

MR. LE BARBIER: Exception.

A Yes; he carried it because, as a business man--

MR. ELY: I object to any reason, and ask to have everything stricken out after the words "Yes, sir."

MR. LE BARBIER: I object. If the question is allowed I think the whole answer should come out.

THE COURT: I will hear the complete answer.

A (Answer continued) Because he was a business man, and carried too much money, and was out much during the night.

MR. LE BARBIER: I object to everything after "yes, sir" and I ask to have all the rest of the answer stricken out.

THE COURT: I will allow it.

BY MR. ELY:

Q And he used to carry this revolver with him, every day, to your knowledge; didn't he? A Yes, sir.

Q Now, where did he use to carry the revolver, if you know? A He was carrying it because he was a business man, in the left hip pocket; in the left back hip pocket. (Indicating.)

Q And that was because he was a business man? A Yes, sir.

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Q And you didn't see the revolver on the night of the 20th of July?

MR. LE BARBIER: I object to the question, because it is foolish. And I understood the interpreter to say that it was because he was a cripple.

THE COURT: Strike out from the record, "because he was a business man," the remark of Mr. Ely.

MR. ELY: Yes; but that's what the interpreter said.

THE COURT: I refer to your remark, after the answer was given to the interpreter, and that I strike out. When you asked the question, you made that remark. That's what I strike out.

BY MR. ELY:

Q Now, you say that your husband undressed in the bedroom, on the night of July 20th, 1906; do you? A Sure.

Q Now, did you see the revolver at any time on the night of the 20th of July, 1906? A No.

Q Didn't you go around to the station house, the police precinct station house, on the night of the 20th of July, 1906?

MR. LE BARBIER: Objected to, as leading. I suggest that he shouldn't lead the witness.

THE COURT: Overruled.

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MR. LE BARBIER: Exception.

A I was.

Q And didn't you see the revolver there, at the station house, when you went there, on that night? A Yes, sir.

Q Well, then, you did see the revolver, on the night of the 20th of July, 1906; didn't you? A yes, sir; but I saw it in the station house, ^{when} the policemen had the satchel.

Q Had what? A A satchel.

Q Had a satchel? A Yes, sir.

Q And you saw this revolver, People's Exhibit 3, at the police station, on the night in question; didn't you?

A Yes; This pistol (indicating).

Q Now, when did you last see this revolver, before you saw it at the police station, on the 20th of July, 1906? A On the 19th of July.

Q At what time? A At 1 o'clock at night.

Q Well, that is 1 o'clock on the morning of the 20th; that's what you mean; don't you? A Yes; because 1 o'clock is already the 20th.

Q Well, that's what I am asking you. And it was at 1 o'clock on the morning of the 20th? And you saw that revolver, People's Exhibit 3, in whose possession? A I saw my husband taking it from the bureau, and putting it in his pocket.

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Q Now, what were you doing at the time that your brother was talking with your husband, after he had come back?

A Well, I busied myself with the things that were on the table, as there were a great many other things in the kitchen.

Q Well, what do you mean? Were you cleaning off the kitchen table? A Yes; I took away some of the glasses and other things that were there, and put it on the washtub.

Q Now, who were in the kitchen then? A I was alone.

Q What's that? A I was alone; I alone.

Q Didn't you tell me that your brother was in the kitchen, at that time, in the presence of Mr Howe and your sister; and didn't you say that in my office, three or four days ago, when I was asking you what your testimony in this case would be?

MR. LeBARBIER: Objected to as immaterial, irrelevant and incompetent, and improper and indefinite, and also upon the ground that the District Attorney cannot impeach, or seek to impeach, his own witness.

THE COURT: The rule is that the District Attorney cannot impeach, that is, show the bad character or truth and veracity of a witness is called. But the rule does not prevent his showing that any witness that he calls is mistaken or does not recall dis-

tinctly. Therefore, I will overrule the objection.

MR. LeBARBIER: Exception.

A I didn't say that he was in the kitchen. I said that he was just in the center of the door.

Q Well, but did you, at any time, say that your brother was in your husband's or your bedroom? A I said that he was in the center of the door, and what I have to say I want to say it before the Judge.

Q Well, I know. But didn't you, as matter of fact, tell me, in the presence of Mr Howe and your sister, when I was asking you to tell me the facts of the case, that your brother--

MR. LeBARBIER: " I submit that that is improper, if your Honor please.

MR. ELY: I haven't got through with my question.

THE COURT: Well, I cannot rule until there is something before me to rule upon.

MR. LeBARBIER: Well, as far as it goes, I object. It is apparent what the District Attorney is saying. He is narrating and seeking--

THE COURT: Mr LeBarbier, if you will wait until his question is finished, then I will entertain your objection. I very often determine in my mind how I will rule upon a question, before it is complete, only to find that I was entirely wrong in my

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apprehension of what was said. I cannot properly rule until a question is before me. Go on and finish the question, and I will then rule.

MR. LeBARBIER: Pardon me, your Honor, I object.

THE COURT: Overruled, at this time.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q (Question continued:) no time went into the bedroom of your husband, after you had admitted him, when he had the conversation relative to his condition? A No; he entered in the bedroom.

Q Well, that's not the question. I am asking you if you didn't tell me that he didn't enter at all. I asked you if it was not the fact that you had told me, when I was interrogating as to your testimony in the case, at my office, upstairs, two or three days ago, in the presence of this gentleman, Mr Howe (indicating), and in the presence of your sister (indicating), that your brother didn't enter the bedroom of your husband, after he had been admitted by you, a second time, on the evening of the 20th of July, 1906? A Yes; because my head was not in the proper shape at that moment; and now I am serene, and I want to tell the things as they are.

Q All right. Now, didn't you tell me at the same time

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that your brother was in the kitchen , when you were cleaning off the table in the kitchen? A No, no.

Q All right. Now, did you hear any shots fired on the evening of the 20th of July, 1906? A First, I heard--

Q Now, please. I asked that question, and it calls for yes or no. Did you hear any shots on the evening of the 20th of July, 1906? A I don't want to talk now about the shots, if I heard any; because I want to tell the whole affair, with other circumstances.

THE COURT: Say to the witness, that she must answer the questions that are asked, and whenever possible, answer them by yes or no.

A (Answer continued:) And if it is not correct to give an answer, without stating something particular before, how can I give such an incorrect answer?

THE COURT: No; answer the question. Ask the question, Mr Ely.

Q Now, did you hear any shots on the evening of the ~~July~~ 20th of July 1906?

THE COURT: Now, yes or no.

A Yes, sir.

BY MR. ELY:

Q Now, where were those shots fired? A From the win-

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dow of the kitchen.

Q Well were they fired in the kitchen? A Yes, sir.

Q Now, when you heard the shots fired, what did you see?

A I saw that they were clinched this way (illustrating) and my brother was pushing my husband against the window.

Q Now, did you see what hand--did you see how your brother held his hands? A I can't say now, because you don't allow me to talk as I ought to talk in this behalf.

Q In his behalf?

MR. LeBARBIER: No. In this behalf, she said.

BY MR. ELY:

Q Did you see how your brother ~~held~~ his hands, at the time of this struggle, as you have described it?

MR. LeBARBIER: The District Attorney, at the conclusion of the last question, stated audibly, "In his behalf." I understood from the interpreter it was "In this behalf." I would like to know from your Honor whether the interpreter may be asked whether the words "In this behalf" were not the words used by the witness.

THE COURT: Yes. Mr Interpreter, tell us what the witness said.

THE INTERPRETER: Well, I don't remember it

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distinctly now. The Stenographer must have wrote it down.

(It is repeated by the Stenographer.)

MR. ELY: Is it ~~in~~ "In this behalf"?

THE INTERPRETER: Yes.

MR. LeBARBIER: And may I ask your Honor to instruct the jury to disregard the remark of the District Attorney?

MR. ELY: I unite in that request. I misunderstood it.

THE COURT: Very well, strike it out. Strike out the remark of the District Attorney, the jury will disregard it.

BY MR. ELY:

Q (Question repeated.) A No.

Q Now, on the 1st of August, 1906, at the District Attorney's office, did you say, under oath: "My brother held my husband's right hand, and was trying to force it down. My husband was near the window. My brother was near the stove."?

MR. LeBARBIER: Objected to on the ground--

A Yes.

MR. LeBARBIER: I move that the answer be stricken out.

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THE COURT: No; I will overrule your objection.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q Now, did you also state: "While they were struggling, I heard glass breaking. The window was smashed. I didn't see the revolver until I went to the station house"? A Yes, I said so. I said that they were struggling, that the window broke, while they were knocking against the window, and that I saw the revolver in the station house.

MR. LeBARBIER: Now, for the information of the Court, may it please your Honor, I ask the Interpreter, didn't the witness just say, "My husband was --in the last question that the witness answered did she say, among other things, that, in the struggle, "While my brother was pushing my husband to the window"? Weren't those words said by the witness, as part of her last answer? I address myself to the Interpreter there, your Honor.

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THE COURT: Can't you answer the question?

THE INTERPRETER: She said so, the first time, and, the second time, she related the struggle, the knocking against the window, the crash of the glass, and seeing the revolver at the station house. And that her brother was pushing her husband towards the window. She said that, the first time, and then she went on again.

MR. ELY: No; but did you correctly interpret that?

THE INTERPRETER: I did.

BY MR. ELY:

Q Now, at this time, did you see anything on your brother's body? A In what time?

Q Well, the time that we were just speaking of? A Oh, I was in a state of convulsions, and I can't say what I saw, or what I didn't see; and, when I want to talk, they don't allow me to talk.

Q Well, for the purpose of refreshing your memory, did you, on the 1st of August, 1906, under oath, at the District Attorney's office, say: "I screamed and cried for help, and I saw that my brother was afire over the stomach. I said, to him, 'What is that? A cigar?' and he said, 'No; I'm shot.'"

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A yes, sir.

Q Now, after that, what did your brother do? A He went out into the hall.

Q And did you-- A Well, but you didn't let me talk what exactly I had to say.

Q Well, just answer my questions, please. Your brother then went out in the hallway; did he? A Yes, sir.

Q And what did you see, when he went out in the hall? A I didn't see what was in the hall-- what he did in the hall-- but, before, when I saw the fire on his stomach, I said, "What's the matter there? Is it a cigar." And he said, "No; I've been shot."

Q Yes. Now, that's all right. Do you remember saying, on the 1st of August, for the purpose of refreshing your memory, the 1st of August, 1906, under oath, at the District Attorney's office: "My brother, he walked into the hall. He fell at the head of the stairs"? A I didn't say that he fell.

Q Now, how many shots did you hear in the kitchen?

A Two.

Q Didn't you hear more than two? Didn't you hear three?

A Two.

Q Do you know who shot those shots? A I don't know anything.

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Q Did you see a revolver in your brother's hands, at any time on the night of the 20th of July, 1906? A I didn't see probably, at all, that revolver in my house.

MR. ELY: Now, I ask to have that stricken out, and the question repeated.

THE COURT: Strike it out.

MR. LE BARBIER: I object to it, on the ground that it is a proper answer and competent.

THE COURT: Repeat the question.

MR. LE BARBIER: Exception.

(The question is repeated by the Steongrapher.)

A No.

MR. LE BARBIER: Did your Honor strike out the answer of the witness?

THE COURT: I struck out the answer and repeated the question, and the answer is, no.

MR. LE BARBIER: Exception.

BY MR. ELY:

Q Now did you see a pistol in the hands of your husband, the defendant, at any time on the night of the 20th of July, 1906?

A No.

Q Now, at the time of the shooting which, as you say, took place in the kitchen, who, if anybody else, was in the

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kitchen? except yourself, your husband and the defendant-- except yourself, the defendant and your brother? A Nobody else.

Q Did you do any shooting, on that night? A No.

Q Did you have any pistol or any weapon of that kind on you that night? A I had nothing.

Q Now were you in the hall at the time your brother fell in the hall? A No.

Q Now, what were you doing at the time your brother fell, at the head of the stairs, in the hall? A I remained in the kitchen, because I was the prey of an attack of convulsions, and remained in the kitchen after that.

Q Now, did you say, under oath, on the 1st of August, 1906: "I was very much nervous and excited, running back and forth from the spot where my brother lay to the kitchen"?

A I don't remember.

Q Well, wasn't that the fact? A Well, in that moment, my head wasn't all right, and I was just talking like a senseless person.

Q In what moment? A When I talked, because I had lost a brother, my husband convicted, my house in ruin; and, therefore, I couldn't have all my mind on it.

