is so inconsistent, indefinite and conflicting as to what happened that there is nothing before the Court to submit to the jury as a question of fact.

THE COURT: What have you got to say to the testimony

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of the woman who rented the room.

MR. LANGFUR: As to the testimony of the woman who rented the room I respectfully urge that there is no corroboration of the act; that her statement is that they came there at 10 o'clock in the morning; that he said he was going to Brooklyn, told her he was going to Brooklyn and that she was going to a cousin; and that at 5 o'clock he came back and that she heard no noise of any kind, heard nothing at all which, in any way, would lead the Court to assume that there was any act of sexual intercourse performed there. As to the other witness that is only a statement as to possibility to perform the act, it is not the consummation of the act.

THE COURT: You have in addition to that the testimony of the police officer. The police officer stated that when he talked with the defendant he admitted to him that he had intercourse with the girl twice.

MR. LANGFUR: That only makes the testimony of the girl more conflicting because the girl testified to other dates.

THE COURT: Now is there any other ground. I shall deny your motion.

MR. LANGFUR: I move to dismiss upon the ground that the People have failed to sustain the allegation as to the age of the complaining witness. The testimony produced

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here is indefinite and it is impossible to ascertain just what her age is. This woman, a witness on behalf of the People says that she stated her age was nineteen years.

THE COURT: Now that would not exculpate the defendant. If she said she was twenty five years of age it would make no difference. Mr. Justice Loughlin in the Appellate Division in the case of the People against Marx reported in 146 Appellate Division used this language when writing for the Court: "To render the enactment (meaning the Statute) effective neither the consent nor the previous unchastity of the girl nor her representations nor information derived from others as to her age amounts to a defense; her appearance with respect to age is not a defense to the prosecution."

Now it matters not what this girl said concerning her age. It matters not what her appearance was. It matters not what information he had from others, if any, as to her age. If he perpetrated an act of sexual intercourse with a girl under the age of 18 years he is guilty within the meaning of the Statute under which he has been indicted. We have had her father here who states that she was born in April, 19103. You have, in addition to that, the testimony of a man who knew the family about the time she was born. In addition to that you have the appearance of the girl in evidence. I permitted her to stand before the jury so that

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they could make an inspection. It is for the jury to say whether this girl was at the time of the perpetration of the alleged offense under the age of eighteen.

MR. LANGFUR: Your Honor denies the motion?

THE COURT: You see the Statute was designed for the purpose of preserving the morals of young girls. It would not make a particle of difference here if this girl was a harlot at the time she went with him; if she had been a prostitute on the street it would not make a bit of difference. The act that constitutes the crime, namely, that he had intercourse with a girl under the age of eighteen years, if the jury believe it. It does not make any difference concerning her morals at all. The purpose of the Legislature was to preserve the morals of young girls and to determen from inducing them to have intercourse with them when under the age of eighteen years. It is a statutory offense. I shall deny your application.

Exception.

Mr. Langfur opens the case on behalf of the defendant.)

MR. LANGFUR: If your Honor please I offer in evidence the affidavit of Jennie Kessler signed on the 29th day of March, 1919 before his Honor W. H. Sweetser, City Magistrate.)

(Marked Defendant's Exhibit A, and read to the jury.)

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MR. LANGFUR: Now, I offer in evidence affidavit of William Garland and Jennie Kessler swears the facts therein contained are true of her own knowledge.

(Marked Defendant's Exhibit B and read to the jury.)

W A L T E R F U L T E S, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 79 West 126th street.)

DIRECT EXAMINATION BY MR. LANGFUR:

Q You are connected with the Interborough Rapid Transit Company? A Yes, sir.

Q And were connected with that road on the 16th and 17th of March, 1919? A Yes, sir.

Q Do you know Irving Kaplan? A Yes, sir.

Q Do you know the time of his employment and what work he was doing? A Yes, sir.

Q On the 16th and 17th day of March, 1916? A Yes, sir.

Q Will you be kind enough to tell the jury what time Irving Kaplan took out his train? A 12.15.

Q On March 16th, 1919? A (No answer.)

BY THE COURT:

Q Are you testifying of your own knowledge? A Yes, sir.

Q You were there? A Yes, sir.

Q What time? A 12.15 a.m.

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BY MR. LANGFUR:

Q Of what division? A 167th street and Jerome avenue, the Lexington avenue service.

Q From 12.15 until what time did he work? A 7.31..

