

Q Prior to your going to 309 East 90th street, did anybody speak to you? A Yes.

Q Now, I asked you that a few minutes ago, and you said no to the same question? A You asked me if I heard any noise. That's the way I understand it.

Q No. You said that you had no talk with anybody?
A Well, I thought you asked me about if I heard any cry.

Q Well, did somebody say something to you? A Yes.

Q Then you didn't understand that question that way, when I asked you before? A No, sir.

Q And then when somebody made some communication to you, you went to 309 East 90th street? A Yes, sir.

Q And did you see the witness who was in the witness chair when you were called in here, and you were standing there at the rail (indicating)? A I didn't see him then.

Q Now, you understand English; don't you? (Question repeated.) When you were called in here, and identified at the rail? A Yes, sir.

Q Well, now, try and listen and understand the questions. Now did you see that person--do you know what that man's name is? A Yes.

Q What is it? A His name is Mr Bauer.

Q And did you see Bauer at any time on the night of the 20th of July, 1906? A Yes, sir.

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Q And when, relatively to you entering the premises 309 East 90th street? Do you understand that? A Yes, sir.

Q Relatively to your entering those premises, when did you see Bauer? A I seen him after I brought the--

Q Now, do you understand me? I am asking you relatively to your entering the premises, that is, about what time, with respect to the time you entered the premises 309 East 90th street, did you see Bauer? A About ten minutes afterwards.

Q After what? A After I entered.

Q Then where did you see him? A I seen him in the hallway on the fourth floor.

Q Didn't you see him as you came--as you entered, and came out? A I didn't notice him, at that time.

Q Did you notice a man passing you? A Yes, sir.

Q You noticed a man passing you? A Yes.

Q But you didn't notice his identity? A No, sir.

Q Now, prior to the 20th of July, 1906, you were not acquainted with the person named Bauer, whom you saw in the witness chair, to-day? A No, sir.

Q Then you entered the premises 309 East 90th street, about eight o'clock in the evening of the 20th of July, 1906? A Yes, sir.

Q Now, when you went into the premises, what did you do? Don't give me any conversations of any kind, unless they are

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asked for. What did you do? A I asked who done the shooting.

Q You asked who done the shooting, you say? A Yes, sir.

Q Didn't you just hear me say to you, under no circumstances, to give any conversations? And isn't, "I asked who done the shooting", conversation? Now, you understand English; don't you? A Yes.

Q Well, then, try and do as you are told, with respect to answering the questions that are propounded to you.

MR. ELY: Now I will agree to have that stricken out.

MR. LeBARBIMR: Very well.

THE COURT: Well, strike it out. Go on.

(The question is repeated by the Stenographer.)

BY MR. ELY:

Q Now, do you understand that question? A Yes, sir.

Q Now, then, you may answer it? A I went upstairs to the fourth floor.

Q And, when you got upstairs to the fourth floor, what, if anything, did you see? A I seen a man lying across the hall, at the head of the stairs.

Q Yes. Now, Tarpey, did you see whether the man who, you say, was lying across the hall, at the head of the stairs-- I will withdraw that. Did you see how the man was lying? Whether on his face, or his side, or his back, when you saw

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this person lying across the hall, on the fourth floor?

Yes or no that is. Did you see? A Yes, I saw him.

Q And how he was lying? A Yes, sir.

Q And how was he lying? A He was lying partly on his left side, with his head partly against the wall.

Q And was he right across the hallway? A Yes, sir.

Q All the way across? A Yes, as far as his length would go.

Q Yes? A Right across the hall.

Q And his head was up against the wall? A Yes, sir.

Q Now, did you stop and look at him, as you saw him lying across the hallway, that way? A Yes, sir.

Q Now, just please tell us what you observed? A I observed that his clothes were bloody.

Q Whereabouts, Tarpey? A In the body, sir; his coat (indicating the stomach.)

Q Well, you are pointing at his stomach. Is that what you mean? A Yes, sir.

Q And then this man's clothes were bloody upon the stomach? A Yes, sir.

Q Now go ahead. What else did you see about this man that we are talking of now? A That's all I observed then.

Q That's all you observed about him then? A Yes, sir.

Q Now, do you know who that man is that you saw lying

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across the hallway, with blood on the stomach of his clothes?

A I didn't know then, but--

Q Now, Tarpey, will you listen to the question and answer it?

(The question is repeated by the Stenographer.)

BY MR. ELY:

Q Do you understand that question? A I do, sir. He was the injured man. I afterwards found out his name.

Q Well, I didn't ask you when, but I ask you do you now know he is? The trouble is you either do not understand English, or do not understand my question, and I will have each one repeated to you, so that we will have no difficulty in seeing that you do know the true meaning of the question. Well, who was he? A Joseph Ciofolo.

Q Joseph Ciofolo, was he? A Well, it is the same pronunciation; yes.

Q Now, do you know what has become of Joseph Ciofolo? A Yes, sir.

Q What has become of him? A He died.

Q And, after seeing Joseph Ciofolo, lying across the hallway, as you have said, what did you do then? Don't give me any conversation. Now do you understand that question?

(The question is repeated by the Steonographer.)

A Yes, sir. I told some one to ring for an ambulance.

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Q Do you remember my having told you not to give any conversations, unless they were asked for. Do you remember that, Tarpey? A Yes, I do.

Q Is, "I told somebody to ring for an ambulance," a conversation? A I thought it was an answer.

Q Is that a conversation? Now is it. Now, you must remember not to give conversations. Did you hear me?

A Yes.

Q You may say, "I said something to somebody." But you must not give any conversation. Now, do you understand me? You must not give any conversation, unless it is asked for?

A Yes.

Q I repeat, now, after you saw the man lying there, whom you subsequently ascertained was Joseph Ciofalo, across the hallway, as you have stated, what did you do? A I went into the room.

Q Into what room? A Into the kitchen.

Q Yes. The kitchen of whose apartment, if you know?

A Of the defendant's.

Q Yes. And, before going into the defendant's apartments, had you ever seen this article, People's Exhibit 3 for Identification (indicating)? Yes or no. A No.

Q Did you see People's Exhibit 3 for Identification on the night of the 20th of July, 1906? A Did I see it? Yes.

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Q When did you see it, how long after you had been in the premises on the fourth floor of 309 East 90th street, did you see People's Exhibit 3 for Identification? A About five minutes.

Q And, before you saw it, you had gone into the defendant's apartments? A Yes, sir.

Q Where were you when you saw People's Exhibit 3 for Identification? A I was-- I came out again. I was right in the doorway of the kitchen and the hall.

Q You were in the hall? A Yes, sir.

Q And in whose possession--where was the revolver, this People's Exhibit 3--strike out, revolver. Where did you first see it? A It was in the hands of a young man.

Q Yes. And do you know who that young man is? A Yes.

Q Who was it? A Mr Erb.

Q Mr Erb? A Yes, sir.

Q And what did Erb do with this revolver, if anything?

A He put it under my arm, handed it to me.

Q Yes. Now, Tarpey, continuing to direct your attention for the moment to the revolver, I ask you if you can positively identify the article that you now have in your hands, People's Exhibit 3 for Identification, as the article that was picked up and handed to you by this person, Erb, as you

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were standing in the hallway on the fourth floor of premises 309 East 90th street, on the 20th of July, 1906, shortly after 8 o'clock? A Yes, I can identify it.

Q Positively? A Positively.

Q And, from the time--did you break that revolver yourself, that night? A Yes, sir.

Q And, of course, breaking it is doing what? A Sir?

Q Breaking it is doing what? A Well, it is parting it like this (illustrating), disconnecting it, or unhinging it.

Q Why, it is opening it; isn't it? A Yes.

Q Just break it now. You have seen a revolver before; haven't you? A Yes, certainly; but some of them are different.

Q Well, you broke that on the night in question, didn't you? A Yes. But it is very rusty now. I didn't have such trouble as that before. Its rusty now, sir.

Q You can't do it? A I say it is rusty, now.

Q Let me have it. I'll open it. Now, that's the way you broke it; isn't it (illustrating)? A Yes, sir.

Q And when you broke this People's Exhibit 3 for Identification, what, if anything, did you find in People's Exhibit 3 for Identification? A I found three discharged cartridges.

Q That's right. Go ahead. A Three discharged cart-

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ridges, and two filled ones, two that were not discharged.

Q Now, I show you this article, and ask you to take it in your hand. Now, look at the contents. Now, I ask you, after looking at the contents of that envelope, whether you ever saw the contents of that envelope before? A Yes, sir.

Q And I ask you when you saw the contents of that envelope? A The evening of the 20th of July.

Q And where did you see the contents of that envelope, on the evening of the 20th of July, 1906? A In the station house.

Q Yes. And whereabouts were those articles when you first saw them? A They were in the pistol, sir.

Q That's it. And they were in this article (indicating People's Exhibit 3 for Identification)? A Yes, sir.

Q And you saw those three articles in People's Exhibit 3 for Identification, when you broke People's Exhibit 3 for Identification, in the Station House? A Yes, sir.

Q Now, where is the station house? A It is in 88th street, between First avenue and Avenue A, about the middle of the block.

Q From the time that People's Exhibit 3 for Identification had been handed to you, in the premises 309 East 90th street, by Erb, up to the time that you opened People's Exhibit 3 for Identification, and found in it the articles that

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you now hold in your hand, had People's Exhibit 3 for Identification been out of your possession? A No, sir.

MR. ELY: Now, I offer the five articles that this witness has just stated were in People's Exhibit 3 for Identification, as People's Exhibit 4 for Identification.

THE COURT: They may be so marked.

BY MR. ELY:

Q Did you see where this young man, Erb, got People's Exhibit 3 for Identification? A (No answer.)

Q Do you understand the question, Tarpey? A Yes, sir.

Q You say that Erb was the boy who handed you People's Exhibit 3 for Identification? A Yes, sir.

Q Now, the question is, did you see where Erb got People's Exhibit 3 for Identification, which he handed to you?

A No, sir.

Q You did not? A No, sir.

Q And you had been there about five minutes before you got this People's Exhibit 3 for Identification? A Yes, sir.

Q And you had been in the defendant's room; hadn't you?

A Yes, sir.

Q And had you seen the defendant there? A Yes, sir.

Q Now, you took--or, after you received People's Exhibit 3 for Identification, did you see the defendant again?

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A Yes, sir.

Q And did you show the defendant People's Exhibit 3 for Identification? A Yes, sir.

Q And did you ask the defendant anything about the ownership of People's Exhibit 3 for Identification? A Yes, sir.

Q What did you ask the defendant about People's Exhibit 3 for Identification? A I asked him, "Is this your pistol?" and he said, "Yes."

Q And what else? A I asked him, "Is this the pistol that you shot him with?" and he said, "Yes."

MR. ELY: Now, sir, if your Honor please, I offer People's Exhibit 3 for Identification in evidence, and also People's Exhibit 4 in evidence.

THE COURT: I will receive them.

(They are marked, respectively, People's Exhibits 3 and 4, in evidence.)

BY MR. ELY:

Q Now, Tarpey, did you see Mrs. Calandra on that evening? A Yes, sir.

Q And did you ask Mrs Calandra any question? Yes or no.

A Yes, sir.

Q And when you asked Mrs Calandra a question, what, if anything, did she do? A She led the way into the room for me.

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Q And who did she lead you up to? A She pointed into the room, to her husband.

Q She pointed at her husband, did she, after you had asked her some question? A Yes, sir.

Q Now, do you know this lady, standing there (indicating)? A Yes, sir.

Q Is that the lady that you refer to? A Yes, sir.

Q And did you say anything to the defendant when you went to where he was? A Yes, sir.

Q Now, did you ask the defendant who the injured man in the hallway was? A Yes, sir.

Q What did the defendant say? A He said, "He is my brother-in-law."

Q Well, now, you may give the whole conversation that you had with the defendant, do you understand? That is, this man here (indicating the defendant). Do you understand? A Yes, sir.

Q Now, you may give the whole conversation? A When I entered the kitchen, Mrs Calandra said, pointing to her husband--

MR. LeBARBIER: Now, never mind what she said.

MR. ELY: Now, I do call for that. It was said in the presence of the defendant; proceed

THE COURT: Proceed.

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A He said, "I'm here, Officer."

BY MR. ELY:

Q Now, what did Mrs Calandra say in the presence of the defendant?

A "What for you kill my brother? What for you shoot my brother?" In broken English.

Q And what did the defendant say? A He says, "I'm here, Officer. I won't run away. I shot him. I shot him in self-defence. This man is my brother-in-law, and he came to my home, and was drunk, and started a fight with me."

Q What? A "Started to quarrel with me--" I correct myself-- "Started to quarrel with me, and I seen him coming for me, and what chance would a small man like me have with a big man like him? So I reached for the pistol, and shot him."

Q How many times did he say he shot him? A I asked him how many times he shot him, and he said, "Two or three times."

Q Yes; now, you testified on this subject, on the 6th of August, 1906, didn't you? A Yes, sir.

Q Before the Coroner, at the Coroner's inquest?

A Yes, sir.

Q And do you recollect all the testimony you gave then?

A I do.

Q Well, give it all just as you gave it then, now?

A Well, will I have to go over all that again?

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Q Well, I tell you to give it again. You say you do.

A When I entered the room, he said, "That's all right, Officer. I won't run away. I'm here. I shot him. I shot him in self-defence."

I asked him why he shot him, and he said, "This man is my brother-in-law, and is in the habit of coming to my house drunk, and he started to quarrel with me."

Q Now, did you say that at the Coroner's inquest, that he started to quarrel with him? A Well, he started to fight or quarrel, either one or the other. "And a small man like me, what chance would a small man like me have with a big man like him?"

