

that his story is true that he was asked to be a witness, but the point I make is this, this witness claims that he was not present when the letter was written, and my information is that he was present. Is that so, Mr. Vandiver?

MR. VANDIVER: No sir; he was not present.

THE WITNESS: No sir; I wasn't present.

MR. SCITTA: And I have absolute proof that he wasn't present. It is the first time I ever saw the man in my life, this morning, and he said that the letter was given to him by the mother.

THE COURT: Mr. District Attorney, I would suggest that you have a County Detective follow this witness, to insure his presence.

You are now under the subpoena of the Court, and if you fail to appear here tomorrow morning, I will punish you for contempt of Court.

MR. VANDIVER: Well, I would like to have him committed.

MR. SCITTA: And I will keep him in our custody, until tomorrow morning.

MR. VANDIVER: And I don't want him to be in the custody of counsel for the defendant. He has been long enough in their custody.

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MR. SCITTA: You have no right to say that. I have made an affidavit for my client, which you didn't know anything about, and you have admitted that, and you have made a woman commit perjury, and then you got her out of it by saying that you made the mistake. If the Court please, Mr. Vandiver took the affidavit of that woman, and it was duty, his business, to find out --

THE COURT: What woman?

MR. SCITTA: Mrs. Casioli. Where she swears, in that affidavit, that this man, in her presence, this man, Phillip Serio, in the presence of another woman, told her that he had been intimate with her daughter; and then she goes on the stand, and deliberately says that it isn't so.

THE COURT: Mr. Vandiver says that it was an error. - Now, you know how affidavits are prepared, counsel.

MR. SCITTA: Well, if the Court pleases, the District Attorney ought to be extremely careful in preparing an affidavit.

THE COURT: That is true. What Section is that, Mr. Vandiver?

MR. VANDIVER; 690, something.

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MR. SCITTA: Add the District Attorney sent for this man to come to his office. Has the District Attorney the right to do that? It has been decided by the Appellate Division that he has not.

THE COURT: You see that Sec. 618B refers to a witness for the People.

MR. VANDIVER: Well, sir, I think that the People's interests demand his attendance here tomorrow.

THE COURT: That is true; but the difficulty lies in the fact that he is not a witness for the People. I think that you had better put one or two of your County Detectives to watch this witness; and you will ensure his presence here tomorrow; and, if he makes an attempt to leave the State, you can procure his attendance.

MR. VANDIVER: I can't keep him in the custody of a County Detective, sir.

THE COURT: No; at this time I do not feel inclined to commit the defendant for perjury. But you cannot commit him to the House of Detention, under the statute. It is only where the witness is called by the People.

MR. VANDIVER: Then I will subpoena him, sir, and ask for his commitment.

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THE COURT: Well, that would be another way. No, the Court could not permit that. I will parole this witness in your custody, Mr. Scitta, and take your word for his appearance.

MR. SCITTA: Yes sir; and I will see that he is here. And I ask in regard to the defendant that your Honor parole him, too. He is under bail.

THE COURT: No.

MR. SCITTA: Will your Honor not consider the flimsy evidence on the part of the People, and let him go on his bail?

THE COURT: I do not desire to express any opinion. The defendant is committed.

(The trial was adjourned until Wednesday morning, January 16th, 1907, at 10:30.)

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TRIAL RESUMED

New York, January 16th, 1907.

FRANK BELL, being recalled for further cross-examination, testified as follows:

BY THE COURT:

Q Give your true name? A Francesco Billueci.

CROSS EXAMINATION CONTINUED BY MR. VANDIVER:

Q Have you talked with anyone about this case since I saw you last? A No sir.

Q Nobody at all? A No sir.

Q Sure about that? A Yes sir.

Q Haven't you talked with Mr. Scitta, counsel for the defendant, since you were on the stand? A Well, I have talked to him, last night.

Q Well, that is what I asked you. Anybody else? A No body else.

Q Did you talk to the defendant? A No sir.

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Q Any of the defendant's relatives? A No sir.

Q Father? A No sir.

Q Mother? A No sir.

Q Brothers? A No sir.

Q Now, after having had a night to think it over, what day was it you got the letter from Josephine? A Monday morning.