Q How many local trips did he make from Jrome avenue to Atlantic avenue, Brooklyn and back again? A Three local and one express.

Q How many cars were in the local train? A Three cars.

Q How many cars in the express train? A Ten cars.

THE COURT: What is the object of this testimony?

MR. LANGFUR: The testimony of the complaining witness is that at 10.30 and subsequently at 11.30 this defendant spoke to her.

THE COURT: Is that important in this case-- the time that he first spoke to her. You don't deny in your opening that he took her to a room. The only question is did he take her to the room and did he have intercourse with her there.

MR. LANGFUR: I submit we would show the entire credibility of the complaining witness's testimony.

THE COURT: Go on.

MR. CAFFREY: We will concede that she was mistaken about half past eleven. I will say for counsel's benefit that we will concede that this acquaintance was begun after 12 o'clock.

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MR. LANGFUR: And that her testimony that she met him at 10.30 and at 11.30 was false?

MR. CAFFREY: She was mistaken. No questions.

I R V I N G K A P L A N, the defendant being duly sworn, in his own behalf, testified as follows:

(The witness states he lives at 1678 St. Johns Place, Brooklyn.)

DIRECT EXAMINATION BY MR. LANGFUR:

Q How old are you? A Thirty going on thirty one.

Q Are you married? A No, sir, single.

Q Do you know the complaining witness, Jennie Kessler?

A I do.

Q What time did you take a train out on the 17th of March, 1919? A 12.15 a.m. in the morning.

Q From what station? A 167th street and Jerome avenue.

Q Where did you take this train to, what line? A From Jerome avenue to Brooklyn.

Q What position did you occupy on that train? A Conductor on the front car only.

Q How long have you been in the employ of the Interborough? A Two years and five months.

Q When did you first see the complaining witness Jennie Kessler? A On my first trip out, the 16th, that night.

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

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After Recess.

I R V I N G K A P L A N , resumed the stand, testified as follows:

DIRECT EXAMINATION BY MR. LANGSUR:

Q At what station, Mr. Kaplan, please? A 116th street, Lexington avenue. I did not talk to her. She talked to me. She talked to me in the train at the Atlantic Avenue station. I asked her where she was going and what she meant by riding up and down the subway. I asked her where she was going to and she told me she had no place to go, she was away from home, she had been riding up and down the Subway.

I said to her she should stay on the train, that I will get her a place to sleep. She said, I want you to get me a place, a room, so I can get a job. I am away from home and while I have a job and a room I can go home, otherwise I wouldn't go home unless I have a room and if you will kindly take it for me I will be obliged to you.

Q What? A I talked to this girl, she asked me to get her a room. I took her to a room on Lexington avenue and 117th street. I engaged a room that night around 10 o'clock in the morning and the landlady charged me \$5 for that room. I only had three dollars and I gave her the three dollars and went home to get the rest of the money because I had no more with me and she wouldn't let me stay in the room, she wanted all the money at once and I only had three dollars, I could

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only give her three dollars and she took the three dollars and I went home for the rest of the money. I came back the same day at seven in the evening and went down to the landlady and paid her the rest. After I paid her the balance of the money I went in the room and I took off my coat and hat and I asked her to come in bed and she turned around and laughed at me.

I invited her to go to bed with me and she turned around and started to laugh and I said, what are you laughing at and she said, what a fool you are. I said, what do you mean by fool, because I got you this room? She said, I can't go with you. I said, what's the reason? She said, I am unwell. I said, No, you are not unwell, you are trying to play some trick on me. And she said, no, I am not. And she showed me she was unwell and I went away and left the place and I was excited, I said, is that the way you play me? I said, I am out five dollars and a half, I gave you a dollar and that makes six and a half, and, I said, you are a fine girl to pay me back that way.

Q Is it a fact that you took that girl to that room for the purpose of having sexual intercourse with her? A I did, sir. And I left the place.

And on coming back the next morning I threw the keys at her and I said, you are a fine one. I am out six dollars and there you are, and I threw her the keys and I don't know what she did with the keys, I paid for that room a full week.

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At Atlantic avenue I had a talk with her. She showed me a paper at that time. She showed me the paper that she was 18. I have not got that paper with me at the present time. I don't know what I did with the paper, I gave it back to her. I read that paper in her presence. Nobody else saw that paper but me at that time.