Q Well, I know, but I am asking you if that wasn't the

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fact, namely, that you were running about, to and fro, between the kitchen and where your brother lay, in the hall, on the night of the 20th of July, 1906. I'm not asking about your mind or anything else. I am asking you for the fact? A I can't remember. There was the door of the American woman open.

Q Now, do you remember Officer Tarpey? C Come up here, Tarpey. A This gentleman here, yes.

BY MR. ELY:

Q Do you know that man? (Indicating Officer Tarpey.)

A Yes, sir.

Q Who is he? A The policeman who came to my house.

Q Well, who came to your house on the 20th of July, 1906?

A Yes, sir.

Q Now, did he ask you who did the shooting? Yes or no, please? A He didn't say anything to me, because I wasn't talking English; I didn't know how to talk English.

Q Now, please, didn't this officer ask you who did the shooting? A Well, but if I don't understand English, how can I know whether he asked me or not?

Q Well, you understand English somewhat, do you not?

A I don't understand anything at all.

Q Why, you have answered some questions here in English,

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to-day. A Well, what answer did I give in English? Do you call it to talk in English, when a person says, yes?

Q Well, I won't enter a discussion with you on that subject. You saw this officer, on the 20th of July, 1906; didn't you? A Yes; I saw him in my house.

Q And that was after the shooting; wasn't it?

A Yes, sir.

Q And this officer asked you a question; didn't he?

A No.

Q You say, Mrs. Calandra, that you don't understand any English at all, now?

A (No answer.)

(The witness looked at the Interpreter, and he interpreted the question.)

A I don't understand English, any English at all.

Q But you did understand then, that I was asking a question; didn't you?

A Well, of course, if a person looks in the face of another, and addresses her, that is a question.

Q Well, didn't Tarpey look at you in your face, and talk to you, when he went into your house, on the night of

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the 20th of July, 1906, after the shooting?

A No.

Q Why, when Tarpey came in, you and your husband, the defendant, were the only people in the house; weren't you?

A Yes, sir.

Q And you were in the kitchen, weren't you, and your husband was in the bed room, sitting on the bed; wasn't he?

A My husband also was in the kitchen.

Q You swear that is so; do you?

MR. LE BARBIER: She is under oath, and I object to the question, as foolish.

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

BY MR. ELY:

Q Well, you recognize, Mrs. Calandra, that you are under oath; do you not?

MR. LE BARBIER: Objected to, as incompetent.

THE COURT: She may answer the question.

MR. LE BARBIER: Exception.

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A Of course, I know I am talking under oath.

BY MR. LeBARBIER:

Q And you recollect that you have taken an oath to tell the truth, the whole truth, and nothing but the truth; do you not? A Of course; it is the truth.

Q Now, when Tarpey came into your room, after the shooting, on the evening of the 20th of July, 1906, did you go into the bedroom, and point your husband out to him? (Illustrating.) A No. When my husband--when the officer came, my husband was in the kitchen.

Q Well, did you point your husband out to the officer?

A No.

Q Your recollection on that point is fresh, so that you are not in any doubt on the subject? A No, I did not.

Q Now, did you say, in the presence of the officer, as you were walking up and down the room, "What for you kill my brother? What for you shoot my brother?" in broken English?

A No.

Q Did you use those words in any language at all?

A No.

Q Did you ever say those words at all to the defendant, or in the presence of the defendant? A No, no.

Q Now, Madam Calandra, didn't you, on or about the 28th of

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June, 1906, complain to Celia Manjanara's family of the intimacy between your husband and Celia Manjanara?

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

THE COURT: She may answer.

MR. LeBARBIER: Exception.

A I didn't complain, only I was a little jealous; that is all.

MR. LeBARBIER: Now, I move that that be stricken out, may it please your Honor, on the ground that it is incompetent.

THE COURT: Yes. Strike that out.

BY MR. ELY:

Q Now, didn't you tell your husband--withdrawn. Now, didn't you and your husband have words over the fact that you did complain to the family of Celia Manjanara about his relations with her?

MR. LeBARBIER: Objected to on the ground that it is incompetent, and in no way connected with anything in this case.

THE COURT: I will receive it.

MR. LeBARBIER: Exception.

A Yes.

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BY MR. ELY:

Q And didn't he tell you--

MR. LeBARBIER: I move that the answer be stricken out, as incompetent.

THE COURT: No; I will let it stand.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q And didn't he tell you on that account, because of your complaining ~~about~~ to Celia Manjanara's family, that he wouldn't live with you, and did then absent himself from you?

A No; he didn't absent himself from me.

Q Why, isn't it a fact that, for about four weeks before the 15th of July, 1906, you and your husband were not living together?

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

THE COURT: Overruled.

MR. LeBARBIER: Exception.

A But he came every week to visit me.

BY MR. ELY:

Q Won't you answer the question?

(The question is repeated by the Stenographer.)

A Yes; but he didn't go away on account of Celia. He

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went away because I had a quarrel with him.

Q Now, didn't you say on the 1st of August, 1906, under oath, at the District Attorney's office: "This girl was the cause of all, and the ruin of peace of the household. Then my husband afterwards, with me, absented himself for about a month. Just before he left home, I had some words with him, and he said, 'You are all the time complaining about this girl. Before you break up the house, I'll break it up. I'll leave.' I reply, 'Very well; you can take the bookkeeper, and I will attend to my business.' That was in June last"?

MR. LeBARBIER: Now, I object to that, as incompetent, and on the ground that this is directly under the authorities as to impeaching a witness, who is proffered here for truth and veracity.

THE COURT: I take it this is all produced for the purpose of showing motive?

MR. ELY: Certainly.

THE COURT: It seems to me competent.

MR. LeBARBIER: I don't see under what rule, your Honor; and, if you will permit me, I will submit an authority after recess, if I can send to my office.

MR. ELY: Well, why not take the adjournment

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now? It is one o'clock. Will you tell the witness please not to converse with any one?

THE COURT: Yes; I so instruct the witness.

Gentlemen of the jury, do not talk about this case, or permit anyone to talk to you about it, or form or express any opinion thereon, until the case shall be finally submitted to you.

Be here promptly at 2 o'clock.

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AFTER RECESS.

ANGELINA CALANDRA, her direct examination being continued, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. ELY:

Q (The last question is repeated.)

MR. LeBARBIER: Objected to.

THE COURT: Allowed.

MR. LeBARBIER: Exception.

A I said that, yes, to the District Attorney, but just because I was jealous; that's all.

BY MR. ELY:

Q Now, did you say, also, at the same time and place, under oath: "Through the solicitation of my brother and friends, my husband came back again to live with me"?

MR. LeBARBIER: Objected to, as incompetent, immaterial, irrelevant, and not in the presence of the defendant.

MR. ELY: It is a fact. What is the answer?

THE COURT: You may inquire as to the fact, of course.

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MR. LeBARBIER: Exception.

A Yes, sir.

BY MR. ELY:

Q Now, did you at the time that you made this statement, on the 1st day of August, 1906, under oath, at the District Attorney's office, say: "I can't say anything against my husband or against my brother, and the cause of all the trouble was that girl. I have told nothing but the truth, and everything I know"?

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

THE COURT: Objection sustained.

BY MR. ELY:

Q Now, Mrs Calandra, do you know this man here (indicating Mr Rooney)? A Yes, sir.

Q And you spoke to him just before the opening of court, and said to him in English, "I give my jacket and umbrella to my sister"; did you not?

MR. LeBARBIER: Objected to, as incompetent, immaterial and irrelevant, and not in the presence of the defendant.

A Yes.

THE COURT: I will sustain the objection.

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MR. LeBARBIER: I move that the answer be stricken out.

THE COURT: Yes.

CROSS EXAMINATION BY MR. LeBARBIER:

Q Why was it you said you were jealous, Mrs Calandra?

MR. ELY: I object to that.

THE COURT: She may answer.

A Because she was a friend of the family, and, since long, didn't come any more.

Q Isn't it a fact, Mrs Calandra, that this so-called jealousy that you speak of you learned from some clairvoyant, or fortune teller?

MR. ELY: I object to that.

THE COURT: Oh, I sustain the objection.

MR. LeBARBIER: We propose to connect that.

We propose to show that, consulting generally a fortune teller, the fortune teller told her beware of some lady.

THE COURT: No; I sustain the objection. We are getting along way from the issue.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q While the defendant was away from you temporarily, as

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you say, did he support you?

MR. ELY: Objected to, as immaterial.

THE COURT: She may answer that.

A Always. He never allowed me to miss--to feel any lack of money.

BY MR. LeBARBIER:

Q Did I understand you to say that the reason of your not being together, at the time that you were asked about, was because of some quarrel between you two?

MR. ELY: I object to that, because that is not the testimony that has been given.

BY THE COURT:

Q What is the fact?

THE COURT: Ask her what is the fact; not what she said, because the record shows that.

BY MR. LeBARBIER:

Q What was the reason, if any, Mrs Calandra, why you and your husband were not together for some time? A Because, the nightbefore, I did something that he didn't like. I told him to--I said something that he didn't like; and, on the following morning, he came to me, and wanted to kiss me, and I refused, and was angry, and then he says, "Well, I go," and so he left.

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Q Was there any real cause for you two being apart?

MR. ELY: I object to that.

BY MR. LeBARBIER:

Q If any?

MR. ELY: Objected to.

THE COURT: She may answer.

A No reason, no real reason at all. It was just a quarrel, a family quarrel on things of the house.

Q How long before the 20th day of July was it that you came together? A It was on a Sunday.

Q Well, do you recall about the date when it was?

A No; I don't remember the date.

Q Was it two or three weeks before the 20th, or a month, or how much time? A Four weeks he was absent.

Q No. How long before the 20th of July was it that you were living together again, after this absence, you know?

A Five days.

Q You were living happily those five days?

MR. ELY: I object to that.

THE COURT: She may answer.

A Yes, sir.

BY MR. LeBARBIER:

Q Was there any question between you and your husband,

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during those five days, that you were living together, prior to July 20th, 1906, of Celia Manjanara? A Nothing at all.

Q To your knowledge, was this occurrence that resulted in the shooting by reason of any quarrel between Joseph Ciofalo and your husband, as to Celia Manjanara being the cause?

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MR. ELY: Objected to.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did Celia Manjanara have anything to do with the trouble on the night of the 20th of July, 1906? A Nothing at all.

Q When your brother came in, that night, and you said, "First, we offered our brother some food, and he refused to accept," what did your brother do? A We engaged in some little conversation with the friends, and then he left.

Q Was it before he left that the defendant said, "Let's have a glass for health"? A glass of drink? A Yes; and it was before; and all the persons and my brother himself drunk.

Q Joined in the drink? A Yes, sir; joined in the drink.

MR. ELY: Well, can't we have the interpreter, now, instead of Le Barbier, counsel for the defense?

THE COURT: Yes; do not interrupt. Let the interpreter give the interpretation. Proceed please.

BY MR. LE BARBIER:

Q How long was it after that that your brother started--

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that your brother went out? A Well, it might have elapsed eight or ten minutes; I can't exactly recall.

Q Before your brother went out, that time, did your husband say to him, "We'll talk this matter over in the morning," or words to that effect?

MR. ELY: I object to that. No; I will not object to it. I will withdraw the objection.

A I don't remember. I hadn't any mind to such little things.

BY MR. LE BARBIER:

Q If I understand you correctly, something was said in English? A Yes; the talk was in English.

Q Be that as it may, how long did your brother remain outside, before he came and knocked at the door? A Some ten minutes.

Q When he said these words, "Open, open, Angelina," what did your husband say to you, if anything? A My husband said, "No, no," but I was in a state of embarrassment between what my husband said and between my brother, who was outside.

Q And did your husband say not to open the door?

MR. ELY: I object, if your Honor please. In the first place this conversation is incompetent. I made no objection before, but I make the objection now.

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MR. LE BARBIER: It is the res gestae.

MR. FLY: No; it is a declaration--

it purports to be a declaration of the defendant, and it is in the nature of testimony in his own behalf, that it is not possible to contradict; and it is improper under the case of the People against Real.

MR. LE BARBIER: It is the cross examination of a hostile witness.

MR. FLY: I object to that suggestion. I think it has been manifest, from the demeanor of the witness on the stand, and the testimony that has been adduced from the witness, that the witness is a witness adverse to the People.

THE COURT: I sustain the objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Now, when your brother was saying, "Open, open, Angelina," and your husband was saying, "No, no," what else did you hear?

