

START

601

CASE

CASE # 601

PEOPLE vs. CALANDRA.

-: INDEX :

	Direct	Cross	Re-D.	Re-C.
Opening address for the People	4			
Timothy D. Lehane	18	25	31	
Charles H. Cocke	32	42		
Edwin St. John Ward	44	51	54-58	56
Walter H. Volckening	58	63	73	

CASE # 601

-: I N D E X :-

	Direct	Cross	Re-D.	Re-C.
Catherine Giglio	75	82		
Vita Giglio	91			
Carrie Filoramo	94			
Albert Bauer	100	105	113	
Michael Tarpey	115	135		
Michael Tarpey		150	162	168
William E. Erb	169	171		
John G. Stein	172	178		
Celia Manjanara	180			
Catherine Fitzell	181	187	188	188
Pietro Piastro	196	199		

CASE # 601

-: INDEX :-

	Direct	Cross	Re-D.	Re-C.
Joseph H. Moore	202	203	204	204
George L. Buckman	205	207	209	
John C. Berry	211	212		
Angelina Calandra	217	265	285	

CASE # 601

-: INDEX :-

	Direct	Cross	Re-D.	Re-C.
Angelina Calandra		299		
Giovanni Merenna	301			
Opening address for the Defense		327		
Bayard C. Fuller	337	339		
Edwin S. Johnson	340	341		
Biaggio Calandra	342	372		

CASE # 601

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

PART III.

-----X
THE PEOPLE,
VS.
BIAGGIO CALANDRA.
-----X

Before:

HON. WARREN W. FOSTER, J.,

and a Jury.

Tried, New York, October 15, etc., 1906.

Indicted for murder in the First Degree.

Indictment filed August 7th, 1906.

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

ASSISTANT DISTRICT ATTORNEYS JAMES R. FLY and
WALTER B. HOWE, for the People.

CHARLES E. LE BARBIER and WALLACE N. VREELAND, ESQS.,
for the Defense.

Frank S. Beard,

Official Stenographer.

CASE # 601

MR. ELY: Now, if your Honor please, before I begin my opening, I ask that all the witnesses be excluded from the court room, except those witnesses who have been examined, during the entire trial. As to those, witnesses who have been examined, I do not care whether they stay in or not.

THE COURT: Yes; this direction will continue, and be in force to the close of the case. After the witnesses have been examined, they may return to the room.

MR. LE BARBIER: May it please your Honor, character witnesses?

THE COURT: Oh, no; witnesses to the facts. Of course, your character witnesses will be limited in number?

MR. LE BARBIER: Oh, yes; we will observe the usual rule; within four or five. And there is another point, your Honor. Mr. Vreeland, as to a point after the occurrence, will be a witness.

THE COURT: Oh, I apprehend the rule will not apply to him. I do not know what he is going to testify to. He can intimate to the District Attorney.

CASE # 601

MR. ELY: Oh, no, no. I don't make any suggestion that he be excluded. He is of counsel in the case.

THE COURT: And, if any objection is made to his presence, I will hear the objection, and decide it.

MR. ELY: No; I make no such objection as to his being here.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock).

CASE # 601

4

AFTER RECESS.

OPENING ADDRESS FOR THE PEOPLE

of

ASSISTANT DISTRICT ATTORNEY JAMES R. ELY.

May it please your Honor:

Mr. Foreman and Gentlemen of the Jury,

As you are well aware, having sat here for some time, and having heard the questions propounded to you and the other talesmen, this is a case where the charge is murder in its First Degree, and it is a most serious case.

The Grand Jury of the County of New York have indicted the defendant, Biaggio Calandra, for the crime of murder in the first degree, in that, as is alleged, on the 20th of July, 1906, in the City and County of New York, at 309 East 90th street, this defendant, with premeditation and deliberation, and without justification, shot three shots, at one Joseph

CASE # 601

Ciofolo, his brother-in-law, and, of those three shots, two took effect, one penetrating the abdomen, entering just above the navel, and passing through the abdomen, and finally causing death through peritonitis, and the other entering the left thigh; and the said Ciofolo died, on the 27th day of July, 1906, in the Presbyterian Hospital, as the direct result of the shooting that occurred on the 20th day of July, 1906, at 309 East 90th street.

Now, Gentlemen of the Jury, before the People of the State of New York can ask for a conviction of murder in the first degree, they must prove three facts as facts, to your satisfaction and beyond a reasonable doubt.

The first one is: That Joseph Ciofolo, the deceased in this case is dead. That must be proved as a fact.

The second is: That Joseph Ciofolo, the deceased, came to his death at the hands of this defendant here.

The third is: That Joseph Ciofolo came to his death at the hands of this defendant, when the defendant was acting with premeditation and deliberation, and without justification; or, in other words, maliciously,

CASE # 601

wilfully and feloniously, those words being synonymous, in the law, with the words that I have just used, with deliberation and premeditation, and without justification.

But, gentlemen, when the People have proved these facts to your satisfaction and beyond a reasonable doubt, then you are bound, under your oaths, to bring in a verdict in accordance with your oaths, namely, a verdict of murder in the first degree.

Now, in cases of this description, the People are not bound to prove intent.

Motive and intent in cases where the crime charged is murder in the first degree, may be collected from the act itself. A man is presumed by law to be responsible for the natural results of his own act; and, therefore, if the natural results of the act of a person are such as would deprive another of his life, and this act is without justification, then the acts of the person who did deprive this other of his life would be one of the various degrees of homicide; and, if the act was premeditated, or deliberated, and was unjustified, then that act would be an act of murder in the first degree, it would fall within the

definition of murder in the first degree.

Now, Gentlemen of the Jury, all that is necessary in order to form premeditation and deliberation is that the act should be considered before it is actually carried out, and no appreciable time is necessary within which a person must conceive the design, before he carries it out.

It is sufficient if the design is conceived, before it is actually carried out. In other words, if there is any time for thought before the formation and the execution of the design, the human mind acts with such celerity that it is sometimes impossible to measure it; and all that is necessary, as I have said, is that the design should be formed before it is carried out, to establish murder in the first degree, if the killing is unjustifiable.

As far as any other motive is concerned, I shall not, at this time, mention any. It may be that a motive will be developed in the course of the trial.

The facts in this case are very simple. The defendant was a brother-in-law of the deceased, having married the sister of the deceased; and, on the 20th of July, 1906, as I have said, this defendant shot

CASE # 601

the deceased, from the result of which shooting the deceased died on the 27th day of July, of this year, at the Presbyterian Hospital.

Now, for some time prior to the 20th of July, 1906, this defendant had been engaged, at 282 Washington street, in the wholesale fruit business. The defendant does not belong to what is usually known as the criminal classes, nor did the deceased. They occupied a respectable position in the community, and as far as the People know, neither had ever been in any trouble with the law, or had ever been in any difficulties of any kind.

The wife of the defendant is, also, a respectable woman, and he had been married to her some nine and a half years, about, prior to the 20th of July, 1906.

There had been a little feeling, however, between the defendant and the deceased, for some little time, and this feeling apparently grew out of a disagreement between the defendant and his wife, the deceased's sister.

There was a bookkeeper in the employ of the defendant, by the name of Celia Memengara, and, on

0678

CASE # 601

or about the ~~4th~~^{7th} of July, 1905, the defendant and some of the employes of his concern, his fruit concern, went off on a picnic, and, during the picnic, the defendant was so attentive to his book-keeper, as to annoy or arouse the feelings of his wife.

There were words between them, and for some time matters did not go on very smoothly between the defendant's wife and himself, the defendant, on ~~his~~ occasions, absenting himself from his house.

But, eventually, it culminated, somewhere towards the latter end of June, 1906, by the defendant's wife going to see Celia Menengara's family, and making a complaint, the result of which was that Celia Menengara was no longer in the employ of the defendant; and, on the complaint of his wife being brought to his knowledge, he simply left, and withdrew from his house, and went to live elsewhere. For about three or four weeks before the 20th day of July, 1906, the defendant had been living separate from his wife.

During this period, the deceased, Ciofalo, and some other friends, were anxious to bring about a reconciliation; and, eventually, on the 15th of July,

CASE # 601

I think it was on Saturday evening, a meeting of reconciliation was arranged, the deceased bringing the defendant to the house where the defendant's wife and some relatives were, and a reconciliation was effected, the defendant having stipulated that his wife should shake hands with Celia Menengara, as a condition of reconciliation, and this occurred; and, from the 15th on, the reconciliation was apparently complete, and the defendant and his wife lived together.

On the night of the 20th of July, 1906, shortly before eight o'clock, the deceased went around to 309 East 90th street, the apartments of this defendant. They were on the fourth floor; they had an apartment on the fourth floor. 309 is one of those apartment houses, with a hall in the middle, and apartments on either side. They are called two flat apartments, and the defendant had an apartment, as I say, on the fourth floor, on the easterly side.

Shortly before eight o'clock on the night in question, namely, the 20th day of July, 1905, the deceased went to the apartments of the defendant, and he found the defendant and his wife and three friends there,

the friends being the Giglios. There was Mrs. Giglio and her daughter and her son, who had been having supper with the defendant.

When the deceased got in, there was some question about being allowed to remain so long at the business place, without notice that the defendant was not coming back. There was some discussion, as I say, between the deceased and the defendant on that subject; but it amounted to but little, and, about eight o'clock, the Giglios went away; and, shortly after eight o'clock, a few minutes after the departure of the Giglios, the deceased left the kitchen in which they had all been seated, and went out in the hall.

As the deceased went out into the hall, the defendant's wife said to him, "Why so much trouble about business?" Or words to that effect, and the defendant said, "Oh, well, it's because your brother is always drunk," or words to that effect.

And, when I make that statement, I do not attempt to quote the words exactly, but, if I do not quote them accurately, those were the words that were substantially used.

CASE # 601

And the defendant's wife replied, "Why, my brother wasn't drunk."

Just about that time there was a rap at the door, and the door was opened, and the deceased returned, and he said, "Do you mean to say I am drunk, you villian, you coward? He shook his finger at the defendant. He had nothing in his hands.

But, just prior to the time that the deceased had left, at or about the time that Joseph Ciofalo had left, the defendant had withdrawn from the kitchen into his bed room, and had partially undressed himself.

The defendant was in the habit of carrying a revolver, and the revolver which was used on this occasion, we will show, was the defendant 's revolver.

The defendant, as I say, had withdrawn from the kitchen, and gone into his bed room, and, at the time that Joseph Ciofalo returned to the kitchen, the defendant was in the bed room.

The deceased,, Joseph Ciofalo, did not, at any time, go into the bed room, but he approached toward the door, and stood at the door of the bed room; and, when he said, "Do you mean to say that I am drunk?" Or words to that effect, "you coward, you villian", he

shook his finger at him.

The defendant then immediately came out of the bed room, and there was a struggle between them; and, in the struggle, a window was broken, and then three shots rang out.

Immediately after the second or third shot had rung out, Mrs. Caofolo, the defendant's wife and the deceased's sister, looked at the deceased, and she saw that there was smoke coming from his garments, right in front of his stomach, and she said, "What's the matter?" to her brother, "you are burning", or words to that effect. "Is it a cigar?" And he said, "No, I am shot."

The deceased had taken away from the defendant a pistol which belonged to the defendant, and, with the pistol, he walked away out of the premises, and stood in the hallway.

He was found there, standing in the hallway, with his pistol in his hand, which had three discharged shells and two cartridges in it. He was found there standing in the hallway, with his pistol in his hand, by one by the name of Bauer, a young man who was attracted by the noise, and had rushed in

and found him there.

And Bauer took the pistol out of the hands of the deceased, and threw it down on the floor, and rushed out again, and called an officer.

As Bauer was running off, the deceased, who was standing, at that time, about three feet away from the head of the stairs, fell in the hallway, and did not rise again, I believe, until he was taken away on a stretcher by the ambulance surgeon.

He was taken away, then, to the Presbyterian Hospital, where he remained for a week, and eventually died from peritonitis, the direct result of the perforating wound which entered the abdomen, just above the navel.

Now, after the shooting, the defendant was found in his room, and he was partially dressed then.

When the officer went in to see him the defendant said that he had committed this deed; that he had shot two or three times; and that he had shot in self defense; and that is the only statement that he made, at that time.

He did not state how or in what way, manner or form he had been attacked. He simply stated

CASE # 601

that he had done the shooting in self defense.

The defendant, as you see, is a hump-back, and he has something the matter, I think it is with his left leg. It may be withered. Anyway, he drags it. He is a small man, and he does not look especially powerful, physically.

The deceased, however, was a man who was about five feet, nine. He was a man who weighed, perhaps, anywhere from 160 to 180 pounds; and he was a man, however, fifty-five years of age.

Now, as far as my witnesses that the People have, on the morning of the 21st of July, 1906, as well as on the night of the 20th of July, 1906, there was no mark of any kind on the defendant's person, indicative of any violence of any nature.

