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COURT OF GENERAL SESSIONS,

Part IV.

----- x
: Before:
THE PEOPLE OF THE STATE OF :
NEW YORK, : HON. JOHN W. GOFF, Recorder
: and a jury.
-against- :
LEONARDO BRONCADO. :
----- x

Indictment filed July 12, 1906.

Indicted for Murder in the First Degree.

New York, October 15, 1906.

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

For the People: Assistant District Attorneys Arthur C. Train
and Amos Pinchot.

For the Defendant: Mr. Robert Townsend and William C. Keir.

Peter P. McLoughlin,

Official Stenographer.

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THE CLERK: (To the defendant) If you desire to challenge an individual juror, you must do so now and before the juror is sworn.

(By consent of both sides this notice is considered as given when each juror is called).

JOSEPH FREEDMAN, a juror being duly sworn, and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q This defendant is charged with murder in the first degree. His name is Leonardo Broncado, and he is charged with having shot and killed one Frank Francesco Lapaglia, on the first of June, last summer, the place of shooting being on the northwest corner of Stanton and Christie Streets. The Grand Jury have indicted him for murder in the First Degree by an indictment filed on the 12th day of July last. Now, of course, we have to secure, if possible, a jury of twelve who are able to sit in a case where the defendant is charged with murder, having no such prejudice against capital punishment as would preclude them from finding a verdict of murder in the First Degree. So that the first question I ought to ask you, is whether or not you have any such opinions, conscientious opinions, touching capital punishment as would prevent you

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from finding a verdict of Murder in the First Degree, even though you were convinced of the evidence, beyond any reasonable doubt, that the defendant had committed that crime?

A I have not.

Q You have not any such prejudice or opinion? A No, sir.

Q Mr. Freedman, have you ever served before? A Yes, sir; in the City Court, but not in General Sessions.

Q Not in General Sessions? A Never.

Q I remember examining you about a week ago, in the other case? A No, sir; I was not called.

Q You were not called? A No, sir.

Q What is your business? A I am an importer and a manufacturer, I am a manufacturer of gentlemen's buttons and silver jewelry, silver novelties.

Q Where is your place of business? A 92 Spring Street, New York, and the factory is in 18 Street.

Q Where do you live? A 62 East 104th Street.

Q Always lived in New York City? A Yes, sir; always since in this country.

Q How long is that? A Eighteen years.

Q Where do you come from? A From Vienna, Austria.

Q Born in Vienna? A No, sir; I was not born in Vienna; I was born in Hungary.

Q You lived in Vienna? A Yes, sir; brought up in Vienna,

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and studied there.

Q You have never served at all in any criminal case?

A No sir; never in this country.

Q But you have served in the City Court? A Yes sir.

Q Never served in the Supreme Court? A No sir; only in the City Court; I was not called in the jury but once and that was about three years ago in the City Court. It is not so long since I am a citizen, I am only eight years a citizen.

Q Do you know of any reason which would prevent you from serving in this case where a man is charged with the most serious offence known to the law and if you believed that he should be found guilty of murder -- I ask you if you know of any reason why you could not serve conscientiously and fairly? A I have no reason except to do my duty as long as I am permitted to.

Q You know of no reason why you could not serve fairly and impartially? A No sir.

BY MR KEIR:

Q What is your business? A I am a manufacturer and importer.

Q Of what? A Of buttons, I manufacture silver novelties.

Q This is an Italian that is to be tried. Have you

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any prejudice against that nationality? A No sir; I have no prejudice.

Q Against any nationality? A No sir; for I am myself a foreigner.

MR. KEIR: No challenge.

MR. TRAIN: Challenge withdrawn.

The juror was sworn and took the first seat in the jury box.

J O H N J. W E L S H, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Welsh, the first question I must ask you is that which I asked Mr. Freedman, whether you have any such conscientious opinions about capital punishment that if you were sworn as a juror and your mind convinced beyond a reasonable doubt as to the defendant's guilt, nevertheless, could not find him guilty of murder in the first degree? That is a long question and perhaps you did not get it all?

A Yes sir; I don't believe that I would be a competent juror under those circumstances; I don't believe in capital punishment.

Q It ain't a question whether one believes in it or not, that is really irrelevant, I can't tell really whether

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I believe in it myself, -- it is a question of being able to do your duty, under your oath that would be imposed upon you if you were sworn to render a fair and impartial verdict -- if you were sworn as the second jurymen here and your mind was convinced, beyond any reasonable doubt, that this defendant committed the crime of murder in the first degree, would you render a verdict of murder in the first degree. That is the question? A Well, I have had no experience along this line and I don't know. I believe that I can tell you what my belief is if that would help you.

Q You don't believe, as a matter of policy, that capital punishment is a good thing, isn't that it? A Yes sir.

Q You have a personal dislike to that form of punishment? A Yes sir.

Q Supposing you are sworn as a jurymen and you haven't any doubt but that the defendant committed the crime of murder degree in the first with those feelings that you have in regard to it, as an institution, opposed to it personally, would that prevent you from rendering a verdict in accordance with what your mind tells you is the correct verdict in the case? A Well, I am compelled to tell you that I don't believe I could.

Q You don't think you could? A No sir.

Q Then, of course, I can't accept you as a jurymen?

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A I don't believe in capital punishment.

Q That would intervene between you and what you knew would be the proper verdict? A I believe it would.

BY THE COURT:

Q Have you ever given such thought and consideration to this subject as would enable you to draw positive conclusions upon the subject? A Well, I have thought a good deal on the subject, yes sir; it is not a question that I would arrive at hastily.

Q Now, you see the policy of this State, at the present time is, and the policy of every State in the Union with the exception of three and those three States modify that policy somewhat -- it is the policy of a great majority, an overwhelming majority of the civilized States in the world and has been so for centuries and centuries. In this State, our own State, it is the wise judgment of the people of this State and it has been ever since they have been a State that the death penalty should be inflicted where human life is taken maliciously and feloniously. Now, in all other cases the old rigors of the common law have been modified and that is the only offence to which the penalty is prescribed. In other words, he who sheds blood unjustifiably his blood shall also be shed. Now, do you think that as a citizen of this State obeying its laws and being loyal to its in-

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stitutions that you are strong enough in your opinion to set those opinions up against the wisdom and the law of your own State? A On the very ground, I think, Mr. Recorder, that you make that it has been the custom for years and years and ages, it is a relic of barbarism, is a thing that ought not to be done in this age in my opinion.

Q You think that your conscientious opinion would interfere with you in the discharge of your sworn duty as a juror? A I think they would, yes sir. I have not had the experience but I believe they would.

(The juror was excused.)

J O H N W. B U R C H, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Burch, you heard the general statement as to the nature of this case? A Yes sir.

Q Have you got any conscientious opinion on the subject of capital punishment that would prevent you from finding a verdict of guilty in this case? A None whatever.

Q Have you served as a juryman? A I have.

Q Have you ever heard of this case? A No sir.

Q Do you know of any reason why you could not make a fair juryman to try this defendant on a charge of murder in

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the first degree? A None whatever.

Q Your business is what? A Commission merchant.

Q Your place of business is where? A 8 West 18th Street.

Q You reside where? A I live in Brooklyn -- 8 West 18th Street is my business.

Q What is the nature of your business? A Woolen business.

CROSS EXAMINATION BY MR. KEIR:

Q It is an Italian who is on trial. Have you any prejudice against that nationality? A No sir.

Q Did I understand you to say that you served on other criminal juries? A Yes sir.

Q Lately? A Three years ago.

Q Many times? A That was the first criminal case -- on a capital case.

Q You served on a capital case? A Yes sir.

The juror was challenged peremptorily by the defense.

GUSTAVE GOLDBERG, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Goldberg, where do you live? A 1879 Third Ave.

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Q What is your business? A Hat business.

Q Did you ever serve on a jury before? A Yes sir.

Q When was that? A Two years ago.

Q Was that in a criminal case? A In the Criminal Court.

Q What court was that in? A General Sessions.

Q Well, you understand the nature of this case, Mr. Goldberg, this man is being tried for murder in the first degree. Have you any feelings or scruples of any kind in regard to capital punishment? A I have not.

Q Which would make it impossible for you in case the evidence was conclusive beyond a reasonable to impose the death penalty?

THE COURT: Modify that question and ask him if he was satisfied beyond a reasonable doubt of the defendant's guilt of the crime of murder in the first degree would he be prevented from rendering a verdict of guilty of that crime because of any conscientious opinions he has regarding the infliction of the death penalty.

THE WITNESS: I would.

Q You would or would not? A I would.

Q Will you speak a little louder? A I would.

BY MR. PINCHOT:

Q In other words you have such scruples -- A Accord-

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ing to the evidence, you know; according to what the evidence is.

Q According to the evidence, you would render a verdict in accordance with the evidence? A Yes sir; I would render a verdict in accordance with the evidence.

BY MR. KEIR:

Q This is Mr. Goldberg? A Yes sir.

Q What is your business? A Hat business.

Q Manufacturer? A No sir.

Q You have served before in Criminal cases? A No sir; not in criminal cases.

Q Have you any prejudice against Italians? A No sir.

Q None? A No sir.

Q Nothing of that sort? A No sir.

The juror challenged peremptorily by the defense.

HYMAN D. BINSWANGER, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Hyman D. Binswanger, how do you spell that name?

A Binswanger.

Q What is your business? A Dealer in bluestone.

Q Where is your place of business? A 3 West 29th Street.

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Q You reside where? A 18 East 60th Street.

Q Now, have you any conscientious opinion touching capital punishment so that you could not find a verdict of murder in the first degree? A No sir.

Q Have you any knowledge of this case at all? A No sir.

Q Did you hear my general statement as to its nature? A No sir I did not.

Q The defendant is charged with murder in the first degree? A Yes sir.

Q He is charged with murdering a man whose name is Lapaglia. The defendant's name is Broncado and the man he is alleged to have murdered is Lapaglia. He is charged with shooting him on the first of June on the corner of Stanton and Chrystie Street. You know nothing of the case at all?

A No sir.

Q Do you know any of the gentlemen in the case in any way? A I recognize one of the counsel on the other side from having served in the courts when he was prosecuting attorney.

Q Mr. Townsend? A Yes; he was then a prosecuting attorney.

BY MR. KEIR:

Q Born in this country? A Yes sir.

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Q All your life here? A Yes sir.

Q New York? A Philadelphia, and New York.

Q Acquainted with any of the gentlemen in the District Attorney's Office? A No sir.

Q Any prejudice against the Italians? A No sir.

Q Have you ever considered the subject of Italians and their emigration to this country? A No sir.

Q No feeling of any kind? A No sir; I do business with them. I have business relations with them.

Q No feeling against foreigners, have you? A No sir.

MR. KEIR: Challenge withdrawn.