A I didn't hear anything else. I opened the door, and my brother came in.

Q Did he come in quickly? A Yes; he came in rather angrily.

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MR. ELY: Now, I object to "rather angrily" and ask to have it stricken out.

THE COURT: Objection sustained. Strike out, "rather angrily".

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q When he came into the door there, what did he say?

A "You dastard fellow that you are, do you think that I am drunk?" (Illustrating.)

Q And when he said that, what did he do? A And then he grabbed hold of my husband, this way (illustrating), to strangle him; and he said, "This night will end it, and, if you don't stop I am not afraid of you, and I'll take the revolver."

Q What is that? A "If you don't stop that, to night, I am apt to make an end of it, to night, even with thine revolver. I am not afraid of thee."

Q When this was said, where was your brother? A In the bedroom.

Q What then was said by either party? A They talked then in English. My brother continued to wrangle with my husband, and pushed him against the window.

Q No. I'm talking of the bedroom.

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MR. ELY: Well, all right, if your Honor please.
I object to counsel prompting the witness now.
She seems to be getting on well enough.

THE COURT: There is nothing before me now,
Mr. District Attorney, no question whatever. Go on,
Mr. Le Barbier.

BY MR. LE BARBIER:

Q Did you see your brother do anything to the defendant,
in the bedroom? A He grabbed hold of my husband; they
struggled together; and then my brother pushed my husband.

Q Did your brother grab hold of the defendant, before
your husband did anything?

MR. ELY: I object to the form of the question.

THE COURT: I will sustain the objection.

You may ask what was done, and what was done first,
if you wish.

BY MR. LE BARBIER:

Q Is that the first thing that your brother did, to
seize hold of your husband?

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

MR. LE BARBIER: She has said that, or leading up
to it.

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BY THE COURT:

Q What did your brother do first? A The thing first that he did was to say, "You dastard fellow, do you think that I am drunk?"

BY MR. LE BARBIER:

Q And what did your brother do, if anything, by way of seizing hold of your husband?

MR. ELY: Now, I object to that.

THE COURT: She may answer that. It may be leading.

A My brother entered, and took hold of my husband thus (illustrating).

BY MR. LE BARBIER:

Q Was that in the bedroom? A Not in the bedroom. (Speaking in English.)

BY MR. ELY:

Q Not in the bedroom, eh? A (The witness replies to the interpreter.) Not in the bedroom. In the sleeping room.

BY MR. LE BARBIER:

Q When he did this to your brother, in the bedroom, what was the next thing that took place? A They both remained holding each other, and went into the kitchen.

Q yes. Were they holding each other when they went into the kitchen?

MR. ELY: Objected to. He has just said that.

THE COURT: Sustained. She has just made that answer.

MR. LE BARBIER: Question withdrawn, then.

BY MR. LE BARBIER:

Q Were they holding each other, coming out of the bedroom?

MR. ELY: Objected to. It has already been testified to.

THE COURT: Yes.

MR. LE BARBIER: Question withdrawn.

BY MR. LE BARBIER:

Q When they went into the kitchen, were they both holding one another?

THE COURT: That has been answered.

MR. LE BARBIER: Well, question withdrawn.

I want to show that they kept it up in the kitchen.

BY THE COURT:

Q How long did they remain clinched? A It might have been some ten minutes.

Q Where? A In the kitchen; from the bedroom they turned into the kitchen.

THE COURT: Now I think you have it definitely.

BY MR. LE BARBIER:

Q Now, pardon me just a minute. When they came into

the kitchen-- question withdrawn. Please look at that diagram, and see if you understand it. (Indicating the diagram in evidence.) A This I don't understand, at all, because I am not versed in drawings.

Q Well, when they were in the kitchen, did they remain in the same spot or move about? A They turned around together, until they reached the window, and the window crashed.

Q Who was up against the window, at the time it crashed?

A My husband.

Q And was your brother pushing him up against the window?

MR. FLY: One minute. I object to the question in that form.

THE COURT: Don't lead.

MR. LE BARBIER: That is the fact, your honor.

THE COURT: No, no; you must not state what the fact was.

BY THE COURT:

Q What was your brother doing? A My brother pushed my husband against the window, until the window broke.

BY MR. LE BARBIER:

Q What happened then? A Then there were two reports of a revolver. I fell into a convulsion, and I don't know anything else.

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Q Was there a table in the kitchen? A yes, sir.

Q When I say kitchen, I mean the living room, what is called the living room, the kitchen. How about that table? Was it in its place, or turned over, or what?

A It came against the washtub, and I was there, too.

Q Did anything fall off of the table?

A yes, sir; glasses and bottles.

Q Had the glasses and bottles, which you say fell off the table-- had these glasses and bottles which you say fell off the table-- had these glasses and bottles fallen off the table before the two reached the window, which you say was broken?

A While they were turning, they struck against the table, and then the glasses fell, and bottles fell.

Q Was that before they reached the window?

A Well, they were just shuffling and going towards the window.

Q Going towards what?

A Going towards the window.

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Q Were they shuffling or were they fighting?

MR. ELY: I object to that, if your Honor please.

THE COURT: She may answer that.

MR. ELY: That is a conclusion of the witness.

Why don't she tell what they were doing actually.

A Well, when I say shuffling, I mean with the foot, moving about with the feet.

MR. ELY: Is that the answer of the witness or your answer?

THE INTERPRETER: It is her answer. It is separate from fighting; shuffling the feet is different from fighting.

THE COURT: Now, I will sustain the objection, because the interpretation of the interpreter now puts a different aspect on the matter. You may repeat the question.

BY MR. LE BARBIER:

Q At the time that you say they were going around in the kitchen, in the way you have described, after coming out of the bedroom, were they still holding each other?

MR. ELY: Objected to. That has been several times specified to by the witness, on this examination.

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THE COURT: Yes; we have had "They had hold of one another," but, inasmuch as the matter is of such importance, we can go into it with minuteness and fullness.

MR. ELY: Why, certainly, although it has been answered three or four times, on the cross examination.

THE COURT: I will allow the question.

(The question is repeated by the Stenographer .)

A Yes; they were always holding each other, my brother always turning my husband, until he pushed him against the window.

Q Now, at that time, did you hear your husband make any outcry?

MR. ELY: Now, don't answer that question. I object to "outcry". I don't object to the question, "Did you hear your husband say anything?" and then to have her describe the chain of events.

THE COURT: Yes; that is open to the objection that it is leading.

MR. LeBARRIER: All right.

BY THE COURT:

Q What, if anything, did you hear your husband say?

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BY MR. LeBARRIER:

Q What, if anything, did you hear your husband say?

A I couldn't understand anything, as I said, because I was in convulsions, and didn't hear well.

Q Before you went into these convulsions, madam, did you hear your husband say why your brother took hold of him?

A They talked in English, and I didn't understand.

Q Did they whisper in each other's ears, or indulge in loud talk?

MR. KLY: Oh, I object to that.

A They were talking loud.

BY MR. LeBARRIER:

Q Now, at any time during this particular occurrence, did you see any revolver in the hands of your brother?

A No.

Q Did you see any revolver in the hands of your husband?

A No.

Q Did you see where their hands were?

MR. KLY: Yes or no, that calls for, if your Honor please.

MR. LeBARRIER: I don't call for yes or no; I call for an answer to the question.

THE COURT: Now answer the question, yes or no, if possible.

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A Grasping each other.

BY MR. LeBARBIER:

Q Grasping with what? What portion of the body of each other were they grasping? A Both hands were grasping the other hands (illustrating).

Q Well, they had their hands grasped together, this way (illustrating)? Did you see your brother do anything with his head? A I didn't see anything, because I was in convulsions.

Q How long have you known your husband? A Some twenty years.

Q Do you know other people who know him? A My sister, my relations and friends.

Q I am now speaking of your husband? You understand that; don't you? A Yes; my husband.

Q What is his reputation? A Very good. And my husband always had a high respect for my family.

MR. RLY: Well, I object to the high respect for the family.

THE COURT: Yes; that is not competent.

MR. RLY: And I ask to have it stricken out.

THE COURT: Yes; strike it out, as to the high respect that her husband had for her family.

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MR. LeBARBIER: And we except.

THE COURT: Do you except to that?

MR. LeBARBIER: Yes, sir. We think, in a homicide case, that the lid shouldn't be held down too tight.

THE COURT: I have no discretion to vary the rules of law, at all. The rules of law as to evidence must be observed as carefully in a homicide case as in any other kind of case.

MR. RLY: While I don't believe the rules of evidence should be relaxed in a homicide case, or in any kind of criminal case, if counsel thinks that statement of the witness is beneficial to her husband, I am perfectly willing to withdraw that objection, and that motion, and it may stand.

THE COURT: Yes; by consent, it may stand.

MR. LeBARBIER: Very well, then.

BY MR. LeBARBIER:

Q Prior to your husband and your brother being in that kitchen, on that night in question, was that window pane broken?

A No.

Q Mrs Calandra, I understood you to say, in answer to the prosecutor's questions, that your husband was in the habit

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of carrying a revolver.

THE COURT: Yes; she said that.

MR. ELY: This revolver, she said; the revolver in evidence.

BY MR. LeBARBIER:

Q Will you kindly tell us just what you mean by that?

MR. ELY: I object to that. She has very fully told us.

THE COURT: Well, I think, Mr LeBarbier, you have got that quite sufficiently in evidence. It becomes now merely cumulative testimony. I sustain the objection for that reason.

MR. LeBARBIER: Well, then, I will withdraw that, on your Honor's suggestion, and ask this question.

BY MR. LeBARBIER:

Q Was he in the habit of carrying it every day, or only occasionally?

MR. ELY: I object. She has already ~~said~~ testified on that subject.

THE COURT: Well, answer that question, and I think that will be sufficient on that subject.

A When he left, in the morning, he always took the revolver.

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BY MR. LeBARBIER:

Q At what hour, generally, did your husband go to work?

A Sometimes at one o'clock, and many times at twelve o'clock.

Q Twelve o'clock at night? A Yes, sir; always in the middle of the night.

Q Was he a hard working man?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q Who was it that paid for the funeral of Joseph Ciofelo?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. LeBARBIER: Exception.

THE TENTH JUROR: If your Honor please, I would like to ask the witness a question, if it is proper, and, if it is improper, will your Honor correct me?

BY THE TENTH JUROR:

Q To the best of your knowledge and belief, during your marriage, can you state whether your husband had a permit, a legal permit, to carry a revolver? A I don't know.

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THE NINTH JUROR: Your Honor, I am just simply somewhat in the dark as to what the witness means by the word "convulsions", which she has used on several occasions.

THE COURT: I will take that up in a moment.

BY THE COURT:

Q In your testimony, you said you had convulsions, and did not recall actually ~~xxx~~ what you saw taking place. What do you mean by the term "convulsions"? A That I fell in a swoon, and fell to the ground.

Q Do you mean that you were unconscious, and hence don't know what was taking place? A No; I fell to the ground, and didn't see anything more in convulsions.

Q So, have you any memory whatever as to what took place, after you say you fell to the ground? A Nothing.

REDIRECT EXAMINATION BY MR. ELY:

Q Now, Mrs Calandra, you testified before the Coroner, didn't you, in the Coroner's Court, in August, on the 6th of August, I believe it was, 1906-- yes, the 6th of August, 1906?

A Yes, sir.

Q Now was this question asked of you: "Q Where was your husband at the time your brother came back into the room

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from the hallway?"

MR. LeBARBIER: Objected to on the ground that he is seeking to impeach his own witness, and because it is incompetent.

THE COURT: She may answer.

MR. LeBARBIER: Exception.

A I can't remember.

BY MR. ELY:

Q And did you make this answer: "My brother came in the kitchen as soon as I opened the door"?

MR. ELY: And that, your Honor, of course, calls for yes or no.

THE COURT: Yes; answer yes or no, if possible.

A I can't remember.

BY MR. ELY:

Q Now, was this question asked you, and did you make this answer: "Q Now, I ask you where your brother was, at that time? A He came out from the bedroom into the kitchen"?

A I can't remember all these things, but I should like to detail before the Judge all these things that I remember, in my own way...

Q No, the question is, was that question put to you, and

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did you make that answer to that question, at the Coroner's Court? A Yes, sir.

Q And you made that answer to that question, to the question I have just asked you? (Repeat.) A I can't remember.