She showed me a paper, Jenny born in Russia, January some day in January, 1901, I didn't exactly read it. I did not ask her if she had that paper with her. She showed me the paper.

Q What was your idea in examining the paper? A She showed me the paper.

Q Why did you inquire about her age? A Why, because I told her it is not proper to ride up and down with anybody on the Subway at this time in the morning.

Q This paper she showed you in the subway? A Yes, sir, it was.

Q That was after you had the talk about the room that she showed you this paper? A yes, sir, I spoke to her about a room and she showed me the paper.

Q Were you present at the time she spoke to the landlady and said something about her age? A When the landlady made up the bed she turned around to her and said, Lady, how old are you and she turned around and said, going on 19, that was when I was not with her. Yes, sir, I knew it was unlawful

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for me to have sexual intercourse with a girl under the age of 18.

Q Were you alone with her in that room on the evening of March 17th, 1919, were you there in the morning with her alone

A In the morning I was there. The landlady was there and I left. The landlady fixed up the room and she stood out in the hall and I went about my work in Brooklyn. I remained after the landlady went out not five minutes. I did not have any intercourse with her. I did not have intercourse with Jennie Kossler on the morning of March 17th, 1919. I did not have intercourse with her at 9 o'clock on March 17th, 1919.

Q Or at 10 o'clock? A A. m. or p. m.

Q In the morning? A No, sir.

Q Did you have any intercourse at all with her? A No, sir, not at all. I returned there in the afternoon.

Q Did you have any intercourse with her in the afternoon or after 5 or 7 o'clock? A No, sir. She was unwell at that time. She showed it to me. There was no place covered with blood, I didn't see any blood at any time in that room.

I gave my name Irving Kaplan when I took that room. I was dressed as a conductor at that time.

Q Did Mrs. Griffin give you the keys of the room until you had paid the full amount of \$5 did she give you any keys?

A No, sir. I got the keys to the room when I came back at 7 o'clock. I took this girl to this house on Lexington

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5avenue to have sexual intercourse with you. That~~3~~was the only intention I had, after having this talk with her in the Subway, she solicited me and I took her there for that purpose. I did not notice that her dress was somewhat over the tops of her shoes, she was not made up as I saw her to-day. I mean by made up, she was fixed up with a lot of rouge and nice hat and long coat when a girl goes out on the street, she doesn't look like she does in the house. She had a coat on. The coat was just about to touch her shoes. The dress was a little bit shorter than the coat. It did not expose her limbs, not at all. She did not have on the same dress she has got on here to-day.

Tuesday morning the 18th, the following day, to St. Patrick's Day, I went over there and threw the keys at her and turned the keys in and she commenced to cry and I said, what are you crying for and she said, you are leaving me all alone and I have no money and she cries and I said, here is a dollar, I said, don't cry, you have work, the room is paid for a week, and I went out and I went home. I never saw her after that time.

I never had a talk with a man named Benheimer. I will tell you, I had a run in with him, I had some trouble with him.

It was two weeks before that my nephew passed away, he lived in the hospital ten days and so did Mr.

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and I went over to the Atlantic Avenue station, I told him if I can use the phone and he said yes, and I went out at 167th street and Jerome avenue, I wouldn't be in that night for work because my nephew passed away and I attended the funeral at 2 p. m. in the afternoon and I took sick and I couldn't come to work and he answered all right, I could stay over that night.

Q The man from the Interborough? A Yes, sir.

Q Go ahead and tell us about Berheimer, what happened between you and him? A The following day when I came to work he said-- I lived in Brownsville, anybody knows where Brownsville is, 68 St. Johns street, and this man lived in 24th street or 23rd street, and he used to take lunch at 125th street, some bakery over there, and he used to bring the lunch for the two of us and I would come from work and I would say how much was it, and he used to say 60 cents or 75 cents, and I chipped in half, and on the following day he came to work and he said, "You are a fine man-- excuse my expression-- he said, "Who to hell told you to take off Saturday night," and I said, "None of your business, I am a conductor, I am supposed to be your boss, you are not my boss and I didn't tell you why." I was sore, my nephew passed away and my heart was all full, I was sad, and all that, he had made me sore when he asked me that and I just told him it is none of your business, any time I want to

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take off I will take off, I never took off time from the company in two and a half years and I never stayed off one day without permission and I have only been off on the Jewish Holidays.

Q What happened after you had this talk with him?