MR. TRAIN: The juror is satisfactory to the People.

(The juror was sworn and took the second seat.)

DAVID MACNAIR, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q What is your business? A No. 7 Walker Street, the Syndicate ~~En~~ Trading Company.

Q What is your business? A Dry-goods.

Q Have you any conscientious opinions regarding capital punishment such as would preclude you from rendering a verdict of guilty? A No sir; I believe in capital punishment.

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Q You believe in it? A Yes sir.

Q Where do you live? A 202 West 118th Street.

Q Are you a native of New York City? A No sir.

Q Where were you born? A Scotland.

Q What part of Scotland, Edinburgh? A I was born in Saltus, Ayrshire, near Glasgow, thirty miles from Glasgow.

BY MR. KEIR:

Q You have been some years in this country? A Twenty-two years, sir.

Q Have you any prejudice against Italians? A No sir.

Q Are you acquainted with any of the gentlemen here?

A No sir.

Q None of the gentlemen in the District Attorney's Office? A No sir.

(The juror was challenged peremptorily by the defense.)

M I C H A E L P I L N A C K, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Pilnack, have you any conscientious opinion regarding capital punishment, such as would prevent you from rendering a verdict of murder in the first degree in case your mind was convinced by the evidence that the defendant was guilty. Do you understand the question? A I do.

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Q Have you any such? A I have not.

Q You have not? A No sir.

Q Where do you live? A 425 East 71st Street.

Q 475 East 71st Street? A Yes sir.

Q How long have you lived in New York City? A Twenty-three years.

Q What is your business? A General trucking.

Q General truckman? A Yes sir.

Q You have been a citizen of New York for how many years? A Since 1891.

Q Where were you born? A Bohemia.

Q What city? A Grascowitz.

Q How old were you when you came to this country?

A Fifteen years.

BY MR. KEIR:

Q Are you acquainted with the gentleman who was just speaking to you? A No sir.

Q Or Mr. Train? A No sir.

Q Or any gentleman in the District Attorney's Office?

A No sir.

Q What did you say your business was? A Trucking.

Q I suppose you have no prejudice against Italians?

A Not as I know of I have not.

Q None against them? A No sir.

The juror was challenged peremptorily by the

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People.

O T T O F. S O B E L, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Sobel, did you hear Mr. Train's explanation of this case? A Yes sir.

Q Do you know what the case is about? A Yes sir.

Q Have you any conscientious opinions regarding capital punishment which would prevent your finding a verdict of guilty of murder in the first degree if the evidence showed beyond a reasonable doubt that the defendant was guilty of the charge? A I have.

Q You have? A Yes sir.

Q Do you believe in capital punishment? A No sir; I do not.

THE COURT: I sustain the challenge.

A A R O N H. W O L F, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Wolf, where do you live? A 24 East 109th St.

Q 24 East 109th Street? A Yes sir.

Q What is your business? A Manufacturer.

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Q What is that? A Manufacturer.

Q What do you manufacture? A Coats and suits.

Q How long have you been in business? A Twenty years.

Q Mr. Wolf, you know the nature of this case? A I do.

Q Have you any conscientious scruples or opinions with regard to capital punishment that would prevent your rendering a verdict of guilty in case the evidence showed, beyond any doubt or any reasonable doubt that the defendant was guilty? A No sir.

Q You have not? A No sir.

Q Do you feel that this prejudice which you have would cause you to render a verdict contrary to the evidence or the weight of evidence in the case -- supposing you felt convinced that the man was guilty would you still be deterred from rendering a verdict according to the evidence? A Not in the first degree.

Q Not in the first degree? A No sir.

MR. PINCHOT: I submit the challenge.

BY THE COURT:

Q Do I understand you, sir, to say that if you were a juror even though you were satisfied that the defendant committed the crime of murder in the first degree, notwith-

standing that, you could not render a verdict of guilty of that crime? A Not for capital punishment.

Q Murder in the first degree carries with it the penalty of capital punishment. What I wish to ascertain is, even though the evidence convinced your mind beyond a reasonable doubt, that the defendant committed the crime of murder in the first degree would you refuse to render a verdict of guilty of murder in the first degree on account of your opinions regarding capital punishment? A I think I would.

Q Sure you would? A Yes sir; I am always opposed against capital punishment.

THE COURT: I sustain the challenge.

G E O R G E M U R P H Y, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Murphy, what is your business? A Photographing materials.

Q Your place of business? A 57 East 9th Street.

Q You reside where? A 65 West 93rd Street.

Q Have you any conscientious opinion touching capital punishment such as would prevent or preclude you from finding a verdict of murder in the first degree even though your mind was convinced of the defendant's guilt of that crime?

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A No sir.

The juror was challenged peremptorily by the defense.

GEORGE W. WEEKS, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Weeks, where do you live? A 316 West 47th Street.

Q What is your business? A Hotels.

Q How long have you been in that business? A 25 years.

Q Have you any conscientious opinions in regard to capital punishment which would preclude your finding a verdict of murder in the first degree, even though you were convinced beyond a reasonable doubt by the evidence that the man was guilty? A No sir.

Q You have not? A No sir.

Q What is the name of the hotel? A The Oriental Hotel, Manhattan Beach, I just came from there.

Q How long have you been manager there? A Twenty years.

Q Before Mr. Corbin died? A Yes; before Mr. Corbin died.

(The juror was challenged peremptorily by the

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defense)

JACOB ROSENSTREICH, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Rosenstreich, have you any conscientious opinion regarding capital punishment? A No sir.

Q Which would preclude your rendering a verdict of murder in the first degree? A No sir.

Q Speak out loudly? A No sir.

Q If your mind was convinced beyond a reasonable doubt that the defendant was guilty? A No sir.

Q Just speak a little louder? A Yes sir.

Q You have? A Yes sir.

Q Do you mean that you have such opinions or you have not such opinions? A No sir; I have not such opinions.

Q What is your business? A Cap manufacturer.

Q Caps? A Yes sir.

Q How long have you been in business? A Ten years.

Q How long have you lived in New York City? A 22 years.

Q 22 years? A Yes sir.

Q Where did you come from? A From Roumania.

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Q Born in Roumania? A Yes sir.

Q How long have you been a citizen and voter here in New York? A Eleven years.

Q And you voted here every year? A Yes sir.

CROSS EXAMINATION BY MR. KEIR:

Q What is your name? A Rosenstreich.

Q Are you acquainted with Mr. Train or this gentleman?

A No sir.

Q Acquainted with anybody, any gentleman in the District Attorney's Office? A No sir.

Q Have you any prejudice against Italians as a Nation?

A No sir.

Q Are you a married man? A Yes sir.

Q A man of family? A Yes sir.

(The juror was challenged peremptorily by the defense.)

LEOPOLD P. ROSENBERG, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Where do you live? A 109 East 81st Street.

Q What business are you engaged in? A Manufacturer.

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Q How long have you been in business in New York City?

A All my lifetime since I have been in business.

Q Born where? A In Connecticut.

Q Parents foreigners? A Yes sir.

Q Now, Mr. Rosenberg, have you any conscientious scruples or ideas regarding capital punishment which would prevent you from giving a verdict of murder in the first degree in case your mind was convinced beyond a reasonable doubt of the guilt of the defendant? A I think I have, sir.

Q You have? A Yes sir.

MR. PINCHOT: I submit the challenge.

THE COURT: Any other questions.

MR. PINCHOT: No sir.

BY THE COURT:

Q Have you been questioned on this subject before?

A Yes sir.

THE COURT: Challenge sustained. He says he has been questioned on this subject before, and I have no doubt that he knows what he is saying.

The juror was excused.

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CHARLES BAER, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Baer, have you any conscientious opinions regarding capital punishment which would preclude you from finding a verdict of murder in the first degree even though your mind was convinced beyond a reasonable doubt of the guilt of the defendant? A I am against capital punishment.

Q What is that?

THE COURT: He says he is against capital punishment. I sustain the challenge.

SAMUEL M. ROSENFELD, a juror, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Where do you live? A 162 East 59th Street.

Q What business are you in? A Umbrella manufacturer.

Q Umbrella manufacturer? A Yes sir.

Q Now, Mr. Rosenfeld, have you any conscientious opinions regarding capital punishment which would preclude you from finding a verdict of murder in the first degree even though your mind were convinced beyond a reasonable doubt by the evidence of the guilt of the defendant? A I have.

Q You have? A Yes sir.

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MR. PINCHOT: I submit the challenge.

THE COURT: Challenge sustained.

MAX NEIMANN, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q What business are you in? A Knit goods.

Q How long have you lived in New York City? A All my life.

Q Have you any conscientious opinion regarding capital punishment which would preclude you from finding a verdict of guilty of murder in the first degree in case your mind was convinced beyond a reasonable doubt of the guilt of the defendant? A No sir; not at all.

Q You understand the question? A Yes sir.

Q You are an American? A Yes sir.

Q Have you ever lived outside of New York City?

A Never.

Q How long have you been in this particular business, knit goods? A I have never been in any other business..

Q Brought up in this business? A Yes sir.

Q Where is your place of business? A 377 Broadway.

Q Wholesale goods? A Yes sir; it is wholesale manufacturing.

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Q Mr. Neimann, you are a manufacturer, you are in business for yourself, are you? A Yes, sir.

Q How many years did you say you had lived in New York City? A Thirty-five.

Q How many? A Thirty-five.

Q You were not born here? A I was.

Q Born right here? A Yes, sir.

Q Have you any prejudice against the Italians? A None.

Q None whatever? A No, sir.

MR. KIER: The juror is acceptable to the defense. I withdraw the challenge.

(The juror was challenged peremptorily by the People).

MAURICE MEYERS, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Have you any conscientious opinion regarding capital punishment which would preclude you from finding a verdict of guilty of murder in the first degree in case your mind was convinced of the guilt of the defendant beyond a reasonable doubt? A No, sir.

Q Do you understand the question? A Say it over again.

Q Have you any conscientious opinion in regard to capital

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punishment which would preclude you from finding a verdict of guilty of murder in the first degree/ even though your mind was convinced by the evidence, convinced beyond a reasonable doubt by the evidence, of the guilt of the defendant; do you understand that? A Yes, sir.

Q You say you have such scruples, have you? A (No answer).

Q Do you answer the question? A Well, I have such a feeling.

Q You have such a feeling? A Yes, sir.

THE COURT: I did not understand that.

THE WITNESS: Yes, sir; I have.

Q Would you find a verdict of guilty of murder in the first degree if the evidence before you convinced your mind beyond a reasonable doubt that the defendant committed that crime. Would you find such a verdict? A Yes, sir.

Q That was my impression from your first answer that you would find such a verdict. Have you ever served as a juror?

A No, sir.

Q How long have you been in this country? A Eighteen years.

Q What is your business? A Manufacturer --

THE COURT: I think there should be a consent here.