As matter of fact, the deceased, on the night in question, had two bullet wounds in his body; one entering the abdomen, just near the navel, and the other his left thigh.

As matter of fact, after the deceased was shot, as he was shot, in the rooms of this defendant, by this defendant, on the night in question, the deceased was found, having taken the defendant's revolver away,

CASE # 601

and there were still two chambers of the revolver which had not been exploded or discharged.

Of course, you will consider all these matters, when you do consider the question as to whether or not there was self defense in this case.

It will appear, however, that, after the night of the 20th of July, 1906, and after the defendant had simply informed the officer, that he had done this act in self defense, that he was arraigned in the Police Court; and, through his attorney, the defendant said then that he had done this in self defense, when the deceased bit him in the wrist; and that is, as I understand, the basis of the claim of self defense.

Now, gentlemen of the jury, when the People have shown that this man, without justification, without legal justification, and with premeditation and deliberation, committed this act, namely, shot these three shots, two of which took effect upon the body of the deceased, and one of which caused his death, as I say, without justification, and with premeditation and deliberation, for you can collect premeditation

CASE # 601

and deliberation from three shots; there is an interval between every one of three shots, and there must be a working of the finger, each time, in order to pull the trigger; when you consider this case on the evidence, and the evidence will all be put in; and the People do show you that this defendant did fire three shots at the deceased, on the night in question, from the direct results of which the deceased died, the People will ask for a verdict of murder in the first degree.

CASE # 601

THE PEOPLE'S TESTIMONY.

TIMOTHY D. LEHANE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Lehane, what is your business? A Physician and surgeon; coroner's physician.

Q And how long have you been admitted and licensed to practice as a physician and surgeon? A Since about 1892 or 3.

Q And how long have you been the physician to one of the coroner's? A Three years, next September.

Q And your official title is what? A Coroner's Physician for the City of and County of New York and Borough of Manhattan.

Q And then you were a coroner's physician on the 27th day of July, 1906? A I was.

Q And did you perform an autopsy upon the body of anybody, at the Presbyterian Hospital, on the 27th of July, 1906? A I did.

CASE # 601

Q Was it the cadaver of a male or female person?

A A male.

Q And do you know Officer Ziegler, of the 28th Precinct? A I do.

Q And did you see Officer Ziegler at the Presbyterian Hospital, on the afternoon of the 27th of July, 1906? A I did.

Q And where were you at the time you saw Officer Ziegler?

A In the Morgue of the Presbyterian Hospital.

Q Was there anything on a slab in the morgue of the Presbyterian Hospital? A Yes.

Q There was, when you saw Ziegler? A Yes, sir.

MR. ELY: Come up here to the rail, Ziegler.

BY MR. ELY:

Q Do you see that officer standing there (Indicating)?

A Yes, sir.

Q Do you know who he is? A Yes.

Q Who? A Officer Ziegler, of the 28th Precinct.

Q And the Officer Ziegler of whom you have just been speaking? A Yes, sir.

Q Now what was on the slab, if anything, in the morgue of the Presbyterian Hospital, on the afternoon of the 27th of July, 1906, when you saw Officer Ziegler, who just stood up, a

CASE # 601

moment ago, at the rail? A A male, by the name of --

Q No, no. A cadaver? A Yes.

Q The body of a male person? A Yes, sir.

Q And, before you saw Ziegler there, in the morgue, did you know who the body of this man was? A No, sir.

Q And, after you had seen Ziegler, did you know who the body of this man was? A Yes, I did.

Q And after you had seen Ziegler, what name did you call him by? A Joseph Ciofoli.

Q Now this Joseph Ciofolo was a man about how old?

A My notes, please.

Q Here they are? A A man in the neighborhood of 55 years; five foot, 7 inches in height; weight about 180 pounds; muscular, well built; grey hair and moustache.

Q Well, go ahead, just tell it all? A He was autopsed by me on the 27th of July, 1906, at four p.m.; and the results of the autopsy --

BY THE COURT:

Q On what day in July? A On the 27th day of July, 1906, at four p.m. The results of the said autopsy, and the cause of death, were peritonitis, as the result of a pistol shot wound in the abdomen.

BY MR. ELY:

Q Now, you examined the body carefully; did you?

CASE # 601

A Yes, I did.

Q And just tell the jury here how many pistol shot wounds you found on the body? A Two.

Q And please describe where those pistol shot wounds were located? A The pistol shot No. 1, was two inches above the umbilicus, in the median line.

Q Well, is the umbilicus what is colloquially known as the navel? A Yes, sir; and took a backwards and downwards course, and came out about three inches from the median line of the spinal column, right over to the posterior and superior spine of the ilium.

Pistol shot wound No. 2 was located on the upper and anterior surface of the left side, about four inches below the inguinal fold.

Q Where is that? What is that? A Right here (Indicating); about there. It went through the outer surface of the femur, coming out posterior to a point almost opposite to the point of entrance (Illustrating).

Q That is, it went right through the thigh? A Right through the thigh.

Q He was shot through and through, there? A Yes, sir.

Q Now, doctor, you have been talking about pistol shot No. 1 and pistol shot No. 2. Of course, you mean simply

CASE # 601

by that the pistol shots which you examined in their order?

A Yes, sir.

Q You don't know anything about which pistol shot was shot first? A No, sir.

Q Not having been there? A No, sir.

Q I simply call this to your attation, so that there will be no uncertainty about it? A Yes, sir.

Q Now this No. 1 and No. 2, with reference to the pistol shots, simply refers to the time of their examination by you; is that right? A Yes, sir.

Q That is, you examined the pistol shot which penetrated the abdomen, just above the umbilicus, as you say, first?

A Yes, sir.

Q And that's the reason why you call it pistol shot No. 1? A Yes, sir; No. 1.

Q Thank you. Now, doctor, did you find any bullet, when you performed this autopsy? A No, sir.

Q Did you receive any bullet from anybody which refers to this case? A I did.

Q Have you that bullet with you? A I have.

Q Will you kindly produce it? A I will.

Q Now, you produce an envelope, do you, which you hand to me? A Yes, sir.

CASE # 601

Q And which has certain writing on it? A I have.

Q And, on feeling this envelope, I feel some substance within it. Will you please feel it yourself? A Yes.

Q Now do you feel a substance within that envelope?

A Yes, sir.

Q And ~~you~~ have you ever felt the substance within the envelope before, before you just felt it there? A Yes. Well, it has been in my possession.

Q Now, please, please. Yes is the answer? A Yes, sir.

Q, Now will you be good enough to tell me from what source you acquired possession of that envelope? A The contents of the same --

Q (Question repeated). A From Doctor Cocke.

Q Now, doctor, are you able to tell me whether at the time you received that envelope from Dr. Cocke, the substance which you just stated you felt in the envelope, a moment ago, was in the envelope? A Yes, sir.

Q It was? A Yes, sir.

Q And I will ask you now, when you received that envelope, with the inclosed substance, from Dr. Cocke? A On the afternoon that I performed the autopsy.

Q Well, please say. That is the 27th day of July, 1906? A Yes, sir.

Q And where did you receive that? A In the office

CASE # 601

of the Presbyterian Hospital.

Q And it was in the Morgue of the Presbyterian Hospital, I believe, you stated that you performed this autopsy?

A Yes, sir.

Q And the Presbyterian Hospital and the morgue are in the City and County of New York; are they? A Yes, sir.

Q And in whose possession has that envelope been ever since you say you received it from Dr. Cocke, on the afternoon of the 27th of July, 1906? A In my own.

Q And you identify it; do you? A I do.

Q As the envelope and the -- was the envelope-- pardon me -- the envelope which you now hand me, I perceive, is sealed? A Yes, sir.

Q That is, glued together, stuck together? A Yes, sir.

Q I ask, at the time that you received this envelope from Dr. Cocke, it was sealed? A Yes, sir.

Q Was it sealed when you got it? A Yes, sir.

Q And then, as far as you are concerned, you have never seen the contents of this envelope? A I don't recollect. I might have seen him place the bullets in the envelope.

Q Well, now, I have never called it a bullet, and you mustn't. You won't be sure whether or not you saw him place the contents in the envelope, or not? A I can't say.

CASE # 601

Q, But you may have and may not have? A Yes, sir.

Q But, any way, when the envelope did come into your possession, it was sealed; is that right? A Yes, sir.

Q And it has remained in your possession, sealed as it is now, since; is that right? A Yes, sir.

MR. ELY: I offer this now only for Identification.

(It is marked People's Exhibit 1 for Identification.)

BY MR. ELY:

Q I believe you have told me the cause of death, but you may state it again? A Peritonitis, following a pistol shot wound of the abdomen.

Q And then the direct result of this pistol shot wound of the abdomen was the death of the deceased; is that right? A Yes, sir.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Tell me, doctor, what was the condition of the organs generally?

MR. ELY: Objected to. That is immaterial, incompetent and irrelevant.

THE COURT: He may answer.

A The heart was soft and flabby, otherwise normal. The

CASE # 601

lungs both had adhesions at the base and apices, and congestion. Kidneys presented evidence of diffused nephritis. The spleen was normal. Liver was fatty and stomach empty. The intestines, the small intestines were dilated, and contained considerable exudate of a fibrinous character. The brain was congested and wet.

Q And, if I understand you correctly, the liver was not normal? A Oh, counsellor --

Q The deliver was not in a normal condition? A No, sir.

Q Indicating disease of any kind? A Either alcoholic --

MR. ELY: I object. Wait, wait. I object on the ground it is wholly immaterial, irrelevant and incompetent, for the reason that, even if this man were shown to have died of these causes, it could not in any way affect the question in this case; because unless they could show affirmatively that he was treated with crass negligence, to such an extent that the doctors themselves would be liable for the death of the deceased, and subject to prosecution for a homicide, why it is no defense, and the law is well settled on that point.

THE COURT: The cause of death is, of course, germane to this inquiry. But it does not follow

CASE # 601

that, because the doctor has testified, that is necessarily the cause. The defense has a right to develop in cross-examination, if possible, another cause of death; and it being cross-examination, and preliminary in its nature, I will allow it.

BY MR. LE BARBIER:

Q (Question repeated). A Yes, sir.

Q What was that disease? A Either syphilis or alcoholism.

Q Which of the two, doctor, may I ask?

MR. ELY: Now, I object. The question is whether he has an opinion.

THE COURT: If he knows.

BY MR. LE BARBIER:

Q If you know? A Well, to the best of my opinion, from the condition of his brain, it was possibly due to alcoholism.

MR. ELY: I object to that, and ask to have it stricken out.

BY THE COURT:

Q Can't you answer beyond a reasonable doubt? A Not except from a pathological condition that the organs presented.

Q We don't want any possibilities. We want probabilities, with a reasonable certainty. A From a reasonable certainty,

CASE # 601

from the condition his brain and liver were in, he presented the condition of alcoholism.

BY MR. LE BARBIER:

Q, That is to say, from your pathological observation of the body, it showed alcoholism; didn't it? A The results of alcoholism.

Q I mean that, the results of alcoholism? A Yes, sir.

Q Do you know when it was, doctor, that this body was brought to the Presbyterian Hospital? A No, sir.

Q When you undertook to autopsy the body, did you observe beforehand the condition of the body? A I did.

Q Did the body show any signs of operation? A Yes, sir.

Q One or more? A One.

Q Do you know whether there was one or more operations on the body?

MR. ELY: Of your own knowledge, now.

A I am unable to answer.

BY MR. LE BARBIER:

Q From your observation of the body, I understand you to now state that you are unable to answer whether there had been one or more operations on the body, before you aut-

sied it? A Yes, sir.

Q Did you at any time see the defendant? A Not to my knowledge or recollection.

Q Before the autopsy? A No, sir.

Q Do you know, doctor, how long the body had been in the Presbyterian Hospital, before you autopsied it? A No, sir.

Q Did you at any time see the clothing of the deceased? A No, sir.

Q In your observation -- question withdrawn. To be brief, I understand you to say that there were these two bullet perforations in the body, one in front, near the umbilicus, and penetrating inwards, and downwards, and backwards, having its point of exit in the back of the body? A Yes, sir.

Q And in the other, the bullet had its point of entry on the femur, the upper anterior surface of the left leg, penetrating the outer surface of the femur, and extending backwards, and coming out in the rear of the leg, as I understood it? A Yes, sir.

Q Any marks, that you noticed, at all, around the wound? A No, sir.

MR. KLY: Well, I suppose you mean, Mr.

Le Barbier, this last wound? There are two wounds.

CASE # 601

MR. LE BARBIER: Well, I am proceeding by way of question and answer.

MR. ELY: Well, I object to that, and move to strike out the answer.

THE COURT: Yes. It would be more enlightening, Mr. Le Barbier, if you would specify the wound about which you asked.

BY MR. LE BARBIER:

Q Around either wound? A No, sir.