Q Which Monday morning? A This Monday morning.

Q Day before yesterday? A Yes sir.

Q The 14th day of January, 1907? A Yes sir.

Q Is that right? A Monday morning.

Q The 14th of January? A Well I don't know the date.

Q It might have been the 7th of January; might it not?

A No sir; it was this Monday morning.

Q Day before yesterday? A Yes sir.

Q Two days ago? A Yes sir.

Q Now, how long before Monday had you had the conversation with Josie about writing the letter?

MR. SCITTA: Now, if the Court please, isn't this repetition? Haven't we gone all through that? I was stopped, when I tried to ask questions.

MR. VANDIVER: If your Honor please, I will show you on the record --

MR. SCITTA: I don't think I should be treated

any worse than the District Attorney.

THE COURT: You need not make any comment. Make your objection. You have asked, and I have asked, this witness as to when he had the conversation regarding the letter, and my recollection is that the witness testified that the talk was had on Friday.

MR. VANDIVER: He hasn't said the same thing to you and to me, sir, and that's the reason why I am asking now.

THE COURT: You may ask it again.

Objection overruled.

BY MR. VANDIVER:

Q How long before you got the letter was it that you had the conversation with Josie about writing it? A I had conversation with her, Saturday.

Q With Josie? A Yes sir.

Q What time of day on Saturday? A Night time.

Q After you had received the brown notice from me?

A What 's that?

Q (Question repeated)? To come down here? A No sir; she had a conversation with me before I received this brown notice.

Q When was that? A Well, she has telephoned to me, a week before that.

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Q Yes. A To come down and see her.

Q And what day of the week? A I don't exactly remember.

Q Early in the week^{ing}, was it? A I don't exactly remember.

Q Monday or Tuesday or Wednesday of what week? A I told you I don't exactly remember what night it was.

Q Well you went down to see her, didn't you? A Yes sir I went down.

Q And you talked with her about testifying for her, in her behalf? A Well, she asked me would I come down and testify.

MR. SCITTA: Objected to. We have gone all over this ground.

THE COURT: Overruled.

BY MR. VANDIVER:

Q That was early in the week, last week, and you didn't get the letter until this Monday? A Yes, this Monday.

Q And, after you got the brown notice from me, you went and talked with her again? A Yes sir.

Q Now, when did you have the conversation with her, or any of her family, about the \$100.? A Oh, this was some time in June or July, or August.

MR. SCITTA: Now, if your Honor please, I object.

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We have been all over that ground about the \$100.

THE COURT: Overruled.

MR. SCITTA: Exception.

BY MR. VANDIVER:

Q Then there wasn't any more talk about the \$100., last week, or last Monday? A No sir.

Q Now when you came to see me, on Monday morning, January 14th, you had received this letter from Josie; hadn't you? A Yes sir.

Q And you had given it already to Serie; is that right? A Yes; that's right.

Q And you got it after you got the brown notice from me; is that right? A Yes sir.

Q And you didn't give it to me? A Didn't give you what?

Q The letter? A No sir.

Q And you didn't tell me about the letter?

MR. SCITTA: I make the same objection, if your Honor please.

THE COURT: Overruled.

MR. SCITTA: Exception.

A No sir.

BY MR. VANDIVER:

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Q Now, having received this letter, and having delivered it to the defendant, after you received the notice from me, you said nothing whatever about it, when you got to my office? A I didn't deliver it to him.

Q How did he get it? A He come to the house, and he took it; I give it to him, when he seen it.

Q How did he happen to come to the house? A Eh?

Q (Question repeated)? A He come up there to see me.

Q Had he ever been there before? A No sir.

Q Just dropped in, early Monday morning? A Yes.

Q Then you sat in my office for quite a while, on Monday, with knowledge of this letter locked up in your interior?

A Eh?

Q Knowing that the defendant had the letter?

A Yes.

Q And when I talked to you, you said nothing about it?

A No sir.

Q And when I talked to Josephine, in your presence you said nothing about it? A No sir.

BY THE COURT:

Q At that time, you were aware that Josephine, her mother and father wanted you to commit perjury; is that so?

A Yes sir.

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Q Why, didn't you tell the District Attorney about it?