(The juror was excused by consent).

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LEOPOLD STEDER, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Stedeker, is that your name? A Yes, sir.

Q How long have you lived in this City? A About forty years.

Q Forty years? A Yes, sir.

Q What is your business? A Manufacturer of ladies' hat braid.

Q Please speak a little louder? A Manufacturer of ladies' hat braid.

Q Do you know the nature of this case? A I do not.

Q Well, this is a case where a man named Broncado is charged with murder in the first degree. Now, have you any conscientious opinion in regard to capital punishment? A I have.

Q Which would preclude your finding a verdict of murder in the first degree, even though your mind were convinced by the evidence of the guilt of the defendant? A I have, yes sir.

Q You have such scruples? A Yes, sir.

MR. TRAIN: I submit the challenge.

THE COURT: Challenge sustained.

HILBERT R. CHAMBERS, a juror, being duly sworn and examined as to his qualifications, testified as fol-

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lows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Have you any conscientious opinion regarding capital punishment which would prevent you from finding a verdict of murder in the first degree, even though your mind was convinced of the defendants' guilt from the evidence? A I don't think so, no, sir.

Q What is your business? A Fire insurance.

Q Your place of business? A Elizabeth, New Jersey.

Q Do you reside in New York? A Yes, sir.

BY MR. KIER:

Q This is Mr. Chambers? A Yes, sir.

Q What is your first name? A Hillery R.

Q You are an American? A Yes, sir.

Q Lived in New York all your life? A Yes, sir.

Q You have no prejudice against foreigners of any kind, or any nation, have you? A Yes, sir.

Q You have? A Yes, sir.

Q This is a foreigner on trial. Would that prejudice -- is that prejudice so strong that you could not render a fair judgment where a foreigner is on trial?

MR. TRAIN: I object to the form of that question.

Q Can you render a fair verdict or disposition of a case

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where a foreigner was concerned on trial? A Yes, sir; I think I could.

Q You are not sure, you think you could? A Yes, sir; I am not sure.

Q You are not sure? A Yes, sir.

MR. KIER: I think, if your Honor please, that this is a fair challenge.

THE COURT: What is your question?

MR. KIER: As to foreigners, he has already stated --

THE COURT: Possibly you had better put your question again, and see how the gentleman answers it.

MR. KIER: He has already said that he is prejudiced against foreigners, that is the beginning, that is how the gentleman starts out.

BY THE COURT:

Q Would that prejudice prevent you from rendering a fair verdict in this case? A I mostly employ Italians.

(The juror was excused.)

JULIUS FREEDMAN, a juror, being duly sworn and examined as to his qualifications, testified as follows:

BY MR. TRAIN:

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Q Have you any conscientious scruples regarding capital punishment? A I have.

Q I examined you last week? A No, sir.

Q Didn't I? A No, sir.

Q I thought I asked you that question before? A No, sir; I was not called up.

Q I have simply seen you in the Court room. You have conscientious opinions touching capital punishment? A Yes, sir.

Q You could not set those aside? A No, sir; I start that way.

MR. TRAIN: I submit the challenge.

THE COURT: Challenge sustained.

MORRIS LESTER, a juror, being duly sworn and examined as to his qualifications, testified as follows:

BY MR. TRAIN:

Q Mr. Lester, have you got any prejudice against capital punishment? A None.

Q None at all? A No, sir.

Q Sure of that? A Yes, sir; sure of it.

Q What is your business? A Men's outfitters.

Q Where is your place of business? A 127th Street and

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Third Avenue.

Q 127th Street and Third Avenue? A Yes, sir.

Q Your residence is where? A 2033 Madison Avenue.

Q Are you a native of New York City? A No, sir.

Q Where were you born? A Germany.

Q What part of Germany? A Prussia, Pesth.

Q How long have you been here? A Twenty-four years.

Q I forgot to ask you whether you had served before and are familiar with the duties of jurymen in criminal cases?

A I have been on the jury before.

Q You have? A Yes, sir.

Q Do you know what a jurymen's duties are? A Yes, sir.

Q To decide the question of fact arising in the trial?

A Yes, sir.

Q And to receive the law from the Court? A Yes, sir.

Q You know that? A Yes, sir.

Q Are you a married man? A Yes, sir.

Q Family? A Yes, sir.

Q Ever been in any other kind of business? A I was in the gents' furnishing business myself before.

Q What business are you in now? A Men's outfitters, clothing and gents' furnishings.

BY MR. KEER:

Q Mr. Lester, have you any prejudice against Italians?

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(No answer).

Q You were born abroad yourself? A Yes, sir.

Q Nothing against Italians? A No, sir.

Q In answer to my friend's question as to experience you have had some, have you? A None that I know of.

Q You have never had any experience on other juries?

A Yes, sir.

Q You have? A Yes, sir.

MR. KEIR: The juror is acceptable to the defence.

(The juror was challenged peremptorily by the People as a juror).

EDWARD C. GALLEY, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Have you any prejudice against capital punishment?

A Yes, sir. I gave my decision about fifteen years ago at 23rd Street and Fifth Avenue, and at that time I was against capital punishment.

Q You have not changed your opinion since then? A No, sir.

Q You were examined by Commissioner Gray.

(The juror was excused).

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JACOB FREEDMAN, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Have you any conscientious opinions regarding capital punishment? A I have not.

Q You have none? A I have not.

Q What is your business? A Importer of trimmings.

Q How long have you been in business? A Five years.

Q How long have you lived in New York? A All my life, thirty-eight years.

Q Are you familiar with the duties of a juror? A I am, yes, sir.

Q Do you know anything about this case? A No, sir; nothing except what I have heard the District Attorney say this morning.

Q You have not read about it in the papers? A No, sir.

Q Are you prepared to render a verdict in this case, to act as a fair and impartial juror if you should be accepted?

A I am, sir.

Q Do you know any reason why -- or do you know of any reason that would prevent you from acting as a fair and impartial juror? A No, sir; I do not.

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The juror being declared satisfactory was sworn and took his seat in the jury box.

WILLIAM H. D. NORTH, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Have you any prejudice against capital punishment?

A No, sir.

Q What is your business? A Contractor.

Q How long in business? A Fifteen or sixteen years.

Q Where? A 1224 Southern Boulevard.

Q Familiar with the duties of a jurymen? A Yes, sir.

Q Do you know any reason why you could not serve impartially in this case? A No, sir.

CROSS EXAMINATION BY MR. KEIR:

Q Are you a native of New York? A No, sir.

Q How is that? A No.

Q Lived here some years? A Yes, sir.

Q You have no prejudice against Italians?

A No, sir.

Q None whatever? A No, sir.

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Q Acquainted with any of these gentlemen here? A No, sir.

Q Any gentleman in the District Attorney's office?
A No, sir.

Q Man of family, married? A No, sir.

Q Not married? A No, sir.

(The juror was challenged peremptorily by
the defence.)

CHARLES STABE, a juror, being duly sworn and
examined as to his qualifications; testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Stabe, have you any conscientious opinions in
regard to capital punishment which would prevent your finding a
verdict of murder in the first degree, in case your mind was
convinced beyond a reasonable doubt of the guilt of the defen-
dant? A No, sir.

Q Are you familiar with the duties of a juror? A Yes,
sir.

Q You have lived in New York? A Yes, sir.

Q What is your business? A Lithographing.

Q How long have you been in it? A Eighteen years.

Q Where is your place of business? A 14 and 16 Lispen-
ard Street.

Q Wholesale business or retail? A Wholesale.

Q What position have you in that company? A Vice-President.

Q Vice-President? A Yes, sir.

BY MR. KEIR:

Q Mr. Steibe, is that your name? A That is right.

Q A native of New York? A Yes, sir.

Q You have no prejudice against Italians and against foreigners at all? A None whatever.

Q Are you acquainted with any of these gentlemen here in the District Attorney's office? A No, sir.

Q Or any one in the office of the District Attorney?

A No, sir.

Q Mr. Jerome or any of his assistants? A No, sir.

(The juror being declared satisfactory to both sides was duly sworn and took his seat in the jury box.)

CHARLES SCHAVRIEN, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Have you any prejudice against capital punishment?

A I have.

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Q Have you any such strong prejudice or feeling as would preclude you from rendering a verdict of murder in the first degree, if your mind were convinced beyond a reasonable doubt of the guilt of the defendant by the evidence? A I have.

MR. TRAIN: I submit the challenge.

THE COURT: Challenge sustained.

CHARLES A. PRINGLE, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Have you any prejudice against capital punishment?

A No, sir.

Q Are you familiar with the duties of a juror? A Yes, sir.

Q What is your business? A Printing.

Q What is the name of your firm? A John C. Rankin & Company.

Q What position do you hold there? A Vice-President.

Q How long have you held that position? A Most four years.

Q Where do you live? A 349 West 85th Street.

BY MR. KRIR:

Q Mr. Pringle, you are a native of the United States?

A Yes, sir.

Q And of New York? A Yes, sir.

Q Lived all your life here? A Yes, sir.

Q Any prejudice against foreigners? A No, sir.

Q Italians? A No, sir.

Q Do you know any of these gentlemen? A No, sir.

Q Personally? A No, sir.

Q Acquainted with anybody in the office of the District Attorney personally? A No, sir.

(The juror was challenged peremptorily by the defence.)

JOHN A. PIERCE, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Pierce, do you know of any reason why you could not make a fair and impartial juror in this case? A No, sir.

Q Have you any prejudice against capital punishment, regarding capital punishment? A No, sir.

Q What is your business? A Retired, real estate.

Q Where do you live? A 481 Filmore Street, Bronx.

Q How long since you have been in business? A Six years.

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(The juror was challenged peremptorily by the defense).

AUGUST J. D. ROSS SI, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q How do you spell that Rossi? A R-o-s-s-i.

Q Mr. Rossi, what is your business? A I am a Civil and Mining Engineer.

Q I examined you last week on the other case? A Yes, sir.

Q You have not any prejudice against capital punishment?

A I do.

Q You have? A Yes, sir; I have been examined.

Q I thought you were accepted, and the defence challenged you? A No, sir; I have been examined by Colonel Fellows I was 25 years ago, before Judge Cowing and Judge Barrett, and I was excused on all criminal cases involving the death penalty.

(The juror was excused.)

WILLIAM ROTHWELL, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Rothwell, where do you live? A 76 Manhattan

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Avenue.

Q What is your business? A Produce dealer.

Q Do you know of any reason why you could not make a fair and impartial juror in this case? A No, sir.

Q Do you know anything about the case? A No, sir.

Q Have you any conscientious scruples or feelings about the infliction of capital punishment which would preclude you from rendering a verdict in accordance with the evidence.

BY MR. KEIR:

Q Have you any prejudice against foreigners? A Yes, sir.