Q You said that; did you? A He said that, sir.

Q You gave that testimony at the Coroner's inquest; did you? A Well, I believe I did, sir.

Q Do you swear that you did? A Well, to the best of my ability, I did.

Q Well, you mean to the best of your recollection you did? A Yes, sir.

Q And your recollection is not any refresher, to-day, than it was on the 6th of August? A No; I guess not.

Q Well, is it as fresh? A Yes, sir.

Q It is? A Yes, sir.

Q Well, go on. A "So I seen he was coming for me,

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and I reached for the revolver, and shot him."

Q Now, for the purpose of refreshing your memory, on the 6th of August, did you say, "I seen him coming for me, and I put my hand on the bureau, and got the revolver, and fired"?

A Well, them may not be the same words.

Q Now, will you answer that question?

MR. LeBARBIER: I think, your Honor--permit me to say in the first place, your Honor--he is apparently endeavoring to impeach his own witness.

THE COURT: No, no. I will overrule the objection.

MR. LeBARBIER: No; I have no objection.

MR. ELY: Then why do we waste time in a speech?

THE COURT: Then why rise to address the Court, if you have no objection to make?

MR. LeBARBIER: Well, I suggest that the whole testimony be read, the whole answer; and not put a colored interpretation on the answer, giving only a part of it; and I now object to the interpolating of this answer, apparently taken before the Coroner's jury, and I request that the whole answer be read.

MR. ELY: I am perfectly willing.

THE COURT: Proceed, please.

BY MR. ELY:

Q Was this question asked you: "Q Officer, tell the jury what you know about this case?" And did you give this reply: "A I was on post on the evening of July 20th, and, along about 7:55 P.M., on the corner of Second avenue--7:50 P.M.--a great crowd of citizens ran toward me. They said that there was a man being murdered, at 309 East 90th street."

MR. ELY: And, of course, your Honor, that is incompetent, and it is only brought now by me for the reason that counsel has asked that the whole answer be read.

"I hurried there, and went upstairs, and found, on the fourth floor, at the head of the stairs, an injured man, lying prostrate across the hall. I asked who done the shooting. A lady, Mrs Calandra, she pointed, in Italian, this way (indicating), indicating, 'My husband.' I asked where he was, and she led the way into the kitchen, and from the kitchen to the bedroom, where Calandra was sitting on a bed, in his underclothes. He said, 'Officer,' he said, 'I done it. I'm not going to run away. I shot him in self-defence.' I got the gun, and asked him, 'Is this the gun you shot him with?' And he said, 'Yes.' I asked him how many shots he fired,

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and he said, 'Two or three.'

MR. ELY: Now, I omit three lines, which have nothing to do with my question as regards the conversation with the deceased.

MR. LeBARBIER: No, sir.

MR. ELY: Excuse me. If your Honor please, I say--

MR. LeBARBIER: Your Honor has ordered the reading of the answer.

THE COURT: Well, let us proceed in an orderly way.

MR. LeBARBIER: I suggest that your Honor has directed the reading of the answer.

THE COURT: This was all done by consent; not by my direction.

MR. ELY: I say, I omit three lines that were not responsive to the question that I asked.

THE COURT: Now I will hear your motion,

MR. ELY: And he can offer it afterwards.

MR. LeBARBIER: No, sir. We submit, now, under every authority, that this answer shall be read as a whole. We demand that the answer be fully read.

MR. ELY: Well, I will read it.

BY MR ELY:

Q (Question continued:)

"I brought it back into

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the hall, and asked the injured man 'Is this the man that shot you?' He groaned, in an audible voice, and he said, 'No. I want a doctor.' I brought the prisoner back to his room, again, and meanwhile an ambulance was being rung up, and the doctor came, and said a hurried examination at the hospital was necessary--Dr. Cocke.

"I brought the other man back, and he give me his name and his pedigree, and he gave me the injured man's name and pedigree, and place of residence. He said he worked for the defendant. I asked him why he shot him, and he said he came into his room, and was in the habit of coming into his house, drunk--intoxicated--and causing great trouble between him and his wife; and he said to the injured man, 'Now,' he says, 'Josie, go home, and we will talk this matter over, tomorrow, down at the store.' He says he went as far as the kitchen door, in the act of going home, and turned back, in a threatening manner towards him, and came in, and forced him into his bedroom, and he says, 'I seen he was coming for me, and I put my hand to the bureau, and got the revolver, and fired.' I asked how many shots was fired, and he said, 'Two or three shots.'" Now, did you answer the question that way? A Yes, sir.

Q And that's all you know about the case; is it?

A Yes, sir.

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CROSS EXAMINATION BY MR. LeBARBIER:

Q Don't you know a little more about the case, Officer?

MR. ELY: I object. He may ask a question.

THE COURT: He may answer the question.

A Yes, sir.

BY MR. LeBARBIER:

Q Do you remember going into the defendant's apartment, that night? A Yes, sir.

Q Did you observe any blood on the floor? A Yes, sir.

Q Whereabouts? A At the north end of the floor, under the window.

Q Near the window? A Yes.

MR. ELY: Under the window, he said.

BY MR. ELY:

Q Didn't you? A Yes, sir.

BY MR. LeBARBIER:

Q Did you observe any other place where there was any blood, like? A (No answer.)

Q In the kitchen this is, isn't it? A Yes, sir.

Q Was there blood anywhere else in the kitchen, Tarpey?
A No, sir; that's all I seen.

Q Did you observe any window in the apartment there, in the kitchen? A Yes, sir.

Q Was that window in good order? A No, sir.

Q What was the condition of the window? A Broken;

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broken glass.

Q Which window was broken? A The one on the north end of the room.

Q How much of it was broken? A Well, there was a large piece broken, a very large piece.

Q Was there a large aperture in the place there where the glass should be? A Yes, sir.

Q That was out? A Out.

Q Were the pieces of glass on the floor, or had they fallen outside, if any? A There was some on the floor.

Q Not the whole of it, though?

MR. ELY: I object. How can he tell whether it was the whole, or not?

THE COURT: He may answer, if he knows.

A No, sir; I don't know whether it was the whole, or not.

BY MR. LeBARBIER:

Q Did you pick up any of the pieces of glass?

A No, sir.

Q Do you know whether anybody did? A No, sir.

Q Do you know whether any of those pieces of glass are in the possession of the District Attorney? A No, sir.

Q Do you know whether or not the sash was broken?

A I don't know, sir.

Q After you went into the premises 309 East 90th street,

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and proceeded upstairs, where you saw Ciofelo, and went inside into the defendant's apartment, where, at that time, was the defendant standing?

MR. ELY: I object to that question. He assumes that he was standing. We don't know where he was, or what he was doing.

BY THE COURT:

Q Well, where was the defendant?

BY MR. LeBARBIER:

Q Where was the defendant? A He wasn't standing, sir.

Q Where was he? A He was sitting; sitting on the bed.

Q What was the condition of his dress? A He was undressed.

Q Well, how much dressed was he? A He had his underclothes on, shirt and drawers.

Q He had what, you say? A Undershirt and drawers.

Q Did he have any socks on? A That I couldn't tell. I couldn't answer to that.

Q You remember testifying at the Coroner's inquest, do you not, Officer Tarpey? A Yes, sir.

Q Do you remember this question and answer being put to you: "Q He had no stocking on; had he? A No"? Is that correct? A Well, I couldn't swear whether he had stockings on or not.

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Q Well, I am not seeking to mix you up in any way.

MR. ELY: I object to any conversation between counsel and the witness.

THE COURT: Put the question, please.

BY MR. LeBARBIER:

Q I call your attention to this question and answer:

"Q He had no stocking on; had he? A No." Do you recall that answer to that question? A I think so; yes.

Q Did you observe the arms of the defendant?

A No, sir.

Q Did you observe his arm? A No, sir.

Q Do you remember this question being put to you at the Coroner's inquest: "Q Did you see his arm? A Yes"?

A If I did, I seen the arm afterwards.

Q Was this testimony correct, at the Coroner's inquest, that you gave--

MR. ELY: That is not the proper question, if your Honor please, and I object to it.

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THE COURT: I will sustain the objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did you testify as follows, at the coroner 's inquest:

"Q Did you see his arm? A Yes."?

MR. ELY: I object. He has already said he gave, practically, that testimony, that he didn't say that he saw his arm, at a certain time; that's all. There is no contradiction there, as far as I have been able to see.

THE COURT: He may answer the question.

A I seen the arm afterwards. I didn 't see it then, in the room.

BY MR. LE BARBIER:

Q In the room, of course. You saw his arm in the room? A No, sir, not then.

THE COURT: Well, are you asking as to the fact, or the former testimony? I think it is a little in doubt. I cannot understand it, and I do not believe the witness does. Put your question so that it will be understood by him, please.

BY MR. LE BARBIER:

Q You were a witness at the coroner's inquest in this case, were you not? A Yes, sir.

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Q Did you testify as follows, in answer to this question --

THE COURT: Now, let me interrupt. Unless it tends to contradict, it will not be proper.

MR. LE BARBIER: I know that, your Honor.

THE COURT: Very good. I only call your attention to it.

BY MR. LE BARBIER:

Q "Q When you went inside, after this talk with the wife, did you go into the bed room of the defendant? A Yes, sir."? A Yes, sir.

MR. ELY: Well, he has said that before.

THE COURT: Go on, please, Mr. Le Barbier.

I take it this is preliminary.

BY MR. LE BARBIER:

Q "Q He had no stocking on; had he? A No."?

MR. ELY: And he admitted that already, that he said that.

BY MR. LE BARBIER:

Q Now, again: "Q Simply had his drawers? A And under-shirt."?

MR. ELY: Now, I object to this. It is consuming time unnecessarily. We have had it already. He is reading from the minutes, and asking him if he made these answers.

THE COURT: I thought he was merely reading from the minutes, without putting any question.

BY MR. LE BARBIER:

Q "Q Was he in bed? A Sitting on the bed".?

THE COURT: What are you asking, Mr. Le Barbier?

MR. LE BARBIER: I asked him if he was a witness at the coroner 's inquest, and if he didn't make his answers to the following questions.

THE COURT: Then I will sustain the objection of Mr. Ely, because they do not tend to contradict.

MR. LE BARBIER: And that is just what they do. This officer testified that he didn 't see his arm.

THE COURT: Well, I have heard several questions read by you from the minutes of the coroner, which seem quite in line, to my mind, with his testimony, to-day. I did not rule, because I thought you were leading up to some supposed contradiction. I will sustain the objection to such questions as have thus far been read.

MR. LE BARBIER: And I wish to contradict him.

THE COURT: Then proceed to the contradiction.

MR. ELY: Except as to the witness's being asked whether he testified before the Coroner, "He

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had no stockings on, had he? A No, sir." That was in before, your Honor.

THE COURT: Yes. And I have not ruled on that, therefore.

MR. ELY: And all the others are stricken out?

THE COURT: Yes.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Isn't it a fact that, when you were in the bed room of the defendant, you noticed the condition of his arm?

A I don't remember anything on the arm, in the bed room.

Q Now, upon that particular point, did you not, at the Coroner 's inquest, answer the question as follows: "Did you see his arm? A Yes, sir."?

MR. ELY: Now, I object to that.

THE COURT: He may answer that.

A I understood it, at the Coroner 's inquest.

MR. LE BARBIER: Never mind what you understood.

BY THE COURT:

Q Did you so testify, is the question? A I did testify it.

BY MR. LE BARBIER:

Q Did you observe the condition of his wrist, if any?

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A No, sir, not then.

Q Isn't it a fact that, while in the bed room of the defendant, at this particular time, you did observe the condition of his wrist? A No, sir.

Q Did you not, as a witness at the Coroner's inquest, answer this question, as follows: "Q Was his wrist red?

A Yes, sir."? Now yes or no? Did you? A No, I don't remember answering it that way.

Q Did you observe the skin in and about and on the wrist? A Not then, sir.

Q Isn't it a fact that, while you were in the bed room of the defendant --

THE COURT: Mr. Le Barbier, the record doesn't show, I am quite sure, whether your question is, "Did you so testify?" Or whether you are asking a question as to fact.

MR. LE BARBIER: I first put the question as a fact, and asked him if he had not so testified; and I wanted to appear clearly on the record.

BY MR. LE BARBIER:

Q And that, at that time, in the bed room with him, you did observe the condition of the wrist, and stated the condition of it? A No, sir; not at that time.

Q Now, as a witness before the Coroner, did you not tes-

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tify as follows, in answer to this question: "Q Was it bleeding? A The skin was off. It looked red, raw, the skin being off".? Did you or not testify so? A I didn 't understand it that way.

Q Did you or not so testify? A Well I did, if it is there; I did; because I seen it that way afterwards, but not at that particular time.

Q Now, wait. We will get at that.

MR. LE BARNIER: Now, I move to strike out the words that he saw it afterwards, on the ground that it isn't reponsive.

MR. ELY: I object to that.

THE COURT: Strike it out.

BY MR. LE BARBIER:

Q Did you at any time have a conversation with the defendant in regard to his wrist? A Yes, sir.

Q When was that? A Two days afterwards.

Q What was said? A He said, "You can see where he thought to bite me."

Q "thought to bite me," or, "did bite me"? A Or, "did bite me."

Q Did you see the teeth marks on the wrist? A No, sir; I seen no teeth marks.

Q, Well did you see any marks on the wrist? A Yes, sir.

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Q Did it appear to you like a bite?

MR. ELY: I object.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q What did it appear to you like?

MR. ELY: I object. Let him describe it.

He is making the witness his own witness as to this.