Q All right, Mrs Calandra, give me again that conversation which you say you heard between the deceased and the defendant, at which you say that the deceased said to the defendant that he was going to do for him, that night, even though the defendant had a revolver. Just give me the words of that, again? A It was my brother who said such things to my husband.

Q Well, that's what I say. Now just give exactly the words that you say now that your brother then used? A My brother said, as he entered, "You are a dastard fellow."

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Q Well, we've gotten beyond that. We want now to get to the point where he said he was going to do for him that night, even if he had a revolver.

A And then my husband said that he didn't want any further insulted, and my brother said, "I think that I will make an end of it, to night, with your own revolver."

Q Oh, that's it is it? Are those the words you say your brother used that time? A Yes, sir.

Q That he, your brother, was going to make an end of your husband, with your husband's own revolver, at night? A Yes, sir; and he added, also, "Because I am not afraid."

MR. ELY: Now, please read me the previous testimony of the witness on that subject, Mr. Stenographer.

BY MR. ELY:

Q Now, didn't you testify a minute ago, as follows:

MR. ELY: Now read that, Mr. Stenographer.

(It is read by the stenographer.)

Q That is the testimony that you gave to counsel for the defense, and that's right; is it? A Yes.

Q Now, did you give that testimony at the Coroner's inquest? Yes or no. A No.

Q Why didn't you? A Because I wanted to reserve it for

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the Judge.

Q What is that? A Because I wanted to reserve my answer for the Judge.

Q You wanted to reserve that bit of testimony-- A For the Judge.

Q You wanted to reserve that bit of testimony until the case came up for trial, before the Court; is that right?

A Yes, sir.

Q And you didn't ever tell that to any member of the District Attorney's staff either; did you?

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

THE COURT: Allowed.

MR. LE BARBIER: Exception.

A I didn't say anything to anybody.

BY MR. ELY:

Q Well, you were asked, weren't you, to tell all the truth, if you knew it, respecting this occurrence on the 20th of July, 1906?

MR. LE BARBIER: Objected to.

Objection overruled.

MR. LE BARBIER: Objected to as incompetent.

It is a conversation occurring in the absence of

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the defendant, and is immaterial, irrelevant and incompetent.

THE COURT: I will hear the answer.

MR. LE BARBIER: Exception.

A Well, but, at that moment, my head wasn't all right, and I was talking foolishly.

MR. ELY: Didn't the witness say, "Si,"

"Yes", first, Morrossi?

THE INTERPRETER: Yes.

MR. ELY: Then why didn 't you translate that "yes"? It was very important.

THE COURT: Now, if the witness said "yes", that should be a part of the translation.

THE INTERPRETER: Well, I said "well," which is the same as "yes".

MR. ELY: I thought "si" was "yes".

THE INTERPRETER: Yes; and, also, "well".

MR. ELY: I want the question repeated, if your Honor please. I ask to have it read by the Stenographer, and to have the Interpreter give the correct and full answer to the question.

(It is repeated by the Stenographer.)

A Yes.

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BY MR. ELY:

Q Why didn't you tell this conversation which you now give concerning the threat of your brother to do your husband with his, your husband's, on revolver? A Because my head wasn't all right.

Q Well, wasn't your head all right on the 6th of August, 1906, when you testified before the Coroner? A I had no-- my head wasn't all right.

Q And was it all right on the 1st of August, 1906?

A No.

Q And when did your head become all right? A In these latter days, when I was calmed down, with my mind serene, in my own apartment, retired, and engaged in putting in order my things in the house.

Q And you have been in that quiet and peaceable and calm frame of mind for the last ten days; haven't you? A I was calm in these latter days only, because I secluded myself in my rooms, and didn't want to talk with anybody.

Q (Question repeated.) A No.

THE FOREMAN: Well, may it please your Honor, I would like to know if the lady, the witness, is calm now.

THE COURT: Ask the question.

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BY THE FOREMAN:

Q Are you calm now? A Of course.

BY MR. ELY:

Q Now, you were in the kitchen, weren't you, at the time your brother knocked on the door, or were you in the kitchen at the time your brother returned and knocked at the door?

MR. LE BARBIER: I object. I submit this has all been gone over in the direct and cross.

THE COURT: I will allow it.

MR. LE BARBIER: Exception.

A When my brother knocked on the door, I was in the bedroom.

BY MR. ELY:

Q All right. Then you went out, and let your brother in; didn't you? A I opened the door for my brother.

Q Yes. And then you let your brother in; didn't you?

A Yes.

Q And then you now say that your brother ran right into the bedroom; do you? A He first stopped at the door, and then they grappled. Then it was, subsequently, that they grappled.

Q Now you say he first stopped at the door. You mean at the threshold of the door, the bedroom door, or at the threshold of the kitchen door? A At the door of the bedroom.

Q And was your husband at the door of the bedroom, as your

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brother arrived there? A (No answer.)

Q Yes or no. A My brother was just before the bed--
my husband was just before the bed, not my brother.

Q Now, I repeat my question.

(The question is repeated by the Stenographer.)

A He was near the bed, and the bed and the door was both
close one to the other.

Q The bed and door are both close together? A Yes, sir;
the bed and the door are close, one to the other.

Q Well, I want to know whether your husband was at the
threshold of the bedroom door, when your brother arrived there?

A No; he was inside the bedroom, beyond the threshold, and
near the bed.

Q Now, how near the door was the bed? A About that
far (illustrating).

THE INTERPRETER: Indicating half a foot.

MR. ELY: No. Indicate again, indicate again.

(The witness does so.)

MR. ELY: That's four and a half inches, by the
Clerk's rule.

BY MR. ELY:

Q And then it was that you say, now, that the deceased and
the defendant took hold of each other, when your husband was

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standing four and a half inches away from the door? A Yes, sir.

Q And how far within the room-- and then your brother wasn't standing within the room at all, if your husband was standing four and a half inches away from the door; was he?

MR. LE BARBIER: I object, if your Honor please, and submit that the witness has been exhausted on the direct and cross examination, and has answered these questions a dozen times.

THE COURT: She may answer.

MR. LE BARBIER: Exception.

A My brother was on the threshold.

BY MR. ELY:

Q Yes, your brother was on the threshold? A Yes, sir.

Q And where were you when your husband, as you say, was four and a half inches away from the door, and your brother was on the threshold of the door? A I was behind my brother.

Q How far away from your brother? A Just close to him.

Q Well, how far away? Do you want the rule again?

A You, with these trifling and ridiculous questions, make me nervous.

Q Well, I don't want to get you out of that calm mind,

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I tell you very frankly, but just tell me how far away from you your brother was, at the time you were standing there, as you say? A Well, as if from here to the chair where I am. (Indicating.)

Q Indicate that again, will you, please? A Well, my brother was here, on the threshold, in the center, and I was here, just where I am now. (Illustrating)

Q Well, that is within two feet and a half of your brother; is that right?

MR. ELY: You will admit that it is two feet and a half?

MR. LE BARBIER: I will not admit anything at all in what I consider a ridiculous re-direct examination, and I now move to strike it all out.

MR. ELY: And I object to your characterization of the re-direct and I ask that your Honor instruct counsel to be more temperate in his characterizations.

THE COURT: Yes. Strike it out.

BY MR. ELY:

Q (Question repeated.)

MR. ELY: I would like to know whether that distance was two and a half feet that was indicated.

THE COURT: Well, counsel for the defense may

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say whether or not they concede it.

MR. LE BARBIER: Well, if your Honor please, I will concede nothing from the District Attorney. I have tried to be affable, but I am getting tired.

THE COURT: Well, the jury have seen the distance, Mr. Ely.

MR. ELY: But I want it on the record, if your Honor please.

BY MR. ELY:

Q From here to here? A I can't tell just exactly.

MR. ELY: Well, then, we will say two feet; no, twenty-eight inches.

THE COURT: Then, that will appear on the record.

BY MR. ELY:

Q And you were behind your brother, two feet? A Yes.

Q Now it was then, wasn't it, that the struggle that you say occurred, happened? A No; it was when I started to move some of the things in the kitchen.

Q Well, all right. But it started from the point that you have just mentioned, did it not, with your husband there, four and a half inches from the door, and your brother on the threshold? A They didn't immediately grapple. They insulted each other, and they commenced to grapple when I removed the

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things in the kitchen.

Q Well, then, they remained in that position there, insulting each other, until they began to grapple; is that right? A Oh, they grappled in the moment that I was turned with the back for the things in the kitchen, and I didn't see, in that moment, how they grappled, in the beginning. It was when I heard the noise, that I turned again, and saw them grappling.

Q Now, until you turned your back, you observed your husband standing four and a half inches within the bedroom, and your brother standing on the threshold of the door, did you not? Is that right? Yes or no. A Yes, sir.

THE COURT: Gentlemen, we will suspend here for the day.

Gentlemen of the jury, do not talk about this case, or permit anyone to talk with you about it, and do not form or express any opinion thereon, until the case is finally submitted to you.

Be in your seats promptly at 10.30 o'clock on Monday morning.

(The trial was then ADJOURNED until Monday morning, October, 22nd, 1906, at 10.30.)

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TRIAL RESUMED.

New York, October 22nd, 1906.

ANGELINA CALANDRA, being recalled for further cross examination:

MR. ELY: No more questions of this witness, your Honor.

THE COURT: The witness is with you, Mr. Le Barbier.

MR. LE BARBIER: No more questions, sir.

THE COURT: Then call the next witness.

MR. ELY: If Your Honor please, I find that my witness, my last witness in the People's case cannot be reached on the telephone, and he is under subpoena, and we will now search for him. He promised to be here at 11 o'clock precisely, and it is now nearly half past eleven. He is a physician. And I will ask your Honor for an adjournment now, so as not to keep the jury sitting in the box unnecessarily, so that we may find this witness. He is the last witness that I propose to call in the People's case.

MR. LE BARBIER: A witness of ours has come in,

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if your Honor please, and we asked the learned assistant to put him on the stand, to let us put him on the stand, at least, and we were met with a refusal.

THE COURT: Very well, then, call your witness if he is here.

MR. ELY: Well, if your Honor please, it is not an orderly proceeding, and I think that we had better wait to call him in the regular order.

THE COURT: Then you desire a recess now, Mr. District Attorney, to search for your witness, and secure his attendance?

MR. ELY: Yes; I will see that he is here, if it is possible to find him, and, if not, I shall ask for an attachment for him.

THE COURT: Then you desire a recess now until when? One o'clock or half past one o'clock?

MR. ELY: Well, sir, until half past one o'clock.

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AFTER RECESS.

G I O V A N N I M E R E N N A, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are a physician? A I am.

Q Oh, Doctor, of course you were subpoenaed, this morning, and you did not get here. And you were prevented by professional business? A Yes, sir.

Q Of a rather serious nature? A Yes, sir; I had a case of delirium tremens on my hands, and I was --

Q And you came as soon as you could? A Yes, sir.

Q And reported at my office, upstairs? A I did.

Q Now, Doctor, do you know the defendant here?

A I do.

Q And do you see him? A I do.

Q He is right here; is he (indicating the defendant)?

A Yes, sir.

Q And for how long a time have you known the defendant?

A For six or seven years.

Q And did you have any conversation with the defendant, four or five days before the 15th of July, 1906? A Well, I don't know what the 15th --

MR. LE BARBIER: Objected to, as immaterial,

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irrelevant and incompetent.

THE COURT: That would be about the 10th of July, 1906?

MR. ELY: Yes, sir.

THE COURT: He may say yes or no.

MR. LE BARBIER: Then I withdraw the objection to that.

BY THE COURT:

Q Yes or no, Doctor. A Well, but I don't know what date that refers to.

Q To the 10th of July.

BY MR. ELY:

Q Somewhere about the 10th. A How many days before the crime was committed? Then I could say.

BY THE COURT:

Q The alleged shooting is said to have occurred on the 20th of July last. A Well, yes.

BY MR. ELY:

Q And where was that conversation that you had with the defendant held, about ten days before the 20th of July, 1906?

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

THE COURT: Allowed.

MR. LE BARBIER: Exception.

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A Down at his business.

BY MR. ELY:

Q Well, that is 282 Washington Street? A Yes, sir;
in Washington Street.

Q And who was present at the conversation, if anybody?

A No one else.

Q Besides yourself and the defendant? A Myself and the
defendant.

Q Now what was that conversation?

MR. LE BARBIER: Objected to.

THE COURT: Doctor, if this was a professional
communication, received by you in the course of your
professional duty, you must not answer the question,
because you know that anything that is communicated
to a physician cannot be divulged, because, of
course, the professional relation^{is} established, and
there is a privileged communication, and no evi-
dence can be given of it.