Q You have? A Yes, sir.

Q Very decided, are they not? A It might influence me some.

Q Mr. Rothwell, if the defendant on trial was a foreigner could you give him as fair a consideration, give as fair consideration to his case as you could to an American? A I am afraid it might influence me.

Q You don't think you could? A No, sir; it might influence me.

BY MR. TRAIN:

Q What do you mean by a foreigner? A A foreigner; a person coming from other countries here.

Q Everybody originally came from somewhere else who is

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living in America. Now, do you mean you could not give a man born in another country a fair trial? A Well --

Q Why not. Does it make any difference to you where he was born? A Well, I don't know; I am kind of prejudiced against some of the foreigners.

Q Have you any prejudice against the Italian race?

A Yes, sir.

Q Is that prejudice of such a character that you could not give the defendant, who is an Italian, a fair and impartial trial on the evidence? A I am afraid it might influence me somewhat.

Q You don't mean to say that if the defendant was not guilty you would convict him just because he was an Italian, on general principles, would you -- would you convict the defendant on general principles? A No, sir; I would not do that.

Q You would convict him on the evidence, if you convicted him at all? A Yes, sir; but of course there is that feeling and it has some influence over me.

Q What sort of an influence has it over you? A Well, I have not got the right feeling for the Italians as I would for our own race here.

Q Would be inclined to think that he would be more likely to commit a crime? A Yes, sir; I think foreigners

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is more hot blooded, and more apt to murder men than our own race here.

Q That feeling would be in your mind if you sat in this place here? A Yes, sir; it might.

(The juror was excused).

LEOPOLD FREISEN, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q What is your business, Mr. Freisen? A Painter and Decorator.

Q Painter and Decorator? A Yes, sir.

Q Where do you live? A 2194 Bathgate Avenue.

Q Are you familiar with the duties of a juror? A Yes, sir.

Q Is there any reason why you could not make a fair and impartial juror in this case? A Not that I know of.

Q Have you any prejudice in regard to capital punishment?

A No, sir.

Q How long have you been in business? A Thirty years.

Q Are you the proprietor of this establishment? A I am.

Q How long have you been the proprietor? A The last

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twenty years.

Q The last twenty years.

(The juror was challenged peremptorily by
the defence.)

DANIEL F. MYERS, a juror, being duly sworn and
examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Myers, where do you live? A 1228 Clinton Avenue,
Bronx.

Q What is your business? A I am out of business.

Q What was your last business? A I was a jewelry
salesman.

Q Have you any prejudice in regard to capital punishment?

A I have not.

Q You have not? A No, sir.

Q Do you know any reason why you could not make a fair
and impartial juror in this case? A I don't see why.

Q You don't know anything about the case? A No, sir.

BY MR. KEIR:

Q You are a native New Yorker? A Sir?

Q A native New Yorker? A Yes, sir.

Q Lived here all your life? A Well, all but three
years, I have lived fifty seven years in New York.

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Q You have no prejudice against foreigners at all?

A I have not.

Q No feeling on the subject at all? A I have not.

Q Are you acquainted with these gentlemen, Mr. Train or his associate? A No, sir.

Q Or any one in the District Attorney's office, that is no personal acquaintance? A No, sir.

(The juror was accepted and sworn and took his seat in the jury box).

HENRY ROLLOF, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Rollof, I examined you last week, if I remember right? A Yes, sir.

Q You have no prejudice against capital punishment? A Yes, sir; in some ways I have.

Q I thought last week you said you didn't have any? A Well, I changed my mind.

Q Have you changed it? A Yes, sir.

Q What caused you to change your mind? A Well, in some cases I am against it, and there might be a case where naturally I would be against capital punishment.

Q Would the nature of the case make a difference -- of

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course I am talking about opinions -- you would not convict a man of murder in the first degree without plenty of evidence, but if your mind was convinced of his guilt of murder in the first degree, would any feeling that you might have about capital punishment being desirable, or anything of that sort, lead you to render any verdict except the one which your mind has dictated to you as being right? A Pretty near -- I can't tell.

Q In what kind of a case, Mr. Rollof, would you be against capital punishment? A Well, I know a great many cases in different ways, you know, and altogether I don't know that capital punishment is not all right.

Q You don't like it? A No, sir.

I don't think that would prevent my serving on the jury.

Q If you swore to find a verdict on the evidence you could better decide your feelings about it? A Yes, sir.

Q Just as the jury are expected to do. Now, supposing you are sworn as a jurymen to find a verdict on the evidence. You may have these feelings in regard to capital punishment, but suppose you are convinced that the defendant actually committed the crime of murder in the first degree, would you hesitate to find a verdict of murder in the first degree? A That is hard to tell.

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Q Well, if your mind was convinced that the defendant had committed the crime would you hesitate to find a verdict?

A Then I have to change my mind again on the other side, so I can't tell that.

BY MR. KEIR:

Q Have you any prejudice against foreigners at all?

A No, sir; not at all, because I am a foreigner myself.

MR. KEIR: The juror is acceptable to the defence.

MR. TRAIN: I am in this position. Sometimes you are against it, and sometimes you are for it. My business here is to present the facts to the jury, and let the jury decide whether this man Broncado, is guilty or not of murder in the first degree. Supposing you are sworn as a juryman and your mind is convinced that he is guilty of murder in the first degree, will this feeling against capital punishment step in and lead you to acquit the defendant or find him guilty of something else?

THE WITNESS: Well, that is a question that I cannot answer, I don't know myself.

MR. TRAIN: I cannot answer it for you. I will have to submit the challenge. This man sometimes is against capital punishment, and sometimes he is for

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it.

BY THE COURT:

Q My good sir, you and I are both for upholding the law as good citizens? A Yes, sir.

Q You believe in jury duty as part of the duties of a good citizen? A Yes, sir.

Q Now, if you are accepted as a juror, you are to become a judge of the facts in the case? A Yes, sir.

Q You become a judge while you sit in the jury box?

A Yes, sir.

Q And as such judge, if the evidence in the case satisfies your mind, that is, convinces you beyond a reasonable doubt that the defendant committed the crime of murder in the first degree, would you render a verdict of guilty of murder in the first degree if your mind was convinced beyond a reasonable doubt of his guilt? A Yes, sir -- well, I might, would not enter such a case, I would recommend him to mercy.

Q You know that has nothing at all to do with your verdict. Would you render a verdict of guilty of murder in the first degree if you were satisfied that he committed that crime? A Well, I might do so, yes sir.

Q Would you do so? A Well, I think I would do so, yes, sir.

THE COURT: Challenge sustained.

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CHARLES ELLERS, a juror, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Ellers, have you got any prejudice against capital punishment? A No, sir.

Q No prejudice? A No, sir.

Q Have you had any experience as a jurymen? Are you familiar with the duties of a jurymen? A Well, I know it but I haven't had any experience, I never served as a juror.

Q Well, what is your business? A Butter and egg business.

Q Place of business where? A Harlem Market.

Q How long have you been up there? A Five years.

Q Before that what was your business? A I used to be a salesman downtown in the butter and egg business.

Q A butter and egg place? A No, sir; wholesale.

Q Wholesale what? A Salesman.

Q In what? A Butter and eggs.

Q Eggchangers? A A salesman.

Q What was the business, dealing in eggs, buying wholesale and selling them? A Yes, sir.

Q Was that an egg chandler? A No, sir; not exactly

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egg chandling, it is an egg dealer.

Q You are a native of New York City? A No, sir; I am not; I was born in Germany.

Q What part of Germany? A Oldenberg.

Q Have you any prejudice against capital punishment?

A No, sir; I have not.

Q Sure of that? A Yes, sir.

BY MR. KEIR:

Q Are you acquainted with any of these gentlemen?

A No, sir.

(The juror was challenged peremptorily by the defence).

SOLOMON HANDEL, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q How do you spell that name? A Handal.

Q What is your business? A Export.

Q What is that? A Of general merchandise.

Q Where do you live? A 15 Trinity Place.

Q How long have you lived in New York? A Eleven years.

Q Have you any prejudice in regard to capital punishment?

A I am against it.

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Q You are against it? A Yes, sir.

Q Well, have you sufficient prejudice to prevent you from giving a verdict in accordance with the evidence, I mean, if you were convinced beyond a reasonable doubt by the evidence that a man was guilty of murder in the first degree, would you hesitate to bring in a verdict of guilty? A I don't believe in capital punishment, you see, I believe in guilty or not guilty, but I don't believe in capital punishment.

Q What I asked you was, would you bring in a verdict in accordance with the evidence? A Yes, sir; I will according to the evidence, but I don't believe in killing, you see; I don't believe in a man to be killed.

Q Do you know that the result of a verdict of murder in the first degree is the death penalty? A No, sir.

Q Would you bring in such a verdict in case your mind was convinced of the guilt of the defendant? A No, sir.

THE COURT: Challenge sustained.

HENRY L. DOKE L, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. PINCHOT:

Q Mr. Dokel, have you any conscientious opinion in regard to capital punishment which would preclude your render-

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ing a verdict of guilty in the case of murder in the first degree, even though your mind were convinced by the evidence of the guilt of the defendant? A No, sir.

Q You understand my question? A Yes, sir.

Q Your answer was what? A No, sir.

Q What is your business? A Groceries.

Q Where do you live? A 212 West 102nd Street.

Q How long have you been here in New York City? A About twenty-two years.

Q Twenty-two years? A Yes, sir.

Q Do you know of any reason why you could not be a fair and impartial juror in this case? A Well, it is against the Italian?

Q It is against an Italian. A Yes, sir; that would not affect me.

Q Just speak louder? A It would not affect me, any of my feelings in any way, although I haven't got much use for those in my business; it would not hurt my feelings in any other case or way.

Q Do you think your feelings would influence you at all in your verdict? A No, sir.

Q You would be honest? A Yes, sir.

BY MR. KEIR:

Q How do you spell your name? A D-o-k-e-l.

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Q I understand you to say that you have been twenty-two years in New York, in New York City twenty-two years? A I am in business since 1883.

Q Have you any prejudice against Italians? A Not in this case, I shouldn't think so.

Q In any case have you a prejudice against them? Of course you were born abroad? A I was born on the other side in Germany.

Q Have you any prejudice against foreigners? A No, sir.

(The juror was challenged peremptorily by the defendant).

JUDSON A. HARRINGTON, a juror, being duly sworn and examined as to his qualifications, testified as follows:

BY MR. TRAIN:

Q Mr. Harrington, I examined you last week and I think you said you had no prejudice against capital punishment?

A No prejudice.

BY MR. KEIR:

Q Mr. Harrington? A Yes, sir.

Q You are a native New Yorker? A No, sir; I have been in New York twenty-two years.

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Q Are you acquainted with Mr. Train? A No, sir.

Q With any gentleman in the District Attorney's office? A No, sir.