Q Having autopsied a number of bodies, in your experience as a coroner's physician, and physician, can you state whether or not, when you examined both of these wounds, the body was in such a condition that you could determine whether there had been any marks in and about the points of entry of each wound? A No, sir.

Q From the condition of the body, you couldn't determine? A No, sir.

Q Do I understand you correctly, when you speak of the condition of the body, do I understand you to speak of the condition of the body resulting from the operations on the body

A There was only one operation on the abdomen, an incision in the abdomen. There was no operation on the left leg at all.

Q And did you observe the wound on the left leg, so as to be able to determine whether there were any marks at all, at

the point of entry? A There were no marks at all.

Q There were no marks at all? A No, sir.

Q That is what I wanted to find out. Do you know whether or not that body had been bandaged from the operation on the wound in the umbilicus? A I believe it had a dressing

Q Did you see it? A I believe so.

BY THE COURT:

Q When you say you believe,-- A That is to the best of my knowledge, your Honor.

Q Do you mean to the best of your knowledge or the best of your recollection? A To the best of my knowledge and recollection.

BY MR. LE BARBIER:

Q Do you know how long that dressing had been on that wound? A No, sir.

Q Is there any indicia that we can go by, as to determining how long the dressing had been there on that wound?

A No, sir.

RE DIRECT EXAMINATION BY MR. ELY:

Q Now, Doctor Lehane, when you say that you didn't observe any marks at all about the wound there on the thigh -- it was the left thigh; wasn't it? A Yes, sir.

Q Wasn't there a bluish mark around the opening? A No,

CASE # 601

sir.

Q You didn't observe any, if there was? A No, sir.

Q Now, the question has been asked you as to whether or not this body upon which you performed an autopsy, of Joseph Ciofalo, was bandaged, and you said -- indicated that you saw some sort of a bandage, up and down the abdomen. You don't know whether it was bandaged or not; do you? A To the best of my recollection, there was a dressing on the abdominal wound.

Q And a dressing is different from a bandage; isn't it?

A A dressing might be a number of bandages.

Q And it might be simply a piece of gauze or lint, stuck on with this plaster? A Yes, sir.

Q And without any bandage around? A A bandage is ordinarily supposed to be, in common parlance, something that encircles? A Yes, sir.

Q And it might have been an ordinary piece of gauze, secured to the body by these adhesive plasters? A Yes, sir.

CHARLES H. COCKE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are a physician, duly licensed to practice?

CASE # 601

A According to the provisions of the Board of Health regarding hospital internes.

Q Yes. You are a hospital interne; are you? A Yes, sir.

Q And for how long a period have you been connected with the Presbyterian Hospital? A Since January 1, 1906.

Q And, prior to that, were you studying? A Well, not since the June previous, when I graduated at a Medical College.

Q You graduated in June, 1905? A Yes, sir; from the Medical College, and --

Q What did you do in the summer of 1905? A Well, I traveled in Europe.

Q Well, were you pursuing your medical studies? A No, sir; not actively; only reading.

Q Did you visit hospitals while you were abroad? A No, sir; not actively; only reading.

Q Now, on the 1st of January, 1906, you became an interne in the Presbyterian Hospital, in New York County? A Yes, sir.

Q And that is in East -- A East 70th street and Madison avenue.

Q East 70th street and Madison avenue? A Yes, sir.

CASE # 601

Q Now do you remember the night of the 20th of July, 1906? A Yes, sir.

Q And, on the night of the 20th of July, 1906, what were your duties? A I was house -- I was ambulance surgeon.

Q Yes. And at or shortly before eight o'clock in the evening of the 20th day of July, 1906, did you go personally on the ambulance anywhere? A I did.

Q And where did you go? A To a house number on 90th street, as well as I recall, 300 something.

Q 309 would you say? A Yes, I think that's it; as well as I recollect.

Q And you went there in pursuance of a call for an ambulance? A Yes, sir.

Q And you went there on the ambulance? A Yes, sir.

Q And what did you find there? A I found a man lying in the hallway, who was suffering from --

Q Now, in the hallway? That is, in the hallway of 309 East 90th street, to the best of your recollection? A Yes, sir; according to my best recollection.

Q Yes. Go on, please? A I found a man lying on his back or side, I don't recall which, with some blood oozing from his left leg, and some marks of burns upon the clothing, on front of his abdomen. The man was unable to give me his

CASE # 601

name, and he was in a condition of shock.

Q Now wait a minute. You can say whether he was conscious or unconscious, but don't say that he was unable to give his name. It means the same thing, but one is proper and the other is improper. Go on? A Well, he --

Q Was he conscious? A Well, he wasn't -- he wasn't exactly -- I wouldn't describe it as being conscious or unconscious. That is, he could be roused.

Q Well, in other words, you didn't say anything to him? A I held no conversation with him whatever.

Q No, is the answer, then. You didn't say anything to him? A No.

Q And he didn't say anything to you? A No.

Q Now what did you find, when you looked at him?

MR. LE BARBIER: Now, pardon me. Your Honor, I respectfully move to strike out the words "he didn't say anything to me", as incompetent.

THE COURT: No; I do not see any harm in that. They may stand.

MR. LE BARBIER: Exception.

BY MR. FLY:

Q Now go ahead? A I found the man bleeding to a small

CASE # 601

extent from a wound on the left thigh. Also, there were evidences of a wound in his abdomen; and the man having no perceptible pulse, was given stimulants.

MR. LE BARBIER: I object.

BY MR. ELY:

Q I didn't ask you that. I am just asking you what you found. Now where was the point of entrance in the wound in the abdomen, as well as you recollect? A In the neighborhood of the navel.

Q It was about an inch below the navel? A As well as I recall. I couldn't state definitely.

Q Well, you testified to this in the coroner's court, didn't you? A Yes.

Q And your memory was fresher then, about the subject, naturally, on the 6th of August, 1906, than it is to-day, in October? A Yes, sir.

Q Now, did you find anything doctor in the -- I withdraw that. You say that you saw a wound in the region of the navel. Now did you find anything on his back? A Not at that time.

Q Well, at any time? A After bringing him to the hospital.

Q Yes or no, please. At any time? A Yes.

Q And when was it, when did you find it? A After I

CASE # 601

brought him to the emergency ward of the hospital.

Q Yes. And when you brought this person to the emergency ward of the hospital, what did you do with him? A I put him upon a bed, and pulled his clothes back for examination of his wounds.

Q Yes? A And, in turning him over on his side, I discovered a wound behind. And shall I go on and tell what I found?

Q Certainly, please? A And there, lying between his skin and the undershirt, was a bullet.

Q Now, I show you People's Exhibit 1 for Identification. And please take that -- don't open it or do anything other than just what I ask you -- please take that envelope, and tell me whether you ever saw that envelope before? A To the best of my knowledge and recollection, I have.

Q And do you know whose handwriting that is on it?

A Yes.

Q Whose is it? A Mine.

Q And then you are sure of your own handwriting, at least aren't you? A Well, yes.

Q Well, then, you say that you received that envelope positively, if you recognize your own handwriting on it? A Yes

Q I ask you if you know Dr. Lehane? A I do.

CASE # 601

Q Did you see him here, on the witness stand? A I did.

Q And did you ever see Lehane before to-day? A Yes.

Q Did you see Dr. Lehane in the Presbyterian Hospital, at or after or between the dates of the 20th and 27th of July, 1906? A Included?

Q (Question repeated). A I did.

Q And, at any time that you saw Dr. Lehane, did you have an envelope, marked People's Exhibit No. 1 for Identification, in your possession? A I did.

Q Now, doctor, you have spoken of having found a bullet between the skin and the undershirt of this person, whom you took from 309 East 90th street; haven't you? A I have.

Q And what, if anything, did you do with that bullet? A I put it upon my dresser, and --

Q Well, eventually -- I don't care whether you put it in your pocket, and took it out and looked at it again -- what did you do with it? A Well I gave it, eventually, to Dr. Lehane.

Q Well, at the time when you gave it to Dr. Lehane, did you enclose it in anything? A In an envelope.

Q And do you see the envelope in which you enclosed it, at the time you gave it to Dr. Lehane? A Yes, sir.

Q Well, where is it? A Here it is.

Q And what did you do with the envelope before you gave it to Dr. Lehane? A Sealed it.

Q And is that the envelope in which you put the bullet which you found upon the body of the deceased, the person that you brought from the house 309 East 90th street, on the night of July 20, 1906? A Yes.

Q And the contents are the bullet which you put into that envelope, before you sealed it and gave it to Dr. Lehane? A Yes, sir.

Q And that is the identical bullet? A Yes, sir.

MR. ELY: Now I offer this bullet in evidence, if your Honor please.

(It is admitted without objection, and marked People's Exhibit 1.)

BY MR. ELY:

Q Now did you undress ~~the~~ the deceased, the body of the deceased? A Yes, sir.

Q Now, did you make any mark on the garments of the deceased that would enable you to identify them? A No.

Q Then I won't ask you about the clothing, if you say you can't identify it. Now there were how many wounds in all; how many did you see on the body? A One in front, about

CASE # 601

the navel, another behind; one in front of the thigh, and another behind.

Q And did you take,-- did you personally perform any operation on the deceased? A No.

Q Who did, if you know? A I don't know which one of the attending surgeons was on duty.

Q Well, when you got the deceased at the hospital, on the evening in question, after undressing him, and finding the bullet, what was done next, as far as you personally know? A After I discovered that--

Q Now, please. I don't care what you discovered. You have described all that. A I reported the man, as soon as I got in there, to the House Surgeon, to whom he would go.

Q Well, did you hand him over to somebody? I don't care what you reported. A I brought him in to the emergency ward.

Q Yes. You left him there? A After I examined him, and found that he had this wound.

Q Well, you have told us about your examination. And then you left him there? A Yes; I left him.

Q Did you see him again that night? A I don't know.

Q Did you recollect? Who attended him, after you had put him into the emergency ward? A The House Surgeon, Dr. Ward.

CASE # 601

Q Dr. Ward attended him? A Yes, sir.

Q And was he Dr. Ward's patient from that time on?

A Yes.

Q Until he died; is that right? A Yes, sir.

Q And now, didn't you attend any operation that was performed on the person of this man, whom you brought from 309 East 90th street, on the night of the 20th of July? A No.

Q Now, just look at this paper, and that signature (indicating). Do you recognize either signature there? A Yes

Q And whose signature, if any, do you recognize there?

A My own.

Q Now, looking at that paper, to which your signature is appended, does that in any way refresh your recollection as to whether or not you attended at any operation that was performed? A I know that I didn't.

Q You know that you didn't? A Yes.

Q Is Dr. Ward here? A Yes, sir.

Q Now do you know what the name of this person whom you brought from 309 East 90th street around to the hospital, on the night in question, that is, the 20th of July, 1906, is?

A Yes, sir.

Q What is? A Joseph Ciofalo.

Q Now, you have told us practically all that you know of

CASE # 601

your own knowledge of the case? A I have.

Q And do you know of your own knowledge what became of Joseph Ciofelo, as you call him? A No.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Dr. Cooke, how long was Joseph Ciofelo in the hospital?

A Don't know.

Q What time in the evening was it that he was brought to the hospital? A About 8:45.

Q Was he conscious at that time? A Its the same question. I described a condition of semi-consciousness, that is, he could be roused to move, but I didn't have any conversation with him.

Q Well, you were a witness at the Coroner's inquest, weren't you, doctor? A Yes, sir.

Q Do you remember this question and answer: "Q What time of day was it? A About 8:45 at night. Q At that time what was he suffering from? A Suffering from shock. Was conscious?"

MR. ELY: Read the rest of the answer, now. I object, unless the whole answer is read. The whole answer must go in.

THE COURT: Has the whole answer to the question been read to the witness?

CASE # 601

MR. ELY: No, sir; that is what I am objecting to.

THE COURT: Well, I think it should be.

MR. LE BARBIER: May it please your Honor, the answer relates to the wound. I have no objection to reading the whole answer.

THE COURT: Well, I do not know how you can expect a witness to remember, if the answer is not brought to his attention.

MR. LE BARBIER: Very well, I have no objection to read it.

THE COURT: Very well.

MR. LE BARBIER: On the contrary.

BY MR. LE BARBIER:

Q "Q At that time, what was he suffering from? A Suffering from shock; was conscious. A penetrating wound of the abdomen; and there was a wound also behind the back, and one in the thigh, penetrating wound." Did you make that answer? A To the best of my knowledge.

Q Well, at the time that you made it, then, was it a correct answer, doctor? A To the best of my knowledge.

Q Was it a correct answer?

THE COURT: He says, "to the best of my knowledge

CASE # 601

it was, I say."

MR. ELY: Objected to.

MR. LE BARBIER: I don't think he answered it as pointedly as your Honor puts it.

BY THE COURT:

Q Can you answer that question in any other way? A No, sir.

EDWIN ST. JOHN WARD, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Ward, what is your business or occupation?