THE WITNESS: This wasn't --

THE COURT: But, if it was not such a communica-
tion, you can tell us of it.

THE WITNESS: This wasn't professional, your
Honor.

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BY MR. ELY:

Q Then give us that conversation between yourself and the defendant.

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

THE COURT: Allowed.

MR. LE BARBIER: Exception.

BY MR. ELY:

Q Now then please say what you said to the defendant, and what the defendant said to you? A I heard that there was a little trouble in the family --

THE COURT: No, no, Doctor. We want to know what you said to the defendant, and what the defendant said to you.

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

MR. ELY: Unless he said that to the defendant.

THE COURT: Of course, if you said that to the defendant, you may tell it; whatever you said to the defendant, and whatever he said to you.

THE WITNESS: Your Honor, that was the cause of my calling there.

MR. LE BARBIER: Now, I move to strike that out, as incompetent, immaterial and irrelevant and ir-

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responsive.

THE COURT: Strike it out. All we want is the conversation between you and the defendant, the very words if possible.

BY MR. ELY:

Q. (Question repeated) A Well, I asked him why he didn't go home, and he said, "I don't know. My wife seems to be a little upset with her mind. She is somewhat jealous".

MR. LE BARBIER: Now, if that is the answer, I move to strike it out.

MR. ELY: But we haven't yet the entire conversation.

THE COURT: Let us have the entire conversation. Reserve your motion, please, until we have the entire conversation.

MR. LE BARBIER: Exception.

THE WITNESS: Well, that's all.

MR. LE BARBIER: Now, I renew my motion, and ask to have it stricken out.

THE COURT: Decision reserved.

MR. LE BARBIER: Exception. And I respectfully ask for a ruling on this, at the present moment.

THE COURT: Denied.

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MR. LE BARBIER: Exception.

BY MR. ELY:

Q Now, Doctor, after this conversation with the defendant, did you go anywhere?

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

THE COURT: Overruled.

MR. LE BARBIER: Exception.

A What do you mean by that, sir?

BY MR. ELY:

Q Well, did you see Mrs. Calandra? A I did.

Q And, without giving any conversation that you had with Mrs. Calandra, I ask you if you had a conversation with her? Yes or no. Did you talk with Mrs. Calandra? A I did.

Q About how long after seeing the defendant, at his place of business, was it that you saw Mrs. Calandra?

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

THE COURT: Overruled.

MR. LE BARBIER: Exception.

A The same evening.

BY MR. ELY:

Q Yes. And then did you see the defendant again?

A The day after, I think.

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Q The day after you saw Mrs. Calandra? A Well, no; the day after I saw the defendant.

Q I say -- A Oh, yes; the day after I saw Mrs. Calandra.

Q Well, did you have a conversation with him? A Always on the same basis.

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

MR. ELY: I consent.

THE COURT: Then strike it out by consent.

BY MR. ELY:

Q Now, what did you say to the defendant, and what did he say to you, when you saw him?

MR. LE BARBIER: Objected to as immaterial, irrelevant and incompetent, and not a part of the res gestae, and not pertaining to the case.

THE COURT: Overruled.

MR. LE BARBIER: Exception.

BY MR. ELY:

Q Now what was the conversation? A As before, that he didn't see any reason why Mrs. Calandra was jealous.

Q Well but did you tell him that you saw Mrs. Calandra?

A The day before. I said, yes.

Q Well, now, then tell us all that happened there, will

you please, between you and the defendant; what you said to him and what he said to you, and what you said to him, if anything, about the meeting which you had with Mrs. Calandra, the day before.

MR. LE BARBIER: objected to as incompetent, and I respectfully call your Honor's attention to the fact that no connection has been shown absolutely as to the deceased in this conversation, no connection of any kind; and the fact is, under the opening of the learned District Attorney, that we were living peacefully and happily together before the occurrence took place.

THE COURT: objection overruled.

MR. LE BARBIER: Exception.

MR. ELY: Now, will you also direct the jury to disregard the statement that counsel knows was manifestly improper?

THE COURT: certainly. Gentlemen, the statements made by counsel are not to be considered by you, at this time. They are for my benefit, not yours.

BY MR. ELY:

Q Well now, Doctor, will you please tell us? A Well, I told him that he has always been good to his wife, that they

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had always lived a harmonious life, and I didn't see why he should keep out of the house, in these circumstances, and he said, "Well, there is no fault on my side, and I can't do anything to prevent that."

Q Well, what else was said there and then, if anything?

A Well he said, "There is a misunderstanding on the side of my wife there, in reference to" --

BY THE COURT:

Q Well did he say there was a misunderstanding?

A Yes, sir; that there was a misunderstanding.

BY MR. ELY:

Q He said that there was a misunderstanding on the part of his wife as to what? A Well, because she was jealous.

Q Well, did he mention any name then, at all?

A No; he didn't mention any name then at all.

Q Well, now, after that, did you see Mrs. Calandra again, before the 14th of July, 1906? A No, I did not.

Q Did you see the defendant again before the 14th of July, 1906? A No, sir.

Q Now, did you see the defendant on the 14th of July, 1906? A What day is that? If you tell me the day?

Q That was Saturday? A Saturday, yes.

Q And who -- and where did you see the defendant?

A I saw him in a place in Bensonhurst.

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Q And who was there? A Him and Mr. Ciofalo.

Q And who did the defendant come with to this place at Bensonhurst? A With Mr. Ciofalo.

Q And did you have any conversation with the defendant there, at that time, please? A I had no conversation at all. We were at the place, and they just joined in.

Q Yes. Well, now, what was said by the defendant, if anything, about a reconciliation, or going home, or anything?

MR. LE BARBIER: Now, may it please your honor, I do object, on the ground that absolutely there is no foundation for this.

THE COURT: Anything about a reconciliation would appear to be foreign to this case. The theory of the testimony is that they were declarations against interest made by the defendant, and, if there are any such, let us have them. But anything concerning their strained marital relations would hardly be competent.

MR. LE BARBIER: Well, but there were no strained marital relations, absolutely none.

THE COURT: Then I will withdraw the word "strained". Now, Mr. Fly, I will hear you.

MR. FLY: Well, it does not seem to me especially proper for me to state the entire scope of this

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examination now, before the jury, for the reason that anything that I might say on this subject might prejudice the jury.

THE COURT: Yes. The objection is made to your question, because your question inquires simply into the marital relations of the defendant and his wife.

MR. ELY: Well, now, if your Honor please, if the state of facts is this, that here was a brother-in-law --

MR. LE BARBIER: May it please your Honor, we object to any statement.

THE COURT: Well, I will hear it. It is for my benefit.

MR. ELY: Well, we will approach the bench, and state it so that no one can hear it.

MR. LE BARBIER: No, I don,t care to hear it, and I object to your stating it openly. You may tell it to the Court. I don,t care to hear it, either privately or openly.

MR. ELY: Now, I have explained the subject matter to the Court, briefly, that I propose to introduce, and, if there is an objection to the question, may the question be read, and we will see?

(The question is repeated by the stenographer)

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THE COURT: Well, I will allow that question, the latter part of it.

MR. LE BARBIER: Your Honor allows that question?

THE COURT: Yes. I will overrule the objection. The question is so broad. I will overrule your objection, and give you an exception.

MR. ELY: Well, will you repeat that question again, Mr. Stenographer, and we will strike out "reconciliation". Perhaps that might be objectionable. We will make that question:

"Q. What was said by the defendant about going home, or anything of that description?"

MR. LE BARBIER: Now I object to that question as leading.

THE COURT: Overruled.

MR. LE BARBIER: Exception.

A Well, we were talking about going home, and he says, "I can't understand how that was taken up. There is no fault on my side. There is no one in the way, and so on, and I can't understand why my wife is jealous".

BY MR. ELY:

Q Yes. And what else did he say, if anything, about going home, or about any condition about going home?

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A And, as a name was in the way, the best way is to shake hands, and make up.

Q Well, now, what was the name?

MR. LE BARBIER: Objected to as immaterial.

BY THE COURT:

Q Well, if he said anything about it you may tell us?

A Celia.

BY MR. FLY:

Q Yes. Celia? A Celia Manjanara.

Q Well, what did the defendant say about celia Manjanara?

A That there was nothing in the matter at all.

Q Well what was the condition of his going home, as to her? A That Celia Manjanara was to shake hands with Mrs. Calandra.

Q And Ciofolo was there? A Yes, sir.

Q And the defendant had come with him? A Yes, sir.

MR. LE BARBIER: Now, respectfully move, may it please your Honor, to strike out all of that answer, as in no way connected with the deceased, as wholly immaterial to the case, as absolutely incompetent by way of evidence, under the issue in this indictment.

THE COURT: Denied, with leave to renew.

MR. LE BARBIER: But when, your Honor?

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THE COURT: At the close of the testimony.

MR. LE BARBIER: Exception.

BY MR. ELY:

Q Now, Doctor, did you see, after this conversation on the 14th of July, 1906, Celia Manjanara? Yes or no.

A When was it? What day was it?

Q The next day, the 15th, Sunday. A Yes, on Sunday.

Q And did you go anywhere with Celia Manjanara?

A Yes, sir.

Q And where did you go?

MR. LE BARBIER: objected to, as immaterial, irrelevant and incompetent, an act done in the absence of the defendant, and in no way pertaining to this case.

THE COURT: Sustained.

MR. ELY: If your Honor please, if it is shown--

MR. LE BARBIER: I object to any statement on the part of the learned Assistant.

MR. ELY: If your Honor please, I think I have a right to show this, if the act was in accordance with something that had previously been agreed to between the defendant and this witness, as a fact. I am asking for a fact.

MR. LE BARBIER: Well, if I may say a word --

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MR. ELY: Now, please; I haven't got through.

THE COURT: I will hear you, Mr. Le Barbier, as soon as the District Attorney has spoken.

MR. ELY: I think that I have a right to ~~my~~ show that an act, that a fact occurred, if that fact was one that had been arranged, or if the other occurrence was one that had been arranged between this witness and the defendant; that's all. I don't ask for any conversation.

THE COURT: I adhere to my ruling, and sustain the objection to the question.

CROSS EXAMINATION: None.

MR. LE BARBIER: May it please your Honor, I respectfully move to strike out all the testimony of Dr. Merenna, whose absence caused the delay, this morning, until now, 2 o'clock, on the ground that it is incompetent, immaterial and irrelevant, and in no way connected, in no sense or manner whatever with the subject matter and charge under the indictment, and in no way pertaining to the deceased.

And I respectfully call your Honor's attention to the fact that, under your Honor's suggestion, I do think that the moment has arrived when it is

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proper for us, as counsel for the defendant, to make this motion. The witness has come here, and he has testified to certain facts that, apparently, enlighten nothing about the case, and wholly immaterial and incompetent as regards the defendant.

THE COURT: Have you any more testimony, Mr. Ely?

MR. ELY: No, sir.

THE COURT: Then it is proper for you to make your motion now, of course.

MR. LE BARBIER: And I renew my motion.

THE COURT: The substance of the testimony, as I understand it, Mr. District Attorney, is that the witness and the defendant had conversations touching the defendant's marital relations? That's all. I will strike that out.

MR. ELY: Well, sir, the point is--

MR. LE BARBIER: It is stricken out, his Honor says.

THE COURT: Wait a moment. I have intimated my intention, and I will now hear Mr. Ely.

MR. ELY: The point is, if your Honor please, that, if these arrangements, touching the occurrence that took place at the Italian pension, at Benson-

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hurst, had been simply and solely arranged by this witness, without any respect to the deceased, that, then, of course, they would have no bearing here, and would be stricken out, without any question. But it does not appear that the deceased had nothing to do with them, because it does appear that the deceased was there, and that he took the defendant there, or went there with him, to the place where this arrangement was made, and that he participated in it.

MR. LE BARBIER: Even so, your Honor. What has that got to do with the killing? In any way has it been brought about by the learned District Attorney that anything connected with the killing is now connected with anything in the case, so far as the killing is concerned?

THE COURT: I think that what you claim, Mr. District Attorney, appears in testimony, without the Doctor's testimony. My impression of the whole case is that it does appear that there was some straining of the relations, and some effort made on the part of the deceased to bring them together. I think that appears in the former testimony.

MR. LE BARBIER: There is nothing absolutely in

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the case to that effect, your Honor.

MR. ELY: No, sir.