Q Any prejudice against Italians? A None at all.

Q None at all? A No, sir.

(The juror was excused).

ISAAC LINDHEIMER, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Have you any prejudice against capital punishment?

A I have, sir.

Q Is it of such a character that if you were sworn as a jurymen, and your mind convinced on the evidence beyond a reasonable doubt, you could not find him guilty of murder in the first degree? A No, sir.

THE COURT: Challenge sustained.

LOUIS BRUNSON, a juror, being duly sworn and examined as to his qualifications, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Brunson, where do you live? A 1265 Washington

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Avenue.

Q What is your business? A Real estate.

Q How long have you been in it? A Three years.

Q Have you any prejudice regarding capital punishment?

A No, sir; not specially.

Q What is your answer? A Not specially.

Q Have you any opinion in regard to it which would preclude or prevent your finding a verdict of murder in the first degree in case your mind was convinced beyond a reasonable doubt by the evidence that the defendant was guilty?

A No, sir.

Q You have not? A No, sir.

Q You know of no reason why you could not be a fair and impartial juror in this case? A No, sir.

BY MR. KEIR:

Q Mr. Brunson? A Yes, sir.

Q You have not any prejudice against Italians?

A No, sir.

Q Nor against foreigners at all? A No, sir.

Q Been many years in New York? A Yes, sir; all my life.

Q What do I understand your business to be? A Real Estate and insurance.

(The juror was accepted by the defence and sworn).

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THE COURT: It is my duty to admonish you that you must not talk about this case or form or express any opinion concerning the guilt or innocence of this defendant. We will take a recess until a quarter after two o'clock.

R E C E S S.

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THE PEOPLE vs. BRANCATO.

AFTER RECESS.

J O H N M c C A R T H Y, duly called and examined, touching his qualifications to serve as a juror, testified as follows:

BY MR. TRAIN:

Q Mr. Mc Carthy, have you any prejudice against capital punishment? A Well, I can't say that I have.

Q You would obey your oath as a juror, however unpleasant the consequences might be? A Yes.

Q Are you familiar with the duties of a juror in a criminal case? A I have never served in a criminal case.

Q But at the same time, you are familiar with what the juror have to do? A Certainly.

Q They have to decide all questions of fact in the case. What is your business, Mr. Mc Carthy? A I have retired from business.

Q What was it? A I have retired from the fire service.

Q What? A I retired from the Fire Department five years ago.

Q Now, do you know of any reason why you could not make

a fair and impartial jurymen to sit in this case and decide the question of the guilt or innocence of this defendant of the crime of murder charged against him? A I do not.

BY MR. KEIR:

Q You are not acquainted with Mr. Train or his colleague here? A I am not.

Q Is it Mr. Mc Carthy or Mc Carty? A Mc Carthy.

Q Are you acquainted with any gentleman in the District Attorney's office? A Well, I have an acquaintance in the District Attorney's office; yes.

Q Extensive, is it? A What?

Q An extensive acquaintance is it or just ---

A Yes, a long acquaintance.

THE COURT: I think you misunderstand each other.

I think Mr. Mc Carthy means he knows some one in the District Attorney's office; is that true, Mr. McCarthy?

THE WITNESS: Yes, I know --

BY MR. KEIR:

Q Well, how many do you know, Mr. McCarthy? A Well, I know one personally that is employed there as a clerk.

THE COURT: The witness says that he knows a clerk in the District Attorney's office.

MR. KEIR: Accepted by the defense.

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MR. TRAIN: Satisfactory to the People.

(The witness is duly sworn as a juror and takes the ninth seat in the jury-box)

JOSEPH LOESCH, duly sworn and examined as to his qualifications to serve as a juror, testified as follows:

BY MR. TRAIN:

Q Mr. Loesch, have you any prejudice against capital punishment? A No, sir.

Q Are you familiar with the duties of a jurymen in a criminal case? A Some of them.

Q What is your business? A Traffic manager.

Q For what company? A Washburn Wire Company. 118th Street and the East River.

Q Do you know of any reason why you could not serve fairly and impartially as a jurymen to try this defendant for murder? A I don't know of any.

MR. TRAIN: Satisfactory to the People.

BY MR. KEIR:

Q Are you a native of the United States, Mr. Loesch?

A Yes, sir.

Q Have you lived in New York many years? A About

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thirty-nine.

Q Oh, indeed. You haven't any prejudice against foreigners?

THE COURT: No, no, no, I will not permit that. This defendant is an Italian. You may ask him if --

MR. KEIR: Well, I will limit it to the Italian nation.

Q. Have you any prejudice against the Italians, Mr. Loesch?

THE COURT: That would prevent him from giving this defendant, who is an Italian, a fair trial.

Q (Continuing) That would prevent you from giving this defendant a fair trial? A No, sir.

Q You say no? A No, sir.

Q Are you acquainted with Mr. Train personally? A No, sir.

Q Nor any of his colleagues? A No, sir.

Q Are you acquainted in the District Attorney's office to any extent? A No, sir.

MR. KEIR: Accepted by the defense.

(The witness is duly sworn as a juror and takes the tenth seat in the jury-box.)

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C H A R L E S F E U S , duly called and examined as to his qualifications to serve as a juror, testified as follows:

BY MR. TRAIN:

Q Have you any prejudice against capital punishment?

A No, sir.

Q You are familiar with the duties of a jurymen, are you not? A Yes.

Q Do you know of any reason why you could not make a fair and impartial jurymen to try this defendant for murder?

A No sir.

Q What is your business, please? A Theatrical manager, formerly, but I am retired now.

Q Will you give me your address? A 2192 Valentine Avenue, Bronx.

MR. TRAIN: Satisfactory to the People.

MR. KEIR: Challenged by the defendant.

I R V I N G G . K N O X , duly called and examined as to his qualifications to serve as a juror, testified as follows:

BY MR. TRAIN:

Q Mr. Knox, have you any prejudice against capital

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punishment? A No, sir.

Q Do you know of any reason why you could not serve fairly and impartially to try this defendant for murder?

A No, sir.

Q What is your business, please? A Steel business.

Q And your office is where? A 100 Broadway.

BY MR. KEIR:

Q Mr. Knox, is it? A Yes, sir.

Q You are a native New Yorker? A I am born in Washington.

Q Have you any prejudice against Italians? A No, sir.

Q Are you acquainted with any of these gentlemen on the other side? A No, sir.

MR. KEIR: Accepted by the defense.

(The witness is duly sworn in as a juror and takes the eleventh seat in the jury-box.)

PHILIP H. JONAS, duly sworn and examined as to his qualifications to serve as a juror, testified as follows:

BY MR. TRAIN:

Q Mr. Jonas, have you any prejudice against capital punishment? A I have.

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Q Well, is that a conscientious matter with you, or is it just a matter of opinion? A Well, it is a conscientious matter with me.

Q Is your feeling of such a nature that even if you were morally convinced of the defendant's guilt, that feeling would preclude you from finding a verdict of guilty? A Well, I would have a prejudice against sending a man to the chair.

Q Well, of course, you don't send him to the chair.

A Well, I'd be in the direct line of sending him, if I was a juror.

Q Well, you are called as a jurymen to perform a purely intellectual duty. You are to weigh the evidence and decide from the evidence whether you are morally convinced that the defendant did or did not do a certain act, namely, commit the crime of murder in the first degree. Now, if your mind was convinced by the evidence that the defendant had, within the definition of murder in the first degree, which his Honor, the learned Recorder will give you, committed the crime of murder in the first degree, would you have any hesitation in rendering a verdict of that character on account of this conscientious feeling that you have? A Well, my opinion would be against finding a verdict of guilty. My mind,-- I should not like it.

Q Well, of course, you would be under oath. A I'd be

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under oath, yes.

Q That is what a jurymen is, a man who takes an oath.

A Certainly.

Q Now, if you took an oath to render a verdict which your mind told you was the correct verdict, couldn't you do it?

A I could do it, yes.

Q Now, do you mean anything more than that you would dislike to do it? A I would dislike to do it.

Q Well, could you set aside that feeling of dislike?

A I don't think I could.

Q Well, then, you couldn't live up to your oath.

A Well, I'd like to live up to my oath to a certain extent, but I would have a great feeling against sending a man to the chair. I would not like to do it.

Q Well, there is no man alive, unless he were a cold blooded brute, that would not feel the same way. A No.

Q But the point is that we have got to carry on our institution. Now, of course, there is no reflection on you because you don't approve of capital punishment, but I am trying to get twelve men who can set aside any feeling of repugnance, any feeling of dislike to that form of punishment, or even any feeling of conscience, provided they are able to live up to their oath and perform this duty which their citizenship and chance have cast upon them. Now, if you can

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set aside any feeling that you have and render a verdict with reference to nothing except the evidence, there is no reason why you could not serve in the case. If, on the other hand, although you had a perfectly clear perception of what your duty was, under your oath, you nevertheless allowed yourself to be influenced by the consequences of the verdict, why I could not in justice to the people, of course, take you as a jurymen; and you are the man that is to decide that.

A Well, you want me to say that I could give a verdict?

Q I don't want you to say anything except what you believe. I want to know just what you believe, whether if your mind was convinced of this defendant's guilt you could not render a verdict of guilty of murder in the first degree?

A Yes, I think I could. I shouldn't like to.

Q Well, then, it is really a matter of liking and disliking? A Well, it is a question of not wanting to send a man to his death.

BY THE COURT:

Q But you see, sir, you do not send the man to his death. A Well, I do. I contribute to it, your Honor, when I bring in a verdict of guilty.

Q No; you simply declare a fact. That is where jurors frequently labor under a mistake. You declare a fact.

The fact in dispute here is whether this defendant killed

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the person he is charged with killing or not, and you are called upon to say by your verdict whether he killed that person or not. Now, when you declare that you are satisfied on the evidence that he killed the person, it is a law that takes care of the balance. You do not pass sentence. The Judge is placed here for that purpose; you do not pass sentence; you simply declare a fact. I wish the jurors would only bear that in mind, that they are simply to declare a question of fact, and when they declare the fact, that they find according to their honest conviction, the law takes care of the rest; the law fixes the penalty. The individual's own act brings him under the law. The law says, for this act you shall suffer so and so. You don't say it. You see, in some jurisdictions, the jury fix the penalty, but here in our State they do not. They simply declare the fact, and the question of fact here to be declared is, did the defendant commit the murder charged against him? If he did not, why, the law says he is not guilty of any crime. If he did, the law says he should be subjected to certain punishment. That is the situation. Now, do you, understanding your duties as such, as an intelligent citizen, do you feel that if you took that twelfth seat in the jury-box that, notwithstanding your views relating to capital punishment, you, as a sworn

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Juror, if you were satisfied upon the evidence that this defendant committed the crime charged against him, could not unhesitatingly declare a verdict of guilty of the crime charged? A Yes, I could.