A Physician and surgeon.

Q And are you duly admitted and licensed to practice under the laws of the State of New York, or are you licensed to practice because of being an interne in a hospital?

A I am under both.

Q Both? A Yes, sir.

Q And when were you admitted and licensed to practice, under the Laws of the State of New York; how long ago? A I received my license in August, 1904, and registered it in January, 1905.

CASE # 601

Q Are you connected with any hospital, at present?

A With the presbyterian Hospital, in this city.

Q And how long have you been connected with the Presbyterian Hospital? A Since January 1, 1905.

Q Now, do you remember the night of the 20th day of July, 1906? A I do.

Q Do you know the gentleman who has just preceded you on the stand, Dr. Cocke? A I do.

Q And did you know Dr. Cocke on the date that I have just mentioned, the 20th day of July, 1906? A Yes, sir.

Q And was he connected with the Presbyterian Hospital, on that day? A He was.

Q And what was his assignment, what were his duties, among others? A On that evening, he was on the ambulance duty.

Q And did you see him about 8:45, or shortly thereafter, in the evening of that day? A I did.

Q And where did you see him? A I can't say; it was either in the accident ward or the operating room.

Q Yes. And, at the time you saw Dr. Cocke, on the evening of the 20th of July, 1906, did he have any patient?

A He did.

Q What was it? A male or female? A A male.

Q And what, if anything, did Dr. Cocke do with this

CASE # 601

patient? A Dr. Cocke brought the patient in, examined him, and reported him to me.

Q And when you say, "He reported him to me," does that practically mean that he turned him over to your care? A He did.

Q And you took the patient, and put him in the emergency ward, did you? A He was there.

Q Oh, he was there? A He was there; yes.

Q And what, if anything, did you do with respect to this patient? A On looking at the case, and hearing the report, I ordered him prepared for operation at once.

Q And do you know what the name of this patient, who was turned over to you by Dr. Cocke, on the evening of this 20th day of July, 1906, was? A I was told it was Joseph Ciofolo.

Q Joseph Ciofolo? A I am not sure of the spelling. It was given to me as Ciofolo.

Q And, after the patient was turned over to you, and you had heard the history of the case, and had ordered preparations made for the operations, do you know who performed the operation? A, It was done by Dr. George Woolsey, attending physician, of the Second Surgical Division, together with the staff of the division.

Q And did that staff include you? A Yes, sir.

0717

CASE # 601

Q And were you present at the operation? A I was.

Q Just think what was done, and what you saw? A At the operation?

Q State first what you observed about the body or on the person of this Joseph Ciofolo. He was not dead then; was he? A No.

Q State what you saw from an examination of the person of Joseph Ciofolo; and state then what was done, if anything, connected with an operation? A My examinations were cursory when I was told that a bullet had penetrated the abdomen.

MR. LE BARBIER: Well not what you were told.

BY MR. ELY:

Q Well, I don't care whether it was cursory, or the most minute or microscopic. I want to know what you did?

A I examined merely the anterior surface of the abdomen.

Q And, when you examined the anterior surface of the abdomen, what did you observe? A I observed, first, of all, an area of burn of the skin.

Q You observed an area of burn of the skin? A Yes.

Q Please indicate or describe where you found on the abdomen this area of burn on the skin was? A It was in what is called the epigastrium, or pit of the stomach, between the navel and the ribs.

CASE # 601

Q Now, please indicate on your own body? A Here (Indicating).

Q Touching the second button of your coat? A Yes, sir.

Q And that is just about the pit of the stomach? A Yes just about the pit of the stomach.

Q And about how much of an area was there, where you noticed a burn? A, It was nearly half the size of my palm, of my hand.

Q Well was it an inch and a half by an inch and a half, would you say? A About that.

Q And what was this area of burn around? A hole?
A There was a hole there, a penetrating wound.

Q I beg pardon? A There was a hole there, a penetrating wound.

Q And was this hole in about the middle of this area of burn? A It was a little more to the right.

Q And did you examine that penetrating wound then, or was it examined in your presence, so that you knew anything about it? A It was not, any more than by inspection.

Q Yes. And you inspected it; did you? A I did.

Q And was the body dressed or undressed at that time?
A It was undressed, when I saw it.

Q That is, the clothing was removed? Was it entirely

CASE # 601

removed, if you recollect? A It was.

Q Or just from the hips up? A That I couldn't say.

Q Well, but you know that it was, from the hips up?

A It may not have been from the shoulders, but it was from the entire abdomen.

Q It may not have been from the shoulders, but it was from the entire abdomen? A Yes, sir.

Q Thank you. Now what happened after you had made this inspection of this hole, this penetrating wound, situated within the surface of this area of burn; what happened after that?

A The body was prepared for operation, and I saw it next in the operating room, when it was finally scrubbed up for the operation, at the time of the operation, when the incision was made.

Q An incision was made, you mean? A Yes; an incision was made, to the right of the penetrating wound, because the penetrating wound --

Q Now, never mind about the cause. A The penetrating wound was probed, and seemed to lead downwards and to the right.

On opening the abdomen, there were some escape of contents abnormal to the peritoneal cavity. The intestines and their viscera were examined. Various penetrations were found, both of the omentum, the mesentery and the intestines. The bullet seemed to penetrate into the posterior wall of the

CASE # 601

peritoneal cavity, nearest the spinal column, to the right, just above the crease of the ilium.

There was found a little nick in the large intestine, and three distinct perforations of the small intestine, close together, involving a piece of gut perhaps four to six inches long.

Q Now, were there any bullet holes on the back? A I didn't see it, at the time.

Q You were looking for it? A I didn't look for it. I was told that there was one, and let it go at that.

MR. LE BARBIER: I respectfully move that this be stricken out, from this witness, uncorroborated.

THE COURT: What was it?

MR. FLY: "I was told that there was one. I didn't see it myself."

THE COURT: Yes, certainly. Strike it out.

BY MR. FLY:

Q This operation was performed on the 20th day of July, 1906, at the Presbyterian Hospital? A It was.

Q And, after that, do you know whether any further operation was performed? A There was.

Q And when was that, doctor? A On the morning of July 27th.

Q And what became of Joseph Ciofalo, if you know?

A He died, after the second operation.

Q On what date? A On July 27th.

Q 1906? A Yes, sir.

Q Where? A In the Presbyterian Hospital.

Q In New York County? A New York County.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Was the result of the second operation his death?

MR. KLY: Objected to.

THE COURT: Allowed, if he knows, from the doctor's personal knowledge.

A I believe it was, at least in part.

BY MR. LE BARBIER:

Q How long had this man been at the hospital? A He had been there seven days, counting the full 24 hours.

Q Do you recall the time that he arrived there, the first time? A I do.

Q How long after his arrived was the first operation performed? A Between one and two hours; possibly shorter.

Q Possibly shorter? A Yes, sir.

Q No other operation was performed then, if I understand you correctly, until seven days afterwards? A Not on that man.

CASE # 601

Q Did you see the defendant at the hospital there at any time? A Not to my knowledge.

Q Were you the doctor who sent the certificates to the Police Magistrate? A What certificates?

MR. ELY: Oh, I object to that. That is assuming something that isn't in evidence, if your Honor please.

THE COURT: Don't answer. I exclude it.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q In this case, do you know whether or not any certificates were sent, signed by a physician of the Presbyterian Hospital, to the Police Magistrate, before whom this case originally came?

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

THE COURT: It is preliminary. He may answer.

A I filled out some certificates, which --

BY MR. LE BARBIER:

Q No. Yes or no. Do you know.

BY THE COURT:

Q Do you know whether any certificates were sent to the

CASE # 601

Police Magistrate? A They were sent somewhere, but I don't know where.

BY MR. LE BARBIER:

Q Who filled out those certificates? A I did.

Q Isn't it a fact that you stated--

MR. ELY: Oh, no. I object to any statement.

THE COURT: Don't answer this question.

MR. ELY: I object to the counsel making any statement about the contents of any paper, if your Honor please, because he knows it is improper, and it hasn't been shown that the paper could not be produced.

THE COURT: I shall sustain the objection. The contents of written instruments cannot be brought to the attention of the jury in the form of a question, at this time.

MR. LE BARBIER: I haven't asked, your Honor, for the contents of a paper.

THE COURT: Well, proceed, please.

BY MR. LE BARBIER:

Q Didn't you state, as a fact, that the patient, was recovering?

MR. ELY: I object to that.

CASE # 601

THE COURT: When and where?

BY MR. LE BARBIER:

Q And after the first operation, and within the next two or three days thereafter?

MR. ELY: I object to that, if your Honor please, as incompetent, immaterial and irrelevant. We know frequently that doctors have said, "an eminently satisfactory and successful operation", and the patient is dead.

THE COURT: Allowed.

A I said,,after the first operation, to several people that the patient was improving.

BY MR. LE BARBIER:

Q Will you kindly state to the Court and jury, doctor, what was the cause of the second operation? A On the night before his death, the patient coughed, and burst open his wound. The resuturing of the wound, to keep the intestinal contents of the abdomen, was the cause of the second operation.

Q And then, if I understand you correctly, as a result of the second, the death of the patient was in part due? A I believe it was, at least, in part.

RE DIRECT EXAMINATION BY MR. ELY:

Q Now, doctor, the patient died of peritonitis; didn't he?

CASE # 601

A I believe that was one factor.

Q And this wound was the result of a gun shot or pistol shot in the abdomen here (Indicating)? A Yes, I believe it was; so I was told, I didn't see the pistol.

Q Well never mind. You saw the wound. And you saw burning around it, and you diagnosed that as a, pistol shot wound? A It looked like a pistol shot.

Q You diagnosed as a pistol shot wound; didn't you?

A I did.

Q Now, if you don't understand my question, and if it is so unscientific that you can't answer it, just say so. But, if you can answer it, just please do. And, on account of the pistol shot wound, a certain operation was performed? A It wasn't because of the pistol shot wound that a second operation was performed.

Q No. I didn't say a second operation but a certain operation was performed? A Yes.

Q And that was rendered necessary by the pistol shot wound? A Yes, it was.

Q And you would not have performed that operation, if there had not been a pistol shot wound in the region of the navel; would you? A No, sir.

Q And eventually, after the wound had been sutured up,

0723

CASE # 601

the wound broke out afresh? A It did.

Q And the wound wouldn't have been there, if it hadn't been for this pistol shot wound; would it? A No, sir.

Q And, after the wound had broken out afresh, the peritonitis set in, and this deceased died; didn't he?

A Yes.

Q And then the death was the result of the pistol shot wound; wasn't it? A At least in part; yes.

RE CROSS EXAMINATION BY MR. LE BARBIER:

Q Was the pistol shot wound the sole inducing cause of death?

MR. ELY: Objected to.

THE COURT: It is already answered, I think, but he may answer it again.

A The pistol shot wound was, at least, in part, the cause of his death.

Q What was this area of burn, that you speak of? A It was a superficial burn, involving just the superficial layers, of the skin, in the region of the epigastrium.

Q Well what kind of a burn was it? A It looked as though it had been made by powder.

Q Did you recognize any distinct and positive signs of powder? A No, sir.

CASE # 601

Q Did you smell any powder? A I didn't try to, but I diagnosed it as a powder burn from the history of the case, and the general appearance.

Q Were there little pointed marks, like points? A I can't say now.

Q Well, I want to see if you can, doctor? A I cannot.

Q Now, taking your mind back to the time, and it isn't so very far back, when this patient was exposed for operation, and you having stated that there was an area of burn, characterized, as you say, as a powder burn, if I understood you correctly, are you able to state whether or not there were powder marks on this area of burn?

MR. ELY: I object to that. He has already answered that question.

THE COURT: I sustain the objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Was this burn very pronounced?

MR. ELY: Why, I object to that. That is speculative entirely. He can describe it.

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

MR. LE BARBIER: Exception.

0725

CASE # 601

BY MR. LE BARBIER:

Q Describe, if you will, kindly, Mr. Witness, the character of this burn?

MR. ELY: Well, I object. He has already described the character, and now it is the appearance, if anything. He says it was a powder shot burn.

THE COURT: Objection overruled. You may answer

A It was a small raw area, evidently with destruction of the superficial layers of the skin; and it was, in general outline and general appearance, a wound such as comes from powder burning on the skin.

Q Did you observe the color of this area of burn?

A Not excepting that it was the raw color, the raw surface.

RE DIRECT EXAMINATION BY MR. ELY:

Q Now, doctor, when you saw raw, you mean reddish?

A Reddish, yes.

WALTER H. VOLCKENING, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Now, Mr. Volckening, what is your business? A I am

0726

CASE # 601

an architect.

Q And for how long a period of time have you been an architect? A For twelve years.

Q And you were an architect on the 20th day of July, 1906? A I was.

Q Did you, at the request of the District Attorney, go to the premises 309 East 90th street, in the City and County of New York, on or about the 28th day of July, 1906? A I did.