A And after that I didn't take with him at all. I never spoke with him after that. I never told him that I had taken this young girl to a furnished room and intended to keep her there. I never mentioned any such thing to him. He never asked me why I kept such a little girl, no.

I was arrested on the 27th of March. I was working at that time. I was working every night.

I was arrested by an officer. The officer spoke with me when I pulled into the station at 7:31 and he said, "Come here, I want you," and he grabbed me, I was in a hurry to make a train on the other side and he asked me do I know a girl named Jennie Kessler. I said, "Yes." I was excited because he grabbed me suddenly. I have never been away in my life. I am here 17 years in this country and I have never been locked up for anything, or on the other side either, and he grabbed me and he asked me, "Do you know a girl named Jennie Kessler?" I said, "Yes, sir, I did go with her to a certain place in Lexington avenue, up in the west side, yes, sir," and then he asked me-- I was excited and I don't know

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whether I said yes or no.

Q Just tell us what he said and what you said to him, just tell us the conversation, the jury wants to know. He asked me if I had any intercourse. I told him that I went up there with the intention of having intercourse but she was unwell. I never told him that I had intercourse with her, no.

I have never been arrested in my life. I have never been convicted of any crime.

I have been in the military service of the United States from 1911 to 1914, I was in the 15th United States Infantry. I was honorably discharged.

CROSS EXAMINATION BY MR. CAFFREY:

I did not consider that my service in the Army and my discharge from the Army gave me a right to take a young girl to a furnished room house to have sexual intercourse with her, no, not at all. It wouldn't save me if I done anything wrong. I did not consider that my service and my discharge from the Army gave me any such privilege, no, sir.

I know Officer Murtha, the officer who arrested me. When he asked me if I knew Jennie Kessler I said yes, and when he asked me if I took her to 1883 Lexington avenue I said yes, yes, sir, I told him. He did not tell me that I was charged with rape, no. I did not ask him at that time what I was

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charged with. I did not ask him what he was arresting me for. He said I want you to come along. I didn't ask him what he wanted me for and I didn't ask him at all. He grabbed me and told me I was under arrest, yes. I said, "I am arrested, what for?" Then he did not say he was arresting me for rape, no. He told me he was arresting me for having that girl up in that room, but he didn't say rape.

Q And didn't you say, "Oh, I know what rape is, rape is where a fellow has connection with a girl, didn't you say that?" A No, I did not.

Q Didn't you say that rape was where a man had connection for the first time with a girl-- the first when that had any connection with a girl, didn't you say that to Murtha? A No, sir, I was excited, I don't know what I said, I don't think I said that. I was excited and I don't know what I said.

Q So as a matter of fact, now, you don't know whether you said that to Murphy or not? A I will tell you why I am sure.

Q Now, one minute please. You say you were excited when you were talking to Murphy at the time he placed you under arrest? A Yes, sir. He placed me under arrest. I says, "Arrest me?" He said, "Yes, you," and I went along with him. He says, "You had that girl up in 1883 Lexington avenue." I said, "Yes, sir." That is all, and he took me to 126th street.

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Those words that I am putting in, that is all I remember Murphy said to me. I remember those words. I don't remember anything else I said to him.

Q Will you say now that Murphy didn't say to you that you were arrested for rape? A No, sir. I won't say that he didn't say that. I won't say that I didn't say to Murphy, "Oh, I know what rape is, rape is where a fellow has connection with a girl-- is the first one that has connection with a girl.

Q Murphy did not ask me how many times I went with her. He did not ask me how many times I had connection with her. He never asked me how many times I had sexual intercourse.

Q And didn't you say twice? A No, sir. I did not say anything like that to Murphy. I remember that positively, that I did not say that to Murphy. I never had any trouble with Murphy. There was no feeling between me and Murphy at all, no.

At the time I hired the room from Mrs. Griffin I did not tell Mrs. Griffin that I was married to this girl. I told her that she was my wife, that is sufficient, we understand, for marriage.

Q That is what I am asking you, you told Mrs. Griffin that the girl was your wife? A Yes, sir. I did not put in that I had been married to her for four months. I will swear

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that I didn't tell Mrs. Griffin I was four months married.

The girl was dressed in a long dress and long coat.

The girl did not wear the clothes that are shown in People's Exhibit 2. She did not wear that coat and sweater. She wore a long coat. The color was similar to that, a greyish color. She wore a grey color coat. She wore a long coat. A different coat she wore. I don't know whether it was similar goods or not.