THE COURT: Go on, Mr. Train.

MR. TRAIN: I have no further questions.

MR. KEIR: If your Honor please, I think the juror is disqualified. I have certainly no objection to the gentleman at all.

(The witness is duly sworn in as a juror and takes the twelfth seat in the jury-box.)

COURT OF GENERAL SESSIONS OF THE PEACE,
COUNTY OF NEW YORK. PART IV.

-----x
THE PEOPLE

vs.

LEONARDO BRANCATO.
-----x

Before

HON. JOHN W. GOFF, R.,

and a jury.

Indictment filed July 12, 1906.

Charge: Murder in the First Degree.

New York, October 15, 1906.

A p p e a r a n c e s .

ASSISTANT DISTRICT ATTORNEY ARTHUR C. TRAIN, for the People.

TOWNSEND & KEIR, ESQS., for the Defendant.

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MR. TRAIN'S OPENING ADDRESS.

MR. TRAIN: If the Court please:

Mr. Foreman, and each of you, gentlemen:

As you all know, the defendant is charged with the crime of murder in the first degree, the highest offense known to the law.

He is charged by the Grand Inquest, under an indictment filed on the 12th day of last July, with having murdered one Lapaglia by shooting him with a revolver.

In a few words, this is the charge:

That on Friday night, the 1st day of June, 1906, at about ten o'clock in the evening, he, the defendant, on Christie street, between Houston and Stanton streets, shot Frank Lapaglia; that having shot him he turned and ran south on Christie street as far as Stanton street. Then he turned west and ran to the Bowery. Having reached the Bowery, he turned north and ran about three quarters of a block, where he was caught by a witness who had been in pursuit of him, a man named Joseph Sharp, and who naturally is a very important witness in this case.

This man Sharp held the defendant until a

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police officer arrived, and placed him under arrest.

The policeman having arrested him, he was taken back to the scene of the shooting, and from thence was taken to the 12th police precinct station in Eldridge street.

Of course, the man who was shot was removed to the hospital, and remained there until he died five days later. From the station house, the defendant was taken to the hospital where he was identified by the dying man.

Now, that is, in the very fewest possible words, a statement of the crime charged against the defendant.

From what you gentlemen have said, I fancy that there are at least several of you who have never served on a jury in a capital case before; and before calling any witnesses, I wish to briefly outline the task which rests upon my shoulders; so that, as the case goes on, you may be able to determine whether or not I have accomplished that which the State calls upon me to do.

Of course, the jury are here under oath to perform a certain specific function, and that function is an intellectual one, to determine from the evidence whether or not the defendant in the case has been proven beyond a reasonable doubt to have committed the crime charged against him.

Now, in order to determine whether or not he has committed any specific crime, the jury have to know what the

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crime is, and upon the Court rests the duty of defining the crime of murder.

Now, in this case I fancy that there will be very little question as to the act performed by the defendant. When I say act, I mean physical act. I apprehend that it would be almost impossible to refute the testimony that this defendant with a pistol shot and killed the deceased, but the shooting and killing of a human being is homicide, and unless some specific elements are present in the killing, it may be one form of homicide or another. In other words, it may be an entirely justifiable homicide, or it may be an excusable homicide, or it may be a homicide without justification or excuse, and yet without premeditation and deliberation, in which latter case it would be the kind of homicide which the law calls manslaughter. Or it may be an accidental homicide, where there was criminal negligence on the part of the defendant, such as criminal negligence in the care and use of the revolver, in which case it would be manslaughter in the second degree. Or it may be, and the People allege that it is, a case of deliberate killing, with the intent to take human life, in which case, the intent being present, the crime becomes that kind of homicide known as murder. And if, to go further, there is the additional element of premeditation

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and deliberation, the crime becomes murder in the first degree, the offense charged against this defendant in the indictment.

Now, the People's evidence of this case, if the jury determines that it is credible, determines that it is trustworthy, would seem to show that this defendant not only took the life of the deceased, intending to take it, but that he premeditated and deliberated upon that design to take the life of the deceased.

His Honor will charge you that murder in the first degree is the taking of the life of a human being with the intent to take it and with premeditation and deliberation.

Now, it is perfectly plain what intent is. Of course, you can only infer an intent from the act that a man commits, but if a man draws a pistol and points it at the body of another and discharges it, why no sane man could have any question in his own mind, but that the intent of the person was to do that very act. In other words, we intend, unless we are out of our minds, to do, in most instances, that which we do do. Of course, we may have accidents happen to us. We may fall backwards from a street car without intending to do it, but if we do an act which involves a mental process, such as putting our hands

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in our pockets and taking something out, or raising a revolver and pulling the trigger, or taking a knife out and opening it, that is the best evidence that is at our command as human beings, in determining the processes of mind which is had by the person who performs the act.

So that intent is a very simple matter to determine.

The question of whether or not the act which is intended and which is performed was premeditated or deliberate is oftentimes difficult to determine. If, however, the person has made a threat to take the life of the deceased, has made a threat to take it in a particular way, and then does accomplish that object, does take the life in the precise way that he has foretold that he would take it, there is perhaps the best evidence in the world that he did premeditate the act.

The preparation for the act, entirely apart from statements as to what he was or was not going to do, forms a very high class of evidence upon the question of deliberation. If a man purchases a pistol in secret, loads it, carries it on his person, hunts out his victim and then kills him, no jury would have any hesitation in saying he premeditated the deed.

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Now, in this case, there are elements of proof that would seem to establish that this defendant premeditated the act of killing. On the evening in question he was seen to be near a saloon on the street, and a man entered, and made a statement to a person who was in the saloon, which resulted in the man who was in the saloon, a person by the name of Frangipane, going out and speaking to this defendant who was on the outside, on the sidewalk.

Now, at that time, the man who was killed, was inside the saloon. Now, this witness having been told something by the person who came into the saloon, stepped out on the sidewalk, went out to Brancato and said, "Now, look here, what is the matter?" There had evidently been some words, or something, between the two men, and the defendant said, "You know this Lapaglia? He called me Canuto--" that is to say, ^a cuckold and now I want to shoot him." To that the witness replied, "No, don't do this. Come along with me. It is better for you to go home and go to bed." And the witness took the defendant by the arm and they walked down Christie street, to Stanton street, as far as the grocery store over which the defendant lived, and at that point, the defendant said to the witness, "All right, Mr. Joe--" he called him Mr. Joe; the man's name

was Joseph Frangipane-- "I will go home with you tonight."
And the witness went back to the saloon to look for his
brother. And almost immediately, the witness saw the
crowds of people running, and learned that this tragedy had
taken place.

Now, if you believe this witness-- and so far
as the People are concerned, they have no reason to doubt
that his testimony is true; the man makes an excellent im-
pression-- you have a statement from the defendant himself,
within a few moments before the shooting, that, because of a
certain thing, namely, an insult which the deceased had of-
fered to him, he wanted and desired to shoot the deceased.
And the evidence is that he did do that which he intended
to do, and which he said he wanted to do; and if you
believe that, gentlemen, I submit that the People will
have made out all the evidence of premeditation and delib-
eration that could be necessary in a case of homicide.

Now, so much in general for the case at bar.
In general, of course, you understand that I am here as your
attorney, and as representing the defendant as one of the
public, to see that all the available evidence at the com-
mand of the District Attorney is laid before you.

You have been drawn out of the great body of the
community to perform a very solemn and very responsible

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function, and your duty is to the public and to the defendant as one of the public, and not as anything else. And you are bound by a very solemn oath, to find the precise verdict which your minds tell you is the right and just verdict in the case, and that I know you will do.

Now, I am here also under solemn oath to present the evidence to you, and I am here not to secure a conviction at all costs, not to do anything except to see that you get the material upon which you are to perform this duty.

If, at any point during the case, I can assist you in any way, I ask that you will call upon me to put questions to the witnesses or to enlighten you in any way that I can upon the matter in hand. Because I am here as your very humble servant, simply to assist you, and I want you to avail yourselves of my services in every way you can.

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THE PEOPLE'S CASE.

MR. TRAIN: For the purpose of facilitating the trial, the gentleman representing the defendant concedes that the deceased, Francesco Lepaglio, came to his death on the 1st day of June, 1906, from a pistol bullet discharged from a revolver held by the defendant, and that an autopsy performed by Coroner's physician, Philip F. O'Hanlon, upon a certain body at the Morgue upon the 18th day of June, 1906, was performed upon the body of Francesco Lepaglio, the deceased mentioned in the indictment; and that the shooting took place in the County of New York.

J O S E P H J. S H A R P, called and sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Sharp, you live at 300 First avenue? A Yes, sir.

Q And you are in the butcher business? A Yes, sir.

Q Are you employed by Mr. Benjamin Block at Grace and Lawton avenue? A Not at present, no, sir. I am employed at present by the Indianapolis Abattoir Company 48 and 50

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Tenth avenue.

Q On the 1st day of June, you were working for Benjamin Block, weren't you? A Yes, sir.

Q At Grace and Lawton avenues, Gansevoort Market near 12th street and Tenth avenue? A That is right.

Q Now, were you living at 300 First avenue then? A Yes, sir.

Q Do you know this defendant? A No, sir.

Q Did you know the man who was killed? A No, sir.

Q Didn't know any of them? A No, sir.

Q Do you know any of the men who are witnesses in this case? A No, sir.

Q Did you happen to be on Christie street? A Yes, sir.

Q On the 1st day of June? That was a Friday, wasn't it? A Yes.

Q What time did you go down to Christie street? A Well, I went down about eight o'clock. I had business at 123 Christie street.

Q Who was down there at 123 Christie street? A A friend of mine.

Q And you went down to make a call? A To make a call.

Q How long did you stay at your friend's house? A Well, I stayed there possibly for three quarters of an hour, and

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the party I went to see was not home. I left the house and from there I went to the Puritan Hotel.

Q Yes. A Which was on the corner--- I don't know---

Q Did you go to see any particular person at the Puritan Hotel? A Yes.

Q Whom did you go there to see? A The bartender there.

Q What is his name? A I call him Charlie; some call him Joe, and some call him Charlie.

Q Do you know what his last name is? A No, sir, I do not.

Q Did you talk to him? A Talked to him for 10 or 15 minutes.

Q Then what did you do? A Then I walked down to Christie street, thinking I would meet the party I failed to see earlier that evening; thinking I might see them coming towards home.

Q How far down Christie street did you get before something attracted your attention? A Just after crossing Stanton Street; just after passing the corner.

Q Tell us what you saw? A I saw two men exchanging blows.

Q Two men exchanging blows? A Yes.

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Q Well, where were these two men? A They were three or four doors above Stanton street, on the north side of Christie.

Q Were there any other people on the sidewalk? A There were three other men with them.