A I told the District Attorney that I wouldn't come down to say anything --

Q No. Why didn't you tell the District Attorney that this young girl had attempted to suborn you to commit perjury? A Well I told the District Attorney that I didn't see anything only what I heard, and I wouldn't come down; that I knew nothing, on what I heard.

BY MR. VANDIVER:

Q Did Josephine, in your presence, when you were talking to me, say that you knew anything but what you had heard? A Did who?

Q Did Josie, when she was talking to me, in your presence, upstairs in my room, say that you knew anything about this case, except what you had heard? A Well, I didn't talk to you and Josephine together. You and me talked together inside, alone.

Q And then Josephine came in; didn't she? A She talked to you, but I wasn't present there, at the conversation.

Q You weren't there? A No sir.

Q You talked with Josephine out in the hall; didn't you? A Yes.

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Q Did she tell you, out there, that you knew anything about the case, except what you had heard? A She didn't tell me anything, about that.

Q Yes. Did she ever tell you that you knew anything about the case, other than what you had heard? A Just what she told me. She wanted me to say just what she told me.

Q And you want the jury to believe that; do you?

A Eh?

Q (Question repeated)? A Well, that's right.

Q That she wanted you to come here and say what was not true? A She wanted me to come here, and say what she told me.

THE COURT: Answer the question of the District Attorney.

(The question is repeated by the stenographer.)

A Well, of course, she told me to come here and say what she told me.

BY MR. VANDIVER:

Q Well, was that true? A I don't know whether it's true or not.

Q Then you don't say that she wished you to come here and say what was not true? A Well, she wanted me to come here and say what she told me. I didn't see it, and I don't

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know whether it was true or not.

Q Now, after you had talked with me and her, upstairs, you came downstairs, and talked with the defendant; didn't you? A I didn't tell him nothing about it.

Q Answer that question. Didn't you come downstairs and talk to the defendant, after you had talked to me?

A No I didn't.

Q You saw him on Monday afternoon; didn't you?

A I did.

Q And talked to him? A Monday night; not Monday afternoon.

Q Didn't you talk with him, right after the Court adjourned, right out in the hallway here? A Well, that's Monday evening, about four o'clock.

Q Yes, about four o'clock? A Yes sir.

Q And that was after you talked with me, upstairs?

A Yes sir.

Q And did you go home with him? A No sir.

Q And did you talk with him, that night? A No sir.

Q Or that morning? A No, the next morning, I didn't talk to him. He seen me coming in.

Q And did you talk to Josephine any more? A No sir.

Q Did you talk to Josephine's sister? A No sir.

Q Have you ever been convicted of crime? A No

sir.

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Q You are positive about that? A I am.

Q Speak up, so that I can hear you. Are you positive?

A I am.

BY THE COURT:

Q Were you ever convicted on a charge of disorderly conduct? A Yes sir.

Q What was the nature of the charge? A Oh, I don't know. I was walking down through Park Row, coming home from Jersey and there was a patrol wagon to lock us, somebody, a bunch of boys in front of the newspaper office, and I was passing there, and got thrown in in the bunch.

Q And what was the charge against you? A Disorderly conduct.

Q And what was the disposition of the case? A I don't know.

Q Were you sent to the island? A No sir.

Q Were you put under bail? A No sir.

Q Were you discharged? A No; I was committed to the New York Catholic Protectory.

Q For doing what? Standing on the sidewalk? A No sir; I was just passing there, and I seen what was going on, and they took me in.

Q Under what name were you convicted? A Billucci.

Q When? A Five or six years ago; seven years ago.

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Q What occurred? A Downstairs here.

Q Special Sessions? A No; in the Police Court.

Q Police Court? A Yes sir.

Q Under what name were you in the Catholic Protectory?

A Billucci.

Q First name? A Frank Billucci.

THE COURT: Have that record looked up, Mr. District Attorney.

Q Well how long did you remain there? A Three months.

Q Since that time, have you ever been convicted?

A No sir.

Q Sure? A Yes sir.

Q How old are you? A Twenty-one, going on 22.

Q At the time you were appointed you were appointed a patrolman, a special patrolman, did you make any affidavit, as to whether or not you had ever been convicted of crime?