THE COURT: Sustained.

BY THE COURT:

Q What did you see about the wrist? A I seen it inflamed and red.

Q Bleeding? A No, sir.

Q Was the skin broken? A It was broken a little.

Q Was it bruised and black? A No, sir; it was red; reddish.

BY MR. LE BARBIER:

Q Did you testify, at the Coroner's inquest on the subject, as follows: "Q But, assuming that it was teeth marks, was it a good, full bite?"

MR. ELY: I object.

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THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Now, Officer Tarpey, I will ask you this question: You have stated here, to-day, that the wife stated to you, in broken English, in the presence of the defendant, "What for you shoot my brother?"

MR. ELY: I object. If your Honor please, that wasn't said to the witness. It was said in the presence of the witness, by the woman, to the defendant.

THE COURT: Well, is the question complete? I did not so understand.

(The question is repeated by the stenographer).

THE COURT: Yes. Strike it out. Ask your question without the recital of the facts preceding it.

BY MR. LE BARBIER:

Q Did the wife of the defendant say to you, in the presence of the defendant, as you have said, "What for you shoot my brother?" in broken English?

MR. ELY: Objected to.

BY MR. LE BARBIER:

Q Well, did she say that to the defendant, in your pres-

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ence? A Yes, sir.

Q Did you make any such statement as that, at the Coroner 's inquest? A Yes, sir.

Q Isn't it a fact that, at the Coroner 's inquest you said this: "I asked who done the shooting. A lady, Mrs. Calandra, she pointed, in Italian, this way (Indicating), 'my husband!'"? A Yes, sir.

Q Did you talk with Mrs. Calandra? A Yes, sir.

MR. ELY: I object.

A Did you say Mrs. Calandra?

BY MR. LE BARBIER:

Q Yes? A No, sir; with Mr. Calandra.

Q At any time or anywhere have you talked ever with Mrs. Calandra?

MR. ELY: I object to that, as too indefinite.

THE COURT: He may answer.

BY MR. LE BARBIER:

Q That is, the wife of the defendant?

THE COURT: Now, get the question in your head right, Officer Tarpey.

BY THE COURT:

Q Did you ever talk to the defendant's wife, at any time or place? A Yes, sir; afterwards.

Q Where and when? A Very little, though.

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Q Where and when? A I asked her --

Q No. When and where? A In their own rooms.

THE COURT: Now, we will stop here.

Gentlemen, do not talk about this case; nor permit any one to talk with you about it; nor form or express any opinion thereon, until it is finally submitted to you.

Captain, it has been reported to me that various witnesses have communicated with the defendant, and that packages have been handed to him with the consent of your officers. Now, that is entirely improper.

Immediately at the close of the court, it is your duty, as you know, to take the defendant to the pen, unless, by permission, he is permitted to remain here, for the purpose of conferring with counsel. But there must be no conference whatever with other people, except by my permission.

MR. FLY: And will your Honor direct the witness, as he is on the stand, not to talk with anybody about the case?

MR. LE BARBIER: Well, I submit that it is quite useless, any way. It is an insinuation. We are certainly not going to talk with a witness, and it is

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a useless suggestion for the District Attorney.

THE COURT: The matter is disposed of. Recess until two o'clock.

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AFTER RECESS.

M I C H A E L T A R P E Y, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. LE BARBIER:

Q Now, what is your recollection, Officer Tarpey, as to the two or three shots that you say were mentioned? Was it two shots or three shots? A He said two or three.

Q Well did he say two or three? A No, sir; he said it.

Q I say, did the defendant say two or three? A Yes; two or three.

Q Or is it because you broke the revolver, at the Station House, and found that there were two cartridges loaded, left in the pistol?

MR. ELY: Objected to on the ground that it is already answered definitely.

THE COURT: Have you finished your question, Mr. Le Barbier?

MR. LE BARBIER: Yes, sir.

THE COURT: I will sustain the objection. It seems to me that it is answered.

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MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did you look at the contents of the revolver, before you broke it, at the Station House? A No, sir.

Q Did you know -- question withdrawn. When you say that the defendant said to you that the deceased forced him into his bed room, what else, if anything, was said, at that time?

MR. ELY: I object. That is not the testimony of this witness, as far as I recollect.

THE COURT: He may answer it.

MR. ELY: I object, on the ground that it is injecting something into the testimony of the witness that he has not testified to.

THE COURT: He may answer.

MR. LE BARBIER: If your Honor wants to hear me on that point, I will point to the very words.

THE COURT: I have allowed it.

(The question is repeated by the stenographer.)

A He said that, "he being a much bigger man than me, what chance had I with him?"

Q Did he say that the deceased forced him into his

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bed room? A Yes, sir.

Q Did you observe the condition of the underclothes, that is, the shirt and drawers of the defendant? A Yes, sir.

Q What condition were they in? A They seemed to be in good condition.

Q Well I know. Dry or wet? A Dry.

Q While you were having this talk with the defendant, did you observe his physical condition? A Yes, sir.

Q Was he or wasn't he excited?

MR. ELY: I object to that. That is calling for a conclusion. He can describe what the defendant did.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR LE BARBIER:

Q Please describe his condition? A He seemed to be calm.

Q Calm? A Cool.

Q Cool? A Yes, sir.

Q Cold? A Cool.

Q When you say, "Mrs. Calandra pointed (Indicating); my husband," as you say, did you observe her physical condition?

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A Yes, sir.

Q Calm? A No; she was excited.

Q In what way did it manifest itself? A Such as ringing her hands, and accents in Italian, which indicated that she was very much excited (Illustrating).

Q And did she stop all this, when she spoke to you?

MR. ELY: I object to the question in that form.

THE COURT: He may answer it.

A Oh, no; she continued it afterwards.

BY MR. LE BARBIER:

Q Now, while she was speaking to you, if she did, did she stop moving her hands and her body? A She did, for a moment.

Q And stood upright? A Yes, sir.

Q Quiet? A No, sir, uneasy; walking the floor.

Q She was walking the floor? A Yes, sir.

Q Did you go outside into the hallway, with the defendant? A Yes.

Q Did you go with him towards the wounded man? A Yes, sir.

Q Did you have any conversation there, in the presence of the defendant? A Yes, sir.

Q Did you talk to the wounded man? A Yes, sir.

Q What, if anything, was said? A I asked the wounded man, "Is this the man that shot you?" He was groaning, yet he answered in a troubled voice, "No; I want a doctor."

MR. LE BARBIER: Now, I move to strike that out the words "he was groaning".

MR. ELY: I object. He called out the whole of it.

THE COURT: Wasn't that responsive to your inquiry?

MR. LE BARBIER: I think not. I asked about a conversation.

THE COURT: Strike out, "he was groaning", then.

BY MR. LE BARBIER:

Q Did the wounded man say that more than once?

A Yes, sir.

Q How many times? A Twice.

Q Looking at the defendant? A He looked at him once, sir.

Q And said, no? A And said, no.

Q And was that the first no? A No; he answered no again, as he turned on his left side, and looked the other way.

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Q Did you take the defendant to the hospital, at any time? A Yes, sir.

Q Did you take him in the presence of the wounded man? A Yes, sir.

Q Did you have any conversation there?

MR. ELY: Yes, or no?

A No.

BY MR. LE BARBIER:

Q When was this? A It was two days afterwards; the morning of the 22nd.

Q What did you take him to the hospital for?

MR. ELY: I object.

THE COURT: He may answer that.

BY THE COURT:

Q Why did you take him to the hospital? A To be identified by the prisoner -- by the deceased -- by the injured man -- by the man that's dead now.

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BY MR. LeBARBIER:

Q Well, when you arrived at the hospital, did you have the defendant with you? A Yes, sir.

Q Did you go into the room of the injured man?

A Yes, sir.

Q Where was he, in or out of bed? A He was in bed.

Q Did you go up to his bed? A Yes, sir.

Q Did you take the defendant up to the bed with you?

A Yes, sir.

Q How near the bed did you go? A Why, we were standing right beside the bed, perhaps about a foot away from the side of the bed.

Q Were you facing the injured man? A Yes, sir.

Q Was the defendant facing the injured man? A I think--

Q (Question repeated.) A No.

Q What was he doing? A He was lying on his back, looking upwards.

Q Was the defendant facing the injured man, I mean?

A Yes, sir; facing the injured man.

Q Now in that position, and at that time, and going there for a purpose, did you say anything? A No, sir.

Q Did anybody say anything, in the presence and hearing of the wounded man and of the defendant?

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MR. ELY: Yes or no.

A Yes, sir.

BY MR. LeBARBIER:

Q Who? A Detective Stein.

Q What was said?

MR. ELY: I object, as incompetent, immaterial and irrelevant.

THE COURT: Sustained.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q Don't you answer this question. At that time and place and at that particular moment, did the deceased say--

MR. ELY: No. I object to his asking what the deceased said, because he knows perfectly well that it is incompetent to incorporate that in any question, after your ruling, a moment ago.

MR. LeBARBIER: I have yet to learn that that is incompetent, your Honor.

MR. ELY: Then you have a good deal to learn.

THE COURT: I will sustain the objection.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q Now, don't answer this, Officer. At that moment, and at that particular time and at that place, did you hear--don't

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answer this--the defendant say anything?

MR. ELY: Answer that yes or no. I don't object to that.

THE COURT: Yes or no.

A No.

BY MR. LeBARBIER:

Q Don't answer this. At that time and place and particular moment, did you hear anybody say anything in the presence of the deceased and of the defendant?

MR. ELY: I don't object to that. Yes or no to that.

A Yes.

BY MR. LeBARBIER:

Q Don't answer this, until I get a ruling. Please state what was said?

MR. ELY: I object.

THE COURT: Have you gone into this at all, Mr District Attorney?

MR. ELY: I have not.

THE COURT: Sustained.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q How long did you remain in the hallway, at the top of the stairs, with the defendant and the wounded man? A Just

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about one minute.

Q Did you go back into the room? A Yes; afterwards.

Q Did the defendant at any time change his underclothing, to accompany you? A No, sir.

Q Do you know that of your own knowledge? A Yes, sir.

Q Did you observe the condition of the room, the kitchen?

A Yes, sir.

Q Other than the broken window? A Yes, sir.

Q Did you observe the position of the chairs? A No, sir.

Q The table? A Yes, sir.

Q Did you observe the position of the sofa? A No, sir.

Q Do you know how many chairs were in the kitchen?

A No, sir.

Q Do you know how many chairs were in the bedroom?

A No, sir.

Q Do you know where the sofa was? A No, sir; not exactly.

Q Do you know where the table was? A Yes, sir.

Q Was it in the bedroom or the living room? A It is in the kitchen.

Q Well, that's the living room, the kitchen.

MR. ELY: Well, I object. How does he know where they lived. He says, the kitchen.

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THE COURT: It is a statement of Mr LeBarbier's, which is out of order; and, if it is objected to, I must sustain the objection.

MR. LeBARBIER: Well, I am putting it in the way of a question.

THE COURT: Then do so.

BY MR. LeBARBIER:

Q Well, in all my questions, when I spoke of the kitchen, I meant the living room. Have you understood it that way?

MR. ELY: Objected to.

THE COURT: He may answer.

A Yes, sir.

BY MR. LeBARBIER:

Q When you went into the bedroom, did you observe where the position of the bed was? A Yes, sir.

Q Where? A Well, the head of the bed lay towards the south, and the feet towards the north.

Q Well, now, Officer, isn't it a back--please take People's Exhibit 2. Now, looking at People's Exhibit 2, will you kindly indicate on that diagram where the bed was? Do you understand the meaning of the word "diagram", the learned Assistant District Attorney suggests? A I understand the meaning of the word "diagram" very well; but sometimes they are not very perfect, you know.

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BY MR. ELY:

Q Do you understand that diagram? That is the question.

A Yes, sir.

BY MR. LeBARBIER:

Q Now, looking at People's Exhibit 2, will you kindly state where, in the bedroom, was the bed? A As you enter the door, from the kitchen, here (indicating).

Q Yes. A As you enter the bedroom from the kitchen, you go south, and, as you do, the bed lies right there, with the head of the bed there, and the foot there (indicating).

Q Well, may I ask if you will mark on that diagram where the head of the bed was, when you entered? Just a little cross? A There (indicating).

Q Now, will you kindly state, Officer, whether you know whether there was any other bed in the room? A Yes, sir.

Q A chair? A I didn't take notice of a chair.

Q A bureau? A A bureau.

Q What kind of a bureau was it? I mean generally, as to size, etc.? A It was a plain, respectable piece of furniture.

Q Will you kindly indicate on that diagram, People's Exhibit 2, where the bureau was, at the foot of the bed?

A I've marked the foot of the bed, where that "O" is.

Q And that's where the bureau was? A Well, the bureau

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is about a foot or a foot and a half from the foot of the bed.

Q Then you have marked the foot of the bed "O"?

A Yes; that's as far as my recollection goes.

Q Between the "O" and the partition was the bureau?

A Yes.

Q At the time you entered the bedroom, did you observe whether or not the window, sash window, between the living room and the bedroom was open or shut? A I didn't notice, sir.

Q Did you observe whether or not there was any glass window there, at all? A No, sir.

REDIRECT EXAMINATION BY MR. RLY:

Q Now, Officer Tarpey, you were just asked by counsel for the defendant, a moment ago, if you noticed the condition of the ~~xxx~~ kitchen, when you entered it, and you replied that you did? A Yes, sir.

Q Now, were any of the articles of furniture overturned or upset? A I didn't see any, sir.

Q And were all the articles of furniture straight, or didn't you notice them? A I noticed the table in particular.