Q Did you go into premises 309 East 90th street? A I did.

Q Did you make a drawing of any part of the premises 309 East 90th street? A I did.

Q On or about the date mentioned? A I did.

Q And what part of the premises did you make a diagram or drawing of? A I made a drawing of the living room, bath room and a part of the bed room, of the rear part of the top flat, east side.

Q Do you remember what floor it was on? A I think it was the third floor; I am not sure.

Q Well, now, wait a minute. I show you this paper and ask you if you ever saw it before. Take it in your hand and look at it? A Yes.

Q And now I ask you if you know what that purports to

CASE # 601

represent? A That represents --

Q Now, yes or no? A Yes.

Q And I ask you if you know who draw or made those lines on that paper, who made that drawing? A I did.

Q And I ask you now what that drawing purports to represent? Look at the bottom of that, and read it? A Diagram of fourth floor, in part, 309 East 90th, County, City and State of New York.

Q And is that the diagram that you made on the 20th day of July, 1906? A Yes.

Q Is that a correct diagram? A Yes.

Q And on what scale is it? A One-half inch to the foot.

MR. ELY: I offer it in evidence.

MR. LE BARBIER: If your Honor please, I would like to ask a question, before the diagram is admitted.

BY MR. LE BARBIER:

Q Does this show the condition of the apartment, on the night of the 20th of July, 1906?

MR. ELY: I object. And it isn't offered for that purpose, at all. It is simply offered for the purpose of giving the jury some basis on which to form an opinion as to the premises in question.

CASE # 601

tion. But the physical condition of the premises, on any special occasion, or as on the night of the 20th, it does not represent, and it is not claimed that it does represent it.

MR. LE BARBIER: Now, one question more.

BY MR. LE BARBIER:

Q What was the measurement? I didn't hear you? A A half inch to the foot. It is marked at the foot of the drawing.

MR. LE BARBIER: If your Honor please, counsel for the defense objects to the diagram, unless there be eliminated chairs, tables, sofa and sewing machine, and other movable fixtures and furniture in the bath room, and living room, and bed room.

THE COURT: I can only instruct the jury to disregard them.

MR. ELY: As regards that, if your Honor please I am perfectly willing that, at the time, it should be -- the jury should be instructed to disregard every bit of the furniture that was found in there.

THE COURT: Everything movable, as shown on the diagram?

MR. ELY: Yes, sir. And that such instruction last until such time as they are proved to be in

CASE # 601

these places on the evening in question.

MR. LE BARBIER: And, subject to that, we have no objection.

THE COURT: Very good.

MR. LE BARBIER: I would like to ask another question.

BY MR. LE BARBIER:

Q The exit, leading from the living room to the hall, was that a wooden door? A It was a wooden door.

Q Was there any glass partition there? A In the hallway?

Q Yes? A No, sir. That was a solid, four panel door.

Q That was a solid, four panel door? A Yes, sir.

MR. ELY: Well, I object. These are not proper questions, as to the admissibility of this diagram.

THE WITNESS: The living room, you are speaking of, I suppose?

THE COURT: There is nothing before me now. That has been answered.

MR. LE BARBIER: If your Honor please, we don't want to worry the learned Assistant District At-

CASE # 601

torney.

MR. ELY: Oh, you don't worry me, at all.

THE COURT: Have you any further question to ask as to the diagram?

MR. LE BARBIER: Just one more.

BY MR. LE BARBIER:

Q What was the character of the partition from the door going into the living room, extending down the hall?

MR. ELY: I object to this, at this time.

THE COURT: I will sustain the objection at this time. That does not go to the admissibility of the alleged diagram.

MR. LE BARBIER: Very well. We will get at it later.

THE COURT: It is proper cross-examination, of course, at the proper time. Is there any objection, Mr. Le Barbier?

MR. LE BARBIER: No, sir; subject to the exclusion of the movables at this time.

THE COURT: Yes. Gentlemen of the Jury, the location of movable articles is to be disregarded by you, until further notice.

(It is admitted as People's Exhibit 2.)

CASE # 601

BY MR. ELY:

Q Now, Mr. Volckening, I call your attention to People's Exhibit 2. I notice that there are various words on spaces on this diagram, which spaces are colored yellow; and I notice that there are various words on certain other space on this diagram, which spaces are colored pink. You notice that yourself; don't you? A Yes, I do.

Q Now, will you tell me the reason for making some yellow and other pink? Can you tell me that? Yes or no? A Yes.

Q Now what's the reason? A The reason is that the spaces colored yellow indicate movable articles, such as chairs or tables; and the parts colored pink, with names on them, are part of the fixtures of the apartment, like a range or tub or toilet, anything of the kind.

Q Such as, for instance, "W. C."? A Yes; that stands for the toilet.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Were these articles which you have marked yellow and characterized as movable articles, in that apartment on the 20th day of July, 1906.

MR. ELY: Oh, I object to that. We don't claim it at all, as far as this witness is concerned.

THE COURT: "He may answer.

A Well, the articles that I have marked yellow --
BY MR. LE BARBIER:

Q Now answer yes or no, please? A Yes; on the day that I had made my measurements --
BY THE COURT:

Q What day was that? A The 29th, I think.

CASE # 601

MR. ELY: No; it was the 28th.

THE WITNESS: The 28th.

BY THE COURT:

Q Do you know anything about whether or not those articles were in the apartment on the 20th of July?

A No, I don't.

THE COURT: Now, you have it exactly.

BY MR. LE BARBIER:

Q In what way did you measure this? By tape or what?

CASE # 601

A By tape line or rule.

Q And you measured it personally? A Yes, sir.

Q And are there any windows, according to the diagram?

A Yes.

Q How many? A One double window.

Q That is, the living room? A Yes.

Q On the right hand side of the diagram? A Yes.

Q What was the condition of that window? A The light of glass in the lower sash was broken.

Q Was that a whole sash, that extended across the window?

A Yes; it was a very wide window, very wide.

Q And a large window corresponded? A Yes, sir; with a centre division in the sash; two lights of glass and the lower sash.

Q Yes. What was the condition of those lights of glass?

A Well, one of them was broken.

Q Which one? A The right hand one, as you faced the window.

Q The right hand one, as you faced the window? A Yes.

Q Yes; as you faced the window? A Yes.

Q In what way was it broken Mr. Volkening?

MR. FLY: I object.

Q Why, the glass was broken.

CASE # 601

BY MR. LE BARBIER:

Q Was there any glass in that lower right hand pane?

MR. ELY: Now, I object to that as incompetent, immaterial and irrelevant, as to what it was on the 28th.

I don't kind it--

THE COURT: Yes. If you purpose showing the condition on the 20th, I will permit this, as a preliminary question.

MR. LE BARBIER: Yes, sir; that is our sole object.

THE COURT: Then I will receive it, subject to a motion to strike out, if not connected.

MR. ELY: One moment, if your Honor please. We don't make any question at all but that the window pane was broken, on the evening of the 20th of July, 1906; I don't make any objection to that; but I do make an objection as to not only this pane but I do being broken on the 28th-- it may be that the whole glass had been removed from the window or anything else, a dozen things may have happened-- but I make no objection to the fact, which I believe to be a fact, that the window was broken, on the night of the 20th of July, 1906.

CASE # 601

THE COURT: Then, if you concede that the window was broken on the night of the 20th, the concession may be noted, and I will sustain the objection to the question.

MR. ELY: And I so stated in my opening.

MR. LE BARBIER: But the concession of the learned Assistant District Attorney doesn't show whether it was of a pinhead character, or a big break.

THE COURT: But its condition on the 28th is no evidence of its condition on the night of the 20th; and, it being conceded that the window was broken, on the 20th, you may show the extent of the break on the 20th, but not on the 28th; and I sustain the objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q What was the height from the floor of the living room to the sill of the window, on the right hand side? A Well, I'll have to examine the drawings. I can't carry those matters in my mind.

Q Here it is? A Well, I haven't indicated it here.

Q Well, will you kindly indicate it? A Well, to my best knowledge, it was about two feet. That's about the

CASE # 601

average sill height, twenty inches.

Q Will you kindly take a pencil, with his Honor's permission, and kindly indicate it on the diagram?

MR. FLY: Well, I object to his making any marks without measuring. That was created after he had made his measurements, and not from imagination.

THE COURT: You may take the testimony, but don't mark up the diagram.

MR. LE BARBIER: Very well, then. I'll take an exception.

BY MR. LE BARBIER:

Q What was the height? A Well, I don't remember what was the height from the floor to the sill.

Q Well, figure it out, according to your scale there, and tell the counsel for the defense and the Court and jury, what was the height from the floor to the sill of the window?

MR. FLY: Objected to.

BY THE COURT:

Q Can you answer the question? A Not from the diagram.

Q Well, from the diagram and your own recollection of what you saw? A Well, I can tell you about what the sill was, but not the exact measurement.

Q Then give your best recollection of it? A About

CASE # 601

twenty-two inches high.

BY MR. LE BARBIER:

Q Why can't you give the exact measurement? A I don't remember whether I measured the height of that sill, or not.

Q Will you kindly state, from an examination of People's Exhibit 2, what the size of the window was?

MR. ELY: Why, I object, unless--

BY MR. LE BARBIER:

Q In width, rather, and in height.

MR. ELY: I object, unless it appears, it is shown, by the scale on the diagram.

THE COURT: This is calling for the knowledge of the witness. He may testify as to his own knowledge.

A Well, I would acquire that knowledge by scaling off the width of the window. I haven't got the width marked off--

BY MR. LE BARBIER:

Q Well, can't you tell the width of the window by the scale? A Why, sure. The width of the daylight opening, or the width of the sash?

Q The width of the-- A Of the sash?

Q The width of the sash? A Yes, sir; well, it is about four feet to the height of the window, but I couldn't

CASE # 601

give you that exactly.

MR. ELY: He has already said that it was
twenty-two inches from the floor.

BY MR. LE BARBIER:

Q Now, from your recollection, Mr. Volkening, what is the
height of the window?

MR. ELY: From the floor?

MR. LE BARBIER: From the sill.

A I couldn't tell you.

BY MR. LE BARBIER:

Q Why not? A I didn't measure it.

Q From your architect's eye, and the best of your recol-
lection, can you state to the jury what the height of the window
was from the sill up? A Oh, about five feet six, perhaps.
I didn't measure the height of the window from the sill to the
top.

Q Your attention was in no way directed to the window;
was it? A Well, the fact that the glass was broken. I was to
measure that.

Q (Question repeated.)

MR. ELY: I object. He has just answered that
question.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Was your attention directed by anybody to the broken--
to the glass? A It was.

Q When you examined that window, was the glass in the right
lower corner in or out? A Well, there was a large hole in
the light of glass.

BY MR. FLY:

Q What was that? A (Answer repeated.)

BY MR. LE BARBIER:

Q What was the width of the light of glass?

MR. FLY: In which the hole was, Mr. Le Barbier?

MR. LE BARBIER: I put my question.

MR. FLY: Well, then, I object to it, on the ground
that it is too indefinite.

THE COURT: I sustain the objection.

MR. LE BARBIER: Why, it is following right in the
line of the questions.

THE COURT: The time appears to be too remote.

MR. LE BARBIER: That is not the objection urged
by the learned Assistant.

THE COURT: It is objected to generally.

BY MR. LE BARBIER:

Q What was the length of the kitchen? A 18 feet.

Q What was it? A 18 feet.

Q And width? A Well, there is two widths. One is 11
feet 10, and the other is 10 feet.

Q The smaller width is nearer the opening of the kitchen
door into the hall? A The entrance into the kitchen hall.

Q What is the thickness of the partition there in the hall,
if you know, Mr. Volkening? A Well, six inches usually, a
plaster partition; six or six and a half inches.

Q It is plaster? A It is plaster, lath and plaster, and

CASE # 601

studding inside.

Q Do you know whether it was brick lined or not?

A No, sir.

Q You don't know whether it was or not? A No, sir;

I didn't examine it.

Q You didn't examine it for that purpose; did you?

A No, sir.

Q Now kindly take up the door leading into the bedroom.

Was that a door opening in or out, or a sliding door?

A A swinging door.

Q And was that the same as the door coming in from the hallway? A Yes.

Q A swinging door? A Yes, sir; a swinging door.

Q They were both swinging? A Yes, sir.

Q Now let me see that diagram just a moment, please.

Between the sitting room, and the bedroom, what was there?

A A window, a sash window.

Q A sash window? A Yes, sir.

Q Did you observe the condition of that sash window?

MR. ELY: On the 28th?

A On the 28th.

BY MR. LeBARBIER:

Q On the 28th of July, 1906? A Yes, I did.

Q What was its condition?

MR. ELY: I object, as too remote.

THE COURT: Sustained.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q How many floors in that building above this particular, if you know? A I don't know.

Q Eh? A I don't know.

Q Well, was it a skyscraper, this building?