Q What were these other men doing? A They were separating them.

Q Attempting to separate them? A Attempting to; yes, sir; and they succeeded.

Q And did succeed? A And did succeed.

Q Now, who were the two men that were fighting? A Well, one man was the gentleman sitting there.

Q The defendant in this case? A Yes.

Q Brancato? A Yes; and the other fellow was the deceased.

Q The deceased. Now, turn and face the jury and speak loud. Now, you say that you saw these men exchanging blows? A Yes.

Q How near were you to them? A About ten feet.

Q Ten feet away from them? A Yes, sir.

Q Well, how many blows did you see struck? A Not more than two or three. They just merely exchanged swings. I couldn't say that they hit one another, but they swung at one another; hit and punched at one another.

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Q You saw them swing at each other? A Yes.

Q But you don't know whether they hit or not? A I couldn't say.

Q Then they were dragged apart; is that right? A Yes; that is right.

Q Well, now, when these other three men separated the two who were fighting, how did they do it? A Well, there was two of them taking the deceased, and holding him.

Q Yes. A And there was one man-- and the defendant walked the opposite way, and I suppose the distance between them before they stopped walking in opposite directions was 20 feet, and I still stood at the same place where I had stopped.

Q You stood looking on? A And that put me in between the two, and I thought there was going to be some fun. I thought, well, here, I will-- there is something doing here, I guess. So I stood there, and I heard the deceased break from the fellows that were holding him, and he went towards the defendant, and made a swing at the defendant to hit him, but the man that was standing with the defendant stepped in front of him and avoided him being hit. And about that time the deceased then made a kick at the defendant, but I don't think he kicked. The defendant then stepped off the pave-

ment, took a revolver from his right hand hip pocket and shot the deceased; and then he ran south on Christie street to Stanton street, on Stanton street to the Bowery, and up the Bowery somewhere in the center of the block in front of a restaurant there. And I held him on the pavement till the officer came and the officer took him back to the deceased. I followed him from the place of the shooting.

Q He ran all the way? A He ran all the way.

Q And you ran after him? A I ran after him.

Q And you caught him on the Bowery? A On the Bowery.

Q What did he do with the revolver? A I didn't see the revolver no more after I saw him shoot that man. I saw him put it in his pocket after doing the shooting, and running away. After he turned the corner he must have taken it out or something, but anyway I saw the revolver no more until it was shown in the station house.

Q Well, you saw him put it back into his own pocket?

A Into his own pocket.

Q Now, to go back to the shooting. In the first place, these two men were facing each other, and you saw them swing at each other once or twice? A Yes.

MR. KEIR: Two or three times, he said.

Q Two or three times. How many times? A Well, I can't

give you no better idea than that.

Q You don't know whether any of these blows landed?

A No, I don't.

Q Then three men intervened; two men grasped the deceased?

A Yes.

Q And one man the defendant? A Yes.

Q And then they walked apart? A Yes; that is right.

Q With their backs to each other? A That is right.

Q And you remained in the same position that you had been in originally, thus coming between them? A Yes, sir.

Q One went south and the other went north? A Yes.

Q Now, when they had gotten how far apart did anything happen? How far apart were they when the deceased turned around? A About twenty feet, I think.

Q Now, when the deceased turned around, what was the defendant doing? A The defendant had stopped. He had stopped, talking to this gentleman that was with him.

Q And was he standing still? A He was standing still.

Q And when the deceased turned around and walked back towards the defendant, did the defendant see him? A Yes, sir.

Q What did the defendant say? A He wanted to get at him, the same---

Q He wanted to get at him too? A Yes; he wanted to

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get at him too.

Q In other words, having been separated, they both wanted to come back to the attack; is that correct? A Yes, that is right.

Q Now, did the defendant take any steps towards the deceased? A No.

Q He waited? A He waited.

Q The deceased came towards him? A Yes.

Q Now, who was the man that stepped in between them?

A It was the man that was talking to the defendant.

Q Was he the man that had originally taken hold of the defendant? A Very true.

Q The man that helped to take the defendant away?

A Yes; that is right.

Q He stepped between them? A Yes; that is right.

Q Now, what did the deceased do when he approached the defendant? A Well, the same as a man would do if he wanted to go and hit him.

Q Sort of squared off? A That is right.

Q And the third party stepped in and prevented him?

A Yes, sir.

Q And when he stepped in between them, what did the deceased do? A Seeing that he couldn't hit him, he tried to kick him.

Q Well, did he sort of reach past the peacemaker? A That is right.

Q And strike at the defendant? A yes, that is very true.

Q And when he swung at the defendant with his feet, how far were all three of them from the curb? A They were just about able to stand on the edge of the pavement. They were all on the curb.

Q Now, when the deceased swung his feet at the defendant, past the peacemaker, as we will call him, the third man, how far were the deceased and the defendant apart? A Well, the distance of one man standing between the two.

Q Just as close as that? A Just as close as that.

Q And when he didn't land with his feet, or when he swung with his foot, whether he landed or not, then you say that the defendant took something from his pocket?

A Yes, sir.

Q Now, just tell us what the defendant did? A He stepped back-- he just stepped off the curb and pulled his revolver out and shot the deceased.

Q Yes. Now, when he stepped back, how many steps did he take? A Well, he stepped back and shot. I don't know just how many steps, no more than one or two.

Q Now, before he stepped back where was he then? A His

hands were by his side, as far as I can remember.

Q And when he stepped back, what did he do? A He put his right hand in his hip pocket and pulled out---

Q You saw him do that? A I saw him do that.

Q Put his right hand in his hip pocket. Did he have his coat open or closed? A I couldn't say.

Q And did he have any difficulty in pulling the gun out? A No, sir; he didn't appear to have.

Q Now, when he pulled the gun out, what did he do with the gun? A He just deliberately aimed at the man and shot him.

Q He aimed at him; did you see him raise his hand? A Saw him raise his hand.

Q And pull the trigger? A And pull the trigger.

Q And was there any space of time at all between the leveling of the gun and pulling the trigger? A No, sir.

Q Did he point the gun? A It was all done instantly.

Q Did he point the gun? A He pointed the gun.

Q At what part of the deceased's body did he point the gun? A Appeared to be at the head.

Q How close to the deceased was the gun when it was discharged? A Not more than three feet away.

Q Not more than three feet. And what happened to the deceased, when the defendant discharged the gun? A He just

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made one groan and fell over like a log.

Q He made a groan and fell over what? A Fell like a log.

Q Like a log; and what did the defendant do? A He ran towards Stanton street.

Q Did he stop to see what he had done? A Never stopping at all.

Q And where was it he put his gun back in his pocket?
A After he had shot the deceased.

Q Well, was that before he started to run? A While he was running, between where he shot him and Stanton street.

Q You saw him put the gun in his pocket? A I saw him put the gun in his pocket.

Q Now, what did the other people do, or the other two men, while this affair was going on? A I can't tell you.

Q You don't know? A After the shooting I remember nothing more.

Q You just followed the man who had fired the shot?
A Just followed him.

Q I don't suppose you could identify the revolver if you saw it? A No, sir.

Q Did you have any trouble with the defendant in reducing him to subjection and arresting him? A Not so much trouble with him as I did with the crowd. They didn't know what the

trouble was. Some people thought it was just him and I having a fist fight.

Q Well, you tackled this defendant? A Yes, I hit him.

Q Did you know whether or not he had a gun when you tackled him? A I imagined he had a gun when I tackled him.

Q And in spite of that you grabbed him and held him?

A Yes.

Q Will you kindly step down here a moment?

(The witness leaves the witness stand).

Q Now, will you kindly be the defendant, you take the part of the defendant, and Mr. Zinn will be the deceased, and I will be the third person who tried to step in between?

A You mean you want me to indicate the places they were standing?

Q Yes; arrange us any way you see fit? A Now, this gentleman (indicating Mr. Zinn) was standing in this position, just about like that (indicating). He kicked with his feet around the third party at the defendant, and the defendant stepped back and shot like this, over this man's shoulder (illustrating). That is the way it was all done.

Q Drawing the gun from his right hand hip pocket?

A From his right hand hip pocket.

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Q As the deceased made this kick that you tell about, he was kicking around this other man? A Yes, he was kicking around the other man.

Q And the defendant, from behind that third party, drew the revolver and shot past the third party's shoulder and shot the deceased? A Yes, sir.

THE FIRST JUROR: May I put a question?

THE COURT: Certainly.

BY THE FIRST JUROR:

Q Where did that bullet strike the deceased? A It was in the neck some place.

Q In the neck? A Somewheres around here, I think (indicating the upper part of the neck).

Q On the right or on the left side? A I just can't remember; there was a big crowd there.

BY THE COURT:

Q From your illustration, is it correct to say that this third person you speak of was between the defendant and the deceased when the defendant fired the shot at the deceased? A Yes, sir.

Q Could you say whether or not any person had hold of the defendant at the time he fired the shot? A No one had hold of him.

Q Was there any space outside of the space occupied by

the third party between the defendant and the deceased when he fired the shot-- any distance? A Well, he was--- not much of a distance, any more than they were standing on the pavement and the defendant was standing in the street. He had stepped off the curb.

CROSS EXAMINATION BY MR. KEIR:

Q Mr. Sharp, what you first saw was two men fighting?

A That is true; saw two men exchanging blows.

Q Well, they couldn't have been exchanging blows without fighting; that means fighting, doesn't it, punching at each other? A I can't say that they hit one another.

Q They were exchanging blows, striking at each other?

A I can't say. They were exchanging blows. I can't say if they hit one another or not. I was too-- I wasn't close enough to see.

Q Well, you saw them exchanging blows, and then two or three men came up and dragged the deceased away from the defendant; that is true? A They separated them; two took the deceased, and one took the defendant.

Q Two of them took the deceased away from the defendant?

A That is true.

Q They took him by force away from the defendant?

A No, not-- they took him, just the same as if two children.

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were fighting in the street, they would be separated by their mothers, and one was led away as hard as the other. One was as anxious to fight as the other.

Q Well, here were two men striking at each other?

A Yes, sir.

Q Do you mean to compare their fight with the fight of two children in the street? A Well, they were separated the same as two children would be.

Q They were not playing, were they? A I don't think so.

Q No; and then this man, when some other man interceded with him, I understood you to say a few minutes ago, walked about 20 feet away? A I said, when both of them had stopped walking, they were twenty feet apart.

Q But this defendant walked with another man, you said; walked some distance away? A Yes.

Q While the two other men were still holding the deceased? A And this man was still holding the defendant.

Q Well, two men were holding the deceased? A Yes.

Q Well, he didn't hold him in one place. You say they walked away. How did he hold him? A They had hold of him by the shoulders trying to pacify him. They were peacemakers. They were not forcing them. They were peacemakers.