A No sir.

Q Did you not sign a blank? A No sir.

Q You were regularly appointed by the Police Commissioner of this County as a special officer? A No; I wasn't appointed by the Police Commissioner of this County.

Q But you were a member of this so-called Union that organized among themselves to conduct a police business; is that it? A Yes sir; I was working for the New York Patrol

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Company.

Q You were working for the New York Patrol Company?

A Yes sir.

Q As what? A As a patrolman.

Q Who was the President of the New York Patrol Company? A Mike Schilansky.

Q Where does he live? A I don't know.

Q Where is the office of the company? A 212 Grand Street.

Q Is it in existence, at present? A Yes sir.

Q What salary did you receive? A Forty dollars a month.

Q How long had you worked there? A One year.

Q Continuously? A No, not continuously; on and off.

Q Well how long did you work on and how long did you work off; how long were you off? A That I don't remember.

Q Well, how long did you work steadily at this place? A Six months steady.

Q When? A That I don't remember.

Q How long ago? A Well I worked last month steady, in Harlem.

Q Doing what? A Watching stores.

Q What stores did you watch? A On Second and First Avenue, from 111th to 116th Street.

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Q The numbers of the places? A I don't know.

Q Do you want this jury to understand that you watched every store on those blocks? A No sir; not every store.

Q Well what particular stores? A Well what the company had. They have got a label on each door.

Q Did you have a list of places? A No sir.

Q Well, watching at night, you would have to go to each door along the avenue; wouldn't you? A No sir.

Q Well how would you be able to observe which was a store which required protection? A Well they took me around, and showed me, at first.

Q You knew that the letter which you had would be very helpful to the defendant; did you not? A I did not.

Q Didn't you think that a letter stating what you should testify to, and the further fact that you were induced to commit perjury, would be helpful to the defendant?

A No sir.

Q Now, the letter given to this defendant, outside of the fact of your oral testimony that you were induced to commit perjury, do you want the jury to understand that, without your testimony, the letter would be helpful to the defendant?

A I don't understand what you mean. Without --

Q Well the letter, what is contained on the face of the letter without your additional testimony, is there any-

thing in the letter to indicate that it would help the defendant? A That I don't know.

Q Did you promise the defendant that you would testify for him? A No sir.

Q At no time? A No sir.

Q Where did you live, last Monday? A Last Monday?

Q Yes. A At 169 Hester Street.

Q Where did the complaining witness live? A Who is the complaining witness?

Q Miss Casioli? A 203 Grand Street.

Q When was the last time prior to Monday that you saw the defendant? A Sunday night -- no, not the defendant. The Casioli's, you mean.

Q No, the defendant, Serio? A Well I haven't seen him since August.

Q Where did you live in August? A No. 5 Mulberry Street.

Q Did the defendant ever call at your house there? A No sir.

Q Do you know how the defendant learned of your residence? A That I don't know.

Q Weren't you agreeably surprised to see this man in your house, Monday morning? A I was.

Q And you knew, at that time, that this case to be moved?

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A Yes I did.

Q And you knew at that time that the District Attorney wanted you as a witness? A I did.

Q And you were going down to see the District Attorney? A I did come down to see him.

Q And you intended to come down and see the District Attorney, at that time? A Yes sir; and I did come down.

Q Anything? A And why did you permit this defendant to take this letter? A Well, he asked me who was it from, and I told him.

Q Did you say anything else to him? A No. He said, "Will you let me have it?" I said, "Take it."

Q Did you tell him that what was contained in the letter was untrue? A I didn't tell him nothing about that.

Q Did you tell him what you would testify to? A I didn't tell him nothing like that.

Q Did you have any conversation with the defendant as to what you were going to testify to, if called? A No sir.

Q Did the counsel for the defendant know what you were going to testify to? A Yes.

Q Well when did you tell it to the counsel? A Well, yesterday morning, when I was outside.

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Q That was the first that you told anybody that the complaining witness wanted you to commit perjury? A That was.

Q And you saw the District Attorney, the day before, and you did not say a word to him? A No sir.

Q Did you expect to receive any money for testifying? Did you expect the complaining witness or her parents to compensate you for giving testimony? A I don't understand what you mean.

