

nearly every day, I like to see the grand stores.

Q You like to see what? A These great stores.

Q What stores are down on Grand street that you wanted to see? A Great stores where there are on exhibition ladies' and gentlemen's suits.

Q Now, what day was this? A It was the 2 Oth day of June.

Q How do you know it was? A Because I saw that date on the paper.

Q On what paper? A The newspaper.

Q On the newspaper? A Yes, sir; on the paper, the newspaper.

Q On that day? A I took the Italian paper, the Progresso Italiano Americano.

Q You had a copy of the progresso on that day and you saw the date on the paper, is that what you mean? A Yes, sir; it was the second day after.

Q It was the second day after? A It was one day after the occurrence in Grand street that I took that paper.

Q Where did you get the paper? A I took it from-- this store in Mulberry street.

Q Did you read anything about this affair in the paper?
A Yes, sir.

Q Then you remembered that you had seen it the day before?
A Yes, sir, when I read that I remembered that I had been

present there.

Q What did you do when you remembered that? A I was very sorry, that is all .

Q Well, did you go and tell anybody about this? A No, sir.

Q You never told a soul? A No, sir; nobody.

Q What is that? A No, sir.

Q Did you ever tell anybody anything about it until today? A No, sir.

Q Not a word? A No, sir; I went to work and that is all.

Q Now, was that the only crowd you had ever seen on Grand street around a person on the ground? A Yes, sir; I had seen sometimes where homicides had taken place in Mulberry street.

Q You have seen homicides in Mulberry street?

MR. LEVY : I move that the answer be stricken out as not responsive.

THE COURT: I grant the motion.

Q Have you not seen many times crowds gathered around people on the ground in Grand street?

Objected to. Objection sustained.

Q Is this the only you have ever seen a crowd on Grand street around a person who was on the ground ? A Not in Grand street exactly.

Q Now, you don't know the defendant? A No, sir; I

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don't know him.

Q Do you know anybody that knows him? A No, sir.

Q Do you know how you became a witness in the case?

A I had said something about this matter to some countryman of mine from the same village and they have spoken to other Italians, that I witnessed, or was present and had seen something in Grand street and had heard Italian voices.

Q Now, where do you come from, what place in Italy?

A In No. 126 there is a Neopolitan who keeps a saloon and in my own house where I live I have said something about that also.

Q From what place in Italy do you come? What is your native town? A From the Province of Katancara, Calabria.

Q What town? A Gimiliano.

Q How near to the people on the ground were you on Grand Street? A About the distance from the witness' chair to the table there. (Witness indicates.) And I could not come near on account of the crowd.

Q What point on the table? A (Witness indicates.)

Q From here to there? A (Witness indicates about ten feet.)

Q Were there many people on the street? A Yes, sir; there were a great many people in the street.

Q Was there not a great crowd around this person who was on the ground? A Yes, sir.

Q Now, if you saw a man on the ground, why can't you tell

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us what he looked like? A I was afraid that I would be struck; there were a great many people in front of me, preventing me from seeing the face of the individual that was on the ground.

Q Did you see anybody strike the man on the ground on his head? A Yes, sir; I saw the man struck on the head and also he was kicked.

Q If you saw the man struck on the head, why can't you tell us what he looked like, what his head was like? A As soon as he raised his head to get up he was knocked down again and I could not see.

Q Now, you don't know what became of him? A No, sir; nothing at all.

Q Have you any idea how many people there were on the street around that man? A In the beginning there might have been from fifteen to twenty people around there and afterwards it was over one hundred.

PELLEGRINI GIOGRANDE, a witness for the

Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RINGROSE:

Q Will you try and speak English for us?, A I will try to speak English.

Q You are a citizen of the United States, aren't you?

A Yes, sir.

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Q At present employed in what department in the city?

A Yes, sir.

Q In what department of the city are you employed, where do you work? A On 77th street.

Q In what street? A The Street Cleaning Department.

Q Are you a stableman in the Street Cleaning Department?

A Yes, sir.

Q Where do you live? A Mott street, No. 111.

Q Number what? A No. 111.

Q On Mott street? A Yes, sir.

Q Did you live there on the 20th day of last June?

A Yes, sir.

Q Do you know Joseph Yaccobacci? A Yes, sir.

Q Did you live in the same house with him on the 20th day of last June? A Yes, sir; he lives on the third floor and I live on the first floor.

Q He lived on the third and you lived on the fourth?

A Yes, sir.

Q Did you see him on the morning of June 20th? A I seen him about twelve o'clock.

Q About twelve o'clock that day? A Yes, sir.

Q Where did you see him? A 111 Mott street, on the street

Q In the street? A Yes, sir; in front of the house.

Q Was anybody else with you at that time? A Me and Fellichi Desiata.

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Q You and Fellichi Desiata? A Yes, sir.

Q Now, did you and Fellichi and Yacobacci go anywhere that afternoon? A Yes, sir; we went over to Brooklyn; we went to find a job for Fellichi Desiata.

Q Did you three go together? A Yes, sir; we three went together.

Q What time did you leave your home 111 Mott street?

A I think about after two o'clock.

Q What part of Brooklyn did you go to? A Carroll street.

Q Did you see the party that you went to see? A Yes, sir.

Q You say that was to see after a job for Desiata?

A Yes, sir.

Q Now, did you come back from Brooklyn together?

A Yes, sir.

Q The three of you? A Yes, sir; the three of us together.

Q Did any of you have a drink in Brooklyn? A No, sir.

Q Of any kind? A No, sir.

Q Which way did you come back from Brooklyn? A We came back on the new bridge, the Brooklyn bridge, the one which you call the Grand Street Bridge.

Q The Williamsburg Bridge, is that correct? A yes, sir.

Q Now, what time did you get over to the New York side?

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A Just about half past five or a quarter to six, or something like that.

Q Then what did you and Fellichi Desiata do? A We came to Grand street; we went to get a picture and then we came and walked west and the two of them fellers walking east.

Q You had been to see about a picture? A yes, sir.

Q Belonging to whom? A To Mr. Yaccobacci.

Q After that what did you and your two friends do?

A After what?

Q After you saw about the picture? A Well, we don,t get the picture yet.

Q You didn,t get it? A No, sir.

Q After you left the picture store, where did you go?

A We did not get down to the picture store, before we got into the store--

Q You had not reached there yet? A No, sir.

Q You were on your way to the picture store? A yes, sir.

Q Now, did anything happen on the corner of Grand and Norfolk street? A Yes, sir.

Q Where were you and your friends walking? A We were walking on the right side and Joseph Yaccobacci in the center and Desiata on the left side.

Q You on what side? A On the right side.

Q And Joseph Yaccobacci in the middle? A Yes, sir.

Q And Fellichi Desiata on the left ? A Yes, sir.

Q You on the right? A Yes, sir.

Q What happened when you got to the corner of Grand and Norfolk street? A As soon as we passed by, ten, five, eight or nine feet away at the corner of Norfolk street and then we met them three-- two fellows-- two fellows, one walked west or east and we walked west. As soon as we passed three, four or five feet away he got a piece of pineapple, I don't know if he was eating it or picked it up from the ground; I seen that he turned around and run like that and picked up the pineapple, the fellow that is dead.

Q The man that is dead? A Yes, sir.

Q What did he do with it? A He chucked that on his head.

Q Whose head? A Joseph Yaccobacci's head.

Q What happened when he threw it? A Then he threw it like that and he says, "What's the matter with you fellows"? That is all he can understand, and he said, "You Ginny son-of-a-bitch, I'm going to knock the shit out of you."

Q Who said that? A The fellow that is dead.

Q What did you say? A I told him this way, this party was with me and I told him, "We don 't want to get into any trouble." We three talked together.

Q After Yaccobacci was struck with a piece of pineapple, what happened? A We started to talk with them and another fellow was coming.

Q Pelligrini, keep still, go slow and don't get excited.

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A I can't talk slow.

Q Speak as loud as you can and slowly so that we can hear you. Now, was Yaccobacci's hat knocked off? A Yes.

Q Where? A On the corner of Norfolk street, about ten or fifteen feet off the corner.

Q After his hat was knocked off what happened next?

A We stopped to talk to them together, and we talk Italian.

Q Who spoke Italian? A Joseph Yaccobacci.

Q What did he say in Italian? A We said, "We no do nothing to that fellow. What is the matter with those fellows".

Q Who did he speak with? A He and this & Fellichi.

Q We spoke to Fellichi Desita in Italian? A Yes, sir; and I heard it.

Q Now, did Yaccobacci speak English at all? A No, sir; he can't speak English at all.

Q Now, what did the man say, the man that is dead?

A He said, "You Ginny son-of-a-bitch, I am going ti knock the shit out of you."

Q What did you say? A I said, "We don't want no trouble, we want to go off, we want to go home."

Q Did Fellichi say anything? A We said, "We want to go please." That is what I heard him say, "We want to go." We rubbed his hands and said, "We want to go." Then the next fellow stand behind at that time, as we started and the big fellow came behind him and gave him two punches on the head.

Q Gave who? A Joseph.

Q Who did that? A Another fellow behind, I don't know that fellow at all.

Q Was it the man that is dead? A No, sir.

Q Was it the man who was with him? A No, sir; it was another fellow, another party outside.

Q How many men were there? A There were two the first time, you know.

Q Two the first? A Yes, sir; as soon as he hit him he started to run away.

Q Who started to run away? A Joseph Yaccobacci started to run away and the fellow that is dead ran after him, and catches him corner of Norfolk street, and gave him two good punches, knocked him down, got up so quick and gave him a kick with his foot. He started to run away and he ran after him, and I ran right after that fellow and I can't see no more.

Q The one who is dead ran after Yaccobacci? A Yes, sir.

Q Knocked him down? A Yes, sir.

Q How many times? A I seen him two times knocking him down.

Q How many times did he kick him? A I seen him kick that way and then he ran away because there was lots of people there.

Q How many times did he kick him? A I think a couple of times.

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Q Where did he kick him? A On the back, I don't know where he kicked him, he was kicking him on the back.

Q What was the man that is dead doing to him? A I don't know; I didn't see any more after at all. I no see nobody; I stand in the same place where I was while the trouble was; I was there about five minutes and I went home.

Q How many people struck Yaccobacci? A Only two I seen striking him.

Q Two struck him that you saw? A Yes, sir.

Q Did you see the dead man strike him? A Yes, sir.

Q Did you see the dead man kick him? A yes, sir.

Q How many times did he kick him? A Twice.

Q Now, what became of you and Fellichi, your friend?

A I didn't see them any more after that; I left all alone there.

Q You were left all alone? A Yes, sir; and I stand there about five minutes and then I went home.

Q How many people were there? A It was over a thousand people there, more than that too.

CROSS EXAMINATION BY MR. PINCHOT:

Q Now, Mr. Giograndi, are you a friend of the defendant's?

A Yes, sir.

Q How long have you known him? A I know him the same day he came from the old country.

Q Where do you come from? A From Italy.

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Q What part of Italy? A Naples.

Q Naples? A Yes, sir.

Q What part does he come from? A Bruze.

Q On this day you say you were coming back from Brooklyn?

A Yes, sir.

Q You came over the Grand street bridge? A Yes, sir.

Q Is that the bridge that comes across the East River?

A yes, sir; the East River.

Q To Grand Street? A Yes, sir.

Q The end of the bridge is at the foot of Grand street?
You have been over that several times, haven't you? A yes, sir.

Q Now, on this day what time was it when you came across
that bridge? A About half past five or a quarter to six
o'clock.

Q You remember it distinctly? A Yes; sure I remember,
sure, about quarter to half past five or a quarter to six.

Q You are familiar with Grand street? A Yes, sir.