Q Now, for the purpose of refreshing your memory, were you asked: "Q Was it up straight; did you notice? A Yes;

I noticed. Q How was it? A It was up straight"?

A Yes, sir.

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Q And that the table was up straight? A Yes, sir.

Q And it wasn't overturned? A No, sir.

Q And did you notice any articles in the kitchen of furniture, or otherwise, which were upset or overturned?

A No, sir.

Q Now, Tarpey, you have been asked a good deal about the testimony that you gave, or that was read to you by counsel for the defendant, which he said was taken at the Coroner's Court, notably about the wrist? A Yes, sir.

Q Of the defendant? A Yes, sir.

Q Now, on the night of the 20th of July, 1906, as a matter of fact, did you notice the wrist of the defendant?

A No, sir.

Q On the night of the 20th of July, 1906, did the defendant at any time say anything to you about his wrist? A No, sir.

Q On the same night did the defendant--that is, the night of July 20th, 1906--at any time, say anything to you about a bite, or an attempt to bite him? A No, sir.

Q Did the defendant at any time say anything to you to the effect that the deceased, Joseph Ciccolo, bit his wrist, or attempt to bite his wrist? A No, sir.

Q And did the defendant say anything else to you in regard to the shooting than that he did it in self-defence?

A That's all, sir.

Q Now, you were asked, a moment ago, by counsel, whether or not your recollection as to the number of times that the defendant shot depended upon the fact that you found that three shots had been fired from the revolver, or whether or not the defendant testified to that effect himself? A He testified--

Q Now, wait, please. I am simply calling your attention to the question of the defendant's counsel? A (No answer.)

Q Now, on the 6th of August, 1906, at page 7, did you say before the Coroner: "I asked how many shots was fired, and he (referring to the defendant) said, 'Two or three,'"? A Yes; that's perfect.

Q Now, referring again to the alleged injury, or to the defendant's arm, when, if ever, did the defendant ever speak to you about his arm, or his wrist, rather? It is his wrist, rather than his arm. A Two days after.

Q And where was the defendant when he spoke to you about the wrist? A He was on a street car, with--

Q Never mind. I didn't ask you where you were going. I asked you where it was? A On a street car.

Q And who, if anybody, was present, other than you and the defendant? A No, one.

Q And, at the time the defendant spoke to you about his

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arm, or his wrist, rather, did he show you his wrist?

A Yes, sir.

Q And that was the first time that the defendant had spoken to you about his wrist? A Yes, sir.

Q Were you present in court when the defendant was taken to court, the first time? A Yes, sir.

Q And were you in charge of the defendant? A Yes, sir.

Q What day was it that the defendant was taken to court? the first time? A It was on Saturday, the morning of the 21st of July, 1906.

Q Yes. And it was, as you said, on Sunday, was it, that the defendant, for the first time, referred to his arrest in your presence? A Yes, sir.

Q And you had been interrogated as to whether the defendant--by counsel for the defendant--as to whether or not the defendant said anything to you about his wrist, not his arm, on the night of the 20th of July, 1906, when you made the arrest. You have been interrogated, you remember, about that?

A Yes, sir.

Q And what was the fact of that? Repeat it again?

A I said that he made no mention to me of it, in the room.

Q And your testimony before the Coroner referred to the time that you have just mentioned, two days after the occurrence, on a street car? A Yes, sir.

Q Well, your testimony as to the wrist of the defendant?

A Yes, sir.

Q Which you gave before the Coroner, on or about the 6th of August, 1906, related to the time that you have just mentioned, namely, two days after the 20th of July, 1906; is that right? A Yes, sir.

Q Now, Tarpey, you have got a cross and an "O"--you have marked--I will change the form of the question. You have marked a cross and an "O" in that room, on People's Exhibit 2, which is put down on such exhibit as bedroom; haven't you? A Yes, sir.

Q And this cross is--just take that. That's a ruler; do you see? A Yes.

Q Now take this diagram in your hand, and measure the distance of the cross from this black bar, which represents the wall, in inches. How far have you got the cross from the wall, in inches? A (No answer.)

Q Well, do you understand what I say? A Yes, sir.

Q Then why don't you put down the ruler and measure it?

A Well, from what I understand--

Q No. Do you see that mark there (indicating)?

A That's a cross mark.

Q And who put that on? A I did.

Q And this black ink mark here, what is it? A The

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A The partition.

Q I am asking you how far that cross is from this partition, and I've given you a ruler, and ask you to measure it?

A Well, I would like to understand--

Q No. I don't want any explanation. I want to know how far that cross is from the wall? A About an inch and a half.

Q Well that 2, there; do you see that.

Q And here is a mark, even with the cross, how far does it make the cross from the partition? A About two feet, I think.

Q Then the head of the bed, according to the way you have got it marked, is four feet away from the wall? Was the head of the bed four feet away from the partition? A No, sir.

Q Then what you have done here on this diagram may be right, and it may be wrong. Now, how far was the partition from the head of the bed? A It was quite near the partition.

Q The head of the bed was up against the partition, wasn't it? A Yes; that's proper.

Q Now, when you marked this cross here, that was incorrect; wasn't it? A Yes, sir.

Q And it should have been up here against the partition (indicating)? A Yes, sir.

Q That is, the head of the bed was up against the

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southerly partition of the bedroom? A Yes, sir.

Q And the bed--about how near was the bed, a respectable bed, I suppose, like the bureau? A Well, an ordinary sized bed. Well, I would call it a three-quarters bed.

Q Well, then the length? That's the width? A Well, about six feet and a half.

Q And is that your experience with beds? A Yes, sir.

Q And then the bed would extend, we will say, about six feet, to six feet and a half, to the southerly partition in the room? A Yes, sir.

Q And then your testimony as to the bureau is that that respectable piece of furniture was about a foot to the north of the six foot, three-quarter bed? A Yes, sir.

RECROSS EXAMINATION BY MR. LeBARBIER:

Q Was there any light burning in the bedroom? A No, sir.

Q When you went in there with the defendant? A No, sir.

Q Where was the light? In the living room?

MR. ELY: Wait a moment. I object. It is not proper recross-examination. I haven't asked anything about the light in the bedroom, and this was proper cross examination in the main cross-exam-

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ination.

BY MR. LeBARBIER:

Q Did you see any light, when you went in there?

MR. ELY: Objected to.

A No, sir.

BY MR. LeBARBIER:

Q I mean in the premises of the defendant? A Yes, sir.

Q Then there was a light? A Yes, sir.

Q Was the light in the bedroom? A No, sir.

Q Where was the light? A In the kitchen.

Q This bureau that you speak of was up against the partition, or inside the bedroom?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. LeBARBIER: Exception.

WILLIAM E. ERB, a witness called on behalf of the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Now, Mr Erb, do you know this man standing up here

(indicating Officer Tarpey)? A I seen him--

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

Q And did you see him on the night of the 20th of July, 1906? A Yes, sir.

Q And whereabouts did you see this officer--he is an officer of the Police Force; isn't he? A Yes, sir.

Q And when you saw him he was in uniform? A Yes, sir.

Q Now where was it you saw this officer? A In 309 East

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90th Street.

Q And do you know ^{what} his name is? A No, sir:

Q Don't you know now? A No,,sir.

MR. ELY: Come up a little further, Tarpey,
to the rail.

BY MR. ELY:

Q But you recognize this officer as the officer that
you saw in 309 East 90th street, on the night of the 2 Oth
of July, 1906? A Yes, sir.

Q And did you give anything to that officer? A Yes,
sir.

Q And what did you hand to that officer? A A pistol.

Q And where did you find this pistol that you handed to
this officer? A In the hall.

Q In the hall of the premises 309 East 90th street?
A Yes, sir.

Q Now, on what floor was it? A Next to the top
floor.

Q Next to the top floor? A Yes, sir.

Q That 's the fourth floor, is it? A Yes, sir.

Q Now I show you People 's Exhibit 3, and ask you, if
you recognize that as the article which you handed to Officer
Tarpey, on the evening in question? A Well, I ain't
sure whether this is the pistol or not, but it was a pistol

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something like this, a dark pistol.

Q And it was, in all respects, like that one? A Yes, sir.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Before the shots did you hear any outcries?

A No, sir.

Q At any time? A No, sir.

Q Did you hear the shots even? A Yes, sir.

Q How many? A Well I heard one shot, and then I went away, and then I heard one shot right after the other.

Q And how many altogether? A Three.

Q And how long between the first and second shots?

A Well, I should judge a few seconds.

Q And between the second and third? A Well, it was one right after the other.

Q Did you live there? A No, sir.

Q How did you happen to be there? A Why, I was on the top floor, visiting a lady friend of mine.

Q An evening call? A Yes, sir.

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JOHN G. STEIN, a witness called on behalf

of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Stein, you are an officer of the Municipal Police Court of the City of New York? A Yes, sir.

Q And you were, on the 20th of July, 1906? A Yes, sir.

Q And to what Precinct were you then attached? A The 28th.

Q And what was your assignment or detail, on the night of the 20th of July, 1906? A I was detailed in plain clothes.

Q And all over the Precinct? A Yes, sir.

Q And, about eight o'clock in the evening of the 20th day of July, 1906, where were you? A In the station house.

Q And where is the station house? Give us the street and the number? A 432 East 88th. Between First avenue and Avenue A.

Q And just at or about eight o'clock in the evening, of the 20th of July, 1906, what did you do, or where did you go? A Well, I was in the Station House.

Q No. Where did you go? We have got you in the Station House? A I come in the Station House, about 8:20.

Q Yes? A And I remained in there until about 9.15.

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Q Well where did you go from the Station House, on the evening in question? That's what I am asking you? A Well I was on patrol in the Precinct, until about --

Q Did you go to 309 East 90th street? A No, sir.

Q Not at all, that night? A No, sir.

Q And when did you go to 309 East 90th street, if at all?

A I didn't go there at all, until about the 23rd, or so, looking for witnesses.

Q Now, did you see the defendant, on the night of the 20th of July, 1906? A Yes, sir.

Q Do you see the defendant now? A Yes, sir.

Q Where is he? A That gentleman right here, the small gentleman (Indicating).

Q That small man right there (Indicating)? A Yes, sir.

Q And when did you see him? A I saw him in the Station House.

Q At about what time? A At about 8:30 P. M.

Q And I show you People 's Exhibit 3. Did you ever see that before? A Yes, sir.

Q And where did you see that? A I saw that on the desk, in the station.

Q And where was the defendant at that time? A He was in front of the desk.

Q And this then was right in front of him, on the desk; was it? A No; that was right in front of the Sergeant, at the back of the desk, when I seen it.

Q Well, that was on the desk, and the defendant was in front of the desk; wasn't he? A No, sir; the defendant --

Q (Question repeated). A Yes, sir.

Q Now, you see, you don't pay any attention to the question. Now, pay attention to my questions, and answer them. Now did you have any conversation with the defendant on the night of the 20th of July, 1906? A Yes, sir.

Q And what was the conversation? A I asked the defendant, in the back room, I said to him --

Q Now, did I ask you where you asked him? Now, if you will just answer my questions, as I ask them. That's what I want you to do. Now did you have any conversation with the defendant? A Yes, sir.

Q Now then, what was the conversation? Do you understand that question? A Yes, sir.

Q Now, then, answer it? A I asked the defendant, "What was the trouble"? He answered, "My brother-in-law came to my house, drunk. He come into the bed room, to fight me. I was in my underclothes. I am a cripple, and I took the

pistol in the fight, and it went off"?

Q And what went off? A The pistol.

Q And did you ask him anything further than that?

A I says to the defendant, I says, "Well, was there a woman in the case?" And he said, "No; family trouble."

And I said to the defendant, "You may as well tell me," and he said, "Well, I won't speak no more, until I see my counsel."

Q Now, at that time -- have you told us all, as far as you can recollect, that the defendant said to you, at that time? A I believe that's all; yes.

Q Now, did you ask him any more questions? A No; not at that time.

Q Now, at any time after that, did you ask him any more questions? Did you have any other conversation with him? Yes or no? A Yes.

Q Well, did he answer any of your questions, after that? Yes or no? A No; he answered no more.

Q Now, at anytime on the night of the 20th of July, 1906, did the defendant say anything to you about having been bitten? A No, sir.

Q At any time after the night of the 20th of July, 1906, did the defendant say anything to you about having been

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bitten? A Yes.

Q State when and where the defendant first said anything to you about having been bitten? A On the 22nd of July, going down in a Third avenue car to the Prebyterian Hospital, the defendant rolled up his sleeve, and he said, "Here is that mark where I was saying where my brother-in-law bit me."

Q Now, all right. Did you look at his arm? A Yes.

Q Now, as matter of fact, had the defendant ever said anything to you about being bitten before this time that you refer to? A He didn't speak to me about it.

Q Will you please answer the question? A No; he didn't speak to me about having been bitten, before that day, the 22nd.

Q Did he speak to anybody in your presence? A Yes.

Q Now do you know what I am talking about? I haven't finished the question yet. Do you? All right, I'll wait. Now, do you know whether or not he had -- had he, in the presence, before the time on the car, spoken to anybody about being bitten? A Yes.

Q When? A In the Magistrate's Court, on the 21st, he spoke to this gentleman here, Mr. Vreeland, (Indicating), and Mr. Vreeland explained it to the Magistrate.

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Q Well did you hear anything that the defendant said to his counsel? A Yes, I heard it.

Q You heard him say something to the counsel about being bitten; did you? A He showed the --

Q Now please? A No; I didn 't hear him say anything about being bitten; but I seen him show him the arm.

Q Well, then, you don't know whether the defendant said anything to his counsel about being bitten or not, at all?

A No, sir.