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Q Well, you say two men were holding the deceased, and then he broke away, and went back to this defendant twenty feet; that is true, isn't it? A Then he went away from them and went back the twenty feet; that is true.

Q You said he broke away? A No, I didn't say he broke away.

Q Didn't you say he broke from the two when they were holding him? A He left them.

Q Well, they were trying to hold him? A I can't exactly say that they were trying to hold him. Two men could certainly hold one if they were trying hard.

Q Mr. Sharp, you said they were holding him? A Well, they had their hands on him.

Q Do you remember before the Coroner saying that he broke away from them and went after this man? A Well, all right.

Q Yes. A You can take it that way if you wish.

Q I want to take it as you saw it? A I am telling it just as I saw it.

Q Yes, I believe you are fair. Then when he reaches that man, that is, when the deceased reaches the defendant after going the twenty feet, the defendant steps back from him? A No.

Q What? A No, he didn't step back from him.

Q Well, didn't you say he stepped back one or two steps away from him when he came towards him, when the deceased came towards the defendant? A And the peacemaker stepped in between the two.

Q Pardon me. I am asking now about these two people, the defendant and the deceased. They are the only two people I am now interested in. When the deceased comes toward the defendant, the distance of twenty feet, and when he comes there, as you say, didn't you say that the defendant stepped back one or two steps? A Not immediately; no.

Q Well, did he eventually? A Yes, before he done the shooting he had stepped off of the pavement to shoot this gentleman the deceased.

Q Yes; and then the deceased made a lunge at him with his fist to try to strike him; that is true? A At the first meeting?

Q No; I mean after he comes the 20 feet to him?

A Sure.

Q Certainly; and then not reaching him with his fist he used his foot to kick him? A very true.

Q And he kicked him good and hard on the shins; you saw that? A No, sir.

Q Did you see the bleeding shins? A No, sir.

Q Scabbed shins; you didn't see them? A No, sir.

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Q And then the revolver was drawn and the shot was fired? A That is the time he stepped back that one or two feet that you were speaking of.

Q Well, you know they were near enough at that time for the deceased to have all the powder marks over his face, don't you? A I have no experience whatever with revolvers; I couldn't tell you whether they left a powder mark or not.

Q I don't mean; were they pretty near? A They were three feet, I should judge, three feet; not giving an accurate measure.

Q Did you know that powder marks were all over the deceased? A No.

Q It was very close, however? A Yes.

Q You did see the foot raised to kick him, of course?

A I see the foot raised to kick him.

Q How many times; did you see that? A Once.

Q Rather exciting about that moment, wasn't it? You had never seen anything like this before? A I saw nothing like that shooting before. I saw foots raised before, and people aim a kick at one another.

BY THE FOURTH JUROR:

Q When you caught the defendant, was there anything said? A (No answer).

BY MR. TRAIN:

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Q Did he say anything to you? A Who?

Q The defendant? A No.

Q Doesn't speak English, does he? A The first word I heard him speak was when he got to the station house. He said something, but I don't know what it was.

Q He is an Italian? A Yes, sir.

GIUSEPPE FRANGIPANE, called and sworn
as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

(Testimony taken through Interpreter Morossi,
except where otherwise noted).

Q Do you speak English? A (In English) Not very much.

Q Try and speak English and speak loud. Where do you live, Mr. Frangipane? A 235 Elizabeth street.

Q You have got to speak louder than that? A 235 Elizabeth street.

Q What is your business? A I work in the barber business.

Q And sometimes you work in the orchestra? A A musician

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too; yes, sir.

Q What instrument do you play? A A baritone bombardine.

Q Now, when you are a barber, where do you work? A On the Bowery.

Q What number? A 353 Bowery.

Q How long have you known this defendant here, Brancato?

A I know him since the country.

Q Since what? A Since he was a little boy, you know.

Q Knew him in Sicily, did you? A Yes, sir.

Q Were you a townsman of his? A Yes, sir.

Q What town do you come from? A From Gimima.

Q Near what other town is that, Palermo? A Palermo; yes, sir.

Q When did you come to this country, Mr. Frangipane?

A Well, 13 years ago. It will be 13 years next March.

Q 13 years? A Yes, sir.

Q How long has Brancato been in this country? A I don't know; I can't exactly say how long; somewhere about five or six years; I don't know; something like that.

Q Well, you knew him in Sicily? A Yes, sir.

Q And you continued your acquaintance here in New York, did you? A Yes, sir.

Q Did you see him often? A Yes, sir.

Q Now, did you know this man who was killed? A Lapaglio?

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Q Francesco Lapaglio? A Yes, sir.

Q Does he come from Sicily? A Yes, sir.

Q Did he come from the same town? A Yes, sir.

Q When did he come over? A I couldn't tell you that either.

Q You don't know exactly? A No, not exactly.

Q What was his business, do you know?

(Question repeated by interpreter).

A (Through interpreter) Well, he was working as a mason.

Q What was the defendant; what business was he in?

A (In English) Well, he is a barber too; sometimes he works on the barber business.

Q He is a painter too, isn't he? A Yes.

Q Now, on the 1st day of last June, that was a Friday, were you in ~~the~~ Bottomi's barber shop? A Yes, sir.

Q Where is that? A 353 Bowery.

Q That is your barber shop, where you work? A Where I work, yes.

Q What time did you quit work? A A little after nine.

Q How long after nine? A About five minutes; somewhere around there.

Q Where did you go after you quit work? A I go and meet my brother in Christie street, 211, in a saloon.

Q You went to 211 Christie street? A Yes.

Q Did you go into the saloon? A Yes.

Q Did you meet your brother? A Yes.

Q What is your brother's name? A Frank Frangipane.

Q Frank? A Yes.

Q And who keeps the saloon? A Some party by the name of Michaelle.

Q Michaelle? A Yes.

Q Now, your brother lives out in New Jersey, doesn't he? A Yes, sir; in Kingsland.

Q Is your brother a musician too? A Yes, sir; he is a leader.

Q He leads an orchestra? A Yes.

Q Now, do you belong to that orchestra, do you play the instrument that you have mentioned, the baritone, in his band? A Yes.

Q Now, were you going to meet a man named Giordani? A Yes, sir.

Q He was going to hire the band? A Yes, sir.

Q Now, when you came into Michaelle's, did you see the deceased, Francesco Lepaglio? A Yes, sir.

Q And whom was he talking with? A My brother.

Q Your own brother? A Yes, sir.

Q Did he play an instrument too? A Who?

Q Lepaglio? A No.

Q He did not? A No.

Q And the defendant did not? A Yes.

Q He didn't? A No, he didn't.

Q The accused, I mean. Now, while you were talking there-- A Who?

Q You and your brother and Lepaglio; did anyone else come into the saloon? A Yes.

Q Who came in? A When?

Q While you were talking, the three of you? A We was talking of something different-- you know about a point of business with the band; some business.

Q Well, you were talking about music, about the band?

A Yes.

Q Well, all right. Now, who came into the saloon?

A Giordano.

Q Who? A Giordano, the party that my brother was to meet there.

Q What is the name of the man that came in? A Well, I don't know that name; I guess it is only Giordano, I know.

Q Well, some man came in? A Yes.

Q Well, how long had you been talking in the saloon with your brother and this Lepaglio before this man came in? How long? A We was outside only; we no was inside in the

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saloon; we was on the sidewalk talking.

Q Oh, you were on the sidewalk? A Yes.

Q All of you? A Not--- when I see my brother, I meet my brother, and my brother was talking with Lepaglio outside that saloon, not inside the saloon.

Q Well, the two of them were talking outside the saloon?

A Yes, sir.

Q But you didn't go in the saloon at all? A Not that time; I go in the saloon after.

Q Now, how long did you and your brother and Lepaglio stand in front of the saloon and talk about music? A A couple of minutes.

Q And then another man came up? A Yes, sir.

Q What did this man do? A This man was a friend of mine; he is another musician, you know.

Q Yes. A He wants to find out if we can make an engagement or not.

Q Well, this other man was in the band and he wanted to know whether the band was going to play somewhere; is that the idea? A Yes.

Q Now, at that time, did you see the defendant anywhere, Brancato? A Yes, I saw him on the sidewalk.

Q Now, where was he? A Not far from where we were standing.

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Q How far? A About twenty feet or something like that.

Q Was he with anybody or was he alone? A Alone.

Q Alone? A Yes, sir.

Q Now, was he there all the time that you were talking in front of Michael's, or did you see him after this friend of yours came up and joined you? A I see him when a friend of mine came.

Q You saw him first when the friend came up?

A Yes.

Q Now, what was the next thing that happened? A What?

Q What happened?

(Question repeated by the Interpreter).

A (In English) The friend of mine told me that Brancato has a bad idea.

Q Was Brancato present when your friend said this?

A No.

Q He was there on the sidewalk? A Yes.

Q He was twenty feet off? A Yes.

Q So that he could not have heard what your friend said to you? A No.

MR. TRAIN: I consent that the answer of the witness as to what his friend when Brancato was not present in the sense that he could have heard it, be

stricken out.

Q Now, I do not ask that question. But what did you do when your friend said this thing to you? A Why, my friend told me that I go to Brancato.

Q And did you walk over to him? A Yes, I walked over to him.

Q What did you say to him? A I asked him what is the matter, you know, and he say Lepaglio was calling him a Canuto, was calling him bad names, and I say, "You have a bad idea", and I told him "It is better you go home and go to sleep."

Q Now, wait a moment. Is that all he told you, that Lepaglio called him a Canuto? A No. When I told him to go home, he said, "Tonight I want to shoot him", you see; and when I see that, I take him on my arm and I bring him to the corner, to the grocery store and I leave him there, and then I came back to meet my brother in the saloon.

Q Yes. Now, did you say anything to the defendant Brancato after he said that he wanted to shoot Lepaglio? Did you say he would better go home and go to bed? A That is right; yes.

Q What did you say about his going home and going to bed?

MR. KEIR: Pardon me. I think this is somewhat

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leading.

A Well, I leave him in front of the grocery store, and I said good night. "Good night", he said, and he said, "All right; I will go home just for you", he said. That is all.

Q Now, is that substantially your conversation with this defendant? A Yes, sir.

Q Now, how long was it after you had left him at the grocery store before anything attracted your attention?

A I just had time to take a glass of beer, you know. As soon as I was in the saloon, they ordered a glass of beer for me, and I had just taken the glass in my hands, and I heard a shot. That is all.

Q You no sooner had attempted to take a glass of beer in your hands than you heard a shot? A That is right; yes.

Q Were you in the house when you heard the shot?

A I was inside in the saloon.

Q What happened then? A I was inside in the saloon, and when I heard the shot I came out.

Q You ran out. What did you see? A And I saw Lepaglio lying on the floor.

Q On the floor? A On the sidewalk.

Q On the sidewalk? A yes.

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