Q You have been on Grand street lots of times? A I never
been before in that street, but I remember the place for at the
same time I was there.

Q You know what Grand street is? A Yes, sir.

Q You know it is the same street where the end of the
Bridge is? A yes, sir.

Q You can swear to that. Now, after you left the Bridge,
where did you go, did you walk straight down Grand street?

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A Walked about one block straight from the Bridge, then walked down, then walked across the street to Grand street.

Q Straight down Grand street? A Yes, sir.

Q Now, please tell me exactly what time this was if you can? A The time was about a quarter to six.

Q You say that you and the deceased and Fellichi were walking together, I mean you and the defendant and Fellichi?

A Joseph Yaccobacci, me and Fellichi.

Q Who was in the middle? A Joseph Yaccobacci.

Q Now, do you remember the exact place where you met these two American fellows? A Yes, sir; I do.

Q Now, tell us exactly where that was? A It was about ten or fifteen feet away from the corner of Norfolk street, and Grand street.

Q On which side of the street? A The downtown side of the street.

Q Now, you have testified that the defendant was hit by the deceased with a piece of pineapple? A yes, sir.

Q Where did he get that piece of pineapple? A I don't know where it came to him; I don't know if he eat it or pick it from the ground, I do not know.

Q You don't know? A No, sir.

Q Do you remember that you testified before the Coroner that when you first saw the deceased he had the pineapple in his hand and was eating it? A I don't know; I did not look

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in his hands.

Q You did not look in his hands ? A No, sir; we started to talk together and we were about our own business.

Q You did not see any pineapple? A I did see it when I looked up.

Q You did not see the piece of pineapple? A No, sir; I did not see it.

Q Why did you testify before the Coroner that he had a piece of pineapple in his hand and was eating it?

MR. RINGROSE: we said, "I don't know whether he picked it up from the ground or not."

MR. PINCHOT: He said he was eating it, though.

BY MR. PINCHOT:

Q You say that these two American fellows bunked into you, you said that, didn't you? A Yes, sir.

Q And there you and the defendant and the other Italian friend had some conversation with these fellows? A yes, sir; we didn't have any conversation at all.

Q Did you say anything to him? A No, sir.

Q Did the defendant say anything to them? A No, sir.

Q You can answer my questions as if speaking to the jury so that the gentlemen of the jury can hear you. You say you did not speak, don't you-- did you say anything at that time?

A No, sir.

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Q Did you then hear the defendant say anything? A No, sir.

Q Did your other friend, Fellichi, say anything?

A No, sir; he did not say a word.

Q Neither one of you said a word? A No, sir; we talked about our business .

Q Who was the first one that struck the defendant?

A The fellow that was died.

Q What did you do then? A Well, he turned right around, that fellow there, and said, "What is the matter with you fellows."

Q What did you do? A I did not do anything at all; I was standing there.

Q The defendant did not say anything after? A No, sir.

Q His friend did not say anything? A No, sir.

Q Did the defendant here make any response? A No, sir.

Q Did he fight back at all? A No, sir; he don 't know how to fight at all.

Q We don ,t know how to fight? A No, sir.

Q You have already testified that the defendant said, "What is the matter with you"? A Yes, sir; that is all he said.

Q Well, then, he did say something?

MR. LEVY: I object to that on the ground that it is a misstatement of the evidence.

MR. TRAIN: What was it he said?

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MR. LEVY: This witness stated that he asked the deceased in English, "What is the matter. We don't want any trouble with you." The defendant did not say anything in English.

MR. TRAIN: Well, the witness said it.

BY MR. TRAIN:

Q Did Yaccobacci say, "What is the matter with you " when he was hit? A When he is hit with the piece of pineapple the first time.

Q Then Yaccobacci said, "What is the matter with you"? A Yes, sir; he said, "What is the matter with you", and then the fellow says, "You Ginny son-of-a-bitch, I am going to knock the shit out of you." Then he did not understand at all and he said, "What is the matter with you."

Q What language did Yaccobacci say that in? We are trying to find out what language he made this statement in.

THE COURT: What are the Italian words for "What is the matter with you"?

THE WITNESS: (Using certain Italian words.)

THE COURT: That is Italian?

Translate that.

THE WITNESS: "What does that mean ".

BY MR. PINCHOT:

Q Now, Pelligreni, after you and your friend here, the defendant, or your friend here said, "What is the matter", in

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Italian, was it then that somebody struck him or before that?

A Somebody hit him.

Q When was it? A The same time.

Q That is just what I want to find out, and what point in this meeting it was that some one struck the defendant.

A What do you call the fellow that is dying? I don't know what I will call him, he struck him with a piece of pineapple and he turned around like that and he said, "What is the matter with you fellows;" and after that fellow said, "You Ginny son-of-a-bitch, I am going to knock the shit out of you." We started to talk, "We don't want no trouble, we want to go home". A fellow came behind and he hit him a couple of punches, Yaccobacci, and knocked his hat down, his straw hat. Joseph started to run away and the fellow caught him by the corner gave him two good punches and knocked him down. As soon as he knocked him down he got up quick, kicked him with his foot and started to run away and I didn't see any more after that.

Q Now, how far were you away when the deceased hit the defendant? A About fifteen feet away.

Q Fifteen feet? A Ten or fifteen feet.

Q Didn't you come up close and weren't you standing by the defendant? A No, sir; I was standing by the place.

Q Answer my question. Did you or didn't you come up close during this conversation or during this interview?

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A No, sir.

Q You stayed fifteen feet away all the time ? A yes, sir; all the time I stand in the same place.

Q That was as much as fifteen feet away? A At the corner of Norfolk street and Grand street.

Q The place where you were standing was fifteen feet distant? A Yes, sir; I was at the place where my friend got hit.

Q You don't quite understand what I mean. I want to find out how far you were away when all this took place, were you right with your friend or were you far from him ? A I was standing at the same place where it was the trouble happened.

Q How far away was that? A About fifteen feet, I told you again.

Q Fifteen feet? A Yes, sir.

Q And then when the defendant was knocked down hit hat was knocked off? A He was alongside of me.

Q He was alongside of you? A Yes, sir.

Q Was that before or after this time when you were fifteen feet away? A Afterwards.

Q And you did not stand in the same spot all the time?
A I did.

Q Now, you have already testified that at first when the defendant's hat was knocked off you were fifteen feet away from him? A Yes, sir; I was fifteen feet away from him.

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Q You say that you remained in that spot all through?

A Well, I state the truth all the time.

Q You stayed in that spot all through? A Yes, sir; I never moved at all, I stayed all the time.

Q You testified since then that later on you were right by him. Now, how did you get there? A I never was right by him.

Q You were never nearer than fifteen feet? A No, sir.

Q Did you move at all from the first time you saw these two Americans? A No, sir; I never moved at all; I stood in the same place where it happened, about a foot away, this way (illustrating); that is all I was moving, no further than that (illustrates by moving about a foot).

Q You were fifteen feet away from your friend? A Yes, sir.

Q When he was assaulted by these two Americans, when his hat was knocked off and he ran away and was chased by the Americans and when he was knocked down twice and kicked, you still stood in the same place? A Yes, sir; stood still and looked down.

Q You did not have any interest in what was happening to the defendant at all? A No, sir.

Q You did not care whether he was knocked down there?

Objected to. Question withdrawn.

Q What did you do when you saw the defendant, your friend, being kicked, knocked down and kicked? A Stand and looked at him.

Q Stood and looked on? A yes, sir.

Q How far was that from the corner? A About fifteen feet away.

Q Now, I am trying to get the truth out of you and I have no doubt you are trying to answer my questions. But we have not been able to understand each other. I want you to understand what I mean. Will you indicate how far the defendant ran after being struck by the pineapple before he was knocked down? A Up to the corner of Norfolk street from Grand street.

Q Now, ask him if he saw the deceased? A Yes, sir.

Q Now, ask him if he saw a knife in the hands of the defendant? A No, sir.

Q Does he know whether or not Joseph had a knife in his hand? A I do not know.

Q Does he know whether or not the deceased had a knife or weapon in his hand? A I do not know.

Q Did you see the deceased make any motion as if to draw a weapon, the deceased? A I did not see that.

Q What was the very last thing you saw before you turned around and went home? A A big crowd, that is the last I saw.

Q What was the last thing he saw of his friend before he

turned around and went home? A I saw him going home.

Q You saw your friend going home? A I saw my friend going home.

Q What was the last thing you saw ^{of} Yaccobacci, before you went home? A I saw him in the station house.

Q I don't mean then. I mean at this time when the stabbing took place. What was the last thing you saw of the defendant before you turned around and left the scene?

A I did not see anything more.

Q Was the last thing you saw, when you turned around and left the scene, your friend lying on the ground being kicked and punched by the deceased and the rest of the crowd? A Then he got up and was knocked down and the deceased ran after him and then a big crowd ran after him and I don't see him any more.

Q You stood there while your friend was being knocked down and pummelled and when he got up again followed by this crowd, and you did not make any motion? A No, sir.

Q Make any move? A No, sir.

Q To follow him? A No, sir.

Q Or find out what had become of him? A No, sir.

When I saw all the mass of people around there taking part in this matter I thought of myself and I thought the best thing I could do was to keep quiet.

Q You made no attempt whatever to help your friend?

A I did not.

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Q And the man you were with, Desiata, made no attempt to help your friend? A No, sir.

BY MR. LEVY:

Q Did the defendant call the deceased "Sheenie" or any such epithet? A No, sir.

Q Did you hear any of your friends, call the deceased that or use the word "Sheenie"? A No, sir.

Q Positive of that? A Yes, sir.

Q Did you ever hear Yaccobacci, the defendant, talk English? Did you ever hear him use the word Sheenie A No, sir.

Q On that occasion or any other occasion? A No, sir; I never heard him say anything at all.

Q Did you hear a great many people at that time, in the presence and hearing of the defendant and the dead man shout, "Kill the Dago"? A No, sir.

Q "Kill the Ginny"? A I only heard nothing like that because I was standing at the place where the trouble was; I was standing there and I could not hear anything at all.

Q Were you frightened? A No, sir.

Q Were you afraid? A Well, sure, I was afraid; I would not go down to the crowd; I was afraid somebody would hit me too.

Q Now, did you see more persons than the dead man hit Yaccobacci? A (No answer.)

Q Did you see more than one person hit Yaccobacci?

A Yes, sir; I seen two.

Q You saw two? A Yes, sir.

Q Were there many blows struck? A Well, there were a lot of people ran after him, I don't know, about four or five.

Q Did you see Yaccobacci run after the deceased and stab him? A No, sir; the deceased ran after Yaccobacci.

Q You saw the deceased run after Yaccobacci? A Yes, sir.

MR. LEVY: That is all .

G U I S E P P I Y A C C O B A C C I , the defendant, being
duly sworn in his own behalf, testified as follows,
being examined through Official Interpreter
St. Albe:

DIRECT EXAMINATION BY MR. RINGROSE:

Q where were you born? A I was born in Italy, in Vasto.

Q Now, are you a married man ? A yes, sir.

Q Have you three children? A I have a wife and three children.

Q Are they three little girls, your children?

MR. TRAIN: I object to that, whether they are boys or girls.

A Yes, sir.

THE COURT: It does not matter.

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Q Now, where is your wife living now?

MR. TRAIN: I object to that as immaterial, where his wife and children are or how many they are.

Objection sustained. Exception.

Q How long have you been in this country, Guiseppi?

A I arrived here in New York on the 19th of March, 1906.

Q Do you speak English? A No, sir.

Q Can you speak any English at all? A Nothing whatever.

Q Do you understand English? A No, sir.

Q How old are you? A 39 years old.

Q Thirty-nine? A Yes, sir.