When I was in the room with this girl she took off her coat.

She did not have that shirt you show me on her. I couldn't remember the color of it. I do not know what colored skirt she had on in the room there. I was in the room on Tuesday. She only had one skirt with her at that time but I don't know the color of the skirt. When she called me over to show me that she was sick I was pretty close to the skirt but I could not tell the jury what color the skirt was. It was a long skirt. I know this is not the skirt because I can see the other was long and this is short. The other skirt was about six or seven inches longer probably.

She did not wear a sweater. The sweater that is shown me is not the sweater she wore. She had no sweater on. I am sure of that.

She had on a white waist, about the same color as

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the one she has on now. That was not the waist she had on. I was pretty close to her, close enough to see the waist. She had a lace waist on going over here (indicating), that's all. It had lace around it, lace up to here. I don't know what became of the waist. How should I know what became of the waist. After I left the place what did I know what she done with the waist. When I was there she had on the waist. After she took it off and laid it on the chair. I did not examine that waist.

I say I never saw that sweater before. I am positive she didn't have that sweater on.

I am positive that I didn't say we were married four months.

I am positive that I didn't tell the officer I had no connection with her twice or intercourse with her twice.

I spoke to this girl first and she told me that she had left home. She solicited me and asked me to get her a room. She said, "I am away from home, will you get me a room so I can sleep," she says, "by the time I have a room I can go out and get a job and then I can go home."

Q Do you call that soliciting you? A She told me that she had no home or she had left home and she asked me to get her a room and she told me by the time she got a room that she could go out and work. She told me for the

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reason she wanted me to get her a room for her.

Q You didn't say that. You said she asked you to get her a room, she had no home, she had left home, and after she got the room or you got the room for her she would go out and work. Now where is the soliciting there? Why didn't you give her the money to go and get a room? A Why should I? Do I know the girl? I didn't feel sorry for her. She asked me to take the room and she was ask me I shall do with her the same thing.

Q What's that? A She asked me to room with her.

Q What else? A I shall do the same thing to her as others do.

Q Why didn't you tell that to the jury before? A Oh, I was talking to you, you didn't ask me that.

Q I asked you twice, your counsel asked you first and I asked you twice what the girl said to you. Why didn't you say in your answer to your counsel and in answer to me twice afterwards, why didn't you say that the girl said that she would do in her room to you what she would do to other men? Why didn't you say that before? A If you give me a chance to speak to the jury and tell them about it I will tell them. You are the only one talking to me. You didn't tell me to turn around and tell the jury and say the way I speak to this girl.

Q Didn't I ask you twice to tell the jury to tell what

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the girl said to you and didn't you say twice that she said to you that she had left home and asked you to get her a room and after you got her a room she would go out and look for work, didn't you say that twice? A Yes, sir. It is not a fact that I made that up. Why should I make it up. It is straight facts.

It is a fact that I wanted to take her to that room and have intercourse with her. I took her there for that purpose. I did not think she was a young girl from her appearance.

Q Doesn't she strike you now as a girl of tender years?

A Yes, sir, she looks young now.

Q How old does she strike you to be now? A Now she strikes me to be about 16.

I told the officer that the girl had a card in her possession which said that she was over 18. I don't remember that the police officer asked me for the card or the paper. I did not tell that to Murphy. I gave that card back to her. If Officer Murphy says here that I told him that he is mistaken.

I did not tell Murphy that I lost that paper.

Q Before you attempted to have sexual intercourse with her did you ask her whether she was a pure girl? A Sire, I didn't have to ask her that.

Q You didn't ask her? A She was the one that told me that.

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Q She told you what? A She is away from home and she is picking up men to keep her going. She told me she was going out picking up men to make a living. She said that when I met her on my first trip southbound to Brooklyn. I had not made any trips before that one.

Q Did you see her picking up or trying to pick up any men in the car on the trip out from 167th street to Atlantic Avenue Brooklyn? A No, sir. During the time that I was in the car I saw nothing improper in her conduct, no. After I asked her what she was doing she told me. I said what does she mean by riding up and down the Subway. She told me she was away from home. I said, "How are you getting along then if you are away from home?" She said, "I am picking up men." I said to her, "How are you picking up men? Aren't you afraid somebody will lock you up?" And she said, "I don't pick them up on the street, I pick them up in the movies."