MR. ELY: Oh, I object to that, as immaterial.

BY THE COURT:

Q Do you know how many stories this building was? A To my recollection it was six--five stories.

Q Was this the top? A No, sir; it was the fourth floor.

Q The fourth floor? A Yes, sir.

THE COURT: Now, you have it, Mr LeBarbier.

BY MR LeBARBIER:

Q In what direction did the door-- Question withdrawn.

On what side did the door swing, leading from the living room into the bedroom? A That is indicated on the diagram.

Q As indicated here? A Yes; in going from the living--

Q Yes? A It is indicated there.

Q Are the articles marked in yellow here drawn to scale measurements? A Yes.

Q That is the table and the chairs? A Yes.

REDIRECT EXAMINATION BY MR. ELY:

Q You didn't examine the walls; did you? A What do you mean?

Q The thickness of the walls of this apartment?

A Well, if I--

Q Yes or no. (Question repeated.) A No, I didn't.

Q And you are giving your best impression of the thickness of the wall, where you say it is plaster and studding, as six or six and a half inches, as simply a statement made upon the basis of the general thickness of walls of such buildings; is that right? A Yes; that's exactly it.

MR. LeBARBIER: Now, I move to strike out that last answer, as not responsive, and as incompetent and immaterial and irrelevant.

THE COURT: Denied.

MR. LeBARBIER: Exception.

THE COURT:

Gentlemen of the jury:

Do not talk about this case, nor permit anyone to talk to you about it, or form or express any opinion thereon, until the case is finally submitted to you.

It is very important, gentlemen, that you be here on time. The absence of one juror necessarily

delays the whole Court. I try to be prompt myself, and you must be prompt also.

You may go, now, until to-morrow morning, at half past ten o'clock.

(The trial was then adjourned until Thursday morning, October 18th, 1906, at 10:30.)

CASE # 601

TRIAL RESUMED.

New York, October, 18, 1906.

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

DIRECT EXAMINATION BY MR. ELY:

Q You are employed, Miss Giglio, at one of the large department stores in the City of New York? A Yes, sir.

Q And where do you live? A I live 313 East 90th street.

Q And how long have you lived there? A We have lived there a year, the 22nd of May.

Q And you lived there, then, on the 20th of July, 1906? A I certainly did.

Q And for how long a period have you known the defendant? A I have known him since I was a child.

Q Well, that's only a few years? A Thank you.

Q And did you know Joseph Ciofolo? A I certainly did.

Q And how long had you known Joseph Ciofolo? Just as

CASE # 601

long as you have known the defendant? A Yes.

Q And was Joseph Ciofolo, or is the defendant in any way connected with your family? A Joseph Ciofolo was a cousin by marriage. He was married to my mother's brother's only daughter.

Q And on the 20th of July, 1906, was Joseph Ciofolo's wife's mother alive or dead? A Oh, she was dead at the time. She has been dead for ten years.

Q And she had been dead for ten years before the 20th of July, 1906? A Yes.

Q And did you see Joseph Ciofolo, on the night of the 20th of July? A Yes, sir.

Q And where did you see him? A I saw him at the house of Mr. Calandra.

Q At the house of the defendant here? A Yes, sir.

Q About what time was it, Miss Giglio, that you saw the deceased, Joseph Ciofolo, at the defendant's house? A It must have been about seven o'clock. I am not positive of the hour.

Q Well, now, where was the defendant's house? A He lives at 309 East 90th.

Q And do you remember on what floor the defendant lived?

A The defendant lives three flights up.

CASE # 601

Q Well, that would be the fourth floor? A The fourth floor.

Q And do you remember what apartment he had? Whether it was the east or west apartment, inn309? A I think -- yes, the east apartment.

Q Yes, that's right. And look at the diagram, please, People 's Exhibit 2, and see if you can recognize from People's Exhibit 2 what it is? A This here is the kitchen (Indicating).

Q Well, wait a minute. I don't mean any individual room, but do you know whose rooms those purported to be? A Those are Mr. Calandra's rooms.

Q Those are his rooms? A Yes, sir.

Q And that is his house, in ordinary parlance? A Yes, sir.

Q And was it in this house that you were, on the night of the 20th of July, 1906 -- A Yes, sir.

Q When you saw Joseph Ciofolo? A Yes.

Q Thank you. Now who else was there, at the time that you saw the deceased in the defendant's house? A My mother, my brother, Mr. Calandra and Mr. Ciofolo.

Q Your mother, your brother, Mr. Calandra and Mrs. Calandra and Mr. Ciofolo? A Yes, sir.

Q And that's all? A That was all.

CASE # 601

Q And what were you doing, you and your mother and brother doing there? A We had called on them, and Mrs. Calandra asked us to spend the evening with them.

Q And you say that, at or shortly after seven o'clock, the deceased came in? A Yes, sir.

Q Now, was there any conversation between the deceased and the defendant that you heard? A Now, as he entered up from the stairway, coming up from the stairway, he said --

Q Now just answer the question, yes or no? A Yes.

Q Now just tell the Court and jury what the conversation was? A He said, as he came up the stairway --

Q Now who is "he"? A Joe. As he came up the stairway, he said, "Oh, I see you are home. Here you are, eating and drinking, and I have been waiting for you all day at the market."

Q At the what? A At the market, at his place of business. "And I have been waiting for you all day, and I didn't know whether to close or not." Mr. Calandra said --

Q The defendant said? A He says, "Why, you ought to have known, Joe, if I didn't come at a certain hour, it stands to reason you could have closed the business."

It was said, at least on Mr. Ciofalo's part, he was a little annoyed, as naturally he ought to be in a circumstance

CASE # 601

like that. Mr. Calandra wasn't pleased, at the time, at his coming.

MR. LE BARBIER: I object to that, and ask that it be stricken out.

THE COURT: Yes. You may tell us what was said and done, but not what you thought.

BY MR. ELY:

Q Now, Miss Giglio, we have got the conversation that he had, the deceased with the defendant, and the defendant's reply?

A Yes, sir.

Q And please don't give your impression of the manner in which the defendant replied, other than by describing what he did and said?

A Yes, sir.

CASE # 601

Q Now, did you notice the deceased when he came in?

A Yes, sir.

Q How did he--what did you notice about him, if anything?

A We'll, in which way do you mean?

Q Well, in any, if you noticed him? A Well, there was nothing to notice about him.

Q Did you notice whether or not he had been drinking?

A No.

Q Had he been drinking? A No, he hadn't been drinking. As far as I know, he seemed in a perfectly sober condition.

Q Now, after the defendant had made the reply to the deceased that you have stated here, what happened? A Well, he come in, and Mrs Calandra asked him if he would like to have anything to eat, and he said he didn't care to.

Q Mrs Calandra-- A His sister.

Q His sister said to the deceased-- A Yes, sir; and Mr Calandra said the same.

Q The defendant said the same? A Yes, sir. And then he sat down, and that all ended in talking, and we spent the evening very pleasant together. The whole thing blew over. There was no ill feeling whatsoever.

THE COURT: Well, do you want this, gentlemen?
It isn't competent evidence here.

MR. ELY: I didn't ask for that, sir.

0750

CASE # 601

THE COURT: Well, there is no objection on my part, if you want it.

MR. ELY: I ask to have it stricken out, as irresponsible, if your Honor please.

THE COURT: Strike it out.

BY MR. ELY:

Q Now, after this conversation, as I understand, you and your mother and brother and the defendant and Mrs Calandra and the deceased sat about, eating and drinking and talking?

A Yes, sir.

Q For how long? A Well, it might have been probably half an hour.

Q And did you hear any further conversation-- A No, sir.

Q Excuse me. Wait a minute. Did you hear any further conversation that you recollect, between the defendant and the deceased? A No, I didn't.

Q And about what time did your mother and your brother leave? A Ten minutes of eight.

Q Yes. And who did you leave there? Who went out with you? A My mother and brother.

Q And who did you leave in the defendant's apartments?

A Mr Calandra and Mrs Calandra and Joe, Mr Ciofelo, that is,

Q That is the defendant and his wife and the deceased? A Yes, sir.

075

CASE # 601

Q And then you went away? A We went down.

Q And that's all you know about the case, Miss Giglio?

A That's all I know about it..

CROSS EXAMINATION BY MR. LeBARBIER:

Q Miss Giglio, are you twenty-one years of age yet?

A Yes, sir.

Q Is your brother older or younger than yourself?

A Older.

Q Have you more than one brother? A Just one brother.

Q Just one brother? A Yes, sir.

Q What is his first name? A Vito Giglio.

Q Did you all three go around there to that house, that night? A No.

Q You met there at different times? A Yes.

Q When you went around there, was your mother already there? A No. I went up with my mother.

Q You went before your mother? A With my mother.

Q And with your mother--yes, you went to the defendant's place, Mr Calandra's place, and you arrived there about what time? A Well, about half past six.

Q About half past six? A Yes, sir.

Q When was it that your brother Vito came in? A Well, after I arrived, Mr Calandra came, and then my brother came.

CASE # 601

Q And Mrs Calandra was there all the time; was she?

A All the time.

Q What relation are you, Miss Giglio, to Mr Joseph Ciofolo? A He is a cousin by marriage.

Q He is a cousin by marriage? A Yes, sir.

Q Prior to Mr Ciofolo calling, was the conversation general with you all?

MR. ELY: I object to that. That's immaterial, incompetent and irrelevant.

THE COURT: It calls for an opinion, of course, but I will allow it, however, because it is within my discretion.

A Yes, sir.

BY MR. LeBARBIER:

Q Well, there was no special subject mentioned, that you recollect? A No, sir.

Q At the time that you heard Mr Ciofolo coming upstairs, it continued about the same; didn't it? A Yes, sir.

Q Everybody, as I understand you to say, was in a pleasant frame of mind?

MR. ELY: Objected to.

THE COURT: I sustain the objection. I've stricken that out once.

CASE # 601

BY MR. LeBARBIER:

Q How long before that evening had you been at Mr Calandra's place? A Well, it must have been quite a long time.

Q Well, a few months? A Yes, quite that; a few months.

Q Six months, do you think? A Probably.

Q About six months? A Yes, sir.

Q While you were all seated there, talking, as you say, was the door of the apartment closed? A Which door?

Q The door leading out of the hallway? A Yes; it was closed.

Q And who was the last one in there, coming into the apartment, before Mr Ciofolo called? A My brother.

Q Your brother? A Yes, sir.

Q And, after he called, while you were all in the apartment, how long was it before you heard Mr Ciofolo on the stairs?

A Oh, it must have been about twenty minutes; very little time.

Q About twenty minutes? A Yes, sir.

Q But, after your brother called, while you were all seated in the apartment, and talking, the door leading into the hallway was closed? A Yes, sir.

MR. ELY: Objected to. She hasn't said that they were all seated.

CASE # 601

THE COURT: Allowed. It is answered.

BY MR. LeBARBIER:

Q And while you were all seated there, you say you heard the voice of Mr Ciofolo? A Well, the bell rang, and the door was opened, and Mr Calandra said, as a joke--

MR. ELY: Objected to. I object to the word "joke", and ask to have it stricken out.

THE COURT: Strike out the word "joke".

MR. LeBARBIER: May it please your Honor, that is a part of the conversation, I submit.

THE COURT: Strike it out. It is an opin on.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q Well, go on? A He said, "Here is another visitor. Who is this?" And he went out into the hallway, to see who was coming up the stairway.

CASE # 601

Q Who went out? A Mr. Calandra. Mr. Ciofolo was coming up the stairway and he said, "Oh, there you are."

Q And did you hear this remark, before you saw Mr. Ciofolo? A As he was coming in from the hallway.

Q Well, did you hear that before you saw him?

A Yes; I heard it before I saw him.

Q And what did he say? A He said, "Oh, you are here, and I've been waiting downtown, all day, at business. You might have left me know that you were not coming back, because I didn't know whether to close the business or not." And that's all there was to it.

Q And then they came into the apartment? A Yes, sir.

Q And sat down to the table? A Yes, sir.

Q At the table in the kitchen? A Yes, sir.

Q At which table? If I understand correctly, you were all seated? A Yes, sir.

Q How long did you remain there at the table?

A Well, it must have been about half an hour. I am not quite sure.

Q Well, did you remain there until about half past seven or so? A We went down, at ten minutes of eight.

Q You went down at ten minutes of eight? A Yes, sir.

Q Was there any special reason, as far as you can recollect, now, Miss Giglio, why it was that you left at ten minutes

0756

CASE # 601

of eight? A There certainly was, because Mr. Calandra goes to business at a very early hour of the night.

Q Well, what hour is that? A Well, we knew that he generally went out at about half past ten or eleven, and it was a very hot day, and we thought we would go down early, to give him a chance to rest.

Q Did he also say to you that he wanted to go to bed?

A No, sir.

Q Do you remember his winding up the alarm clock?

A He did; yes.