Q Have you ever, before this time, ever been accused either in Italy or here of committing any crime whatsoever?

Objected to. Objection sustained.

Q Have you ever been convicted of any crime whatsoever either in Italy or in this country?

Objected to. Objection sustained. Exception.

Q Now, what is your trade, F. Yaccobacci? A I am a mason, a bricklayer.

Q Are you a union bricklayer?

Objected to. Objection sustained. Exception.

Q On the 20th of June for whom were you working?

A I was working until the 19th of June by Dominick LaSalla.

Q Now, were you working on the 20th of June last?

A No, sir; I was not working on this day. I was excused by

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the boss.

MR. RINGROSE: professor, will you pardon me. Will you ask the witness to testify so that I can hear him and do you mind adding the question and interpreting so that I can hear you?

THE INTERPRETER: Yes.

BY MR. RINGROSE:

Q Now, did you go anywhere on the 20th day of June?

A I went to Brooklyn.

Q With whom? A Pelligreni Giogrande and Fellichì.

Q For what reason did you go to Brooklyn?

MR. TRAIN: I will concede that they went to get a position and that they came back and were walking on Grand street.

THE COURT: Come to the matter in question.

BY MR. RINGROSE:

Q When you came back from Brooklyn on that day what time did you reach the corner of Norfolk and Grand street? A About a quarter to six in the evening.

Q Now, will you tell us slowly in your own way just what happened when you and your two friends reached the corner of Grand and Norfolk street on that evening? Tell us simply all that happened? A I was in Grand street in order to have my photograph taken and I wanted to send this picture to Italy.

Q Tell us what happened? A I was walking with my two friends in Grand street; I was walking a little ahead of them and they were on the side.

Q The names of those friends he gave, didn't he?

A Fellichl Desiata and Pelligreni Giogrande. There were two persons walking just in the opposite direction towards us and they wanted to pass.

Q Male or female? A They were men. Desiata was one way and Pelligreni on the other and I was a little ahead of the two. When we met these two men in Grand street, one of the two was eating pineapple and after he had passed me he took a slice of pineapple and threw it at me and it struck me on the left spot of my head, and when these two men had thrown this piece of pineapple at my head they commenced to laugh amongst themselves.

MR. RINGROSE: professor, didn't he say his hat was knocked off?

THE WITNESS: Yes, my hat was-- my hat fell off and I stooped down to pick it up while these men there stopped and had a laugh among themselves.

MR. RINGROSE: Didn't he say, Professor, as he stooped to pick the hat up something happened?

THE WITNESS: Well, nothing has happened while I was stooping down to pick up my hat, these two men had a laugh, and my two friends were talking among themselves. Then my friends and these two men had engaged in a talk, in a

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conversation and I had my hand on the arm of Desiata and told him, "Let us go on, let us walk on."

MR. RINGROSE: I beg pardon, I know that the professor is doing his very best to interpret but he is not interpreting literally.

Q Was the hat knocked off ? A Well, when I got struck with the pineapple, which I have said before, my hat fell off and I stooped down to pick up the hat and put my hat on and these two men laughed, had a laugh among themselves, and my friends they commenced to talk amongst themselves and then all four engaged in a conversation and I touched the arm of my friend and said, "Let us go on".

Q Which friend was that, which of your two friends was it that you touched on the arm and said, "Let us go on" ?

A I took Desiata by the hand and told him, "Let us go along."

Q Did you speak a word of English at that time? A No, sir.

Q Can you speak a word of English? A No, sir.

Q Do you know what the conversation was about on that corner at that time? Did you understand it ? A What they said I could not understand but they were reasoning about what they had done to me.

Q Now, what happened next? A And as soon as I had said to my friend, "Let us go on" I was struck with the clenched fist from behind on my head and fell down and as soon as I was

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down I was violently kicked several times.

Q Who struck you? A That I don't know. I was struck from behind and I could not see.

Q Who kicked you? A There were five or six people but who they were I cannot tell.

Q Where were you kicked? A (Witness indicates in the back.) On a part below, on the spine.

Q Were you or not kicked in the testicles?

MR. TRAIN: That is rather leading. I object to it.

THE COURT: I sustain the objection.

Q Were you kicked in any other part of your body than the back of the spine? A Yes, sir; I was kicked in the privates, and suffered dreadful pains.

MR. LEVY: May we have that called by its proper name?

THE COURT: I think that is plain enough. It is sufficiently described.

Q How many times were you kicked as you have stated?

A I could not tell; I got a great many kicks.

Q Did the man that is now dead strike or kick at you?

A That I could not tell; I have not seen; I know that I was beaten and kicked by five or six different persons.

Q Now, when you were kicked and beaten, as you have told us, what did you do? A I was lying on the ground in that way and they were all the time on me striking me and kicking me and

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I could not do anything.

Q Show how it happened? A I tried to get up from the ground and as soon as I tried to get up I was thrown down again and terribly kicked and beaten, and after that then I thought that I am going to die and I thought of my knife.

Q Who was it that kicked and beat you, as you told us, the second time? Do you know who it was? A The first witness I know, but who else beat me I can't state because I was stunned.

MR. RINGROSE: Do I understand that the witness testified that he recognized some one as having kicked him?

THE INTERPRETER: The first witness.

MR. RINGROSE: He doesn't mean the doctor, surely?

MR. TRAIN: I presume he means Ripstein.

THE COURT: It need not be disputed but that he meant Ripstein.

BY MR. RINGROSE:

Q Does he remember the name of the first witness? Have you seen the man who kicked you in this court room in this trial?

A I did not see him here in court.

Q Who did you mean by saying the first witness, who did you mean? A Oh, in the moment when they had this talk, this quarrel, among themselves, my friends and these two men, then I was beaten and then I recognized that one of those two men that has commenced the whole affair was beating me, or had beaten me.

F-38 Q you recognized one of those two men? A Yes, sir.

Q Was the man that is dead now the man who kicked you and punched you? A yes, sir; he was one of those that beat me and kicked me.

Q Who is the other man that kicked and beat you?

A That I can't tell, I don't know, I don't remember.

Q Did you see the man on this witness stand testifying-- was he one of the men who beat and kicked you?

A Yes, sir; that is one of them.

Q And the dead man is the other? A That is the other man.

Q Now, when you were trying to get up, after being kicked and feeling as though you were dying, what happened?

A (Witness illustrates.)

THE INTERPRETER: The defendant tried to show what he did after he was beaten, that he moved his arm from the right to the left.

Q Did you at that time when you felt that you were dying pull out the knife? A Yes, sir.

Q Now, when you were on the ground, in what position were you when you drew the knife out of your pocket? Show us.

A I was down in this position.

MR. TRAIN: He indicates by holding his testicles with his left hand.

THE INTERPRETER: I have not said yet what the defendant said. I have not had time to say it. He said

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I was suffering pain from my testicle that had been hurt by the kick.

Q Did you draw your knife, did you draw this knife at that time? A Yes, sir.

Q Did you open it at that time? A Yes, sir; I had opened the knife and I made this motion, this waving motion with the arms.

Q What were your feelings at that time? A I was all gone.

Q What is that? A I was all gone at the time and was completely stunned; I did not know what I was doing.

Q Were you dazed? A (No answer.)

Q Were you in fear that you were being killed?

A (No answer.)

Q Why did you draw the knife? A I felt like dead and I took the knife to defend myself.

Q What did you do with the knife when you took it for that purpose to defend yourself? A I said, "Oh, Dio, and I made this motion. (Oh, Dio, means Oh, God.)

Q What is that? A I said, "Oh, Dio, Oh, God, oh, God, because I was in such an agony and I had the knife in my hand and I made this motion. (illustrating.)

Q Did he also say, Professor, "Oh, God, oh, God, don't kill me"?

THE WITNESS: No, sir, that I did not say.

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Q where were you at the time you were first struck and kicked, the first time you were struck and kicked, where were you

THE COURT: Is it necessary, Mr. Ringrose, to retrace your steps and reexamine the witness?

MR. RINGROSE: I wanted to make clear his position.

THE COURT: I think the jurors have a very clear understanding of his position as described by himself and no good purpose can be served by retracing your steps in this examination.

MR. LEVY: May I make a suggestion, your Honor?

THE COURT: Yes.

MR. LEVY: The purpose of this last question was to show that the first assault happened on the Grand street side of that building and the latter assault took place around the corner whilst the defendant was making an effort to get away from the deceased; that has not been clearly brought out.

THE COURT: You are more likely to confuse than you are to make clear, but you may proceed.

BY MR. RINGROSE:

Q Did you at any time ever run after the man who is now dead? A No, sir, never.

Q Did you ever call the man, the deceased, or anyone else a Sheenie? A (No answer.)

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CROSS EXAMINATION BY MR. TRAIN:

Q I want to know this, whether it was the deceased or Ripstein or some third party that first struck you? A (No answer.)

Q The deceased, Ripstein or some third person first struck him? A No, sir; that I could not say who struck me first because I was struck with the fist from behind, at the back part of my head.

Q Before you arose were you kicked in the testicles by somebody? A Yes, sir.

Q Now, do you know who kicked you? A Yes, sir; I was kicked in the testicles.

Q Do you know who kicked you? A There were five men striking me and I could not say who did that.

Q Then you were suddenly attacked by four or five men immediately after receiving this blow in the head with pineapple?

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

THE COURT: Objection overruled. Exception.

A No, sir; not right away.

Q Well, the point is, he was attacked by four or five men at once and he says that he took hold of his friend's hand and said something, "Let us go away"? A The hat fell off; I picked up the hat, put the hat on and told my friend, "Let us go."

Q Then four or five men attacked you, all at once?

A Yes; then I was struck from behind and I fell down, but I could not say how many there were or who did it.

Q How is that? A I could not say how many persons were at me or who did it.

Q I thought you said four or five? A Or who had done it.

Q How many people were engaged x in kicking and striking you the first time you fell? A Three or four people.

Q Three or four? A Yes, sir.

Q Now, of those three or four were the deceased and Ripstein two? A (No answer.)

Q Were the deceased and his friend two of the parties who were attacking you? A Yes, sir.

Q At that time did you think your life was in danger?

A Yes, sir.

MR. LEVY: I object to the question unless the District Attorney indicates that it means the first assault or the second assault.

MR. TRAIN: I am talking about the first assault. The second assault has not been mentioned at all as yet.

MR. LEVY: Will you be kind enough to put your question in that way?

MR. TRAIN: I press that question. I will put my own questions and if you don't like them you can object and the Court will rule.

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Objection overruled. Exception.

A Yes, sir; after I had been thrown on the ground three times and kicked in the privates then I thought I was gone.

Q Weren't you kicked in the privates the very first time you were thrown on the ground? A No, sir; first I was kicked in the back and then I fell down and while down I was kicked in the testicles and then I thought I was dead.

Q Did you fall down because you were struck in the head or because you were kicked in the back? Which blow knocked you down? A When I was struck in the spine then I fell.

Q Were you struck in the spine at about the same moment you received the blow in the head? A No, sir; first I was struck in the back of the head and then I was kicked in the back-- at the end of the back.

Q Did the blow on your head throw you to the ground? A Yes, sir.

Q Now, at the time that you received that blow in the head, were you not facing Ripstein and the deceased? A No, sir; I was almost blindfolded, I could not see.

Q At the time you received the blow in the back of the head what people could you see? A I saw that there were three or four persons, Hebrews, around me, but who they were I cannot say.

Q At the time that you received the blow you had hold of your friend's hand, did you not? A No, sir; I let the hand of my friend go and then I got struck in the back of the head.

Q when you had hold of your friend's hand, was your friend talking to the two Hebrews? A Yes, sir; Pelligreni and Desiat were speaking to those Hebrews.