Q And then you did hear the counsel say something in regard to the defendant being bitten? A Yes, sir.

Q Now, then, I will repeat again. Before the morning of the 22nd of July, 1906 did the defendant say anything, as you have described, to you or anybody in your presence, about being bitten? A No, sir.

Q Now, going back to the car, you say the defendant rolled up his sleeve, and showed you his arm? A Yes, sir.

Q And what did you see? A I saw a red mark, right on the top of the wrist. It was inflamed. I didn 't notice any teeth marks on it.

Q Do you know what an abrasion of the skin is? A Yes, sir.

Q Well did you notice any abrasion of the skin? A Well the --

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Q Now, answer that, if you can? A No; there was no abrasion; simply red.

Q And about how large was this redness on the wrist that you are referring to? A I would judge about the size of a 25 cent piece.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Subsequently to July 22nd, did you see the defendant?
A Yes, sir.

Q Where did you see him? A I see him in the 28th Precinct Station House, and at the Harlem Police Court.

Q Did you make an arrest in this case? A Yes.

Q When was that?

MR. ELY: I object. It's immaterial.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Were you at any time in the hospital? A Yes, sir.

MR. ELY: Of course, you mean the Prebyterian Hospital?

MR. LE BARBIER: Yes.

BY MR. LE BARBIER:

Q Were you there with the defendant? A Yes, sir.

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Q Did you see the injured man there? A Yes, sir.

Q Did you go into the room where he was? A I did.

Q And did you have any talk with him? A Yes.

Q Please state what it was? A July 22nd, at 10: A.M.,

I took the defendant from the Harlem Police Court, in company with Officer Tarpey, to the Presbyterian Hospital.

I went into the bed of the deceased, and I asked him, I said, "Ciofole, Calandra is outside. Do you want to see him?" And he said, "I don't care. If he wants to see, let him come in."

And, at that time, Officer Tarpey and the defendant stood at the entrance of the ward, about 25 foot away; and I beckoned to Officer Tarpey, and the defendant, to come to the bed side, and I asked the deceased the following questions, I asked him how he felt, and he answered, "I feel good", and I said, "Do you think that you will ever recover from the injuries that you have received?" And he said, "Yes, I think so."

And I took the defendant, Calandra, right to close to him, to the bed side, and I said, "Is this the man that shot you?" And he looked at him, and he said, "No," shook his head; and I asked the question again, and he said, "No;" and he turned his head.

And then I asked the deceased, "Well, who did shoot you?"

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He said, "I don't know," and he turned his head.

CELIA MANJANARA, a witness called on behalf
of the People, being duly sworn, testified asfollowed:

DIRECT EXAMINATION BY MR. ELY:

Q You werebookkeeper for the defendant? A Yes,
sir.

Q, And for what period of time?

ME. LE BARBIER: Objected to, as incompetent, immater-
ial and irrelevant.

THE COURT: I will receive it.

MR. LE BARBIER: Exception.

A One year and two months.

BY MR. ELY:

Q And when did you go there? A The 8th of May, 1905.

Q And up to what time were you in the employ of the
defendant? A About the 21st of June, 1906.

Q Now, I show you this paper (Indicating), and the
handwriting there. Now do you know whose handwriting that is?

A Yes, sir.

Q Whose is it? A It's my own.

Q It is your own? A Yes, sir.

Q And, besides, there is an envelope; is there not?

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A Yes, sir.

Q And in whose handwriting is that? A In my own.

Q In yours? A Yes, sir.

Q And, after writing that letter, did you enclose it in that envelope? A Yes, sir.

Q And did you mail it? A Yes, sir.

MR. ELY: These I offer now simply for Identification.

(They are marked for Identification).

Cross examination: None.

MR. LE BARBIER: I now move to strike out this witness's entire testimony, as it is immaterial, irrelevant and incompetent.

THE COURT: I will take your motion under advisement, and, unless the People connect it, before the close of their case, I'll strike it out.

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

DIRECT EXAMINATION BY MR. ELY:

Q You seem to have a cold, Miss Fitzell? A Yes, sir.

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Q And what's your business?

A Housekeeper and janitor of 309 East 90th street.

Q Housekeeper and janitor of 309 East 90th street?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q And you were houskeeper and janitress of 309 East 90th street, on the 20th of July, 1906?

A Yes, sir.

Q Now for how long a time before that had you been employed in that way?

A This is the first one ever I have had like this. I am about five years and some months there.

Q Five years and some months employed in 309 East 90th street?

A Yes, sir.

Q And did you know the defendant, Biaggio Calandra?

A Yes, sir.

Q And do you see him here? A Yes, sir.

Q And did you know Mrs Calandra, his wife? A Yes, sir.

Q Did you know Joseph Ciofalo, the person who is dead?

A Not personally; only by meeting him on the stairs, one night.

Q Then you knew him by sight? A No. He made himself known to me as Mrs Calandra's brother. I think I drew his attention--

Q Now, please, please. I only asked you if you knew Joseph Ciofalo? A I never knew him, only by meeting him on the stairs, and him making himself known--

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

MR. ELY: I consent to striking out of any conversation between this witness and the deceased. I only asked for the facts, and not for a conversation.

THE COURT: Strike it out.

BY MR. ELY:

Q Now, Mrs--I beg pardon--Miss Fitzell, I want to know whether or not you ever met the person that is now dead on the stairs, before the 20th of July, 1906, in the premises 309

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East 90th street? A Not to my knowledge, because there is several men passes up and down, and I don't know them all.

Q Now, did you see the deceased on the night of the 20th of July, 1906? A Yes, sir.

Q And where did you see him? A Two flights up on the stairs.

Q And did you and this man who is now dead have any conversation? Yes or no. A "Good evening."

Q Now, please don't give me what it is. Yes or no.

Q Did you and this man have any conversation on the stairs? A No; only "Good evening."

Q Did you speak to him, or did he speak to you? A He spoke to me, and he said, "Good ni ght."

Q Now, please don't tell me what he said. He spoke to you? A Yes, sir.

Q And you spoke to him? A Yes, sir.

Q Well, then, you conversed, and this was on the stairs? A Yes, sir.

Q And then you had some conversation on the stairs?

A All right.

Q Now, did you observe the appearance of this man?

A Yes, sir.

Q Now did you--do you know what happened to this man?

A He went upstairs to his sister's rooms.

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

THE COURT: She may answer.

BY MR. ELY:

Q He went upstairs to his sister 's rooms? A Yes, sir.

Q Well, he went upstairs; did he? A Yes.

Q You saw him go upstairs? A Yes.

MR. ELY: Well, we will strike c "to his sister's rooms." I will consent to that.

THE COURT: Strike it out.

BY MR. ELY:

Q Do you know to whose house or apartments this man went?

A Yes, sir.

Q Whose was it? A His sister 's house.

Q The name of the sister? A Mrs Calandra.

Q He went upstairs to Mrs Calandra's rooms; is that right? A Yes, sir.

Q And you don't know of your own knowledge whether she was his sister, or not? A Only she had been living there five years, and only under that name.

Q Now, did you notice the condition of this man who, you say, went up into Mrs Calandra's rooms, on the evening of the 20th of July, 1906? A Yes; sir.

Q What was his condition?

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

THE COURT: You may state what you know of his condition.

A He seemed to me all right.

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

THE COURT: It may stand. It seems to prove nothing out of the ordinary; it seems to be harmless.

MR. LeBARBIER: Well, it would seem to indicate a great deal, if insinuation is to count for anything. But, as matter of law, I agree with your Honor that it is harmless.

THE COURT: I will let it stand.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q Now, Miss Fitzell, did you see this man again at any time after you say he had gone into Mrs Calandra's rooms?

A No, sir; not until I saw him coming down to the ambulance.

Q Well, then you did? You saw him in the ambulance, coming down to be put in the ambulance; didn't you? A Yes, sir.

Q And that was after he had been in his sister's rooms, I mean Mrs Calandra's rooms; wasn't it? A Yes, sir.

Q And was this on the night of the 20th of July?

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A Yes, sir.

Q That you saw him--this man with whom you had had some conversation on the stairs, who went up into Mrs Calandra's rooms? A Yes, sir.

Q Brought out and put into an ambulance? A Yes, sir.

Q And that was the same man? A The same man.

Q About what time was it that you spoke to him, or he spoke to you? Now, please don't give me any conversation. It is simply a question about the hour in the evening that this man went up to Mrs Calandra's rooms, and was subsequently taken away in the ambulance? A Between 7 and 8, sir.

CROSS EXAMINATION BY MR. LeBARBIER:

Q Did you follow this man that spoke to you on the stairs to see where he went? A No, sir.

Q Well, do you know where he went? A He told me he was going into his sister.

Q No; do you know where he went? A Not after he went up two flights.

Q Had you ever seen him before? A No, sir, not to my knowledge; I wasn't acquainted with him.

Q And during all the five years that you had been there, you had never seen him? A Well, I see so many ^{visitors} ~~faces~~ coming into the house.

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Q (Question repeated) A No, sir.

Q How many years were you there? A Five years and some months.

Q And, after you had been there that long, then, for the first time, on the night of the 20th of July, 1906, you see somebody in that house, on the stairs, who talked to you, and then goes up two flights further? A Yes, sir.

Q And you don't know who he was? A Only what he said himself.

Q But you can't tell who he was? A No, sir.

REDIRECT EXAMINATION BY MR. ELY:

Q But you can tell whether the person who went upstairs, and who spoke to you on the stairs, was or was not the person who was subsequently taken out in the ambulance? A Yes, sir.

Q Well, was he, or wasn't he? A Well, I only got a glimpse of him.

BY THE COURT:

Q Well, was he or wasn't he? A He was; yes.

RECROSS EXAMINATION BY MR. LeBARBIER:

Q You spoke of a glimpse. What do you mean, Miss Fitzell?
A Just, you know, I was at the foot of the stairs, when he was coming down, and I was watching the man.

Q Did the man have any hair on his face? A He had a

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mustache, sir.

Q Did he have a mustache? A It looked to me like one, sir.

Q Well, we want to know, Miss Fitzell. Did he?

MR. ELY: I object. She didn't pull it, I presume, sir.

A It looked to me as if he had, sir.

BY MR. LeBARBIER:

Q Beard? A Didn't observe, sir; didn't take notice.

Q Well, you haven't been a witness in many cases; have you? A No, sir; never before in my life.

Q And you want to say what is right; don't you?

MR. ELY: I object to this. It is evident that the witness does.

THE COURT: There is nothing before me now.

Anything else, Mr LeBarbier?

BY MR. LeBARBIER:

Q How big a man was he? A That gentleman there is as tall as him (indicating the Crier), but I think he was stouter than he is, and about as tall.

Q How many men passed you, that evening, going into these premises? A Oh, there is lots of callers.

BY MR. ELY:

Q That evening, he is asking you about? A Oh, that

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evening?

Q Yes. A I didn't see any more coming in that evening.

BY MR. LeBARBIER:

Q Was he the only one? A That's the only one I met, sir.

Q Do you know a family by the name of Giglio? A Yes; 213 East 90th street.

Q Did you see them there, that night? A No, sir; I didn't; to my knowledge.

Q Can't you state a little more particularly, if you will and can? The time when you saw that man come up the two flights of stairs, as you say, was it eight o'clock? A It was between 7 and 8; it may have been twenty minutes to 8, or half past 7.

Q Might it have been a quarter of 8? A It might be; because I didn't keep track of the time.

Q Now, where were you at a quarter to 8? A Lighting the lights on the stairs, sir.

Q So that people coming in and out you could see, at a quarter to 8? A Yes, sir.

Q And ~~xx~~ were you there at ten minutes to 8, also?

A Ten minutes of 8?

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Q At a quarter of or ten minutes of eight? A I come down as soon as I lit the lights.

Q Well, but while you were lighting the lights, was it ten minutes of eight? A Well I didn't quite look. It might have been a quarter, for all that I could see.

Q Well, was it between ten minutes and a quarter of eight? A Something of the kind, but I didn't quite look at the clock.

Q Did you see two ladies and a gentleman come downstairs, at that time? A No, sir, but --

Q Well did you see --

MR. ELY: I object. I think she ought to have an opportunity to answer.

THE COURT: yes; she may finish her answer.

BY THE COURT:

Q Did you finish your answer? A Yes, sir.

BY MR. LE BARBIER:

Q Did you see, between a quarter and ten minutes of eight, when you say you were on the stairs, the Giglios coming down, to go out? A No, sir.

MR. ELY: One moment, please. I object; this has been answered before. She said that she didn't remember seeing them at all, on that night.

THE COURT: It has been already answered, Mr.

Le parbier. But you have got an answer and there is nothing before me now to rule upon.

BY MR. LE BARBIER:

Q On this night in question, did the man that passed you talk with you, or did he just pass by? A He said, "Good evening," to me.

Q Is that all he said? A Yes; all he said.

Q And then he went by? A Passed up to his sister's.

Q Didn't stop to talk with you, at all? A No, sir.

MR. LE BARBIER: I move to strike out that he went up to his sister's.

THE COURT: By consent, it is stricken out.

BY MR. LE BARBIER:

Q And, from his simply passing you by, and saying "Good evening" he was, as you say, the man that you have referred to? A Yes, sir.

Q Did you look at him? A Yes; just looked at him, and passed downstairs.

Q Did you go down to the hallway? A I went down to the basement, sir.

Q To the basement? A Yes, sir.

Q Well, that house has stairs on the outside, hasn't it? Did you return downstairs, and stand near the stairs, at all? A Not after I lit the lights, sir.

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Q Now, after you lit the lights, and went downstairs, where the stairs leading out into the street are, what time was it? A About eight o'clock, sir.