Q Would pay you any money for testifying? A Yes.

Q You did expect that? A Well they told me they would, but I changed my mind, when I came down.

Q No. I mean, recently? A I changed my mind.

Q But, recently, did you expect to receive any pay for coming down here, and giving testimony? A No; I didn't want to be paid for coming down here, at all.

BY MR. VANDIVER:

Q Were you in the Catholic protectory more than once?

A No sir; only once.

Q Were you in any other correctional institution?

A No sir.

Q In this state or any state? A No sir.

THE COURT: No. Strike out the last few questions.

BY THE COURT:

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Q Were you ever convicted of crime on any other occasion than the one you have testified to? A No sir.

THE COURT: A man might go into the City Prison, and not be confined there.

BY MR. VANDIVER:

Q Were you ever fined by a magistrate? A Yes.

Q Well don't you call that a crime?

BY THE COURT:

Q Were you ever convicted of any crime, assault, burglary, or any other offence? A No sir. I was only fined three dollars, once.

Q For what? A For being in front of a crap game.

Q For being in front of a crap game? A Yes sir.

Q Anything else? A That's all.

JAMES BRIENZA, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SCITTA:

Q James, where do you live? A 67 Catherine.

Q Do you live home with your folks? A Yes sir.

Q Do you work? A Sir?

Q Do you work? A Yes.

Q Where do you work? A I work in 443 Greenwich Street.

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Q What's your business? A Glass manufacturer.

Q And how long have you been working? A I have been working there, it's going on about seven months.

Q In the same place? A Yes sir.

BY THE COURT:

Q What kind of work do you perform? A Glass. I silver. They make looking glass there, mirrors.

Q You are a helper? A Silver's helper, yes.

BY MR. SCITTA:

Q Do you know Josephine Casioli? A Yes sir.

Q Did you ever call at her house? A Well I did. But I know her all through Frank Bell.

Q Did you ever call there, either with him or alone?

A Well I called --

Q When she was at home? A Well, I called with him, and without him.

Q Do you recollect the time, or about, when you were there? A It's quite a long while ago now; I don't just remember.

Q Do you know whether you were there during the month of July, or August, of last year? A I don't remember.

Q Did you have a conversation regarding to this case, at the home of Josephine Casioli? A No sir.

BY THE COURT:

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Q What is your answer? A No sir.

BY MR. SCITTA:

Q Did you ever hear Josephine say anything to Frank, or any person, about some testimony in this case? A Well I heard Josephine simply say, once, that -- she says to Frank well to help her out of this case, and to not to go against her.

BY THE COURT:

Q To do what? To help her out in this case? A Yes sir.

Q And not to go against her? A Not to go against her, yes.

BY MR. SCITTA:

Q Do you know whether she made any promise to him? A No sir.

Q Did you hear that conversation more than once, or only once? A I heard that several times, a couple of times.

Q Now state to the court and jury just as you heard it, exactly, the exact words, or as near as you can, the exact words that you heard Josephine Casioli state to Bell, or any other person? A I think that I did say that.

Q Talk louder? A That's the only thing I ever did heard.

Q Well state it. Repeat the words, as near as you can?

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A I called up for that Frank Bell, once, and I saw Frank Bell there.

BY THE ELEVENTH JUROR:

Q Speak a little louder. I can't hear you? A I can't, I have got a cold. I called up there once, and there was Frank Bell there, and I called up at Frank Bell, and I heard this Josephine talking, to Frank Bell, and telling Frank Bell not to go against her case; to -- not to go against her case. That's the second time I ever heard it.

BY THE COURT:

Q That Frank Bell shouldn't go against her case?

A No, not to go against this case.

Q Now state to the jury exactly what you heard, or the substance, if you don't remember the words. Give us the substance, as near as you can? A Well, I am telling it, as near as I can.

Q Well, state it again to the jury? A Well, I heard that she told Frank Bell to go for a witness for her, and not to go against her case; and what she meant by that, I thought she meant not to throw her down in her case.

BY MR. SCITTA:

Q Well, nevermind what you thought. She said that?

A Yes sir.

BY THE FOREMAN:

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Q She didn't offer him any money for doing this; did she? A No sir; not what I heard.