Q When you took hold of your friend's hand, you two were facing the two Hebrews, were you not? A Yes, sir; at that time I saw the faces of these men.

Q Now, in which direction were you facing, west or east? A That I cannot remember.

Q Don't you remember anything about the direction in which you were facing? A No, sir; that I can't tell.

Q When you received the blow from the pineapple were you west or east of the two Hebrews? A I came from Brooklyn and I went west in Grand street.

Q And you passed the Hebrews? A Yes, sir.

Q Therefore, you were west of the Hebrews when you received this blow with the pineapple? A The Hebrews came from the west side against us.

Q Didn't you pass the Hebrews? A The Hebrews came from the west side and we came from the other side.

Q Was this pineapple thrown while the Hebrews were approaching you or after they had gotten by you? A Just when they came near me then they threw that piece of pineapple at my head.

Q How near were you when the Hebrew threw the piece of pineapple? A A couple of steps, from here to there (illustrating.).

Q Now, when you picked up your hat you were still facing in the same direction as when you were walking down Grand street, were you not? A No, sir; at that time I picked up my hat my face was turned to the house.

Q When you got back to your x feet and took hold of your friend's hand you were still facing towards the Bowery, weren't you? A I was looking towards Brooklyn at that time when I went away after having picked up my hat, I was facing east.

Q Do you know how you came to be facing east? A Because I wanted to see where my two fellows were.

Q Then when your hat was knocked off did the two Hebrews face you or go up towards Norfolk street? A No, sir; they did not come after me at that time.

Q Well, did the two Hebrews stop when they threw the pineapple? A In order to strike me with this pineapple they stopped.

Q And you stopped? A Yes, sir.

Q You picked up the hat that had been knocked off? A No, sir; we were in motion, we tried to go on.

Q You were brought face to face with the two Hebrews, were you not? A When I got up, after I picked up my hat, and I got up from the ground then I tried to see where my friends were located and I turned my head into their direction to see where they were and they were then engaged in conversation or in a quarrel.

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Q When you looked to see where they were, were they on the Brooklyn side of you or the Bowery side of you? A The Brooklyn side.

Q Then you don't know how the Hebrews and your friends got from the east side of you to the west of you-- or from the west of you to the east of you? A Yes, sir.

Q Yes or no. A I got the hand of this Desiata and wanted to go away.

Q When you picked up your hat you had to turn around in the direction from which you had been coming in order to see the two Hebrews and your two friends, isn't that your testimony?

A I turned around my head and I saw that the two Hebrews and my friends, the Italians, were engaged in conversation.

Q Now, when you spoke to your friends and said, "Let us go" at that time some one struck you from behind, now, is that correct? A I held the hand of my friend and I went my way, and as soon as I had turned around and gone I was struck in the back of my head.

Q When you received this blow on your head and fell to the ground, did you receive a kick in the back before you got to your feet? A Yes, sir; a great many kicks I received in my back and they prevented me from getting up.

Q Did you receive any kicks in your private parts before you could get up? A After I had been knocked down twice I was kicked in the privates.

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Q We are talking about the first time you were knocked down. Were you kicked in the privates before you could get up the first time you were knocked down? A No, sir; first I received a kick in the anus, at the end of my back, and then I was crawling on the ground.

Q How far did you crawl? A About five or six steps.

Q Why did you crawl? A Because I was struck from all sides with fists and kicked.

Q You were trying to get away? A Of course.

Q Now, do you know what your friends were doing at this time? A No, sir.

Q Are you able to state how many kicks you received while you were crawling away? A A great many times.

Q Did you receive a great many blows? A Yes, sir.

Q Were you afraid of your life? A Yes, sir.

Q Why didn't you draw your knife?

MR. LEVY: I object to that question.

A Because I could not.

Q Why couldn't you draw your knife? A Because I could not, I was on the ground and they did not give me a chance to get up.

Objected to. Overruled. Exception.

Q Was the reason that you did not draw your knife at that time because you were not able to draw it? A When I thought that I was going to die then I took the knife.

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Q Instruct the witness to answer the question. Was the reason that you did not draw your knife when you were crawling away the first time you were knocked down, because you were unable to draw it? A I could not take my knife at that time.

Q Why couldn't you? A I had no intention to use it.

Q Well, if you were afraid of your life why didn't you intend to use it? A I wanted to run away.

Q Did you get to your feet? A I could not, as long as they were punching me.

Q From that time on did you get to your feet at all?
A Yes, sir; after I was kicked and thrown down again then I got up finally and ran.

Q You ran to 18 Norfolk street? A Yes, sir.

Q You ran to 18 Norfolk street? A I don't know on the street where I went.

Q Now, did you get to your feet at all between the first time that you received the blow on the head and was knocked down and the time that you got to your feet and ran into this store?

A No, sir; I could not.

Q When, do you mean to say that you crawled all the way from the spot where you were knocked down to the spot where you finally arose to your feet and made your escape? A I got up the first time and then I was knocked down again.

Q Well, what we want to know is when you got up after being knocked down the first time, or got on your feet, -- ask him when

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he got on his feet the first time after he got knocked down?

Objected to. Objection overruled. Exception.

A I got up in order to be able to run away.

Q How many times did you get to your feet, and how many times were you knocked down again upon the ground before you finally made your escape? A Twice.

Q The first time you got knocked down did you crawl on your hands and knees until you were finally able to get to your feet?

MR. LEVY: I object to that question on the ground that it has been repeatedly asked and answered.

MR. TRAIN: what is the answer? If you know what your client has testified to I will take your statement. Do you know what he has testified to?

MR. LEVY: Yes.

MR. TRAIN: What has he testified to?

MR. LEVY: He has testified, if your Honor please, in answer to that question--

THE COURT: Let him answer the question.

THE WITNESS: Yes, sir; I got up and I was thrown to the ground again and I was knocked up again.

Q Now, while you were crawling the first time, did you fear for your life?

MR. LEVY: I make the same objection on the ground that the question has already been asked and answered.

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Objection overruled. Exception.

A I had.

Q Then why did you not then draw your knife?

Same objection. Same ruling. Exception.

A I could not do it.

Q You could not do it? A No, sir.

Q Why couldn't you draw your knife? A I didn't think, and I didn't know at that time that I should make use of the knife.

Q Do you mean that you did not know you had it? A No, sir.

Q Now, had you been kicked in the testicles before you got to your feet the second time? A Yes, sir.

Q Did you see a single person who kicked you, who struck you, up to the time you got to your seat? A No, sir; I was perfectly confused and I had not seen these men or the faces of anyone surrounding me.

Q When you did get to your feet did you see who was attacking you? A No, sir; I did not.

Q Do you know who knocked you down the second time?
A No, sir; I don't know.

Q The second time did you crawl? A Yes, sir.

Q How far did you crawl the second time? A About a couple of steps.

Q During that time were you receiving blows and kicks?

A Yes, sir; I was.

Q Now, do you know anybody, or do you recall, or did you recognize at the time any of the persons who were attacking you?

A No, sir; I had lost my mind; I was out of my mind.

Q Was it at that time that you thought of your knife?

A I thought about myself that I was dead, and then in that moment I took my knife and I made this motion (illustrating) and waved my hands from one side to the other.

Q Tell the witness to illustrate the position he was in when he drew his knife? A Here is Grand street (witness illustrates) this represents Grand street.

Q Tell him to get down on the floor. We don't want any crawling around at all. Tell him to get down on the floor and show us the position he was in when he drew his knife?

A (Witness illustrates.) I said, "Oh, Dio", and I commenced to move my arm.

Q Now tell him to draw his knife? A (The witness illustrates).

Q Now, Professor, ask him if from the time that he received the first blow up to the time that he went into the store and fell, he is able to state who struck him, who followed him, whom he was engaged in an encounter with, where his friends were, or anything about? A No, sir; I don't know and I can't tell.

Q Did you know that you had hurt or hit anybody?

A No, sir; I did not know.

Q Did you try to strike anybody when you drew your knife?

A No, sir.

Q At the time that you struck with your knife, or were drawing your knife were you then receiving blows and kicks on your body? A No, sir.

Q How long had it been since you were struck? A Only a couple of minutes.

Q Did you tell anybody that you had been struck in the head and in the privates when you were taken to the police station? A No, sir; never said nothing at all.

Q Wasn't there any interpreter in the police station?

A I had none.

Q You made no complaint, you did not ask for medical treatment? A No, sir.

BY THE FIFTH JUROR:

Q Kindly ask the witness how long it was between the time he received the kick in the testicles before he got up and ran?

A It was one minutes

BY MR. TRAIN:

Q Do you remember running to the store? A No, sir; I cannot remember.

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L U I G I S P A V E N T A, a witness for the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RINGROSE:

THE COURT: How many more witnesses have you?

MR. RINGROSE: One eye witness and some witnesses as to character. This is a witness as to character.

Q Now, what is your business? A Banker.

Q Do you know the defendant Guiseppi Yacobacci?

A Yes, sir.

Q How long have you known him, Mr Spaventa? A For a long while.

Q How many years? A About three or four or five years.

Q Five years? A Yes, sir.

Q Speak up? A Yes, sir.

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

Q Do you know what his reputation is for peace and quietness? A Yes, sir; he has always been a quiet man, very quiet man, and a peaceful man.

Q Do you know what his reputation is for truth and veracity? A (No answer.)

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

Q Do you know what his reputation is? A It is very /

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good.

MR. TRAIN: No cross-examination.

GREGORIO MARSEGANE, a witness for the defence
being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. RINGROSE:

Q Mr Marsegane, are you a dentist? A Yes, sir.

Q Do you know the defendant, Guiseppi Yacobacci?

A Yes, sir.

Q For how long do you know him? A For two years in this
country, and I know him in Italy lots of time.

Q How long have you known him altogether? A Well,
twenty years or twenty-five years.

Q Twenty or twenty-five years? A Yes, sir.

Q Do you come from the same town that he does? A What
is that.

Q Do you come from the same town? A Yes, sir, the same
city.

Q Do you know other people who know him? A Yes, sir,
lots of people know him.

Q Please speak up. Do you know what his reputation
is for peace and quietness? A Well, it is good all the time.

Q Do you know what his reputation is? A A good reputa-

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tion; he has got a good reputation.

Q Do you know what his reputation is for truthfulness, telling the truth? A Good, excellent.

Q Did you ever know of his being arrested or accused of crime at any time?

Objected to. Question excluded.

MR. TRAIN: I have no objection to that question.

THE COURT: I exclude it.

No cross-examination.

M I C H A E L D ' A N G E L O, a witness for the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RINGROSE:

Q Mr D'Angelo, how long have you known Guiseppi Yaccobacci, did you know him here and in Italy? A I know him from his childhood.

Q Do you know other people that know him? A Yes, sir.

Q What is his reputation for peace and quietness?

A I know him from all the time to be a good, always working, always minding his own business, never having any trouble with anybody, never drunk, always sober.

MR. TRAIN: No cross-examination .

THE COURT: We will suspend here. Gentlemen of the jury, I caution you not to talk about the case nor express

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any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. We will adjourn court until to-morrow morning, at half past ten o'clock.

(The further trial of the case was then adjourned until Wednesday morning, October 24th, 1906, at 10:30 o'clock.)

New York, October 24th, 1906.

TRIAL RESUMED.

F E L L I C C I D E S I A T I , a witness called on behalf
of the Defendant, being duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Where do you reside? A Mott Street, 111.

Q What is your business or occupation? A I am at the
present time working in a pasteboard factory.

Q Ask him if he has been subpoenaed by the Prosecution,
by the District Attorney?

Question excluded. Exception.

Q What was your occupation or business on the 20th day
of June, 1906? A At that time I was out of work.