Q And during that time, you were on the different stairs leading up into that house, or on the front steps, leading to the street? A No, sir, I walked around the block.

Q And what did you do? A I lit the lights.

Q Now then what did you do after that, being on the basement or first floor. What time was it? A Ten minutes to eight, I suppose.

Q At that time?

MR. ELY: I object to that, and ask to have it stricken out, for the reason that it is her supposition.

BY THE COURT:

Q What is your best recollection of the time, Madam?

A Well, about a quarter to eight.

BY MR. LE BARBIER:

Q When you had lit the gas, and come down to the first floor? A Yes, sir.

Q Now, when you were on the first floor, did you see the Giglios go out? A No, sir.

BY MR. ELY:

Q Now, Miss Fitzell, you were lighting the lights on the

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second stairway, were you, when this man went up that you subsequently saw taken away in the ambulance? A They were lit then, sir.

Q Oh, you had lighted them and you were on your way downstairs? A Yes, sir.

Q And you went directly downstairs after having spoken with this person, as he went upstairs? A Yes, sir.

Q Now, did you know prior to the 20th day of July, 1906, of any relationship existing between this man and Mrs. Calandra? A No, sir.

MR. LE BARBIER: objected to, as incompetent, immaterial and irrelevant, and no part of the examination in chief.

THE COURT: Well, she says no. Go on, Mr. Ely.

BY MR. ELY:

Q Now, after you had spoken to him, on the night of the 20th of July, 1906, on the stairway, had you any information as to his kinship or relationship with Mrs. Calandra?

MR. LE BARBIER: objected to, on the ground that she said she didn't speak to him, and that he only said "Good evening".

THE COURT: She may answer.

A He said "Good evening" to me.

(The question is repeated by the stenographer)

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A No, sir.

BY MR. ELY:

Q Do you understand that question?

MR. LE BARBIER: I submit she understands it.

She talks English.

A Yes, I understand the question.

BY MR. ELY:

Q There wasn't anything else said but "Good evening"?

A No, sir. And then --

Q Well now -- A Well, it is so long ago, I forget.

Q Well, but now we have got a light in now that is penetrating. Please don't tell me what was said, but something else was said than "Good evening"? A Yes, sir.

Q And by this man who walked upstairs? A Yes, sir.

Q Whom you subsequently saw taken away in the ambulance?

A Yes, sir.

MR. LE BARBIER: Move that those two last questions and answers be stricken out, on the ground that they are incompetent.

THE COURT: Denied.

MR. LE BARBIER: Exception.

PIETRO PIASTRO, a witness called on behalf of the People, being duly sworn, and examined through the official interpreter, Philip Dollin, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Where do you live, Piastro? A 301 91st Street, and Second Avenue.

Q Well, 301 East 91st Street? A Yes, sir.

Q And where did you live on the 20th of July, 1906?

A At the same house.

Q Did you know Joseph Ciofalo, in his lifetime?

A Yes, sir.

Q And for how long a time before the 20th of July, 1906, had you been acquainted with Joseph Ciofalo? A Four years.

Q Was Joseph Ciofalo any kinsman or relative of yours, or connection of yours? A He was an uncle to my wife.

Q And do you know the defendant, Biaggio Calandra?

A Yes, sir.

Q Do you see him here? A Yes, here he is (indicating).

Q Now, before the 20th of July, 1906, where did you work? A I worked for the defendant.

Q And for how long a period before the 20th of July, 1906, had you been working for the defendant? A About two years,-- about two or three years.

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Q Now, looking at people's Exhibit 3-- take it in your hand -- did you ever see that? A No.

Q You never saw it? A No.

Q Now, do you know, as a fact, whether the defendant -- did you ever see the defendant with a revolver?

MR. LE BARBIER: objected to, as immaterial, irrelevant and incompetent, and not within the issue in the indictment.

THE COURT: I will receive it, it is a preliminary question.

MR. LE BARBIER: Exception.

A This here, I don't know (indicating the revolver in evidence) but, when he came to the office, he always put the revolver in the drawer.

Q Now, I didn't ask you anything about putting it in the drawer.

MR. LE BARBIER: Now, I move that that be stricken out.

MR. ELY: I consent. Now please repeat my last question, Mr. Stenographer.

(It is repeated by the stenographer)

BY MR. ELY:

Q Now yes or no. A I don't recognize this revolver, but --

BY THE COURT:

Q That is not the question. Did you ever see the defendant with a revolver?

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

THE COURT: You have already objected, and you have already your exception and now I am repeating the question.

MR. LE BARBIER: Exception.

A Yes; he had a revolver.

BY MR. ELY:

Q How many times did you see a revolver in the possession of the defendant?

MR. LE BARBIER: I object to that as immaterial, irrelevant and incompetent.

THE COURT: It is preliminary. Unless connected, I am going to strike it all out.

MR. LE BARBIER: Exception.

A He had it every day.

BY MR. ELY:

Q And did you ever take the revolver that you saw in the possession of the defendant in your hand? A No, sir.

Q And what did you see the defendant do with a revolver, which you say you saw in his hand, every day?

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

THE COURT: Answer.

MR. LE BARBIER: Exception.

A He used to put it into the drawer and then, when he left
the office, he took it with him.

BY MR. ELY:

Q Now did you ever see a weapon of any kind in Joseph
Ciofolo's possession. Yes or no. A No, sir.

CROSS EXAMINATION BY MR. LE BARBIER:

Q What do you mean by "weapon", that you just answered?

A Well, any weapon; a knife or anything else.

Q A knife or what? A A knife or anything else.

Q Well, what do you mean by that? A knife or what?

A Well, I understand by a weapon, a knife, or stiletto, or
anything sharp in point.

MR. LE BARBIER: Didn't he say also, a pistol?

THE INTERPRETER: No, sir, he didn't mention
a pistol.

BY MR. LE BARBIER:

Q In what capacity did you work for the defendant?

A Oh, I was packing fruits.
; pineapples, bananas and fruits.

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MR. LE BARBIER: I respectfully move, may it please your Honor, to strike out all the testimony of this witness, on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: Well, won't you renew your motion at the close of the case? All these motions to strike out the testimony, if not connected, are better made at the end of the case. I cannot very well limit the People as to the exact time when they will connect any particular testimony.

MR. LE BARBIER: Exception.

MR. ELY: Well, if your Honor please, I have another witness ready, but the witness will be necessarily very long; and, therefore, I will ask that your Honor adjourn until to-morrow morning, when I will take up that witness.

THE COURT: very well.

(The court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure and took an adjournment until Friday morning, October 19th, 1906, at half past ten o'clock)

CASE # 601

New York, October 19th, 1906.

TRIAL RESUMED.

MR. LeBARBIER: I understand that the prosecution has not yet finished?

MR. ELY: Well, that's right.

MR. LeBARBIER: But it is likely to finish at almost any moment?

MR. ELY: That is wrong.

MR. LeBARBIER: Well, then it may take some time.

THE COURT: Proceed with your motion.

MR. LeBARBIER: I want to suggest this to your Honor. We have two gentlemen from Brown & Seccombe's, auctioneers, and they have heavy sales on.

THE COURT: Well, what are they for? Character witnesses?

MR. LeBARBIER: Yes, sir.

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THE COURT: And what do you want? To put them on now?

MR. LeBARBIER: Yes, sir; if I might suggest the interruption of the orderly procedure, and put them on now.

THE COURT: Mr Ely, what do you say?

MR. ELY: Oh, I don't object at all. I am willing to do anything to assist.

THE COURT: Then you may call them.

JOSEPH H. MOORE, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you reside? A 156 Montague street, Brooklyn.

Q What is your occupation? A I am a member of the firm of Brown & Seccomb, auctioneers.

Q How long have you been with that firm? A Well, it will be about thirty-five years next December.

Q Do you know this defendant, Biaggio Calandra?
A I do.

Q How long have you known him? A Well, about ten

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years, I should think; it might be over.

Q Do you know other people who know him? A I do.

Q Do you know his reputation for truth and veracity, what it is? A Good.

Q Do you know what his reputation is for peace and quietness? A Good.

Q It is good, to your knowledge? A Yes, sir.

CROSS EXAMINATION BY MR. ELY:

Q Now, what is your name, sir? A Joseph H. Moore.

Q Now, Mr Moore, have you known this defendant during these ten years in any other way than in a business way?

A That is all.

Q And you have never had any social or other relations with him? A No, sir.

Q Purely business? A Yes, sir.

Q And you are an auctioneer? A I am, one of them; and I have got charge of the city collections for the house.

Q And it was in the scope of your business that you knew him? A Yes, sir.

Q Simply as a business man? A Yes, sir.

Q And he paid his debts, and that's all you know about him, really; isn't it? A Yes; I know he has a good business character.

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Q Do you refer to his business character? A Yes, sir.

Q For paying his debts? A Yes. And, outside of that, too. I know that his character is good for anything he wanted, or his word was perfectly good for anything that he said.

Q Yes. And you have only been dealing with him in a purely business way? A Yes, sir.

Q And that is all you know about him, in a purely business way? A Yes, sir.

REDIRECT EXAMINATION BY MR. LeBARBIER:

Q Did you know Joseph Ciofelo? A Yes, sir.

Q How long have you known him? A About fifteen years.

Q Do you know others who knew him? A Yes, sir.

Q Do you know what his reputation was for peace and quiet? A To the best of my knowledge, bad.

MR. ELY: Now, I object, and I ask to have it stricken out. He says to his knowledge, bad.

THE COURT: No. That was not the question that was asked you. Strike it out.

BY THE COURT:

Q Now, do you know his reputation in the community?

A Yes; and that's bad.

RECROSS EXAMINATION BY MR. ELY:

Q Now, how did you know Joseph Ciofelo? In a business

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way purely? A Yes; that's all.

Q And what did you know his reputation to be in the business community? A Well, I knew him to have the reputation for being a quarrelsome man.

Q And you knew that of your own knowledge or because--
A Of my own knowledge, sir.

Q And that's the only way you knew it; isn't it?

A No; I have heard other people talk about it.

Q And how recently did you hear anybody talk about it?

A Oh, in the last year or so.

Q In the last year only? A Well, I've heard it talked about a great many times, besides the last year.

Q Well, I am asking you? A And I am telling you that I have heard it talked about a great many times, besides the last year.

GEORGE L. BUCKMAN, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Mr Buckman, where do you live? A 29 West 93d street, New York City.

Q New York County? A Yes, sir.

Q Do you live there with your family? A No, sir;

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single man.

Q What is your occupation, Mr Buckman? A One of the firm of Brown & Seccomb.

Q What is their business? A Auction business.

Q Do you know how long they have been established in this business, in this city? A Yes, sir; about 45 years; 45 or 50.

Q And where is their place of business? A 235 West.

Q Do you know Biaggio Calandra, the defendant? A Yes, sir.

Q How long have you known him? A Fully fifteen years or over.

Q And do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is for truth and veracity? A Yes, sir.

Q What is it? Good or bad? A Very good.

Q And do you know what his reputation is for peace and quiet? A Very good.

Q Well, you know; do you? A Yes, sir.

Q Well, what is it? Good or bad? A Very good.

Q Now, do you know Mr Joseph Ciofelo? A Yes.

Q Or did you know him? A Yes.

Q How long did you know him, Mr Buckman? A Fully fifteen years.

Q Did you know other people who knew him? A Yes, sir.

Q Do you know other people who knew him when he was alive?

A Yes, sir.

Q Do you know what his reputation was for peace and quiet? A Yes, sir.

Q What was it? Good or bad? A Bad.

CROSS EXAMINATION BY MR. ELY:

Q Mr Buckman, did you ever have anything to do with Joseph Ciofolo, except in a purely business way? A No, sir.

Q And Ciofolo was representing the interests of the defendant; wasn't he? A Yes, sir.

Q And he was insistent upon the interests of the defendant being fully observed; wasn't he? A How is that?

Q (Question repeated.) A I don't know.

Q Well, I am asking you for your knowledge? I am not asking you for anything else? A Won't you kindly give me that again?

(The question is repeated by the Stenographer.)

A Yes.

Q And it was in his insistence on the conservation of the interests of the defendant that you noticed that he was, perhaps, not as gentle as you might otherwise wish? A I

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should think so.

Q And that is the basis for your statement that his reputation for peace and quiet is bad? A Yes, it was.

Q Well, now, you say that you have known the defendant for fifteen years? A Yes, sir.

Q You have known him in a purely business way?

A Yes, sir.

Q Have you known him in a social way, at all?

A No, sir.

Q Have you been around with him at all? A No, sir.

Q Have you ever been to any functions at which he attended? A No, sir.

Q And, as far as his private and domestic life is concerned, he is a stranger to you; is he? A Yes, sir.

Q And the only knowledge that you have of him at all is in connection with business; is that right? A Yes, sir.

Q As an auctioneer? A Yes, sir.

Q He is peaceable about his bills? A Yes, sir.

Q And has responded, from a business standard? A Yes, sir.

Q To the conditions that obtain in business circles; is that right? A Yes, sir.

Q And that is all you know about him; isn't it? A Yes, sir.

REDIRECT EXAMINATION BY MR. LeBARBIER:

Q Pardon me. I overlooked something. Now, how long have you been with Brown & Seccomb? A About thirty-six years.

Q What do you mean? A I have been connected with the firm.

Q And what do you mean when you say that the deceased was insistent upon the defendant's interests?

MR. ELY: I object.

THE COURT: I do not see that that needs any explanation.

MR. LeBARBIER: Do you still object? Answer.

THE COURT: No. I sustain the objection. It has been objected to.