MR. LE BARBIER: The District Attorney has labored hard --

MR. ELY: Oh, I object to these speeches.

THE COURT: I will listen to you, Mr. Le Barbier.

MR. LE BARBIER: I am only stating what I remember of the testimony. There is nothing in this case showing this -- I don't characterize the word at present -- but theory of the prosecution that the deceased was in any wise concerned in anything relating to this so-called Celia Manjanara. The case is, upon the evidence, absolutely barren.

MR. ELY: If your Honor please, according to my recollection of the testimony, there is no direct testimony as to any effort on the part of the deceased, except in so far as it appears affirmatively that the deceased went with the defendant, at this time, and participated in this conversation that the Doctor has testified about just now. That seems to me --

THE COURT: The fact that the deceased and the defendant were together with the witness, of course,

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I am not asked to strike out. I am only asked to strike out the conversation which the doctor had with the defendant.

MR. FLY: In the presence of the deceased.

THE COURT: Yes; the conversations between the Doctor and the deceased.

MR. FLY: And does that include the conversation with the defendant at his office, etc.?

THE COURT: Yes, yes; both at Bensonhurst and at his own office. Now, that disposes of the matter. Now, Mr. Le Barbier.

MR. LE BARBIER: Now, I move to strike out the fact, if your Honor please, that the defendant was with the deceased at any time, anywhere, on the ground that it is incompetent and immaterial and irrelevant.

THE COURT: Denied.

MR. LE BARBIER: Except the night of the murder, or killing, or shooting.

THE COURT: It can do no special harm that I can see. I will leave that in.

MR. LE BARBIER: Your Honor will leave it in?

THE COURT: Yes.

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MR. LE BARBIER: Exception. Do I understand that the People rest?

MR. ELY: Yes.

THE COURT: Yes.

MR. LE BARBIER: Now, I move to strike out the testimony of Mrs. Caroline Filomano, on the ground that it is incompetent.

THE COURT: Well, will you not give me, in substance, that testimony?

MR. LE BARBIER: Well, that testimony was, she took the stand, and said she was the sister of the deceased.

MR. ELY: Yes, the sister of the deceased.

MR. LE BARBIER: And she attended some alleged meeting, upon which subject her testimony was very vague, somewhere.

MR. ELY: No; she said at Bensonhurst.

MR. LE BARBIER: And then said -- your Honor then said you would receive it, subject to a motion to strike out.

THE COURT: Yes. Subject to a motion.

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MR. LE BARBIER: And now I fail to see the materiality of her testimony, in any way.

THE COURT: Well, I deny your motion, as made.

MR. LE BARBIER: I except. Well, that is as near as I can recall that testimony, if your Honor please.

THE COURT: Very well then; I will deny the motion; and you may make any other motions that you have to make.

MR. LE BARBIER: Exception. If I recall, your Honor, some of the testimony of the so-called janitress, Fitzell, was taken subject to a motion. I respectfully move to strike out her testimony.

MR. ELY: Well, why don't he refer to what he wants stricken out?

MR. LE BARBIER: The whole of it.

THE COURT: That was the janitress, who saw the deceased come there?

MR. ELY: Yes, sir; and she had some conversation with him.

MR. LE BARBIER: No; she don't say that he was the deceased.

MR. ELY: Yes. She says that was the man that went up into the apartments of Calandra, and the man

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that she saw afterwards go away in the ambulance.

THE COURT: Denied.

MR. LE BARBIER: Exception. I move to strike out the testimony of Celia Manjanara, on the ground that it is incompetent, immaterial and irrelevant.

MR. ELY: That had better be made at the end of the case.

MR. LE BARBIER: No; I think it falls with the testimony of Dr. Merenna.

MR. ELY: Not necessarily.

MR. LE BARBIER: I don't say necessarily, but it suggests itself to me, as matter of law, that that testimony should fall with the doctor's testimony.

THE COURT: Denied.

MR. LE BARBIER: Exception. Now, I move, may it please your Honor, that the charge of murder in the first degree be withdrawn, on the ground that there have been no facts sufficient to sustain any such charge.

THE COURT: Well, Mr. District Attorney, what have you to say?

MR. ELY: Well, if your Honor please, at this

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time I object to that. At the end of the defendant's case, I may, perhaps, have something to say on the subject; but, at this time, as there were three shots fired, and it appears that the shots were fired by this defendant here, the fact that three shots were fired is sufficient ground, if the jury believes that, at any time between the first and second, or the second and third, the defendant had an opportunity to form a design to shoot again, and to shoot to kill, and there wasn't justification, why, that is sufficient.

THE COURT: There is no proof here as to which shot resulted in the killing.

MR. LE BARBIER: But the three shots --

MR. ELY: Now, if your Honor please, I can't argue, if I am to be interrupted constantly by Mr. Le Barbier. I am willing to have him go right on now, and argue; but if not, let me complete my argument.

It makes no difference which shot took effect, if the design on the part of the defendant, when he pulled the trigger on any one of the three shots was to effect death, and that was without justification. Consequently, if there were three shots, it

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is a condition of affairs ^{from} which the jury would be able to find a verdict of murder in the first degree, which verdict could be well sustained on the authority of a case in the Court of Appeals, in which the Court of Appeals upheld the verdict of murder in the first degree in a case where the man simply pulled a pistol, the defendant pulled a pistol, from his back pocket, and shot that pistol at the deceased, the jury finding that, between the time of the pulling of the pistol from the pocket, and the shooting, there was time for deliberation and premeditation.

THE COURT I am familiar with that case.

MR. ELY: Now, I simply say that, between the shooting of the first and third shots, without regard to which of the three shots was the fatal shot, the defendants had an opportunity, or it is possible, I don't say that he had, that he had time to deliberate and form the design to shoot again, and shoot to kill.

Now, I don't say that, at the end of the whole case, I may not be willing to make a motion on behalf of the People, but at this time it does not seem to me that the motion should be granted.

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MR. LE BARBIER: What is your Honor's ruling?

THE COURT: I thought you desired to be heard.

MR. LE BARBIER: Well, the facts are so patent, your Honor, that they speak for themselves.

THE COURT: I do not think that the proof here warrants the submission of the charge in the indictment of murder. I think it does require me to submit the case as one of manslaughter. To that extent, therefore, I will grant your motion.

MR. LE BARBIER: And does that apply, also, to the second degree of murder?

THE COURT: Oh, yes.

MR. LE BARBIER: Exception.

THE COURT: I will submit it as one of manslaughter, and manslaughter has two degrees, you know.

MR. LE BARBIER: Now, I respectfully move, may it please your Honor, that, as to manslaughter, that that be withdrawn from the consideration of the jury, on the ground that the learned Assistant has failed to present facts sufficient to constitute the crime of manslaughter in its first degree. That's all.

THE COURT: Denied.

MR. LE BARBIER: Exception. I make that same

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motion in regard to manslaughter in the second degree.

That is the motion.

THE COURT: Denied.

MR. LE BARBIER: Exception. I now move, your Honor, that you advise the jury to acquit, on the ground that the People have failed to make out the crime -- to make out any crime under the indictment in this case.

THE COURT: " Denied.

MR. LE BARBIER: Exception. I also move that your Honor advise the jury to acquit, on the ground that it is in evidence in this case that the shooting was not the sole inducing cause of death.

In support of that, if I recall the testimony of Dr. Lehane, he said that the cause of death was peritonitis, caused by --

THE COURT: I recall the testimony to which you refer.

MR. LE BARBIER: But the other physician, Dr. Ward, testified that the second operation was, in part, the inducing cause of death; and, if I recall the testimony correctly, the pistol shot wound was not the sole inducing cause of death.

THE COURT: Denied.

MR. LE BARBIER: Exception.

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OPENING ADDRESS FOR THE DEFENSE

of

CHARLES E. LE BARBIER, ESQ.

May it please the Court:

Mr. Foreman and Gentlemen of the Jury:

The mountains have certainly labored, the mountains have certainly labored, but, according to us, and our testimony, we hold that not even a mouse was born.

I do not purpose, at this moment, taking up any part of your time, for two reasons, first, a speech, at times, is an infliction, and, second, it does seem that it is a necessary part of the procedure, in an important matter of this kind that, before the case is finally submitted, and before the full case is laid before the jury, some address should be made by the attorneys for the defense.

We thank our stars that, finally, we can get to the jury, because, if there ever was a case of merit, if there ever was a case where a killing was

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not a murder, it is this case.

Our defense is a very simple one. The Court will charge you that an indictment is, after all, but a written accusation. A great many men have been indicted, and a great many men have been excused or discharged.

So far as indictment is concerned, it is a written accusation, it is what the Grand Jury say --

THE COURT: Mr. Le Barbier, are you not summing up your case now?

MR. LE BARBIER: No,,sir, I am not.

MR. ELY: Well it seems to me that it is simply a summing up.

THE COURT: Well it seems to me that what you are now stating is not a proper matter for the opening. I will charge it, when the time comes; and an opening is simply to enable the jury to understand the testimony, when it is adduced; but it is not proper to go into a statement of the law, or a discussion of the evidence.

MR. LE BARBIER: Very well, sir.

THE COURT: Proceed, please.

MR. LE BARBIER: Well, now, the defendant at the

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bar is charged with the crime of murder, and two degrees of murder have been taken away, and it is manslaughter, now.

He is a hard working, peaceable, honest fellow. He has carried on his business here in the City of New York for years, as a decent, honest citizen, and a voter; and, just as the learned Assistant, in his opening, said, that their reputation, and his reputation, was good. Now, there is no getting out of that. It stands established in this case, under the opening of the Assistant District Attorney, that the defendant's reputation is good.

The reputation of the deceased, in a measure, was violent; that is, his reputation for peace and quiet was violent. He was a fellow who, when he had a jag on --

MR. ELY: Now, if your Honor please; this is summing up again.

MR. LE BARBIER: This isn't a summing up.

MR. LE BARBIER: He, if he had a jag on, or was under the influence of liquor, I may say, was ugly. Now there is no getting away from that.

And, on the nightin question, he came into the

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house ugly. But they talked there, that evening, the family, and, as the evidence has shown here, there was nothing developed; and Mrs. Giglio and her family went away, and the deceased went away.

And, as the evidence for the People shows, I think Mrs. Calandra said something to the defendant, "There are always quarrels in this house", and he answered that there were not, except when her brother was drunk.

Now, that is the People's case. And, at this moment, the brother was out in the hall, outside of the apartment.

MR. ELY: It is summing up, if your Honor please. Excuse me.

MR. LE BARBIER: Now, I object to these interruptions. It is not a summing up.

THE COURT: Mr. Ely is quite within his rights in making objections.

MR. LE BARBIER: I know. But I object to the objection, your Honor. I am simply citing, may it please the Court, the evidence of that particular meeting, and what took place.

MR. ELY: He has absolutely adduced nothing but

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a summing up on the evidence for the People.

THE COURT: Mr. Le Barbier, when Mr. Ely is properly addressing the Court, I will not permit you to interrupt him.

MR. ELY: But I say that he isn't properly addressing the Court.

THE COURT: Now, Mr. Ely, I will watch the matter. Be seated, please, Mr. Ely. Proceed, Mr. Le Barbier.

MR. LE BARBIER: And he was outside, and he heard that remark. That is the evidence of this case, and our evidence; and, when he heard the remark, he came and violently knocked upon the door; and, just as the wife said, that her husband, when she asked about opening the door, said, "No, no," so we will show you that, at that time and at that moment, we told the wife not to open the door.

And, when the deceased came in there, he came in as a trespasser on our premises.

First, he came into the door, and he said, "You villain, you dastardly fellow, do you say that I am drunk?" And he stepped from the kitchen into the bed room, where, by the Great Eternal, the defendant

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was undressed, and rushed at him.

And the testimony in this case was that the wife said, and it is in testimony on behalf of the People, unimpeached, that the deceased said, "I'll finish you, to-night, even with your own revolver. I'm not afraid."

The deceased then was in the bed room of the defendant, who was in his pyjamas and his stockings. We are not shirking this issue in any way. We are only too glad to come forward and tell our story.

As he came in the room, just as the wife said, and as we will show, he made a lunge, and struck at the defendant, in his pyjamas and in his stockings, virtually in bed.

The defendant dodged, and, just as the evidence of the People is, so is our evidence, that, on the bureau in the defendant's room was a revolver; and, when he struck at him, we saw then the defendant, the deceased, making for the revolver.