Q This is a fact, Miss Giglio, that either before, or a little after he wound up the alarm clock, that he begged you and your mother and brother to remain?

MR. ELY: objected to.

MR. LE BARBIER: I hadn't quite finished the question, your Honor.

BY MR. LE BARBIER:

Q (Question continued) Saying that Mrs. Calandra would keep you company?

MR. ELY: objected to.

THE COURT: sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Will you kindly state, what, if anything, was said by

Mr. Calandra, just before or after he wound up the clock?

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

THE COURT: I cannot see what bearing that may have on this case.

MR. LE BARBIER: Well, of course, your honor can't see that now, but we can see it, and will connect it.

THE COURT: You will connect it?

MR. LE BARBIER: Yes, sir.

MR. ELY: But it is incompetent, any way, for the defendant to call for anything that he said, that we have not brought out. We haven't asked for the conversation between them.

THE COURT: I cannot see its relevancy; but, nevertheless, it is the usual rule to permit counsel, when they say that they will connect, and that its relevancy will be made to appear, to permit the testimony.

MR. ELY: But it can't be made competent, a conversation between the defendant and a third party.

THE COURT: Then I will receive it, subject to a motion to strike out, unless connected.

CASE # 601

MR. LE BARBIER: Of course, we propose to connect it.

BY MR. LE BARBIER:

Q (Question repeated)

MR. KLY: Now, I object to that as too indefinite. State to whom, in the first place, before the question is answered.

MR. LE BARBIER: Now, your Honor, they are all there, these four or five or six people.

THE COURT: I have ruled. It is received, subject to a motion to strike out, if not connected.

MR. LE BARBIER: And the question is again put, and the District Attorney again interrupts me.

MR. KLY: I have the right to interrupt, because it is too indefinite.

THE COURT: The witness will answer the question.

(The question is repeated by the stenographer)

THE WITNESS: Shall I say it?

BY MR. LE BARBIER:

Q Yes. To Mrs. Calandra? A Yes. "Why" he said, "Don't go down so early. I'm not winding up this clock because I want to hurry you out," and I said, "Now you know,

0759

CASE # 601

Brazi, we will always have to go down, and what's the use of keeping you up?" And he said, "Oh, you can stay longer," and I said, "Well, it is ten minutes of eight, and what's the use of waiting that much longer any way, because we will have to go any way?"

MR. KLY: I object to that, and move to strike it out.

THE COURT: Well, I will take the motion under advisement, and will order it stricken out, if not connected.

MR. LE BARBIER: May I ask for information from the Court? Of course, I appreciate what your Honor says, that your Honor does not see the relevancy of this, now. Of course, we have been preparing our defense, and know the relevancy of matters.

THE COURT: Well, that was said for counsel's benefit. I instruct the jury to disregard that.

BY MR. BARBIER:

Q now, what was the pet name of the defendant?

MR. KLY: I object to that.

A The pet name? There was no pet name.

MR. LE BARBIER: I withdraw the question.

CASE # 601

BY MR. LE BARBIER:

Q What was the name by which the defendant was known to this little circle there, that night?

MR. ELY: I object to that.

THE COURT: It may be answered.

MR. ELY: What she called him, I don't object to.

A Well, his name is Biaggio, and we used to call him Brazi.

V I T A G I G L I O, a witness called on behalf of the People; being duly

THE COURT: This witness, I am told, requires an interpreter. The official interpreter is engaged in Part I, and I have no doubt we can get another interpreter, but the District Attorney suggests that the daughter, the last witness, interpret. Is that consented to?

MR. LE BARBIER: Why, I think so.

MR. ELY: You have your own Italian interpreter sitting by you.

MR. LE BARBIER: Yes; I consent to that.

(Miss Catherine Giglio is sworn as interpreter,

by consent.)

(The witness is sworn, through the interpreter).

DIRECT EXAMINATION BY MR. ELY:

Q Now where do you live, Mrs. Giglio? A 313 East 90th street.

Q And do you know the young lady standing by you there?

A Yes, sir.

Q Now who isshe? A Miss Kate Giglio.

Q Well I know it, but who isshe? I know what her name is?

A She is my daughter.

Q Your daughter? A Yes, sir.

Q Now do you know the defendant, Biaggio Calandra?

A Yes, sir.

Q Do you see him here? A Yes, sir.

Q Where is he? A He is there (Indicating).

Q Now, how long have you known the defendant? A Oh, more than twenty years.

Q Now did you know Joseph Ciofolo? A Yes, sir.

Q And for how long a time before the 20th of July, 1906 did you know Joseph Ciofolo? A Thirty-two years.

Q And was Joseph Ciofolo any relation or connection of yours, by marriage or blood? A A nephew, by marriage.

Q And where were you on the evening of the 20th of July, 1906? A Mr. Calandra's home.

CASE # 601

Q And who was there? A We were five of us there, myself, my daughter, my son, Mr. Calandra and Mrs. Calandra, and, afterwards, Joe came, after supper.

Q That is, Joseph Ciofalo, the deceased? A Yes, sir.

Q Now, did you hear any conversation between the defendant and Joseph Ciofalo, as Joseph Ciofalo came into the defendant's apartments, on the evening in question? Yes or no that calls for? A I heard him speak, but I didn't understand him, because he spoke in English.

Q Well did you hear anybody reply to Joseph Ciofalo, when, as you say, Joseph Ciofalo spoke? A Mr. Calandra answered him again, but he answered him in English.

Q And you didn't then understand what that conversation was? A No.

Q Now about what time did Joseph Ciofalo enter the apartment of the defendant? A I think about 7:30.

Q And about what time did you leave? A About ten minutes of eight.

Q Who, if anybody, left with you? A Just us three.

Q Well who are us three? A My daughter, myself and my son.

Q And your son's name is Vito? A Yes, sir.

Q And who did you, if anybody, and your daughter and your son, Vito, leave in the defendant's apartments, when you all

CASE # 601

went away ? A I left the three, Mr. and Mrs. Calandra and Joseph Ciofalo.

Q Now did you notice Joseph's appearance on the night of the 20th of July, 1906, when he came in? A Yes, sir.

Q And did you notice his condition? A He was sober.

MR. LE BARBIER: No questions I move to strike out the last answer as a conclusion, and as immaterial, irrelevant and incompetent.

THE COURT: Yes; there is no proof here. Strike it out.

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

DIRECT EXAMINATION BY MR. ELY:

Q You are a sister of the defendant's wife? A Yes, sir.

Q And where do you live? Are you Mrs. or Miss Filoramo?

A Mrs.

Q What's the name of your husband? A Frank Filoramo.

Q And where do you reside, Madame Filoramo? Where do you live? A 169 East 91st.

Q And how long have you lived there? A About four

CASE # 601

years.

Q And what is the name of your sister? A Angelina Calandra.

Q And she is the defendant 's wife? A Yes, sir.

Q How long have you known the defendant? A How long he is married?

Q No. How long have you known the defendant? A Oh, I have known him since he was a boy, from the old country.

Q Well, is that thirty years or twenty years? A No; he is ten years married with my sister.

Q No. I am asking you how long you have known him?

A Ten years since he is married; and then I have known him since he was in Italy, a boy, about eight years old.

Q And then you have known him for about twenty-eight years; have you? A Yes, sir.

Q Now do you know Celia Menjanara? A Yes.

Q And who is she? A My brother-in-law's bookkeeper.

Q This defendant's bookkeeper? A Yes, sir.

Q And did you see Celia Menjanara and the defendant and others at a picnic, on July 4, 1905? A Yes, sir.

CASE # 601

MR. LeBARRIER: Objected to, on the ground that it is improper and incompetent and irrelevant.

THE COURT: I will overrule the objection. It is a proper question.

MR. LeBARRIER: Exception. This is in 1905, your Honor; that is a year ago in July; and the opening of the District Attorney was, whatever he meant by it, I don't know, but he stated that they were living together afterwards.

MR. ELY: Now, I don't mind, if your Honor please. I will allow the answer to be stricken out, if it is objected to, and I will withdraw the question.

THE COURT: Very well. Then there is no occasion for me to rule.

BY MR. ELY:

Q Now, Madam Filomano, do you know of your own knowledge whether or not, from the 5th day of July, 1905, up to the 20th day of July, 1906, the defendant and your sister continuously lived together?

MR. LeBARRIER: Objected to, as incompetent. Furthermore, may it please your Honor, it is proceeding upon an assumption of facts, sought to be in-

jected in the case.

THE COURT: I do not see the relevancy of it, but, of course, Rome was not built in a day, and, of course, I will permit counsel, as I have permitted you, to build up his case, and I will receive it subject to a motion to strike out if not connected.

MR. LeBARBIER: Exception.

MR. ELY: If that is objected to, I don't care to ask it of this witness. I have other witnesses on the subject.

THE COURT: Very well.

BY MR. ELY:

Q Do you remember the 15th of July, 1906? A Yes, sir.

Q And did you see the defendant anywhere with your sister, on the 15th of July, 1906? A No, sir.

Q Were you at Bensonhurst? A Bensonhurst?

Q Yes? A I am.

Q Will you answer that, please? A I was there.

Q And did you see the defendant, that is, Calandra, and your sister, at Bensonhurst? A Yes, sir.

Q And what day was that? A I couldn't remember very well the day.

Q Well, was not that Saturday, the 15th of July? A Oh, that was on Sunday.

0767

CASE # 601

Q Well, Sunday. A Yes, sir.

Q And it was about the 15th of July? It was a few days before the 20th of July; wasn't it? A Yes, sir.

Q Now, just tell me who were at Bensonhurst, on the 15th of July, or about that date, when your sister and the defendant were there?

MR. LeBARBIER: Objected to, on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: She may answer that question.

MR. LeBARBIER: Exception.

A Well, there was in Bensonhurst I, and my sister, and my husband, and Mrs Meniscalca and her husband, at Mr Meniscalca's house.

Q Now did you see Joseph Ciofelo there, on that day?

A I saw him, on that day, but not at Mrs Meniscalca's house.

Q Was this at Mr Meniscalca's house? A Yes, sir.

Q Now, do you know who the defendant came there with, to Mr Meniscalca's house? A He has come with Ciofelo.

Q He came with Joseph Ciofelo? A Yes, sir.

Q And who was Joseph Ciofelo? A My brother.

Q Your brother? A Yes, sir.

BY THE COURT:

Q Do you mean the deceased? A Yes, sir.

Q And do you remember--did you hear any conversation

CASE # 601

between the defendant and your sister, Mrs Calandra? A No, sir.

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

Q (Question repeated.) A No, sir.

Q Did you see the defendant and your sister do anything?

A No, sir.

Q Did you hear the name of Celia Manjanara mentioned on that day? A No, sir.

Q Did you see Dr Marena there, on that occasion?

A Yes, sir.

Q Did you hear anything that Dr Marena said to the defendant and to your sister, Mrs Calandra? A Dr Marena don't say anything to the defendant.

Q I beg pardon. Please answer my question? A Now that--

Q (Question repeated.) A The defendant wasn't there.

Q Why, the defendant came to Bensonhurst, to this house; didn't he? A Yes.

Q And he came with your brother, the deceased; didn't he? A I don't see him come with my brother.

Q Well, you just told us, a few minutes ago, that he came with your brother? A No; I don't see them together.

Cross-examination: None.

CASE # 601

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

DIRECT EXAMINATION BY MR. ELY:

Q Mr Bauer, what is your business? A Optician.

Q Optician? A Yes, sir.

Q Where are you engaged in business? A 1266 Lexington avenue.

Q And about what street is that? A 85th and 86th.

Q And where do you live? A 336 East 90th.

Q And how long have you lived at 336 East 90th? A Well, the past two years.

Q Were you living at 336 East 90th street, on the 20th of July, 1906? A Yes, sir.

Q What were you doing then? What were you working at then? A Optician.

Q And did you go to 309 East 90th street, on the night of the 20th of July, 1906? A Yes, sir.

Q About what time? A Well, around eight o'clock; a little after.

Q And, prior to going into 309 East 90th street, had you heard any shouts, yes or no? A Yes, I did, as I come near there.

Q Now, please. Yes or no? A Yes, sir.

Q And then you went into 309 East 90th street? A Yes,

CASE # 601

sir.

Q Where did you go in the premises, 309 East 90th street?

A Where did I go?

Q Yes. A On the third floor.

Q That is, you traversed three flights of stairs?

A Three flights of stairs.

Q And when you got up onto the fourth floor, what did you see, if anything? A I met a man standing in the hall.

Q And about how far away was this man, who, you say, was standing in the hallway, from the stairway? A About three feet; three to four feet.

Q About three or four feet from the stairway? A Yes, sir.

Q And what, if anything--did you notice the man? Yes or no? A Did I notice him? Yes.

Q And what did you notice about him? A He seemed to be excited.

Q Did you notice anything about his clothes, or his hands, or anything of that description? A Well, I noticed a revolver in his hand.

Q You saw a revolver in his hand? A Yes, sir.