MR. LeBARBIER: Why, I submit, your Honor, that it is simply a conclusion, in the direct examination; and we have a right to know what he means.

MR. ELY: In the direct examination?

MR. LeBARBIER: Well, in the cross examination, then.

BY THE COURT:

Q Well, do you wish to modify or change your answer?

MR. LeBARBIER: But he doesn't say that he wants to modify or change it. We want to know what

he means.

THE COURT: Well, I have asked the question.

MR. LeBARBIER: And I object to the question, your Honor.

THE COURT: Well, I have asked it, and I'll give you an exception, and sustain the objection.

MR. LeBARBIER: But I submit it is simply a suggestion from your Honor, the witness doesn't say that he wants to do so.

THE COURT: Objection sustained.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q What did you mean, when you were answering the question of the learned Prosecutor, when he spoke to you about the deceased being insistent upon the observation of the defendant's interests?

MR. ELY: Objected to. I didn't say observation.

THE COURT: Objection sustained.

MR. LeBARBIER: Exception.

MR. ELY: If your Honor please, if there are any other character witnesses, we might have them right along now, and get through with all of them.

THE COURT: Yes, that may be done. Of course,

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I do not direct it, or order it.

MR. LeBARBIER: Very well. We will pursue that course.

JOHN C. BERRY, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you live, sir? A 15 West 65th.

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

Q And what is your business, may I ask? A Reporter for R. G. Dun & Company.

Q And how long have you been with R. G. Dun & Company?

A On and off, thirty-three years.

Q Who is R. G. Dun & Company? A Mercantile agency.

Q Where? A 290 Broadway.

Q In this county? A In this county.

Q Do you know the defendant, Niaggio Calandra? A I do.

Q Do you know other people who know him? A I do.

Q How long have you known him? A Over three years.

Q Do you know what his reputation is for truth and veracity? A I do.

Q What is it? Good or bad? A Good.

Q Did you know Joseph Ciofelo in his lifetime? A I

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did.

Q I also meant to ask you, do you know what the reputation of the defendant is for peace and quiet? A I do.

Q What is it? Good or bad? A Good.

Q How long have you known--did you know Joseph Ciofalo?
A Over three years.

Q Do you know other people who knew him? A I do.

Q Do you know what his reputation is for peace and quiet? A I do.

Q What is it? Good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q Berry--is that your name? A Yes, sir.

Q Is the Dun Agency in the business of finding out the reputations of people for peace and quiet? A Well, as to general character.

Q No, no. Just answer that question? A No.

Q And you are an employee of Dun's Agency? A Yes, sir.

Q Did you ever know the defendant, except purely as a representative of Dun's Agency? A No, sir.

Q And you didn't consort with the defendant, at all; did you? A Only in a business way.

Q Well, did you consort with him in a business way?
What do you mean by consorting with him in a business way?

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A Oh, well, I misunderstood that question.

Q Oq, I thought so. Well, you have met him in a business way? A Yes, sir.

Q From time to time? A Yes, sir.

Q Now, it is usual, is it not, in all commercial agencies, to investigate the reputation and financial standing --of course, when I say reputation, I mean financial reputation and financial standing--of a merchant, and then take him--to rate him on that basis? A Yes, sir.

Q And it is not usual for a commercial agency to continue to send agents around to this merchant, whose reputation, financial reputation, they have investigated, unless there is some cause for it; is it? A We are supposed to--want to

Q Now, please. I don't know what you are supposed to do. If the question is obscure, and you don't understand, I will try to frame it differently? A Let me have the question again.

(The question is repeated by the Stenographer.)

A Yes, sir.

Q That's right; wasn't it? A Yes, sir.

Q Now, during the three years that you have seen the defendant, you saw him on each occasion, as the representative of Dun's Agency; didn't you? A Yes, sir.

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Q How many times do you suppose, in the three years, did you see him, that you say you knew him? A Well, I would see him two or three times a week.

Q His credit as bad as that? A No, sir.

Q Well, you saw him two or three times a week on business matters; didn't you? A Yes, sir.

Q And your interviews would be of a length from five to ten minutes perhaps or more, or what were they? A Well, from ten to fifteen or twenty minutes. It was according to--

Q From ten to fifteen or twenty minutes? A Yes, sir.

Q And you say that you saw this defendant on an average of two or three times a week? A Yes, sir.

Q For three years? A Yes, sir.

Q And you are a credit man for Dun's? A I am a reporter for Dun's.

Q Well, I know. One of the credit reporters; aren't you? A Yes, sir.

Q Perhaps I have not described it properly. But you are one of the persons who run around and investigate the credit or financial standing of various people? A In the produce line; yes.

Q In the produce line? A Yes, sir.

Q And then you are one of the credit men of Dun's?
A Yes, sir.

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Q And you report on the credit of various people?

A Yes, sir.

Q And you were going to see one of the representatives of the produce trade, when you went to see the defendant; weren't you? A Yes, sir.

Q And that's all you know about him; isn't it?

A Yes, sir.

Q You didn't discuss with anybody whether he was a pugilistically inclined man, or a peaceable man; did you?

A No, sir.

Q And you don't know anything about that; do you? as far as his domestic life and other relations are concerned?

A No, sir.

Q And you ^{never} mentioned it to anybody; did you? A No, sir.

Q Now, this man Ciofelo, you say that you knew Ciofelo? You know that he is dead, and, therefore, we will discuss him without gloves. You saw Ciofelo, Joseph Ciofelo, from time to time, during these three years; didn't you? A Yes, sir.

Q Did you used to go out and about with Joseph Ciofelo?

A No, sir.

Q Well, he was about your age; wasn't he? A No, sir; he wasn't about my age.

Q Well, you didn't have any relations with him, at all, except of a purely business character? A Yes; that's all.

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Q And you only met Joseph Ciofalo in the course of your dealings with the defendant's business? A Yes, sir.

Q And you only met Joseph Ciofalo as a representative of the defendant in his business? A Yes, sir.

Q And the relations, the entire relations that you had with Ciofalo, were distinctly and absolutely confined to the defendant's business; weren't they? A Yes, sir.

Q And you found him energetic on behalf of the defendant; didn't you? A No, sir.

Q You didn't? A No, sir.

Q Well, did you find him disagreeable? A Yes, sir.

Q And that is the basis you have for saying that his general reputation was bad; isn't it? A No, sir.

Q Well, what is it? If it was 't bad, let's hear it.

I am willing to have it out. A His reputation, from what I heard from outside, was bad.

Q His reputation, from what you heard outside, was bad? A Yes, sir; and his actions--

Q Now, wait a minute. Now, you have got that statement, and we will think of that for a minute. Now, when did you first hear--his reputation for what, first? A For being disagreeable.

Q Oh, for being disagreeable? A Yes, sir.

Q That is, he didn't have a sweet temper; is that right? A Yes, sir.

Q And you were informed from people on the outside that he didn't have a good temper? A Yes, sir.

Q And that's all you know about him; isn't it?
A Yes, sir.

MR. LeBARBIER: Those are all the character witnesses we have here now.

THE COURT: Very good. I shall limit you to one or two more.

MR. LeBARBIER: Well, I was going by the rule of six witnesses as to character.

THE COURT: Oh, no; possibly one or two more.

ANGELINA CALANDRA, a witness called on behalf of the People, being duly sworn, and examined through the official interpreter, Gustav St. Albe, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Now, your name is Angelina Calandra? A Angelina Calandra, yes.

Q And where do you live now? A 91st street, No. 69.

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Q West or east? A East.

Q 69 East 91st street? A Yes, sir.

Q And how long have you lived there? A Three months.

Q And you are the wife of the defendant here; are you not? A Yes, sir.

Q And you and the deceased were related; weren't you? Joseph Ciofalo was your brother; was he not? A Yes, sir.

Q Now, on the 20th day of July, 1906, where did you live? A In 90th street, near Second avenue.

Q At 309? A 309.

Q Now, how long have you been married to the defendant? A Ten years.

Q Now, do you know a person by the name of Celia Manjanara? A It is a woman. I know her.

Q And how long have you known Celia Manjanara? A Four years.

Q And do you know whether or not she was employed by the defendant? A She was bookkeeper.

Q Now, from the middle or last end of June, up to about the 15th of July, were you living with your husband, the defendant?

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

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THE COURT: It is a preliminary question. It may be asked. Objection overruled.

MR. LeBARBIER: Exception.

A I never saw him.

BY MR. ELY :

Q Well, you were not living with him during that time?

A No.

Q Now, on or about the 15th day of July, 1906, did you see your husband, the defendant? A I don't understand you.

Q Well, at Bensonhurst? A Sure, I saw him.

Q At Bensonhurst?

THE INTERPRETER: This lady says that I don't understand her.

MR. ELY: What is that?

THE INTERPRETER: She says she don't want to say anything to me. She says that I don't understand her, and she doesn't understand me, because she is a Sicilian. Up to the present moment, I understood her perfectly; but, if she don't want to understand me, I can't help it.

MR. ELY: Well, repeat my last question, Mr Stenographer.

(It is repeated by the Steongrapher.)

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A Yes; I saw him in the house of Mr Campagna.

BY MR. ELY:

Q At Bensonhurst?

THE INTERPRETER: She says that she don't know.

THE WITNESS: Yes, yes.

MR. LeBARBIER: I move to strike out all of the colloquy that has transpired here on the part of the interpreter, and his conclusion as to what he thinks the witness meant; and, if, because it is Sicilian, he cannot understand, then I respectfully protest against the interpreter.

THE COURT: I will strike out the colloquy referred to, if you will indicate to me the precise words that you wish stricken out. Always do that on a motion to strike out, because, otherwise, you leave it to the judgment of the Stenographer, and that ought not to govern.

MR. LeBARBIER: The whole statement of the interpreter.

THE COURT: Won't you tell me the words to which you make objection, so that I may rule on that exactly and accurately?

MR. LeBARBIER: Will the Stenographer kindly

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repeat them?

(It is repeated by the Stenographer as follows:

"She says that she don't want to say anything to me.")

THE COURT: Now that may properly remain in,
I think. Proceed, Mr Stenographer.)

(The Stenographer repeats further as follows:

"She says that I don't understand her, and she
doesn't understand me, because she is a Sicilian.")

MR. LeBARBIER: Now, that being so, your Honor,
we must object to the Interpreter.

THE COURT: Then there is no motion to strike
out anything before me, is there, Mr LeBarbier?

MR. LeBARBIER: Yes, sir; and we move, also,
to have that stricken from the record.

MR. ELY: Well, why should it be stricken from
the record? We have to act upon it, and change the
Interpreter, why should it be stricken out?

THE COURT: That is the very point. If it is
stricken out, you are kicking out the very stool
on which you stand. I'll strike it out, if you wish,
but, if you wish it to stand, it may stand.

MR. LeBARBIER: I think it is so apparent to
your Honor--

THE COURT: No, no. You either want it to stand or you do not. Which is it?

MR. LeBARBIER: Well, I would like to have it stricken out.

THE COURT: Now, then, strike it out.

MR. LeBARBIER: Under what he has said in this case, now, he does not understand the witness, we must object to the interpretation.

MR. ELY: Well, that is stricken out, and not before us.

THE COURT: Well, Mr Interpreter, if you do not understand, you will of course indicate that fact.

THE INTERPRETER: Yes, sir; of course, at once.

BY MR. ELY:

Q Then it was at the house of Mr Campagna, at Bensonhurst on or about the 15th of July, 1906? A Yes, sir.

MR. LeBARBIER: Now, I will respectfully move to strike out this answer, as immaterial. And, in support of that, I beg leave to call to your Honor's attention to the opening of the District Attorney, wherein he stated to your Honor and this jury that, from June 15th--I think it was--they were living together.

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MR. ELY: I did not. Anyway, if the District Attorney made a statement--

THE COURT: No, not now, Mr Ely.

MR. LeBARBIER: And he tries to leave by this testimony some intangible insinuation in the case that is not borne out by the facts.

THE COURT: I will deny your motion, and give you an exception.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q Now, who was there, at that meeting, with your husband, the defendant, at Mr Campagna's house, in Bensonhurst, on or about the 15th of July, 1906? A My husband and my brother.

Q And who else? A Mr Campagna and Mrs Campagna.

Q And who else? A And myself and sister.

Q And who else? A And my brother-in-law.

Q Yes. And who else? A That's all.

Q Wasn't Celia Manjanara there on that day? A No, sir.

Q And was Dr. Messina there? A No.

Q Well, I may not have gotten the name right. Now, who did your husband go there with?

MR. LeBARBIER: Objected to, as wholly immaterial, your Honor.

THE COURT: Overruled.

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MR. LeBARBIER: Exception.

A I don't know. I found him only in the house of Campagna.

Q Well, wasn't Dr. Giovanna Marena there? A No, sir.

Q Now, did you have any discussion with the defendant, on the 15th of July, 1906, about Celia Manjanara?

MR. LeBARBIER: Objected to, as indefinite, and incompetent, immaterial and irrelevant, and leading, and uncertain.

THE COURT: Well, Mr Ely, what is the relevancy, as you claim?

MR. ELY: Well, I don't care to state it before the jury.

THE COURT: Very well. I will receive it then, subject to a motion to strike out, unless it is connected.

MR. LeBARBIER: Exception.

A No.

BY MR. ELY:

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

Q And who was present, who was at your house, at seven o'clock in the evening, of July 20th, 1906? A Mr Giglio,

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Mrs Giglio and Carrie Giglio.

Q Mr Vito Giglio and his mother and sister? A Yes, sir.

Q And what time did the Giglios come to your house on the night of the 20th of July? A I can't exactly state the time, but I think it was about half past five or six o'clock in the evening.