And, at the same moment, thoroughly appreciating the danger of the situation, the two reached the revolver together on the bureau. The defendant, in his pyjamas and stockings, no shoes on, reached for the revolver. Ciofalo, who had been ugly and surly,

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that night, and who trespassed in there, and was the aggressor, reached for the revolver, and, ye gods, they both got that revolver together.

And, as they both got the revolver together, gentlemen, then it was that the struggle commenced.

Take yourselves back to those premises, under the diagram, as illuminating this case, and see where it was that the entrances are and where the bed room is.

And then, when this man was fighting for his life, when the deceased was doing his damndest, they struggled into the kitchen.

And this little pigmy, you might say, kept shouting to this giant, we might call him, "Go home, go home. Don't."

And there they were, struggling. And they struggled on, just as the People's evidence shows, into the kitchen.

The things were swept from the table, and the table overturned. They struggled the whole length of the eighteen feet of that kitchen, until they came to the window; and, still the forbearance on the part of the defendant was phenomenal, urging his brother to

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go away, endeavoring by every human power to get hold of the revolver, so that, if he could not get away, he could pull the trigger, and he couldn't do it.

And there they struggled, just as the People 's evidence shows you. The deceased took the defendant, struggling with him, and tried to shove him out of the window. No crank from a bullet. I don't believe it will be asserted, on all the evidence in the case, that a bullet from the revolver cracked the window. And he tried to push him out of the window, and failed. He broke the window.

And again, gentlemen, the struggle was resumed there in the kitche; and finally, at this moment, when he had failed to push him through the window, with the desire to kill him on the part of the deceased, he twisted the defendant's arm, and bit him on the upper and lower side of the arm.

And still, with the strength born of despair, the defendant held on to that revolver, struggling, and telling the defendant that he would kill him with his own revolver.

Now, there was the situation. The strength, the energy, even of this dwarf and cripple was fast going

away. He knew that he was facing death. He knew that the last final effort had to come; and, in the sheer strength of despair, for a moment only, he managed to get that revolver, as he thought and felt, in his hand, and pulled quick the trigger twice.

It proved toomuch for him. The deceased, at that moment, got the revolver from him, and, not believing that he was hurt, turned the revolver upon the defendant, and fired a shot.

Think of it. And that's how it was that that revolver was taken from us with the unloaded cartridges; and that's how it was the third shot came to be fired in this case; and that's how it was that the deceased believed he had killed the defendant, and that probably he was uninjured, and that, of all the people around there, he was the only one to say, "No; the defendant didn 't shoot me."

He was the only one who couldn't say it, because he was the only one who believed that he had killed. Now, there was this desperate struggle. He was limp; he fell down; he was on the floor, wet, you might say, with perspiration. That was his position,

with his wife fainting.

Now, we say to you, gentlemen, that, getting back exactly to this case, technically to the case, as our learned Assistant District Attorney would have us, just under the cold words of the statute, we had reason to apprehend grievous bodily injury. We can say it at any time, and in any chain of events, that we had reason to apprehend grievous bodily injury; and, if I can prove it, no matter how you may roar the words out, we are justified under the statute.

That's our case, as it will be told to you by the defendant himself, backed up with good character, acknowledged by the People.

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THE DEFENDANT'S TESTIMONY.

BAYARD C. FULLER, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEBARBIER:

Q Mr. Fuller, how old are you? A Forty-two.

Q What is your occupation or business? A I am the supervising inspector for the Department of Health -- supervising Inspector of the Department of Foods.

Q And in what department are you employed? A I have just said, the Department of Foods, Board of Health.

Q Well, any other special department? A No, sir.

Q Well how long have you been in that department?

THE COURT: Is it a character witness?

MR. LE BARBIER: Yes, sir.

BY MR. LE BARBIER:

Q Now how long have you been in that department?

A Sixteen years.

Q Now do you know the defendant? A Yes, sir.

Q How long have you known him? A I couldn't tell you exactly, but a good number of years.

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

Q Have you had occasion to see him frequently?

A Oh, I pass him by nearly every day, in front of his place of business.

Q Do you know what his reputation is for truth and veracity? A Why he seems to be --

Q Is it good or bad?

BY THE COURT:

Q No, no. Do you know how he is esteemed in the speech of his neighbors? A Well they seem to take him all right, the people that I have talked to about him.

BY MR. LE BARBIER:

Q Well do you know what his reputation is? A Yes, sir.

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

Q And did you know Joseph Ciofalo in his life time?

A Oh, yes.

Q And did you know others who knew him? A Yes.

Q And do you know what his reputation for peace and quiet was? Just yes or no? A Yes.

Q What was it? Good or bad? A Well, it was both.

Q Both? A Yes, sir.

Q Both good and bad? A When he was drunk, he was very bad; and, when he was sober, he seemed to be pretty good.

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Q Now I didn't ask you what the reputation of the defendant was for peace and quiet. Do you know what it was. A Good, sir. You did ask me that question.

THE COURT: Yes; you asked him the question, I think.

MR. LE BARBIER: No, sir; it was for truth and veracity, I think.

CROSS EXAMINATION BY MR. ELY:

Q Mr. Taylor -- is that your name? A Fuller.

Q Bayard Fuller? A Yes, sir.

Q And did you know the defendant in any other than a business way? A No, sir.

Q You did not? He was not a personal friend of yours? A Business only.

Q He was not a personal friend of yours? A No, sir.

Q You didn't go around with him at all; did you? A No, sir.

Q You knew nothing about him in his domestic relations; did you? A Nothing, sir.

Q And you never conversed with anybody to find out what his reputation in his domestic relations was? A No, sir.

Q And all that you knew about him was purely from a business standpoint? A From a business standpoint; that's all.

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Q And you never had any occasion to find out his reputation other than as a business man; did you? A That's all, sir.

Q And the same remarks apply with regard to Ciofolo?
A The same thing.

Q That you knew him absolutely in a business way? A Yes, sir.

Q And that only? A Only in my business relations; that's all.

EDWIN S. JOHNSON, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q Mr. Johnson, how old are you, may I ask? A Forty-six.

Q What's your business? A Commission business; produce commission business.

Q How long have you been in that business, Mr. Johnson?
A All my life.

Q Are you in business for yourself, may I ask? A Yes, sir.

Q Do you know the defendant in this case, Calandra? A Yes,

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sir.

Q How long have you known him? A Well, as a tenant of mine, about four years, I believe.

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

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

Q Good? A Yes, sir.

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

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

CROSS EXAMINATION BY MR ELY:

Q How long have you known the defendant, if you have known him at all? A Well, I have known him in a business way about ten years.

Q Well, have you ever known him socially? A Well, only around business.

Q Do you know what socially is? A I think so.

Q Well, now, then, I ask you if you ever have known him socially? A No, sir.

Q Have you visited him at his house? A Once.

Q Socially or on business? A Business.

Q Has he visited you at your house? A, No, sir.

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Q What? A No, sir.

Q Now, are you married? A No, sir.

Q Well have you met him, the defendant and his wife around at social functions? A No, sir.

Q And you haven't in any way known him at all as a friend, or in his social or domestic relations? A No, sir.

Q All you know of him is from a business standpoint purely; is it? A Yes, sir.

Q And you have leased some apartments, I imagine and infer from what you said? A Yes, sir.

Q And you got your rent? A Yes, sir.

Q And that's all you know about it; isn't it? A That's all.

B I A G G I O C A L A N D R A, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q How much do you weigh?

MR. ELY: I object.

THE COURT: Sustained.

A About --

MR. ELY: Objected to.

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THE COURT: You need not answer.

MR. LE BARBIER: Exception.

BY H. LE BARNIER:

Q Do you know how much you weigh?

MR. ELY: Objected to.

THE COURT: Allowed.

BY MR. LE BARBIER:

Q Yes or no? A I do know.

Q How much do you weigh?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Are you a cripple?

MR. ELY: I object.

THE COURT: He may answer that.

A I am a cripple.

BY MR. LE BARBIER:

Q Have you the use of both of your legs? A I have a stiff leg.

Q Can you bend it? A No, sir.

Q Bend it for Mr. Ely? A I can't. I wish I could.

MR. ELY: I don't want it bent for me. Bend it

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for yourself, if you want to.

THE COURT: Gentlemen, no comments.

BY MR. LE BARBIER:

Q Are you a hunch-back? A Yes, sir.

Q How old are you? A Thirty years old.

Q How old? A Thirty years.

Q Are you married? A Yes, sir.

Q The Mrs. Calandra who testified here is your wife,
is she not? A Yes, sir.

Q Do you love her?

MR. ELY: I object.

A Yes.

MR. ELY: I object.

THE COURT: Objection sustained.

MR. ELY: And I ask to have the answer stricken
out, and the witness instructed not to answer
when I object.

THE COURT: Yes. And do not answer whenever
an objection is interposed. Strike out the answer.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Do you maintain her?

MR. ELY: Objected to.

THE COURT: Sustained.

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MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Have you always lived with her as a faithful and devoted husband?

MR. ELY: Objected to.

THE COURT: I will allow this question, in view of some of the evidence in the case.

MR. ELY: I don't object to his asking him whether he has always lived with his wife, but the other part, I do object to.

MR. LE BARBIER: Does your Honor strike out any part of the question?

THE COURT: I do not. He may answer.

Repeat the question.

(The question is repeated by the stenographer.)

A Yes, sir.

BY MR. LE BARBIER:

Q What is your business? A Fruit merchant; wholesale fruit merchant.

Q How long have you been in that business? A I have been in the business since I was ten years old.

Q How long have you been in the business in the City and County of New York? A Since I was ten years old.

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Q Do you know Joseph -- did you know Joseph Ciofolo?

A Yes, sir.

Q What relationship had he to you? A My brother-in-law.

Q Were you ever in his employ?

MR. ELY: I object to that, as immaterial, whether he ever was or not.

MR. LE BARBIER: I submit, your Honor, that we can show something, just a little something, in this case.

THE COURT: I will sustain the objection to the question, because it relates to a time too remote.

MR. LE BARBIER: Exception.

THE COURT: If you will bring your date down to a recent time, I will allow it.

BY MR. LE BARBIER:

Q When was it that you were in the employ of Joseph Ciofolo?

MR. ELY: Objected to as leading.

THE COURT: Yes; you are leading your witness.

MR. ELY: And interjecting something into the question that hasn't been proved.

MR. LE BARBIER: Well, I'll prove it now.

BY MR. LE BARBIER:

Q How long have you known Joseph Ciofolo? A About

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twenty years.

Q Did you ever do business with him? A I have done some business with him; yes.

Q When did you first do business with him? A About ten years ago.

Q Well, at that time, were you in his employ, or was he in your employ?

MR. (ELY: I object to it, as immaterial, irrelevant and incompetent, and too remote.

MR. LE BARBIER: It may lead up to something, your Honor.

THE COURT: Allowed. It is preliminary.

A I was in his employ.

BY MR. LE BARBIER:

Q At the time of your brother-in-law's death, in whose employ was he, if you know? A I do know.

Q Well tell us then? A In my employ.

Q You know that? A Yes, sir.

Q How long had Joseph Ciofalo been in your employ?

A About five years.

Q Are you a little deaf; are you a little deaf?

A Yes, sir.

Q In one or both ears? A Pardon me?

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Q (Question repeated). A In one ear. (Indicating the left ear).

BY MR. ELY:

Q Which one is it, which one is it? A This one here (Indicating the left ear.)

BY MR. LE BARBIER:

Q Mr. Calandra, will you kindly state to the Court and jury what took place, on July 20, 1906?

MR. ELY: I object to the statement by the witness, and ask to have him interrogated, under question and answer, so that irrelevant and incompetent matters may be kept out.

THE COURT: Yes; question and answer, Mr. Le Barbier.

MR. LE BARBIER: Very well, your Honor. I except to your Honor's ruling, as I must.

MR. ELY: And I object to the remarks of counsel, every time your Honor rules.

BY MR. LE BARBIER:

Q Now, on the afternoon of July 20, 1906, when did you arrive home? A About half past five or six o'clock.

Q Where did you live then? A 309 East 90th street.

Q Did you live there with anybody? A With my wife.

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Q When you arrived at that place, that night, did you go in? A I did, sir; in the kitchen.

Q Did you see anybody in your apartment? A My wife, Mrs. Giglio and her daughter, Katie Giglie.

Q When you went in, what did you do? A Well I took my coat off, and went in the bed room, and took my revolver, and put it on the bureau, and tried to wash my face and hands, and sit on the table to have my supper.

Q Did you lay the revolver on the bureau?