Q Do you remember going to Brooklyn on that day with the
defendant and Pelligreni? A At that hour I was disoccupied.

Q Was he unemployed during that entire day? A No, sir;
I did not work on that day.

Q Now, did he go to Brooklyn on that day with the de-
fendant and Pelligreni?

MR. TRAIN: That is conceded.

Q What time of the day did you return from Brooklyn on
that day? A About half past five or towards six o'clock.

Q Did you witness the occurrence with the deceased;

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you and Pelligreni and the defendant had an argument which resulted in the death of the deceased on that day? A Yes, sir.

Q You were a witness before the Coroner, were you not?

A Yes, sir.

Q You testified in that court, did you not? A Yes, sir.

Q You repeated your testimony or your evidence or your story to Mr. Train, the District Attorney, did you not?

A They asked of me very short declarations.

Q Now, come right down to the occurrence, to the time that you and Pelligreni and the defendant were walking west near the corner of Norfolk and Grand street at about 5.30 o'clock in the evening; just tell the Court and jury what happened there on that occasion? A While returning from Brooklyn, I was walking in the company of Pelligreni and Yaccobacci.

Q When they reached that corner, the southwest corner of Norfolk and Grand Street, what happened? A While we were walking and talking about our own affairs, we had to go to a street that enters into Grand Street, and from there to go to Mott Street, to retire.

Q Now, let us come back to the corner of Norfolk Street, in front of Schnappman's millinery store, what happened there? A We met a young man who was eating some fruit, I don't know what they call it, I think pineapple.

Q What did this young man do with the pineapple?

A Hardly had we passed a few yards than that young man threw

the pineapple in the face of Yaccobacci, which threw his hat off.

Q What happened after he was struck with the pineapple?

A After having been struck, Yaccobacci-- all at once we turned our heads and Yaccobacci said, "What for do you throw that in my face?"

Q Did he say that in English or in Italian? A In Italian, because Yaccobacci does not speak or know any English.

Q Did you make any remark in English or in Italian?

A I did not make any observation neither in Italian nor in English.

Q Did Pelligreni do so? A Pelligreni said a few words in English

Q Did he understand what he said? A No, sir, I did not understand.

Q Why? A I simply understood or heard the words that he uttered, and in the same time he was turning his fists in an attacking attitude.

Q Were the words spoken by the deceased in English or in any other language that he knows? A I did not know what language, because I was here only a few months and I could not tell the difference of languages.

Q But did he hear him make some statements? A Yes, sir; and those words were uttered in a sort of big rage.

Q After the deceased struck the defendant with the pine-

apple, did the defendant take hold of the witness' hands, did he take hold of your hand and say anything to you in the presence of the deceased?

MR. TRAIN: I object to that as leading.

THE COURT: Objection sustained. The question is leading in that form.

Q After the defendant was struck with the pineapple, what happened next? A Yaccobacci was with that man when he started a fight, and he grabbed hold of my arm, and almost at the same time he said the words, "Let us go away", and I also said so, "Yes, let us go away."

Q What does the deceased do after these remarks were made?

MR. TRAIN: I object to that, because it suggests that the deceased did something.

Q Did the deceased do anything after these remarks were made; what happened after these remarks were made? A After Yaccobacci had said the words, "Let us go away" another young man rushed in a hurry against Yaccobacci and struck him twice with the fist in the head.

Q With both fists? A With both fists in the head.

Q Now, what else happened? A After he had been struck by the second young man with the two fists, another attacked him and struck him also with both fists in the head when he cried out, "By the sake of God, what have I done to you."

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Q In what language did Yacobacci say that? A In Italian.

Q Did you see the deceased there at that time? A Yes, sir, I saw him.

Q Was he in front of the defendant and you? A Yes, he was.

Q What did he do? A Yacobacci fell to the ground, and then the deceased and a number of other fellows in a coil, as it were, went over him and struck him with their fists and kicks continually.

Q Did he see the deceased kick him? A Yes, sir.

Q Did he see the deceased strike the defendant with his fists? A Yes, sir.

MR. TRAIN: Ask him what he saw the deceased do.

Q When this happened was there a large crowd at that spot? A (No answer.)

Q Tell us all you know about the occurrence, especially with regard to the number of people that were there at the time? A There was a big crowd.

Q Tell him to go on and tell us all he knows? A While Yacobacci was falling, when he was falling to the ground, as I told before, his straw hat fell down, and I bent down in order to pick it up, and when I was up again he ran away.

Q Where were the men after he stood up? A They turned into another street.

Q Ask him if he knows the name of that street? A No, sir.

Q Did he see the defendant try to run away?

MR. TRAIN: I object to that as leading.

Q After the kicking and punishing which you have just stated you saw the deceased inflict upon the defendant, did you see any more punishing or kicking inflicted upon the defendant? A (No answer.)

MR. TRAIN: Tell him to go on and describe what happened.

THE WITNESS: I told you that I stepped down to pick up the straw hat, then I noticed that everybody was running and then I saw a big crowd that was running after Yaccobacci and I saw the young man that was killed.

Q Up to that time did he see any knife in the hands of Yaccobacci, the defendant? A No, sir.

Q Did you call the deceased or his friends "Sheenie"? A No, sir.

Q Did you hear anybody that was there; did you hear Pellegreni or the defendant call the deceased or his friends "Sheenie"? A No, sir.

CROSS EXAMINATION BY MR. TRAIN:

Q Have you told us everything that you saw and recollect

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of what occurred? A To whom?

Q Have you told the learned counsel? A Yes, sir, everything.

Q So that after Yaccobacci was attacked by these two men about how long is it that everybody ran away and that after they ran away you then saw the crowd pursuing Yaccobacci and that a man was killed? A (No answer.)

Q Now, all you know is that after Yaccobacci was attacked by these two men that everybody ran away? A Yes, sir.

Q Did they run around the corner? A Yes, sir.

Q Did you run after them? A After awhile; then I saw the crowd that was apprehending Yaccobacci and then I saw that a young man was wounded and then I had picked up, as I said before, the straw hat, then I threw it away again.

Q Now, while they had run around the corner and after they had run around the corner, did you see what happened around the other side of the corner? A No, sir.

Q Did you know who wounded the young man? A No, sir.

Q What is the answer? A No, sir.

Q At any time did you see that Yaccobacci had a knife?

A No, sir.

Q Did you ever see Yaccobacci have a knife? A No, sir, never.

Q Did you ever live with him? A Yes, sir; this time

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that I got in America up to that day of June, we lived in the same house.

Q You never saw him have a knife? A Never.

Q Is this the defendant's knife? (Showing witness Plaintiff's Exhibit 1.) A I do not know.

Q Did you ever have a knife? A I never did.

Q Did Yaccobacci ever have a knife? A (No answer.)

Q Didn't you live with Yaccobacci, your other friend?

A At that time when this quarrel took place.

Q How long have you been in this country? A I arrived here on the 18th of March.

Q Did you come with the defendant? A Yes, sir.

Q Had you ever been to America before? A No, sir.

Q You have been in America some months. Can you speak or understand a single word of English? A No, sir, I could not.

Q Not a word? A No, sir.

Q Ask him if he recognizes the phrase, "Son-of-a-bitch"?

A I heard those words uttered by the children, but I do not know what it means.

Q But you recognize them when you hear them, don't you?

A Well, if they are uttered, I hear them, because I have the faculty of hearing.

Q Now, wasn't that used on the 20th of June, that expression? A I heard English words, but I at that time did

not understand anything.

Q You did not recognize that phrase at that time?

A No, sir.

Q Now, how many times has the defendant come to America?

A I know that he came over here with me, but I don't know whether he has been other times.

Q Don't you know, as a matter of fact, that he has been here before? A I did not know.

Q Did you come from the same town with him? A No, sir.

Q He never told you that he had been here before?

A Never.

Q You are quite sure the defendant cannot say a single word of English? A During the time that we were together he never spoke English, and then we always talked in Italian.

Q Now, isn't it a fact that on that evening when he was struck by the pineapple, that he turned to the Hebrew boys and said, "What is the matter" in English; yes or no? A He said--

Q Wait a moment; instruct the witness to answer the question categorically, yes or no. A No, sir.

Q Did you not testify in the Coroner's Court that the defendant turned and said in English, to the Hebrews, "What is the matter"; yes or no? A I said--

Q Wait a moment; do not give his answer unless he

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answers yes or no. Instruct him to answer in that fashion.

THE INTERPRETER: Well, implicitly, he said, "Yes, I said so."

Q Just answer the question yes or no. A Yes, sir.

Q Did you not just say that he didn't say it in English?

A I said Yaccobacci said in Italian, "Ke kause volete", and that corresponds to the English "What is the matter", so I said before the Coroner that he said, "What is the matter".

Q Did you say in the Coroner's Court that the defendant used the English words, "What is the matter"? A No, sir; I was asked whether he said it in English or in Italian, and so I used the words as corresponding to it.

Q Then the witness denies that he made that statement in the Coroner's Court? A I said before the Coroner that Yaccobacci said, "Ke kause volete" and that that answers for the words, "What is the matter" in English; I said to the Coroner, "What is the matter."

Q Does he say that he used those words, "What is the matter"?

THE INTERPRETER: The witness did.

Q Does the witness now say that he used the English expression, "What is the matter"? A Yes, sir; because I had been told those words before, "What is the matter", "Good by" and some other few words.

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Q Now, I have got to get his denial, because I cannot refute him otherwise. Ask him to say yes or no to this question: Did you state that the defendant used the English words "What is the matter" on that occasion? A No, sir.

Q Now, that is enough. When you picked up the defendant's hat where was he? A It was just under the feet of that crowd.

Q Where was the defendant when you picked up the defendant's hat? A He was among that crowd that was overwhelming him with fists and fisticuffs.

Q How long did you hold the hat? A A few incidents, because when I got up and saw that--

Q Just held it a few incidents? A Yes, sir.

Q Did you hold it until they disappeared around the corner? A No, sir.

Q What did you do with it? A I threw the straw hat on to the ground and then I was afraid that something might happen to me and I moved away.

Q When did the defendant drop his hat, while he was running or when he was knocked down? A When he received the two strikes with the fists on the head.

Q The two strikes? A Yes, sir.

Q When you stooped down and picked up the hat-- question withdrawn.

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MR. LEVY: That is our case.

MR. TRAIN: I would like to ask the defendant another question if you don't mind recalling him.

MR. LEVY: I have no objection.

GUISEPPI YACCOBACCI, the defendant, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. TRAIN:

Q When did you come to America for the first time?

A On the 16th of April of last year.

Q What year? A 1905.

Q 1905? A Yes, sir.

Q How long did you stay in the country then? A Six months.

Q When did you go back to Italy? A In the month of October, at the end of September I left for Italy.

LOUIS SALVATORE, a witness for the People was sworn, but not examined.

TESTIMONY CLOSED.

MR. LEVY: I have decided not to make any motion, but instead to make my motion in the form of a request

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to charge.

Mr. Ringrose closes the case on behalf of the
defendant.

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Mr. Arthur C. Train closed the case on behalf of the People as follows:

If the Court please, Mr. Foreman, and each of you, gentlemen of the jury:

I know that I can win your regard in no way so well as by making my remarks as short as those of Mr. Ringrose, so I shall try to do that.

You know that the jury has the duty of trying to determine just what occurred on Grand Street on the afternoon of June 20th, and I am here to help you if I can.

There is no question but that a homicide occurred. That is conceded by the defendant.

It is further conceded that the homicide was committed with the knife which I hold in my hand.

All homicide is criminal as you gentlemen know, unless it is excusable or justifiable, and if it is not either excusable or justifiable, it is murder in the first or second degree or manslaughter in the first or second degree, in accordance with the way in which the homicide was committed.