BY THE COURT:

Q Then what you mean is, this young lady, Josephine, begged Frank Bell not to throw her down? A Yes sir.

BY MR. SCITTA:

Q And be a witness for her? A Yes, a witness.

Q Was there anything else? A That's all I know.

BY THE COURT:

Q Did you ever hear Josephine make any promise to Frank Bell, that she would pay him? A Never.

Q Well what did Frank Bell say, at that time? A I didn't hear Frank Bell say anything.

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Q Did Frank Bell say, "I know nothing about your case, and I will not be a witness?" A I never heard Frank Bell say that.

Q Did he ever say that to you? A No, sir.

Q Did Frank Bell ever tell you that he knew nothing about the case? A Well, he used to come around for the fellow, and try to get the fellow to marry her.

Q For what fellow? A For Philip Serio.

Q And did you ever see Bell and Serio together? A Well, I seen them once.

Q Where? A Around in Catherine Street.

Q When was that? A Oh, that was a long time ago.

Q Well, about how long ago? A Well, about three months ago, I think.

Q About three months ago? A Yes, sir.

Q And did you go with Frank Bell to the defendant?

A No, sir.

Q Well, you used to call at Frank Bell's house often, didn't you? A I used to go up there, yes.

Q And you used to call at 159 Hester street? A No, sir, I used to call down in Phill's shop, that is, the girl's father.

Q And did you ever call down at 159 Hester street where Frank lived? A No, sir; yesterday morning, Monday morning?

Q No, yesterday was Tuesday? A No; Monday morning I was there.

Q And you were there by appointment with Frank, were you not? A No.

Q Well, didn't you go down to see Frank Bell at his house?
A Yes.

Q And didn't you see Serio there, on Monday morning?
A No; I didn't see him there.

Q What time did you go to Frank's house, on Monday morning? A Somewhere around nine o'clock.

Q Was he asleep? A He was sleeping, yes.

Q He was asleep? A Yes, sir.

Q And did you wake him up? A Yes, sir, and I woke him up and he said, "I meet you down at the Court."

Q And how long were you there? A I wasn't there no five minutes.

Q And did Frank Bell tell you about the letter that he had received? A No.

Q Did you see any letter there? A No, sir.

Q Did you see Serio in Frank's house that morning?
A No, sir.

Q Didn't you know that Serio was to come to Frank's house that morning? A No, sir; I didn't know that.

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CROSS EXAMINATION BY MR. VANDIVER:

Q Were you ever convicted of a crime? A No, sir.

Q Do you know what conviction means? A I know what conviction means.

Q What does it mean? A If I was convicted and arrested for anything.

Q Were you ever fined by a magistrate? A Never.

Q Were you ever committed, after conviction, to a correctional institution? A I don't know what that means.

Q Were you ever committed by a judge or magistrate to an institution? A No, sir.

Q How long have you known Frank Bell? A Oh, I know Frank Bell a long while.

Q He is an associate of yours? You go around with him, do you? A Well, I used to once, you know.

Q Well, have you stopped? A Yes; I don't go with him any more.

Q Well, why don't you go with him any more? A Well, because I don't see him any more.

Q You don't see him any more? A No, sir.

Q Did you know his wife, Rosie Bell? A His wife, Rosie Bell, yes.

Q Did you know whether he was married to her or not? A That's something I couldn't tell you.

Q Did he ever tell you anything about it? A No.

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Q Did you ever call on Josephine Casioli yourself?

A Never.

Q Well, then, how did you happen to be up there at the time Frank Bell had this conversation with her? A Because I went up for Frank Bell, you know. He used to be down in the father's shop, all the time.

Q Yes. A And I went up there for him, and when I went up there I found they were talking, and that's all I heard.

Q And had you ever been there before? A The Casioli's house?

Q Yes.. A Yes; I had been up there before.

Q And had you ever seen Frank Bell there before?

A Yes.

Q Talking to her? A Well, I seen him there but I never seen him talking to her.

Q And is that the only time you ever saw Frank Bell talking to Josephine? A No; lots of times.

Q And can you then tell this jury any conversation that you heard Frank Bell have with her, at any time? A No, I can't.