MR. ELY: Now I object to this leading, if your Honor please.

THE COURT: Sustained.

BY MR. LE BARBIER:

Q Well what did you do with your revolver?

MR. ELY: I object. He has just testified on that subject.

THE COURT: It has been testified to, in the very last answer of the witness.

MR. LE BARBIER: Does your Honor sustain the objection?

THE COURT: I do.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Well what happened next? A Then, after I sit

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down, I exchanged a greeting with Miss and Mrs. Giglio, and my wife was getting supper ready, and we had some spaghetti, that night, and so I told Mrs. Giglio --

MR. ELY: I object to that, to what they had to eat, that night.

THE COURT: Yes. Objection sustained.

A (Answer continued) And I said to Mrs. Giglio to have supper with us.

MR. ELY: I object to this.

THE COURT: Question and answer, Mr. Le Barbier, otherwise we will get irrelevant details into the case. We do not care about the small gossip of the dinner table.

MR. LE BARBIER: Well, the Prosecution made a great deal of the gossip there, that night, if your Honor please, a great deal.

THE COURT: Proceed, please.

MR. LE BARBIER: And I submit that it is part of the res gestae.

THE COURT: I overrule your objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q After you exchanged your greetings with Mrs. and Miss

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Giglio, and your wife being present -- A Yes, sir.

Q And your coat off, what did you do?

MR. ELY: Now, I object to the summing up of the statements of the witness, in that way. It is manifestly improper and contemptuous.

THE COURT: Yes. Objection sustained.

Q What did you do then? A Am I to answer.

Q Yes. A We sit down, and all had something to eat.

BY MR. LE BARBIER:

Q How long did you remain there? A We remained there, say, about fifteen minutes.

Q Yes. A Then I heard the bell ring. I got up, and opened the door, and I seen Mr. Vito Giglio coming in, and I said, "Hello, Vito".

MR. ELY: I object to these conversations.

THE COURT: Yes.

MR. LE BARBIER: Won't your Honor permit him to answer that, to tell that?

THE COURT: No. Never mind what you said to him. Strike that out.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Well you said something to him, though; didn 't you?

A Yes, sir.

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Q Did Vito Giglio then come in? A Yes, sir .

Q In where? A In the kitchen.

Q When he came in, what happened? A He sit down
on the table, and I invite him to have supper with us. He
sat down on the table, and then we started about some --

MR. ELY: Objected to.

A (Answer continued) -- about some general things.

BY MR. LE BARBIER:

Q Well, general conversation? A Yes, sir.

Q Did Joseph Ciofalo come there, that night?

A Yes, sir.

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Q What? A He come there.

Q What time, about? A Well, I couldn't exactly remember the time, but it ought to be half past seven or twenty minutes of seven; somewhere around that time.

Q How do you know he came there that night? A Well, I heard the bell ring.

Q Yes? A And I went to open the door, and then I looked through the hall, and I see him coming upstairs, and I turned around and I said to my wife and the other people, "There's Joe," and I said, "Hello, Joe. Come in," and he come in the kitchen.

Q Did he say anything? A Yes, sir.

Q What did he say? A He says to me, "That's a fine thing. You stay here, eating, and the people has got to wait in the store."

Q And what did you say? A I said, "Joe, you needn't wait to the store. When you get through with your work, you could go away. You had all the chance to go. Nobody told you to wait, when you want to go. I give orders to all my people, if I don't come back at five o'clock, to close the store, and so I don't see no use of your waiting for me."

Q And what was said then? A Well, I had him sit down. I said, "Sit down, Joe."

And he said, "Never mind. That's all right," and he

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started to be ugly, and I said, "That's enough. Let's change the conversation. Let's have a glass, let's have a drink. Forget it," I says to him, and we all drink to the Saluta (illustrating).

Q Wait a minute. When you say you all drank to the Saluta, you mean to the health? A Yes; to the health.

Q And after that what happened? A Well, after that we all engaged in some general conversation, me, Mrs. Giglio and my wife; we all had some general conversation.

And it was about ten minutes to eight, and I wanted to get up at 12 o'clock. I had to go down to the market very early.

MR. ELY: I object to that, as to what he had to do.

THE COURT: yes. Strike that out, as to getting up early to go to the market.

MR. LE BARBIER: May it please your Honor, this is all in, on the part of the prosecution.

THE COURT: Strike it out, at this time.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did you wind up your clock? A Yes.

Q Was it a watch or a clock? A It was a clock, an alarm clock.

Q An alarm clock? A Yes, sir.

Q Where did you carry it? In your pocket?

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

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Where was it? A On the top shelf. There was a shelf
on top of the stove, and it was right up there.

Q And did you wind it up? A I did, sir.

MR. ELY: Wait a minute. I object to this as
incompetent, immaterial and irrelevant.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did you do something to the clock?

MR. ELY: Objected to.

THE COURT: Sustained. He has already said
that, that he wound it up. It becomes cumulative,
through repetition.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q When you wound up the clock what, if anything, did you
say to the people present? A I said to the people present --

MR. ELY: I object to that, if your Honor please. We haven't brought it out.

MR. LE BARBIER: On the contrary, it came out by their own witness.

THE COURT: I will receive it, as res gestae. I think it is open to objection, but perhaps it is safer to receive it. Go on, please.

A (Answer continued) I said to the people present, I says, "I must beg your pardon, but I've got to go to bed. I need a few hours of rest, and so I must go; but, if you want to remain, you can keep up the conversation, you can keep up some conversation with my wife, and I don't mind if you keep the conversation, because I am a very fast sleeper, and you don't wake me up, if you keep the conversation, and I'm going to bed, but you can remain a little while yet, and I will sleep."

BY MR LE BARBIER:

Q And did they remain? A Yes, sir.

Q How long? A About a few minutes.

Q And then what happened? A Well then Mrs. Giglio, Miss Giglio and Mr. Giglio went out. My brother-in-law remained.

Q How long did he remain? A Well, I can't tell you how long he remained. He remained a little while.

Q Well, about how long? A About ten or fifteen minutes,

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something like that.

Q And then what happened? A Well then my brother-in-law said to me, "That's fine of you. You go away and leave me there," and I said, "Joe, didn't I tell you that you could go away any time you pleased? What's the use of waiting for me in the store? You had no right to wait for me in the store," "Well," he said -- well some kind of words -- and I said, "Never mind, Joe. I'll go down to the market at 12 o'clock, and then we reason this matter out, in business, to-morrow."

He started talking to me again, and I said, "Joe, I won't bother with it. I see you are drunk," I said to him, "and I don't want any trouble in this house, more than I can avoid; I don't want no trouble at all. And didn't I tell you," I says, "that I will go down in the market in the morning, and this is a matter of business, and we'll settle the business down at the market."

Then he said to me, "How are you going to settle? By discharging me?" he says. "I will break every bone in your hump before you discharge me."

I says, "Go away, Joe, please go away. I don't want to have any trouble. I want to go to bed."

I went in my bed room, and started undressing myself. He kept on insulting me, but I didn't answer him, because I didn't want to give him no occasion --

MR. ELY: I object to that, that he kept on insulting him, and ask that it be stricken out.

THE COURT: Strike it out, that he kept on insulting him.

BY THE COURT:

Q Tell us anything that he said or you said?

A No, sir; I never answered him, because I didn't want to give him no occasion to strike me, because I saw he was in an ugly mood.

MR. ELY: I object to that, to the latter part of the answer.

THE COURT: No. Strike that out, that he saw that he was in an ugly mood. Tell what was said and done.

BY MR. LE BARBIER:

Q Well, when he said that he would break every bone in your hump, what did you say? A I didn't answer. And he started to insult me some more.

MR. ELY: I object to that, that he started to insult him some more, and move to strike it out.

THE COURT: Motion granted.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Now wait. Do you recall the words, the talk that was

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had, before he went outside?

MR. ELY: I object to that. That is manifestly improper.

THE COURT: Sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Did you say anything? A I didn't say anything after he say that.

Q Did he say anything? A Who? Him?

Q Yes. Did he say anything to you after that?

A Yes. He says some more insulting. He said, "You are a miserable cur, and you are no man at all".

Q He said, "You are a miserable cur, and you are no man at all?" A Yes, sir.

MR. ELY: And I object to the repetition by counsel of that. The stenographer is the proper person to repeat it, if necessary.

MR. LE BARBIER: And I submit that I have a perfect right to embody the answer in my question, and should not be called down by the District Attorney.

THE COURT: No. Proceed.

MR. LE BARBIER: Exception.

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BY MR. LE BARBIER:

Q What did you say to that? A I didn't answer to him; I didn't want to give him any occasion to put up the trouble.

MR. ELY: I object to that, and move to strike out the latter part of the answer.

THE COURT: Motion granted.

MR. LE BARBIER: Exception.

A I said nothing.

BY MR. LE BARBIER:

Q Well did you answer him?

MR. ELY: I object. He says that he said nothing.

MR. LE BARBIER: May I ask who is examining the witness, your Honor? I submit that I have some rights to examine my own witness here, and legally.

THE COURT: proceed to examine your witness.

MR. LE BARBIER: That's what I am doing, with respect to your Honor.

THE COURT: No, do not argue with me. You may have an exception, if you desire. Proceed with the question.

BY MR. LE BARBIER:

Q Is that all you said? A I didn't say no more. I only said, "Oh, that's all right." And I was just trying to

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quiet him down, and get him to go home.

MR. ELY: I object to that, to the latter part of the answer, and move to strike it out.

THE COURT: Motion granted.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Well, did anybody say good night? A He did.

Q Well, how did he say it? I want to get it? A Well, he went out, and he said, "Good night," before he went out, and I didn't answer to him.

Q Did he go out of the premises altogether? A Yes; out in the hall.

Q And was the door locked? A Yes. I banged the door right after him.

MR. ELY: Objected to, as leading, at this time.

THE COURT: Objection sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Now do you know of your own knowledge whether or not when he said, "Good night," to you, and went out, the door was shut? A Yes; I know from my own knowledge that he said "Good night," and went out, and the door was shut.

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Q Shut? A Yes, sir.

Q After he went out --

Question withdrawn. What kind of a lock is
on that door?

A One of them yellow locks.

Q Not a yellow lock, but a Yale lock you mean?

A Yes. I can't speak that so well, you know; a Yale lock.

Q When you went out -- question withdrawn. What hap-
pened next?

A My wife started to upbraid me.

MR. ELY: I object to that, that his wife
started to upbraid him.

THE COURT: Strike it out.

MR. LE BARBIER: Exception.

MR. ELY: And I object to what his wife said
to him. That is improper and incompetent.

MR. LE BARBIER: It is part of the res gestae,
which your honor just admitted, a moment ago.

THE COURT: No. Sustained.

MR. LE BARBIER: Exception.

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BY MR. LE BARBIER:

Q Did your wife say something to you.

BY THE COURT:

Q Yes or no? A Yes.

BY MR. LE BARBIER:

Q How long did you remain with your wife in the room?

MR. ELY: I object.

BY MR. LE BARBIER:

Q If you were in the room?

MR. ELY: No, no. I object to that. It is improper to suggest that to him.

THE COURT: Yes; it is.

MR. LE BARBIER: Surely your Honor doesn't hold that I am suggesting?

THE COURT: I sustain the objection.

BY THE COURT:

Q Did you hear anything more of the deceased, or not?

A Yes, sir.

Q When was it and what was it? A Well he say, "Open, open, Angelina. I'll show him if I am drunk."

BY MR. LE BARBIER:

Q Did your wife go to the door? A I holler at my wife first --

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Q What did you holler?

MR. ELY: I object, I object.

MR. LE BARBIER: I submit that this is directly in line with the testimony.

THE COURT: He may answer that.

A I answer back, "No, no".

BY MR. LE BARBIER:

Q "No, no" what? A "Don't open".

Q Where were you at that time? A In my bed.

Q Did you have your clothes on in bed?

MR. ELY: Now, I object to that.

A My underclothes on.

MR. ELY: I object. This is very leading

THE COURT:.. Don't lead the witness. It may be harmless, but it is leading... Be careful to avoid even the appearance of leading.

MR. LE BARBIER: I will do so, sir.

BY MR. LE BARBIER:

Q Did you have your underclothes on? A Yes, my shirt and drawers, my underclothes -- my under drawers and my under shirt. That's all I had on.

Q Stockings, socks? A No, sir. No socks.

Q Were you actually in bed, Calandra? A Yes.

MR. ELY: I object to that, sir. That is in

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