Now, I appear before you to sum up this case in an entirely dispassionate frame of mind. There have been witnesses to testify on both sides who have been substantially contradicted in every respect, and you have

got to make out from the surrounding circumstances and the whole field of the case as near as you can, what occurred.

Mr. Ringrose has entirely unintentionally misinterpreted my attitude toward the witness Ripstein. He is not the character of witness that appeals to me. I don't for an instant believe that this witness came here with the deliberate intention of perjuring himself or that he did perjure himself; but his manner of testifying, his general attitude and the fact that he was mixed up in this row with the Italians,-- all these things lead me to feel that on the whole, in determining the case, his testimony is not of much value.

When you come to the testimony of Mann, who did not know the deceased, who had not anything to do with the occurrence, who had been riding on a street car and got off and saw the whole thing, who had no interest in it, there you have an entirely different class of witness, because there is no suggestion of any motive on his part to change or alter the facts as he saw them, unless you say that because the deceased was a Hebrew and because Mann is a Hebrew that that in itself would be enough to lead him to come here and deliberately try to swear a man into prison. Now, that is hardly enough, that is hardly

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a consideration that appeals to me as sound, because witnesses are not placed on street corners where they can most satisfactorily observe what occurs. We don't have our spiritual pastors or ministers stacked up in the streets where homicides are going to occur. You have got to take the witnesses that happen to be there, and in the Jewish quarter you naturally will get Jewish witnesses, for there is no question but that Grand Street at that hour was filled with Hebrews coming home from their work, and probably there was intermingled in the crowd a great many Italians as well, but the preponderating element was Hebrew, and hence the preponderating element of your witnesses would naturally be Hebrews.

Now, as against the testimony of Mann you have, of course, the testimony of the defendant himself and of his two friends and substantially they are entirely contradictory, so that you have got to determine whether Mann is telling the truth as near as he can or as near as he sees it, or whether the defendant and his people are telling the truth or whether the truth is to be sought somewhere in the compound of their testimony. You all recall the story of the clergyman who had a happy faculty for straddling any difficult proposition that came in his way. On one occasion he was to address a crowded church

on agnosticism, and wishing to please everybody and land on his feet, he commenced in this way, he said, "Gentlemen, there are those who believe that there is a God. There are others, my dear friends, who believe that there is no God. Now," he says, "the truth, my dear friends, probably lies somewhere in between." Of course, in the case of there being a God or no God, the clergyman was quite correct, but in this case, where you have a witness called such as Mann, who, although he did not know the defendant is a Hebrew and probably feels that the defendant should be punished, the chances are that Mann is giving you a fairly straight account of what occurred. By that I don't mean to say that Mann is not telling you what he thinks is the absolute truth, but the salient things in Mann's mind are these: that the defendant stabbed and killed the deceased, that it originated out of a meeting of these two parties in the street and that there was a pursuit. Now, these are things that stick in Mann's mind and these are the salient things that he testifies to. Now, very likely when it comes to what these people said to each other on the street when the apple was thrown, or whether the apple was thrown-- all these things he has very likely inquired about, but when you come to the defendant and his people, you will observe

that no one of them knows anything about any stabbing, the defendant didn't know he had stabbed a man and his two comrades did not see him stab a man. That is perfectly apparent. That is the salient thing for them, that no knife was used by the defendant on the deceased, and as far as they are concerned they are unwilling to testify to that. You know that a knife was used and you know that the defendant used it and used it in a particular way and drove it in three and one-half inches, according to the testimony of the Coroner, into the heart of this young Hebrew.

Now, is it the truth, as the defendant and his people say, that these two young Hebrews without any cause made a fatal attack on them and for some inexplicable reason were then and there joined by a large body of others who united in trying to exterminate a man whom they had never seen before and whom they did not know. Is that the truth? Or is it the truth, as Mann has outlined, that the defendant, without any reason except that he was insulted or struck or barked into by this young Jew, drew a knife, opened it, pursued him for a block and then stabbed him to death?

Why, any of these stories appeals to your minds. I don't believe that this defendant, simply because there

had been some insulting words used or his foot had been stepped on or some man had torn his shirt, took a knife out and when the other man ran, opened it and ran after him, pursued him for a block, grabbed him and stabbed him to death. That doesn't appeal to me as likely. On the other hand, it seems equally improbable-- I don't know how it appeals to you-- that a fat young Jew, seventeen years old, a fat boy, as Ripstein says-- the two Jewish boys probably were eating pineapples and feeling their oats a little, and when they saw the three Ginnies coming down the street they probably did shy a piece of pineapple at them. It is just as improbable to my mind that the fat boy and his companion then were consumed with an instinctive desire to exterminate this man whom they had insulted by throwing the pineapple at him.

Now, we are sensible men and we are not called upon to do the impossible. Let us just for a moment bend our minds to determining what happened down on that street. It is half past five and the workshops and the stores are pouring out their employees into the street. One crowd was setting westward and another was setting eastward and on the sidewalk three Italians and two Jews met. Now, I haven't any doubt, or I don't care to question as to who began this. It doesn't play any

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part in your solution of the difficulty. Your duty is not going to be determined by a question of who was the first person to insult the other side. That has not anything to do with the question of why this defendant forced that knife into the heart of this young Jew without any legal justification or excuse, so I don't care who began it, I don't care whether you believe from his story that the Italians stepped on the foot of the Hebrew or whether you believe the defendant's story and that of his comrades that the piece of pineapple was shied by the deceased at him-- I think probably that is the truth, and I think the chances are that the Hebrews began it and that they threw a piece of pineapple at the Ginny, as they call him, but I don't believe, gentlemen, that the fat boy or his friend had any intention of getting mixed up with three husky Italians to the extent of trying to kill one of them. That is absurd. It does not appeal to your common sense. Now, just what did occur I don't know and I don't believe anybody will ever know. The chances are that somebody struck somebody else. If a life is taken, if the heat of another rises to a point where a man can put his hand in his pocket and take out a knife and open it and then drive it into the heart of another three and a half inches, and you know gentlemen,

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that it takes a powerful blow to do that-- the chances are that the aggravation must have been extreme, not slight. An Italian is not going to stab a man because he has had a piece of pineapple thrown at his head. He stabs a man because he has an altercation with him, because he has been struck, and so I say in trying to reason this thing out that the reason the defendant stabbed Kaselovitch was because Kaselovitch had struck him. There was a mixup. One of the Italians, as you remember, spoke of a quarrel. That mixup did not occur as the defendant says. None of you believe that this defendant, after receiving the pineapple in his head, was suddenly thrown down on the very spot where he had received the pineapple in his head, was kicked and assaulted and bumped and beaten and bruised in the way that he described. His story is impossible and it flatly contradicts the story of his friend. The defendant says that without any reason at all he was knocked down, kicked in the testicles and that he crawled a few feet and finally staggered to his feet and then was immediately knocked down again, and then he got his knife out and by a curious coincidence stabs through the heart the man who originally insulted him by throwing the piece of pineapple at his head.

When I say that the truth probably lies in bet-

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ween the stories of Mann and the defendant, I think I am borne out by the story of Desiati, the man who testified this morning. Desiati naturally, being a friend of the defendant, will color his story as much as he can, and in view of the fact that he has already testified once before the Coroner or made a statement before the police captain on the night of the stabbing, will color his testimony as much as he can to favor the defendant. He says, as all of you remember, that after these blows were struck that he ran around the corner. Now, of course, as you saw yesterday afternoon, I did not cross-examine these Italians. You can't do it. An Italian will not give a categorical answer. An Italian will always give a long explanation. He will insist upon telling you not what you want to know, but tell you something else. Instead of the defendant being at a disadvantage because he is an Italian, gentlemen, there is no greater advantage in the world for this man who sits here before you twelve than to be an Italian, because the very fact that he is an Italian appeals to your sympathies, the fact that he can not speak the English language. I don't believe it when he says that he cannot speak a single word of English, but that appeals to your sympathies-- I am at a tremendous disadvantage in trying to get at the truth of this matter.

Now, Desiati, taking his testimony as a whole, tells a very clear story, and his story is that the Hebrew threw a piece of pineapple at his friend. So far so good. Let us start from that. The Pineapple is thrown. What is the next thing that happens. The next thing that happens is that they went to go home. Of course, they didn't do anything. They did not resent the throwing of the pineapple at all. They did not resent being called Ginnies or sons-of-bitches, or whatever the expressions were. They were three of them to two Hebrews, according to Desiati; they tried to get away. Up to this point he coincides with the defendant. Then he says that the defendant was attacked by two men with their fists, that he was knocked down. Now, up to that point they are the same but then their stories begin to diverge. The defendant says he lost his hat when the pineapple was thrown. He tells you that when he lost his hat he bent down to get his hat and then took hold of his friend's hand and said, "Let us go home" and instead of being allowed to go home he was set upon and nearly killed. Now, Desiati says that the hat did not go off when the pineapple was thrown but the hat was knocked off when the attack took place, that he picked the hat up and when he picked up the hat the next thing he knew was that they all

ran around the corner. Now, Desiati's story substantially shows that there was a quarrel of some kind or a mixup of some kind on the sidewalk. Desiati's story corresponds to Mann's story because Mann says that after the start of the thing they ran around the corner and that the stabbing occurred around the corner. Now, he saw the stabbing. Thus, Mann again. The defendant did not know who did it. His friends did not see it, so there is only one man in this case who comes here and swears on the Bible to tell the truth and he says that he saw this blow struck. That witness is Mann. You can't dispose of man. Mr. Ringrose objected, saying that Mann says that the stabbing took place half way down the block. I don't believe that any of the jury is going to determine the case on that point. It occurred somewhere between the corner and the middle of the block. Mann says that it occurred in the middle of the block and that is the only thing that Ringrose can find to attack his testimony about. Well, I don't care whether Mr. Ringrose attacks him or not. He has come here and told his story and if you believe him or disbelieve him, it is immaterial to me, but the mere fact that he is a Hebrew does not appear to me as any reason for disbelieving his story in its substantial salient points, and the substantial point is that after

the original attack, after the original mixup, there was a chase and running. Doesn't it occur to you that the probabilities are that Mann is telling the truth when he says that the pursuit was by the Italian? Desiati says that the deceased was chasing the defendant. He says there was an assault by the throwing of pineapple and that there were angry words and that there were two or three blows and that then something happened and that something is what you are here to punish, if it deserves punishment. A human life is lost and it was not lost on the spot where the original meeting took place. There was a running and a homicide around the corner and then the flight. The defendant was flying and there were a thousand men after him yelling "Murder" and "Lynch him" and all kinds of things. That man was frightened. The testimony of Schwartz and these other people does not figure in the case. It is just as much in line with the prosecution's theory of how the thing occurred as it is with the defendant's theory of how it occurred. If the defendant was hysterical and did not know what he was doing, why that coincides with Schwartz's testimony. If, on the other hand, he was terrified for fear that he would be lynched or tied to a lamp post or torn limb from limb, why it coincides with Schwartz's story just the same.