Q That is the only conversation that you remember? A Well, you know, when I went in I heard that, and that's all. And lots of times Frank Bell was talking to the mother and all of them.

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Q Are you known by any other name? A Who?

Q You? A Known by any other name?

Q Yes. A No.

Q Are you sometimes called Jack Shep? A No; my name is Brienza.

Q Are you called by any other name by your associates?
A No, sir.

Q Are you employed to-day? A Well, they call me James Brienza.

Q Are you employed to-day, working? A Not to-day, when I am sitting here.

Q Were you working yesterday? A No; I been here three days; they kept me here three days.

Q Well, were you working up till the time you were subpoenaed to come here? A Yes.

Q Were you ever a special officer? A Me?

Q Yes. A No, sir.

Q You never were? A No.

Q That is the only conversation you remember?

A Yes, sir.

FRANCESCO SERIO, a witness called on behalf of the defense, being duly sworn, and examined through the official interpreter, Philip Dollin, testified as follows:

DIRECT EXAMINATION BY MR. SCITTA:

Q Mr. Serio, you are the father of the defendant?

A Yes, sir.

Q Where do you reside? A 111 and 115 Cherry street.

Q You live there with your family? A Yes, sir.

Q And what is your business? A Die maker.

Q Do you recollect the 3rd day of June, of last year?

A Yes, sir.

Q Do you know what day it was, what day of the week?

A It was on a Sunday.

Q And did you go anywhere on the 3rd day of June last? A Yes, sir; in the afternoon, after meals, I went.

Q Did you go alone or with your family? A The whole family. Not one of our family remained in the house.

Q And Philip was along with you?

MR. VANDIVER: I object to the continuous leading of this witness, if your Honor please.

THE COURT: Do not lead the witness, Mr. Scitta.

MR. SCITTA: Your Honor will pardon me, but, considering the nature of the witness, it is a conclusion on his part, the whole family went.

THE COURT: Proceed.

BY MR. SCITTA:

Q Well, where did you go on Sunday, June 3rd? A Hoboken, afternoon time we went to Hoboken.

Q And what is the exact place, what is the exact name of the place where you went? A Its on a hill; on a little hill.

Q What kind of a place is it? A It is a barber shop.

Q And what's the name of the place where you went to?
A The owner of the place, his name is Mr. Cena, Guiseppe Cena; Mr. Joseph Cena.

Q What time did you get to his house? A About three o'clock in the afternoon.

Q And how long did you stay there? A We slept there until next morning, at ten o'clock.

Q Is there any reason why you remained there that night, Mr. Serio? A Yes, there was a reason.

Q Well, now, kindly state to the Court and jury the reason why you remained there that night? A We remained there knowing Mr. Cena for many years. His wife was very sick. She had a stomach pain, a very strong stomach pain.

Q Go on. A Well, then Mr. Cena said to me he has no

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neighbors, Italians, no friends around there, and he begged us to stay over night with him.

Q Did he give you any reason why he wanted you to stay there over night? A We consented to stay there.

Q (Question repeated) A He said "Just out of courtesy, I beg of you to stay, because I have no one to stay with me; I have no help. I beg you, then, to stay here, and help me."

Q Well, during the night did anything happen there?
A About half past nine or nine o'clock she was confined.

MR. SCITTA: He said he wasn't certain as to the hour also.

THE WITNESS: Well, about nine or half past nine. I can't tell for sure. About that time.

Q Well, now, did your family remain there all night in those apartments? A Yes, sir; they remained there.

Q The next day did anybody else come there? A The next morning the sister of Cena's wife, came. She came about ten o'clock Monday. About ten o'clock in the evening she came.

Q And after that what did you do? A As soon as the sister came, it was about ten or half past ten. We all left.

Q Where was Philip, your son, the defendant, during this time? A He was all the time with us. I swear a hundred times that he was with me all the time.

MR. VANDIVER: Once will do.

BY MR. SCITTA:

Q Did he return home with you that night? A Yes; he came to the house.

Q Serio, did Josephine Casioli, or any of her folks ever call on you? A No, sir.

Q Did they ever make any complaint to you about your son, Philip Serio? A No, sir.