Q And he was about three or four feet from the head of the stairs? A Yes, sir.

CASE # 601

Q Now, I show you this article, and ask you if you ever saw that article before? A It looks like the one he had in his hand.

Q Now, please. I ask you a question. Did you ever see that article before? Yes or no. A Yes.

Q Now I ask you when you saw that article? On what night? A The night of July 20th.

Q And where did you see that? A In the man's hand.

Q In the hand of the man who was standing three or four feet from the head of the stairway, on the fourth floor?

A Yes, sir; on the fourth floor.

Q And what, if anything, did you do with that revolver? A Took it away from his hand.

Q And then what did you do with it? A Dropped it on the floor.

Q And then, after that, what did you do? A I went down the stairs.

Q And, as you went down the stairs, did you see the man, who, you say, was standing three or four feet from the head of the stairs, do anything? A Well, he fell down behind me, as I was going down.

Q Fell down where? A In the hallway.

Q He fell down in the hallway, as you were going down-

CASE # 601

stairs? A Yes, sir, as I was going down.

Q And did you notice anything about the clothes of this man, at this time? A No, sir; I didn't take no notice.

Q And then you ran downstairs, or you went downstairs; did you? A Well, I ran downstairs.

Q And then who, if anybody, did you see? A Well, I met Officer Tarpey.

Q And did you say anything to Tarpey? Yes, or no, now, please? A Yes, sir.

Q Now, after you said something to Tarpey, what happened? A Well, he went upstairs.

Q And what did you do? A Well, I went on to work, because I generally go to work--

Q Now, please. I didn't ask you anything about that. And did you return again to the premises 309 East 90th street, that night? A That night; yes.

Q Now, do you see this man standing here (indicating)? A Yes.

Q Do you know who he is? A Officer Tarpey.

Q And is he the person that you say you saw, as you descended from the fourth floor of 309 East 90th street, on the evening of July 20th, 1906? A Yes, sir.

Q Now, about what time, did you return to the premises

CASE # 601

309 East 90th street, on the evening of the 20th of July?

A Twenty or twenty-five minutes past eight.

Q Yes. And whom did you see, when you returned there?

A Well, I seen the defendant.

Q Where was the defendant? A In the room, with Officer Tarpey.

Q And did you see the person who, you say, you took this article from when you returned? A Yes, sir.

MR. KLY: Now, if your Honor please, I offer this article for identification.

(It is marked People's Exhibit 3 for Identification.)

BY MR. KLY:

Q And did you know who the person was from whose hand you took People's Exhibit 3 for Identification? A That was the man that was shot.

Q Yes. Well, that's all right. Now, do you know who he was? A I don't know. I only met him, that night.

Q Did you ascertain who he was? A Yes. Ciofelo; isnt it?

Q Yes, Ciofelo. A Yes. I learned that afterwards.

Q And did you see Ciofelo upon your return? You say you did see Ciofelo upon your return to 309 East 90th street, about twenty-five minutes past eight? A Yes, sir.

CASE # 601

Q Where was he then? A Lying in the hall still.

Q And did you notice him then? A Well, I didn't take much notice of him.

Q Well, yes or no. If you did, say so, and, if you didn't, tell me? A No.

Q Well, at any time, did you say anything to Ciofolo?
A No, I didn't.

CROSS EXAMINATION BY MR. LeBARBIER:

Q How old are you, Mr Bauer? A Twenty-six, past.

Q Married? A Yes, sir.

Q Did you have any business to go into the house 309 East 90th street , that night? A No, sir.

Q You were passing, as I understand it, ~~him~~ in the street?
A Yes, sir.

Q And, before you went into the house, what was the first thing that attracted your attention? A The shouting of murder.

Q You heard loud shouts of murder? A Yes, sir.

Q By different people? A Yes, sir .

Q Did these shouts come from that particular house?

MR. ELY: Objected to.

BY MR. LeBARBIER :

Q If you know?

CASE # 601

THE COURT: Answer.

A I couldn't really tell you. It seemed to come from the other side.

MR. ELY: Well, I object to that, and ask to have it stricken out.

MR. LeBARBIER: Very well.

THE COURT: Strike it out.

BY MR. LeBARBIER:

Q At all events, that was the occasion of your going into those premises? A Yes, sir.

Q Now, having entered those ~~XXXX~~ premises, and as you were going up the stairs, did you hear any shouts? A All through the house.

Q Of what? A Murder.

Q Police?

MR. ELY: I object. Now, there is no necessity for counsel to testify.

THE COURT: Objection sustained. Yes, don't lead.

MR. LeBARBIER: Is it excluded on the ground that it is leading?

THE COURT: Do not lead.

BY MR. LeBARBIER:

Q Did you hear any shouts, besides that of murder?

CASE # 601

A Help.

Q Any other word? A Not to my recollection.

Q Any word with reference to the Police Department?

MR. ELY: I object to that. He has already testified that he didn't hear anything else, and it is incompetent, anyway, to him to have said what he heard, and I didn't object, but I do now.

BY MR. LeBARBIER:

Q Who was this man that you have been questioned about, without your really identifying him until the very last question put to you by the learned Assistant? Who was this man at the head of the stairs? A Well, as I found out afterwards, Joseph Ciofalo.

Q It wasn't the defendant, Biaggio Calandra?

A No, sir.

CASE # 601

1

Q Did you see Biaggio Calandra, the defendant, up there at the head of the stairs, with a revolver in his hand?

MR. KELY: Objected to as not within the scope of the examination and it is leading.

THE COURT: I will sustain it, as leading.

MR. KELY: I haven't asked him any question about the defendant being there, at the head of the stairs.

THE COURT: It is leading.

BY THE COURT:

Q Did you see the defendant at the top of the stairway?

A No, sir.

MR. LE BARBIER: Was that objection pressed by the learned District Attorney, your Honor?

THE COURT: The matter is disposed of now. I have asked a proper question, and given the information that you desired.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did you see the defendant anywhere near the dead man, as we claim? A No, sir.

Q Did you see the defendant -- don't answer this question -- there with a revolver?

MR. KELY: I object. In the hallway or in the room, or where?

CASE # 601

MR. LE BARBIER: Anywhere there.

BY THE COURT:

Q Did you see the defendant at all? A No, sir; not at that time.

BY MR. ELY:

Q And that time is when you first went up? A Yes, sir.

BY MR. LE BARBIER:

Q When you went up there, and saw the deceased, then alive, at the top of the hallway, I understand you to say that you went over to him?

MR. ELY: I suppose you mean the top of the stairs?

MR. LE BARBIER: Yes; the top of the stairs.

BY MR. LE BARBIER:

Q You went over to him? A Yes, sir.

Q You say you found him excited? A Kind of excited.

Q In what way? A Standing there, nervous.

Q Standing? A Kind of shaking.

Q Talking? A Not a sound out of him.

Q Did you hear him yell murder? A No, sir.

Q Or make use of the word help? A Not him.

MR. ELY: I object. He said not a sound out of him, that covers there two questions that the counsel has asked.

CASE # 601

MR. LE BARBIER: May I proceed without interruption, your Honor.

MR. ELY: I object, and I have the right to object.

THE COURT: Proceed. Objection sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q When you advanced towards him -- A Sir?

Q When you advanced towards him, with the revolver in his hand, did you say anything? A No, sir.

Q Did you seize hold of the revolver? A Hold of his hand, first.

Q Did you have any difficulty in taking the revolver from him? A Yes.

MR. ELY: I object.

THE COURT: It is already answered.

BY MR. LE BARBIER:

Q Tell us, if you had any difficulty, what you did?

THE COURT: He said yes.

BY THE COURT:

Q Now what did you do? Let us hear all about it? A I forced the revolver out of his hand.

Q Tell us all about it? A Well, I forced the revolver

out of his hand.

Q And what do you mean, when you say you forced it out of his hand? Did you have to use force to take it out? A Yes, sir.

Q And it required force to remove it? A Yes, sir.

Q Is that your meaning? A Yes, sir.

BY MR. LE BARBIER:

Q How long did you remain there then? A After that?

Q Yes? A About a minute.

Q At the time that you took the revolver from the deceased, was there anybody there at the top of the stairs, besides the deceased and yourself? A Yes, sir.

Q Who? A Two women.

Q Was anything said by them? A No, sir.

Q Besides these two women, were there anybody else present at that particular time? A No, sir.

Q Were there anybody else present at that particular time, prior to your going down the stairs? A Not on that landing.

BY MR. ELY:

Q You mean on that floor? A Yes; on that floor.

BY MR. LE BARBIER:

Q As you went down the stairs, at that particular time, that is to say, after taking the revolver from this man, had

CASE # 601

Officer Tarpey yet arrived? A He was in front of the house.

Q No. Had he yet arrived up where you were, with the dead man? A Not upstairs.

Q When you went to go upstairs, did you observe the position of the deceased, that is, the live man then, Ciofole?

A I didn 't take notice.

Q Do you know whether he continued standing up, or sat down, or what did he do? A No, he fell right down behind me, as I went down, he fell behind me.

Q Fell down the stairs? A No, sir; in the hall.

Q Fell down in the hall? A Yes, sir.

Q I mean to ask, was it a fall? A Yes, sir.

Q He fell down? A Yes, sir.

Q Did you observe, while you were up there, on the top of these stairs, from what apartment Ciofole had come? A No, sir.

Q Did you observe any door open? A Yes, sir.

Q Eh? A Yes, sir.

Q On what side? A Both sides.

Q Both sides were open? A Yes, sir.

Q Do you know who those women were? A No, sir, I don't.

Q Have you seen them since? A I couldn 't recognize them, if I did see them, because they had their hands up to their face, crying (Illustrating).

CASE # 601

RE DIRECT EXAMINATION BY MR. ELY:

Q Now how far off from the -- from Ciofolo,-- were these two women when you saw Ciofolo standing within three or four feet of the head of the stairs? A Well they were away in the back of the hall, at the door.

Q Now please. I can't tell. Just estimate as nearly as you can whether it was one, two, three, four, five, six, or ten or twenty feet? A About four feet away.

Q About four feet from Ciofolo? A Yes, sir.

Q And did you notice in front of which apartment they were standing, whether it was the easterly or the westerly apartment? A Standing between the two.

Q Right between the two? A Yes, sir; against the back.

Q Against the back of the hall? A Yes, sir.

Q And then they were in the extreme back of the hall; were they? A Yes, sir.

Q And just between the two doors? A Yes; just between the doors.

Q Now did you notice what hand this Ciofolo held the revolver in? A The right hand.

Q Was it up or down, or how? A It was downward.

Q At his side, like that (Illustrating)? A Yes, sir.

CASE # 601

Q Now just show the Court and jury what you did to take the revolver from him? A Grabbed his wrist with my left hand, and put my knee behind his foot, and took the revolver away (Illustrating with Officer Fitzsimmons), and threw the revolver down on the floor, then ran right downstairs.

Q And then it was immediately after you ran downstairs, that you saw the deceased fall on the floor behind you?

A Just as I reached the stairs.

M I C H A E L T A R P E Y, a witness called on behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Tarpey, you are an officer connected with the Municipal Police Force of the City of New York? A Yes, sir.

Q And how long have you been connected with the Municipal Police Force of New York City? A Nineteen and a half years.

Q And, on the 20th of July, 1906, how were you assigned?
A I was out on post.

Q You were not connected with the Court squad then; is that right? A No, sir.

Q You were a patrolman? A I was on patrol, that evening, yes, sir.

Q And to what precinct were you attached? A Twenty-eighth.

Q And when were you transferred from the Twenty-eighth?
A August 3d, last.

Q Now, on the 20th of July, 1906, what tour were you doing? A I was doing the tour from 6 P.M. to 12, midnight.

Q And is that the early or late tour? A It is known as the early tour.

Q From 6 P.M. to midnight? A Yes, sir.

Q And what was your post? A My post was 89th and 90th streets from the River, from Harlem River, to Fifth avenue.

Q Now where were you about eight o'clock on the evening of the 20th of July, 1906? A I was on the northwest corner of Second avenue and 90th street.

Q Did you hear something, some cry, or did somebody make some communication to you? A I heard nothing, sir.

Q And did you go, at any time, on the night of the 20th of July, 1906, to the premises 309 East 90th street? A Yes, sir.

Q And what time did you go there? A About five minutes to eight.

Q And, just prior to that, you had been standing where? A On the northwest corner of 90th street and Second avenue.

Q 90th street and Second avenue? A Yes, sir.

Q Now, between what avenues is 309 East 90th street? A It is between Second avenue and First avenue.

Q And how far is it from Second avenue? A To 309?

Q Yes. How many houses down from Second avenue is 309? A Well, there is 301, 303, 305, 307 and 309.

Q Then it is the fifth house? A Yes, sir.

Q And prior to your going to 309 East 90th street, had you heard any noises? Yes or no. A No, I heard no noise.

CASE # 601