Q And how long did they stay at your house on that evening? A About two hours.

Q Well, about what time did they go away, about what time did they leave? A About eight o'clock, or less than that. It might have been eight o'clock in the evening, or ten minutes less than eight o'clock, or ten minutes to eight.

Q Now, did you see your brother before the Giglios left, on that evening? A Yes; because he was in my house.

Q Now, what time did your brother come? About how long before the Giglios went, did your brother come into your house? A About half an hour before.

Q Was the defendant at your house when your brother came in, on the evening in question? A Yes, sir.

Q Now, what were you and the Giglios and the defendant doing, when your brother came in, on the evening in question? A We have been eating.

Q And how long had your husband been in the premises before your brother came in, on the evening in question?

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A My husband had been in the house about more than one hour.

Q Now, when your brother came in, did you hear any conversation between your brother and your husband? A My brother, when he came in, he said, "All those that are eating are living, and the others have to wait for it."

Q Will you tell me again what your brother said, when he came in, please? A "All that are present are eating and drinking, and we that are in business have to wait."

Q And now what, if anything, did the defendant reply to that?

THE INTERPRETER: And, now, what she says, I can't understand.

MR. LeBARBIER: And we object.

MR. ELY: And why should they object, if your Honor please? The Interpreter says that what she says now he can't understand, so he can't interpret.

THE COURT: Well, put it in a different form, if you can, and then bring it to my attention.

BY MR. ELY:

Q Well, what did the defendant say, if anything, after your brother had made the remark that you have just testified?

THE INTERPRETER: That I can't understand, what she just says.

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THE COURT: Prof. St. Albe, have we any interpreter who can interpret?

THE INTERPRETER: Well, the only man who understands Sicilian, more or less, is Mr. Morrossi.

THE COURT: Well, shall I send, gentlemen, for Prof. Morrossi?

THE INTERPRETER: I know that he speaks Sicilian.

THE COURT: Then send for Prof. Morrossi.

MR. ELY: The ninth juror has a question to ask.

THE NINTH JUROR: Are the jury to understand that that was a correct interpretation of the answer that was given by the previous interpreter?

THE COURT: Yes. There is nothing to the contrary. The Interpreter has said that he understood perfectly, up to a certain point. I then instructed him, in the event of his failure to understand, that he should so state, and, shortly after, he said, "I don't understand, I can't interpret," and we have now changed interpreters; and you are bound, gentlemen, by the interpretation. You must accept it as it is given. Whether you believe the evidence or not, is for you to determine. But you must accept the interpretation as a correct interpretation.

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(Benedetto Morrossi acted as interpreter from this point on.)

BY MR. RLY:

Q Now, madam, a moment ago, you testified what the deceased, your brother, said when he came into your rooms, into your apartment, on the evening of July 20th, 1906, and the question now is, Please give what the defendant said in reply if anything? A Do you want the answer of my husband?

Q That's what I am asking for? A My husband said as follows to my brother; nobody has said that he should wait, When the time of the closure had arrived, the place would be closed, and he could go.

Q Now, after this, was there any further conversation between your brother and the defendant? A No, talk at all.

Q Was there not some conversation between the defendant and your brother in English, ensuing then, which you didn't understand? A First, we offered our brother some food, and he refused to accept it.

Q No, no. I am not asking that. That is not the question at all. The question is: After the remark that was made by the deceased, and the answer that was made by the defendant, was there not some further conversation between the deceased and the defendant, in English, which you didn't under-

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stand? Yes or no that calls for? A Yes, they talked a little in English.

Q That's what I am getting at. Now tell me everybody who was there, when this conversation happened, took place?

A In the presence of those persons, they didn't talk anything.

Q Now, that's not my question.

(The question is repeated by the Stenographer.)

A Mrs Giglio, Mr Giglio, Katie Giglio; that's all.

Q Well, and yourself and the defendant? A Certainly, of course. I was there in my house.

Q Well, that's all right. And yourself and the defendant and the deceased? A Yes, sir.

Q And what were you all doing, at the time of this conversation; what were you all doing? A My husband said, "Let us have a glass for the health."

Q Now, at the time of this conversation what were you all doing? Were you all sitting around, or standing around, or lying around, or what? I want to know what you were doing?

A They were seated.

Q Well, you were sitting, weren't you? You were all sitting; weren't you? A All around the table.

Q In the kitchen? A Yes, sir.

Q Well, now, what afterwards did your brother say?

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A He didn't say anything.

Q Now, did you make that mark there (indicating a paper)?

A Yes, sir.

Q And this was on the 1st day of August, 1906, that you made this mark? A Yes, sir.

Q Now, for this purpose of refreshing your memory, I ask you--

MR. LeBARBIER: We object to the reading from any paper, in order to refresh any memory, as incompetent and immaterial.

THE COURT: Go on, Mr. Ely. I will determine when I have heard the full question.

Q I ask you if, at the District Attorney's office on the 1st of August, 1906, you said: "Then my brother said, 'Here are all my friends. Lets have a drink, and we can talk about the matter, no more.'" A It was my husband said so, and not my brother.

Q Well, then that was said, was it; that remark was ~~made~~ made? A Yes, sir; and it was my husband that made the remark.

Q Now, after that, how long after that was it before anybody went out of the room, after that remark? A Yes; I don't know.

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Q Well, about how long? A Nobody went out. My husband rose, in order to fix the alarm clock, because he had to get up at one o'clock.

Q Now you say that the three Giglios were there, don't you? A Yes, sir.

Q And did they stay there all night? A No.

Q Well, then, I ask you how long after this remark was made by your husband, did anybody go out of the room? A Nothing; just a few minutes; maybe five minutes.

Q Yes. Well, then, after ~~gi~~ five minutes afterwards, the Giglios went out? A Yes, sir.

Q And who was left in the kitchen then? A I, my brother, my husband.

Q And anybody else? A Nobody else; we three were alone.

Q And then did you hear any conversation between your brother and your husband, after the Giglios had left the room?

A They talked a little while, in English.

Q And you didn't understand that? A No.

Q And, after they had talked a little while in English, in the defendant's presence, did your brother say anything to you? A He didn't say anything.

Q Do you remember--didn't you say, on the 1st of August, 1906, at the District Attorney's office: "And, at the termin-

ation of the conversatinn, my brother said, 'Good night. I'm going to leave.' This was addressed to me"?

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

MR. ELY: It is simply for the purpose of refreshing the witness's recollection.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

A He merely said, "Good night". He didn't say, "I am going to leave," or "I leave."

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Q Now, how long after the Giglios left, did your brother leave your kitchen, on the night in question? A I can't exactly remember, because I wasn't minding anything in particular, but it might have been some five minutes.

Q Now do you remember that, on the 1st of August, 1906, you said, at the District Attorney's office: "About ten or fifteen minutes after the Giglios left, my brother left"?

MR. LE BARBIER: Objected to.

MR. ELY: However, I will withdraw the question, and go on. It doesn't make any difference.

BY MR. ELY:

Q Well, your brother did leave your rooms, on the night in question, after he had said, "Good night, " did he?

A Yes, sir.

Q And when your brother left, what did you say to your husband? A My husband was in bed, and I said, "In this house there are always troubles."

Q Didn't you say, "There are always troubles about the business?" A No; I said simply, "In this house there are troubles always," and I didn't say anything else.

Q And what did your husband say? A My husband said, "There are no troubles in this house, and your brother is a drunkard."

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Q And what did you say to your husband, the defendant, when he said that? A And I said, "No; my brother isn't drunk."

Q Now, after you said, "No; my brother isn't drunk," what happened? A My brother knocked at the door strongly (illustrating) and he said, "Open the door, Angelina".

Q Now, when you heard your brother knocking at the door, or when you heard someone knocking at the door, and you heard your brother's voice, where were you? A I was standing in front of the bed of my husband, at the bed of my husband.

Q And where was the defendant? A In bed.

Q And he was undressed; was he? A Undressed.

Q And where did he undress? In the bedroom? A Yes; in the bedroom.

Q And what did you do, when you heard the noise of the knocking at the door? A I was opening the door.

MR. LE BARBIER: Now, was it, "I was opening the door," or, "I opened the door"?

THE INTERPRETER: I translated it, and the Stenographer, I presume, has it down.

(The Stenographer repeats the answer.)

BY MR. ELY:

Q Now, what did your brother say as he knocked at the

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door? A "Open, open, Angelina."

Q And what did you do? A I went to open the door.

Q Now what else did your brother say? A Behind the door, he didn't say anything more.

Q Well, when you opened the door, did your brother say anything? A He entered and placed himself in front of the bedroom door.

Q I know. But I ask you what else the deceased said, at the time he was knocking at the door, or at the time you opened the door? A When he had entered, he addressed my husband with the words, "You dastard fellow, do you think I am drunk?" (Illustrating)

Q Now, didn't your brother say anything else, at the time he was knocking at the door, that you now recollect?

A He didn't say anything else behind the door. He said the words that I just referred to.

Q Now, do you remember, for the purpose of refreshing your recollection, did you state, on the 1st day of August, 1906, at the District Attorney's office: "And I heard my brother's voice say, 'Open, open. I'll tell him I'm not drunk. I only came to reason with him.' I then opened the door and my brother came in."

MR. LE BARBIER: Objected to, as incompetent,

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irrelevant and immaterial, as indefinite and leading.

THE COURT: Overruled.

MR. LE BARBIER: Exception.

A No; he didn't say anything about reasoning.

BY MR. ELY:

Q Well, didn't he say the rest? A He said, "Open, open, Angelina." Inside the house he said, "I want to show him that I am not drunk."

Q Now, when your brother came in, where was your husband, when he came into the kitchen, after you had opened the door; where was your husband? A My husband was in the bedroom.

Q And when your brother had said those words, what did your husband do? A My husband said that he didn't want to be insulted, and that he should go on his business, after his business.

MR. ELY: I ask to have that stricken out, and to have my question repeated. I asked for no conversation.

MR. LE BARBIER: Objected to.

BY MR. ELY:

Q I asked you--

THE COURT: I will strike out the answer, as irresponsible.

MR. LE BARBIER: Exception.

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THE COURT: Repeat the question.

(The question is repeated by the Stenographer.)

A My husband had got up from the bed, and remained by the bed.

BY MR. ELY:

Q Now, is your memory on the subject of where your husband was-- I will withdraw that. Now, for the purpose of refreshing your recollection, did you state at the District Attorney's office, on the 1st of August, 1906: "My husband then left the bedroom, and came into the kitchen"?

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

THE COURT: Overruled.

MR. LA BARBIER: Exception.

BY MR. ELY:

Q After your brother had made this remark, at the door? Now please answer that yes or no. A No; I didn't say that.

Q And did you then say, "My brother then addressed my husband, in the kitchen, and asked him, 'Am I drunk? Do you think I am drunk'?" Now yes or no to that. A He said that in the bedroom, and not in the kitchen.

Q Now who said that in the bedroom? A What and who said that?

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Q I am asking you. A But about what talk?

Q Now, we'll drop all that for a minute. When your brother came in he came into the kitchen, did he not, after knocking at the door, and making some remark at the door; you opened the door and your brother came into the kitchen, did he not? Yes or no.

MR. LE BARBIER: I object to that, on the ground that that is not the testimony. I object to it on the ground that it is incompetent, and because the witness has said that when the brother came in, he went into the husband's bedroom.

MR. ELY: That absolutely false, and counsel knows it.

MR. LE BARBIER: And objected to on the ground that the District Attorney has no right to come forward here, your Honor, with some sort of a statement, which, apparently, is false, according to this witness, and present leading questions to the witness. Now, I strenuously object.

THE COURT: Whether or not a leading question shall be put, is within the discretion of the Court. I will overrule your objection.

MR. LE BARBIER: Exception.

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MR. ELY: And I will have my last question repeated, and will your Honor kindly ask the witness to answer yes or no? It calls for categorical answer; and, if possible, for the witness to answer in that way, I submit it should be answered.

THE COURT: Tell the witness to answer yes or no, if possible; and then repeat the question to her.

(It is repeated by the Stenographer.)

A No.

BY MR. ELY:

Q Did your brother come into the kitchen at all? A He entered, and went through the kitchen into the bedroom.

Q Did he go into the bedroom at any time, on that night, after he had come back the second time, Mrs. Calandra?

A Yes, sir.

Q Your brother did? A Yes, sir.

Q Didn't you tell me yourself that your brother didn't go into the bedroom at any time; that all he did was to go towards the threshold of the bedroom door.

MR. LE BARBIER: Objected to, on the ground that it is incompetent, immaterial and irrelevant; the District Attorney cannot impeach his own witness.

THE COURT: The objection is overruled.

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MR. LE BARBIER: Exception.

A Because I didn't want to tell you; and what I want to tell, I want to tell you in the presence of the Judge.

Q And didn't you make the statement to me, that your brother didn't go into the bedroom at all, when this gentleman-- stand up Mr. Howe-- was present in the same room, and your sister, Mrs. Filoramo, was present? A Well, yes; but I, in that moment, hadn't all my freedom of mind. Now, I have my serene mind, and I want to say everything as it was before the Court.

Q All right. Now, have you ever seen this article before (indicating People's Exhibit 3)? A This is the revolver of my husband.

Q And for how long a time have you known that revolver to have been that of your husband? A From the first day when I married him.

Q And have you seen that revolver, practically, every day since you have married him, up to the 20th of July, 1906?

A I saw it up to the 19th of July.

Q Yes. And do you know, as a fact, whether or not your husband carried that revolver?

MR. LE BARBIER: Objected to, as immaterial, your Honor.

THE COURT: Allowed.

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