Q Why didn't you tell that to the jury before? A I can't tell everything at one time. I don't think my counsel asked me that. She told me she was disgusted picking up men, she was sick and tired of that line of business, as soon as I got her a room she would quit and go home but she wouldn't go home before I got her a room.

I cannot give you any reason why I didn't tell you that before.

On the morning of the 17th of March when we went

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around and hired the room from Mrs. Griffin. She went downstairs, the girl stayed in the room and I went downstairs with Mrs. Griffin, with the landlady. I went for the money, she wouldn't let me stay in that room without I gave her the money. I heard Mrs. Griffin's testimony. She said that after she let the room to you that she left you and the girl upstairs and she went downstairs to her own apartment. After recalling that to my mind I still say that I went downstairs with Mrs. Griffin. I did not remain upstairs because I wasn't allowed to remain. I only had \$3 and I gave her the \$3 and she said, "No, no, you have to get me the rest of the money," and I said, "All right, I will go right to Brooklyn and get you \$2." The landlady told me I couldn't remain in the room.

Q How long did you stay in the room? A I stayed in the room with the landlady about 10 minutes, the three of us.

Q You stayed there long enough to make an offer to have intercourse? A We stayed there together.

Q You talked to her in the room about having sexual intercourse and she told you she was unwell? A That was that night, sir, when I came back to give the landlady the \$2.

I came back Tuesday morning to give the keys to the girl to turn in. I gave them to that young lady right there. (Indicating the complaining witness.) That girl was

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there when I came back Tuesday morning.

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R O S E K A P L A N , of 1678 St. John's Place, Brooklyn,
called as a witness and sworn for the defendant, testified
through the Official Yiddish Interpreter, as follows:

DIRECT EXAMINATION BY MR. LANGSUR:"

I am the mother of Irving Kaplan, the defendant in
this case. He lives with me at St. John's place, the number
which I have just mentioned. I remember Monday the 17th of
March, 1919. My son came to the house at 11:30 and he asked
for \$5 at that time and then he went to sleep. I gave him
\$5. I don't remember what time he left the house that day.
I don't know how long he slept because I went to sleep too.
(No cross examination.)

I S I D O R E A B R A M O W I T Z , of 374 Hudson avenue,
Brooklyn, recalled and sworn as a witness for the defendant,
testified as follows:

DIRECT EXAMINATION BY MR. LANGSUR:

Q I am a conductor on the Jerome avenue line and I was
such on the 16th and 17th days of March, 1919. I know Irving
Kaplan the defendant in this case. I did not see him on
the night of the 17th of March or the morning of the 17th of
March with the complaining witness Jennie Kessler. I saw
a paper. I picked up the paper on the floor in the Atlantic

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Avenue Subway station. I just saw the name on that paper.

I saw the name of Jennie Kessler, born January, nineteen --

Objected to. Objection sustained.

I saw the name on that paper. I did not see the age that that paper mentioned.

(No cross examination.)

SAMUEL KOSLIEF, of 334 Glenmore Avenue, Brooklyn, called and sworn as a witness for the defendant, testified as follows:

DIRECT EXAMINATION BY MR. LANGSUR:

I know Irving Kaplan for about ten years. I am a manufacturer in pants with a place of business at 2347 Pitkin Avenue. I know people in my house that know Mr. Irving Kaplan. I have had occasion to speak about Irving Kaplan to those people. I know what his reputation in the neighborhood is for honesty, and a law abiding citizen. I know him, he used to come up in my house, a good man.

BY MR. CAFFEY:

Q He is a good friend of yours, visits your house? A Yes.

MORRIS BOODMAN, of 356 Dumont Avenue, Brooklyn, called and sworn as a witness for the defendants, testified as follows:

DIRECT EXAMINATION:

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I know Irving Kaplan the defendant in this case. I know him since he was a little kid. I have a paint store for myself. I know people who know Mr. Kaplan and have had occasion to speak to these people about Mr. Irving Kaplan as to his character and his honesty. I know he is honest.

Q What is his character? A I know he is an honest boy.
(No cross examination.)

MR. CAFFREY: The People will concede that the questions and answers which were read to the complaining witness yesterday purporting to be questions and answers that were put to her in the magistrate's court were read from a copy of the stenographer's minutes of the testimony taken at the examination in this case.

The people rest.

(Mr. Langsur closed the case to the jury for the defense.

(Mr. Caffrey closed the case on behalf of the People to the jury.)

(The court charged the jury and the jury found the defendant guilty of rape in the second degree.)

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