Mr. Pinchot suggests that the defendant, if he had been trying to get away, would have run towards his own home and yet in point of fact he was running in the other direction. That may appeal to you, but the thing that appeals to me, gentlemen, is that when you make allowances for the difficulty of interpretation, questioning men in a foreign language, the salient thing seems to me to be that these Italians won't admit that there was any stabbing. None of them saw it and yet they all stood around on that side of the street. The stabbing occurred on another street, around the corner, just as Mann said, and he is the only person that saw the stabbing. He says that the defendant stabbed the deceased while the deceased was running. Now, the blow with a knife of this sort is this blow (illustrating), it is upward just like that (illustrating), and that is the way Mann says it occurred-- a blow like that and the knife came about here in that direction, inward and upward. Of course, it is not true that the defendant didn't know he stabbed the man. If you had ever killed, I guess you would know the full particulars, even if you killed a man in the middle of a melee, you would know if you struck the man and drove your knife three or four inches into his heart. The defendant is a good actor. The impression that he

sought to convey was that he had only been here since the 18th of March last; that he was so unfamiliar with our language and customs, etc. that he was really as helpless as a child. Now, it develops that in point of fact, the Italian came over in April, 1905, and prospered sufficiently to go back to Italy after the end of six months and spend awhile; probably he went back for the harvest and stayed through the winter and then came back in March, so that he was not the childish person he would have you believe. I have not the slightest doubt but that when this man was struck with this pineapple, he did turn and say, "What is the matter". Any Italian has a vocabulary of several words when he has been here two weeks, that is, several words of American slang. If a man has been knocked down twice and is in danger of his life, he would not have to wait for a second time to draw his knife, his knife would have been out.

Now, your task is to apply the law which the Recorder will give you to what you believe the facts in the case to be. Of course, if this man's story that the Italian put his hand in his pocket and took out the knife and held it unopen and then when the Hebrew ran he opened the knife, ran after him, caught him and stabbed him through the heart-- if you believe that Mann saw all these

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things and you believe that he is telling the truth, why there you would have a clear case of murder, because there would be all the time necessary in the eyes of the law for what is called premeditation and deliberation. You know that doesn't mean planning the thing out for months. Premeditation and deliberation is merely this, that there must be some time, some appreciable moment or space of time in which a man has the choice to kill or not to kill, or killing or refraining from killing. There is an old case in the Court of Appeals where practically those words are used. It says, if a man has a knife in his hand and elevates it, and up to the moment of elevating the knife he has formed no intention of killing but if, in the descent of the knife his mind reaches the conclusion to kill and he still has time to stop his hand and prevent the homicide, that is enough time for premeditation and deliberation.

Now, of course that is an extremely technical definition and is getting it down pretty fine. I don't think that the ordinary jury would find a man guilty of murder who formed the intent only as his hand was falling, but that I used as an illustration to show you that if the defendant had this knife in his pocket and took it out with the intention of using it and opened it and ran

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around the corner after the deceased and stabbed him, that there would have been all the time for premeditation and deliberation that was necessary. If you believe that there was some kind of a scuffle and that these people ran some substantial distance and then that the stabbing was done in the heat of passion, then it would be a case of manslaughter, if the killing was not justifiable.

MR. RINGROSE: Are you charging the jury?

MR. TRAIN: I have a right to state the law to the jury as I believe the Court will charge it. Manslaughter is killing in the heat of passion without justification.

Now, gentlemen, could the defendant have had any justification for killing this man? Could he really have believed, taking his own story literally, that his life was in danger? Of course, it is improbable that this fat young Jew and his friend should attack two or three Italians of this character in that way, but assuming that the deceased did give him all the provocation in the world, assuming that he struck him, that does not give this defendant any justification for drawing a knife like that and inflicting what he knows is a mortal wound, because, gentlemen, it is significant that this man was not stabbed blindly in the heat of passion but rather the

blow was struck with the intention of killing. This knife Mr. Ringrose says is used to cut butter and bread. It may be a butter knife or it may be used for something else. It may be a table knife, but it is well adapted for another purpose.

THE SIXTH JUROR: How large was the man who was killed?

MR. TRAIN: He was a tall muscular fellow, 180 pounds; five feet nine or ten inches and seventeen years old. He was a fat boy, a cab driver who weighed 180 pounds. There is no question about that. He was a big boy and was probably feeling his oats, as I say, and, as I have admitted, the probabilities are that the boy began the quarrel, that he was the fellow that probably did pick a quarrel, but the point that you have got to determine is from the evidence whether this defendant had any justification to take his knife, because that is what he did. He made this Hebrew boy pay the penalty of his life for having insulted him, for having picked the quarrel with him. I must say to you that this was not a careless, reckless blow, it was an intentional blow with this stiletto or knife. This wound was in the heart and caused death.

Now, I have said all I can say about the case.

A human life has been taken. The defendant admits that he took it. He took it in a particular way with a particular weapon. If you believe that there has been any legal justification shown for this homicide, you will acquit the defendant. If you believe Mann's story that there was premeditation and deliberation, your verdict will be one way, but if you believe that there was a quarrel, whoever began it, a scuffle, and that the defendant in the heat of passion killed the Hebrew, then your verdict ought to be that of manslaughter. A crime of this character ought to be punished unless there was justification for its commission.

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THE COURT'S CHARGE.

GOFF, R.:— Gentlemen of the Jury: The defendant, Guiseppi Yaccobacci, is indicted for murder in the first degree, for the killing of one Kaselovitch, on the 20th of June, in this county. I shall endeavor, gentlemen, to briefly present to you the rules of law which govern this case and by which you must be guided, and I will present those rules of law in as brief and as concise a manner as is possible so that you may escape the confusion from the multiplicity of things that are not essential to satisfy your knowledge.

You are the exclusive judges of all questions of fact in the case.

The Judge is the exclusive authority upon all questions of law. You must accept the instructions which I give you upon the law of the case without question, and when you understand the rules of law applicable to the case you will then be in a position to declare on the facts which you believe to be proven or failed to be proven by this evidence.

The defendant is presumed to be innocent until the contrary is proven.

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The burden of proving the charge against the defendant rests upon the Prosecution throughout the case. At no time is he called upon to prove his innocence.

You are the judges of the credibility of each and every witness that has taken the witness stand. It is for you to say whether any witness has falsely testified or not.

The defendant had a right to take the stand and he availed himself of that right and therefore becomes a witness and is subject to the test as to his credibility that every other witness is subjected to.

The crime charged against the defendant is murder in the first degree. This is embraced in the general term of homicide, and the law says that homicide is either murder, manslaughter justifiable or excusable homicide.

Murder in the first degree is defined by the statute as:

"The killing of a human being when committed from a deliberate and premeditated design to effect the death of the person killed."

Murder in the second degree is defined as:

"The killing of a human being when committed with a design to effect the death of the person killed, but without premeditation and deliberation."

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Manslaughter in the first degree is defined as such homicide is manslaughter in the first degree when committed without a design to effect the death in the heat of passion but in a cruel and unusual manner or by means of a dangerous weapon.

Manslaughter in the second degree is defined as:

"Such homicide is manslaughter in the second degree when committed without a design to effect death in the heat of passion but not by a dangerous weapon or by the use of means other than cruel or unusual."

In order that you may clearly understand the distinction between these several degrees, I will repeat them to you and comment upon them as I go along.

In the degree of crime known as murder in the first degree there are three essentials; first, the killing; secondly, the design to kill, and thirdly, the premeditation and deliberation upon that design.

Now, each of these three essentials must be present. If one of them be absent, the crime of murder in the first degree cannot be committed, and the jury cannot render a verdict of guilty of that degree of murder. So that a person charged with murder in the first degree must be shown by evidence satisfactory to the jury to have killed

a person with a design to kill him and to have carried out his design as the result of premeditation and deliberation. There must be premeditation and deliberation upon the design to kill in order to constitute murder in the first degree.

Murder in the second degree consists in the act of killing with a design to kill but without premeditation and deliberation.

Now, so far, the distinction between these two degrees of crime is that the first degree must show premeditation and deliberation upon the design to kill. In the second degree it is sufficient to show the design to kill without premeditation and deliberation. In other words, premeditation and deliberation must be present to constitute murder in the first degree. They may be absent to constitute murder in the second degree but the design to kill must be present in order to constitute each degree of crime, the first and second.

I am sure, gentlemen, that you will appreciate that distinction. It is very plain. To illustrate: if this defendant designed to kill the deceased and his design was the result of premeditation and deliberation, he committed murder in the first degree; but if he designed to kill the deceased not as the result of premeditation and del-

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iberation upon the design, then he committed murder in the second degree.

Manslaughter in the first degree is where there is a design to kill or the killing is done in the heat of passion and by means of a dangerous weapon. The distinction between that and murder in the second degree is that the design to kill must be present, but in manslaughter the design must be carried out and executed while in the heat of passion and by means of a dangerous weapon.

To recapitulate these three degrees of crime: murder in the first degree, murder in the second degree and manslaughter in the first-- if you find upon this evidence that the defendant killed the deceased with a deliberate and premeditated design to effect his death, he committed the crime of murder in the first degree.

If you find that he did not commit that degree of crime but that he did design to kill the deceased and did kill him without premeditation and deliberation on the design, then he committed murder in the second degree.

If you shall find that he did not commit that degree of crime, then consider the grade of manslaughter in the first degree, did he design to kill the deceased or did he execute his design in the heat of passion and by means of a dangerous weapon.

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Manslaughter in the second degree I have read to you, but you will see from the language of the statute which I will read to you again that it is not applicable because it says that when the killing is done without a design to effect death in the heat of passion but not by a dangerous weapon, then it is manslaughter in the second degree.

It is conceded here on the part of the Defense that the defendant used the knife in evidence before you, and that being conceded of course the definition of manslaughter in the second degree does not apply because the statute, as I have read it to you, says, "where the killing is done in the heat of passion and not by a dangerous weapon." It being conceded that the killing was done here by a dangerous weapon, it is clear that the statute defining the crime of manslaughter in the second degree does not apply.

It is the law that where the jury entertains a reasonable doubt as to the guilt of an accused person of a higher degree of crime it is their duty to give the benefit of that reasonable doubt to the defendant upon that particular grade of crime and consider the next grade of crime. Thus, if you entertain a reasonable doubt that he committed the crime of murder in the first degree, you should give him the benefit of that reasonable doubt and

go on and consider the crime of murder in the second degree. If you entertain a reasonable doubt of his guilt of that grade of crime it will be your duty to give him the benefit of that doubt and consider the next last degree of crime, manslaughter in the first degree.

I have inadvertently commingled the language defining the crime of murder in the second degree with manslaughter in the first degree and I correct that now.

"Such homicide is manslaughter in the first degree when committed without a design to effect death in the heat of passion or by means of a dangerous weapon."

The error that I fell into was that I read it "with a design to effect death"; so that in order to have your minds clear on that subject I will go over it again.

Murder in the first degree consists in the killing of a human being with a premeditated and deliberate design to effect the death of the person killed.

Murder in the second degree consists of a design to kill without premeditation and deliberation.

Manslaughter in the first degree consists in killing without a design to kill but in the heat of passion by means of a dangerous weapon.

Now, the definition I will repeat so that there can be no misunderstanding. There must be in murder in the

first degree a premeditated and deliberate design to kill. In murder in the second degree there must be a design to kill without premeditation and deliberation.

Manslaughter in the first degree must be where the killing is done without a design to kill, but done in the heat of passion by means of a dangerous weapon. It was substituting the word "with" for the word "without" that led to my error.

Now, gentlemen, what constitutes the elements necessary to murder in the first degree? I could not use language that would be so clear and expressive on that subject as has been used by the Court of Appeals in the case of the People against Majone, and when the Court of Appeals speaks and lays down the rule, it speaks with authority that must be obeyed by all judges and juries in this State, because that is the law and therefore, because it has been so spoken, I will read a brief extract from the opinion in that case.

Judge Earl says:

"Under the statute there must not only be an intent to kill but there must also be a premeditated and deliberate design to kill. Such design must precede the killing by some appreciable space of time, but the time need not be long. It must be sufficient for some reflection or con-

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sideration upon the murder for a choice to kill or not to kill and for the formation of a definite purpose to kill. The human mind acts with a celerity which it is sometimes impossible to measure, and whether a deliberate or premeditated design to kill was formed must be determined from all the circumstances of the case."

In ascertaining whether or not there was a premeditated and deliberate design to kill, you have a right to take into consideration the surrounding circumstances, the weapon used and the manner in which it was used. As the Court of Appeals lays down the rule it is not necessary that there should be any specified measure of time preceding the act of killing for the formation of a design to kill for, as it has been so well said, "the human mind acts with a celerity which it is sometimes impossible to measure, and whether a design to kill was formed after premeditation and deliberation or formed upon the instant of striking the fatal blow must be determined from all the circumstances of the case." The Prosecution here contends that the defendant committed premeditated and deliberate murder, that in his pursuit of the deceased with the knife he had time to choose whether to kill or not to kill. Even if a man should draw a revolver knowing that it was loaded and draw it with the intention to kill an enemy,

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and if between the time when the revolver is taken from the pocket and reaches to the level that he wishes it and the pulling of the trigger, if there be time for him to reflect upon what he is going to do and to enable him to reconsider his intention, if there is time for premeditation and deliberation and if he sees fit to carry out his purpose after having such opportunity for reflection, the law says that he has had time for deliberation and premeditation. I cite that as an illustration to you. It is not applicable to this case in so far as the use of the weapon is concerned, but if you gentlemen find that the defendant drew a knife and that the deceased fled from him and that he pursued the deceased and struck the deceased a fatal blow with the design to kill him, you may find that in the time commencing from the drawing of the knife and continuing during the pursuit until he reached the deceased, you may find that in that time there was room and opportunity for the defendant to choose whether to strike the fatal blow or not. You may find that there was time for deliberation and premeditation, on the design to kill. If you so find, it would be your duty to declare the defendant guilty of the crime of murder in the first degree. If you should not be satisfied that there was premeditation and deliberation but

that the defendant did strike with the design to kill, it would be your duty to declare him guilty of the murder in the second degree.

If you find that he struck the blow without a design to kill but that he did it in the heat of passion and by means of the knife with which it is conceded he struck the blow, then it would be your duty to find him guilty of manslaughter in the first degree.

The Defense admits the killing and admits the means used for killing. The knife which has been offered in evidence is admitted to have been used by this defendant, so there can be no question about these matters. You need not devote any time to the consideration of those questions. The man was killed by the defendant and the defendant used this knife in killing him. The Defense interposes what is known as a plea of self-defense and that plea comes under the head of what is defined as justifiable homicide. The law defining justifiable homicide makes use of this language:

"Homicide is justifiable when committed in the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer and there is imminent danger of such design

being accomplished.

Now, that is so important in this case that I will read it to you again so that you may have the terms of the statute clearly impressed upon your memories.

The Court of Appeals, in the case of The People against Shorter, laid down a rule which has been followed without exception for many years since that decision was rendered, which presents the law of self-defense in such clear and compact form that I will read it to you.

"When one who is without fault himself is attacked by another in such a manner or under such circumstances as to furnish reasonable ground for apprehending a design to take away his life or to do him some great bodily harm and there is reasonable ground for believing the danger imminent that such design will be accomplished, I think he may safely act upon appearances and kill the assailant if that be necessary to avoid the apprehended danger and the killing will be justifiable, although it may afterwards turn out that the appearances were false and that there was in fact neither design to do him serious injury nor danger that it would be done. He must decide at his peril upon the force of the circumstances in which he is placed, for that is a matter which will be subject to judicial review."

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In the case of the People against Sullivan, the rule laid down that "if the defendant believed himself about to be attacked, his duty was to avoid the attack if in his power to do so, and the right to defend himself would not arise until he had done everything in his power to avoid the necessity of defending himself."

In the case of The People against Constantine, the Court says:

"The question whether the defendant was acting in self-defense was manifestly a question of fact for the jury. When one believes himself about to be attacked by another and to receive great bodily injury, it is his duty to avoid the attack if in his power to do so, and the right to attack for the purpose of self-defense does not arise until he has done everything in his power to avoid the necessity."

In the case of the People against Kerrigan it was said by the Court:

"So long as there was time and opportunity for reason to assume its sway and the passions to cool, the law holds the defendant responsible for his acts."

In the case of the People against Johnson it was said:

"Before one can justify the taking of human life in

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self defense, he must show that there was reasonable ground for believing that he was in great peril and that the killing was necessary for his escape from the peril and that no other safe means of escape were open to him."

Now, gentlemen, those are the rules of law which govern what is known as self-defense. Repetition from me could not strengthen the language used nor, I am sure, tend to qualify it in any way. I apprehend that you clearly understand those rules of law and that you will apply them to the facts testified to before you here.

The defendant claims that he was going through the street and that he was accosted by some person; that he was surrounded by a crowd of people; that he was struck in the head and then kicked in the back; that he fell; that he tried to arise and extricate himself, and that in doing so that he was kicked in his private person and that the pain was intense, and that in his efforts to free himself from the crowd that surrounded him he, believing his life to be in danger and that no means of escape were open to him, drew his knife and made a motion with it without any particular intent on his part to strike any individual or any particular individual, that he struck out, as it were, wildly, and struck out at the people that were surrounding him and maltreating

him, and that in doing so he struck the deceased the fatal blow which caused his death. That in brief is the defense interposed here. If I am in error as to any particular detail, you will recollect all the details, and it is within your power to correct such error if I have fallen into any, but that I apprehend is the contention of the defense in this case.

Now, gentlemen, if, whatever these conditions and circumstances, you believe that there arose the situation in which this defendant found himself; that he was assailed and assaulted; that he received the blows which he says he received and the kicks which he says he received, and if he honestly believed and had reasonable ground to believe that his life was in peril and there were no means of escape open to him with safety to himself and that he drew a knife to strike at his assailants without designing to strike at any particular one, and that he believed that his action was necessary to protect his life or save his body from great bodily injury and by that stroke he killed the deceased, I charge you on those facts and circumstances being proven to your satisfaction, he should receive a verdict of acquittal at your hands.

The law of self-defense is a law founded in the very instincts of human nature; it is the law of

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necessity, and the civil law of the land simply formulates that which is founded in the very instinct of self preservation. It does not mean, however, that a man may wantonly and ruthlessly kill another and claim that he acted in self-defense. That will not do. That is not the law. A plea of self-defense must not be relied upon or introduced for the purpose of covering up a malicious design to kill another. No man can say, I killed him in self-defense and be acquitted on that plea alone, because if that were the law it would enable every man to take the law in his own hands and be his own judge, jury and executioner. That would not do, and could not exist long in any well ordered society. The law is simple and plain; that a man can only take human life as an extreme necessity for the preservation of his own or the protection of his person from great bodily injury. The threatened danger must not be a danger that is past or be a danger that is threatened for the future. The law says it must be imminent, it must be within the present and existing, and any escape from it except by means of recourse to the use of a weapon or the adopting of means necessary to preserve one's own life or one's own body from great bodily harm.

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But if a man finds himself in the situation defined by the statute, that he has not sought a quarrel, that he has not provoked a quarrel, that he has not continued a quarrel or a fight when he could have escaped, that he is without fault himself for a man who claims to have acted in self-defense must come into court with clean hands-- he cannot be the aggressor and then act in self-defense when he could have discontinued it and escaped and then claim self-defense. He cannot do that. This claim of self-defense if supported by facts can only be justified in law when he shows to the satisfaction of a jury that he has been without fault himself, that he has not been the aggressor in the quarrel, that he used every means within his power to safely avoid the quarrel or the fight and that he found himself in a position from which he could not with safety himself escape, that he believed his life to be in danger and had recourse to the use of the weapon which struck the fatal blow and calculated to save that life or protect his body. If the jury be satisfied upon the proof that such condition existed, the jury would be bound to declare him not guilty of the crime of murder.

Now, gentlemen, you will confront the question in this simple form. If you find that the defendant acted in

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self-defense under the rules that I have laid down for your guidance, you will acquit him and that will end any further inquiry on your part. If you find that he did not act in self-defense you will then consider the question of his guilt of one of the degrees of murder or manslaughter on which I have already instructed you, so that your verdict will be in case you believe the defendant to have acted in self-defense, not guilty. If you believe that he did not act in self-defense and that he is guilty of killing the deceased in one of the degrees of crime mentioned, you will then consider the question of his guilt of murder in the first degree, murder in the second degree or manslaughter in the first degree.

The defendant is entitled to the benefit of a reasonable doubt upon all the evidence and lack of evidence in the case and upon every material question necessary to his conviction of crime. If you entertain a reasonable doubt as to his guilt of any degree of crime, you must give him the benefit of that doubt and acquit him. Or if you entertain a reasonable doubt as to whether or not he acted in self-defense, you must give him the benefit of that reasonable doubt. In other words, he is entitled to the benefit of a reasonable doubt upon every material question in the case. I don't at all believe

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it necessary to go into any lengthy definition or explanation of what constitutes a reasonable doubt. Every man must consult his own conscience as to whether or not he entertains a reasonable doubt and any attempt to define that phrase I think more frequently leads to confusion of jurors' minds than to enlightenment. The phrase itself in my opinion carries with it its own clear meaning.

The defense has requested me to charge on the question of good character, the Eleventh Request presented, which reads: "The jury have a right to consider the evidence as to the good character of the defendant. Evidence of good character may of itself create a reasonable doubt when without it none would exist. And the jury, in the exercise of their sound judgment, may deem such evidence sufficient to warrant an acquittal even if the rest of the evidence should otherwise appear conclusive."

I so charge.

And the Twelfth Request. The character of the accused may be such as to create a doubt in the minds of the jury and lead them to believe that a person of such character would not commit the crime as charged."

I so charge.

As to the other requests, gentlemen, I am of opinion

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that I have included them all in my main charge.

MR. LEVY: Yes, sir.

THE COURT: If I haven't, you may call my attention to them.

MR. LEVY: In connection with that Twelfth Request I ask your Honor to charge that if there is any doubt in the minds of the jury that the defendant intended to kill, he must be acquitted.

THE COURT: No, I decline to charge that to the jury.

Exception.

THE COURT: Because I have already charged that and I recharge it.

Then, gentlemen, I deem it almost superfluous to say to you that you are here twelve American citizens, gentlemen of character, of standing and of intelligence, and that being so it is a waste of words almost to remind you that the defendant is here, although a stranger and of a nationality foreign to this country, he is, nevertheless, before you as a man entitled to the protection of our laws, responsible to those laws for their violation, if he has violated them, and that he must and I am sure will receive a fair and just trial at your hands without regard to his race or to his nationality, and the rule that

applies to the defendant applies also to the deceased, not that he is on trial, but his race has been mentioned in the course of the trial in such a way that it might beget either bias on the one hand or prejudice on the other. I am sure that that element will not enter into your consideration. Simply look at these two men as human beings in our state and subject to our laws and entitled to your protection. Whether the deceased was a Jew or of any other nationality, must make no difference with you. Whether the defendant is an Italian or of any other nationality must likewise make no difference whatever. Two human beings are here for your consideration, one the deceased, the other the living defendant. The defendant killed the deceased without justification; if he did he committed a crime, no matter who the deceased was or what he was cannot enter into your consideration; was he unjustifiably killed and if he was, his slayer committed a crime. If he was justifiably killed you are the only men in the world that can declare so on this evidence before you, and if you feel that he was justifiably killed no matter how regrettable his death may have been, the defendant cannot be held to suffer for that death. If he did, the law declares it criminal, unless he can show you that he did that act in self-

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defense of his own life or in protection of his own life. If he did he should be acquitted; if he did not he should be declared guilty of one of the grades of the crimes charged. Your verdict will be either guilty of murder in the first degree or guilty of murder in the second degree or guilty of manslaughter in the first degree or not guilty. You may retire.

(The jury returned a verdict of not guilty.)