Q Where is your wife, to-day, Mr. Serio? A She was confined some days ago, and she is sick yet.

Q And she is now sick at home? A Yes, sir; she is home, sick.

CROSS EXAMINATION BY MR. VANDIVER:

Q Now, Mr. Serio, the reason that you didn't go to work the next day, Monday, when you were out in New Jersey was because it was a holiday, wasn't it? (No answer)

Q You understand English don't you? A (No answer.

Q (Question repeated through the interpreter) A No, sir; I wasn't.

Q Well, how did you happen to stay away from your work, Mr. Serio? A Well, we remained there because Sena begged us to stay; and then we were, also a little sleepy.

Q You are employed by the week, are you not? A Yes, sir; I and my boy, we work on day's wages.

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Q And when you didn't work you didn't get paid, did you?

A No, sir.

Q And your son doesn't, either? A No, sir; naturally, when you don't work you don't get paid.

Q Well, you were willing to give up your son's day's wages and your day's wages, to sit with your friend in New Jersey on the 4th of June? Were you? A Even one week I would give up.

Q Had you ever stayed there all night before, Mr. Serio? A No, sir, no, sir; this was only one occasion when we stayed.

Q Yes; because the wife was confined, or about to be confined? A Yes, sir; and he was alone, and we helped him out. They were all Americans around there.

Q And how many were in his family, Mr. Serio? A In my family?

Q No, in the family of your friend, whose wife was being confined? A Three sons and his wife; and then he had help, a barber, one or two; I don't know.

Q Were they there that night? A Well, the sons were there, the children, and the workingmen; well, they went out and came in and didn't pay much attention.

Q Well, but you saw him there? A

MR. SCITTA: Give the rest of the answer, please.

He says it was a very warm, hot time there.

MR. VANDIVER: Well, I ask to have it all stricken out.

A It was very warm there.

BY MR. VANDIVER:

Q Has your friend any daughters? A Two females and one boy? The oldest one is a female.

Q And how old is she? A I don't know.

Q Well, about how old is she? A Well, about seven or eight years old, the oldest.

Q How many of your family were along? A Five, we were five altogether.

Q Well, that's about thirteen people who were present in all, who were present; is that right? A The little ones were put to sleep in the bed.

Q And what became of the rest of you? A What's the rest?

Q Well, never mind. How many beds were there? A Three.

Q And who slept in them? A Well, we did the best we could. Some slept on the chairs and others slept in bed, and put the little ones, one at the feet and one at the head; and so we arranged the best we could.

Q How many rooms does your friend occupy? A Three.

Q Three? A Yes, sir.

Q And one of them is used as a barber shop, isn't it?

A One is the barber shop and then two other rooms.

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Q Well, are the other two rooms used as bed rooms, both of them? A Yes, sir.

Q How many beds in each room? A Three beds in all.

MR. SCITTA: And he says, one opens and closes.

THE FOURTH JUROR: Yes; a folding bed.

MR. SCITTA: Give the right answer.

BY MR. VANDIVER:

Q Are all the beds in one room? A No.

Q Where are the beds? A In these rooms.

Q I didn't mean out in the yard? A Well, what you say I say. They are in the rooms.

Q How many in each room? A In one room, there is a big bed, where the husband and the wife sleeps; and in the other room there are two beds.

Q Did you go to sleep that night? A Well, part of the time I went outside, and part of the time I remained in the chair; and so I passed the night.

Q Where did your son Philip stay? A He slept also in a chair; he slept very fast in a chair.

Q Now, Mr. Serio, how do you remember that was the 3rd of June? A Because it was on a Sunday.

Q Are you sure it was June? A Yes; pretty sure.

Q Where were you on the Sunday before the 3rd of June?

A Here in New York.

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Q And where were you on the Sunday after the 3rd of June?

A In New York.

Q Where? What is the answer? A In my home.

Q Were you out of New York any other Sunday in June?

A Well, that Sunday we were outside, and on the other Sundays we were in New York. We went out to take a walk.

Q That will do. Just answer my question. A Sometimes we go to Coney Island or Fort George, or so, take a walk.

Q You have been to Fort George frequently, with your family, have you? A Once, about three years ago.

Q And was Philip along then? A No, sir, I and my wife.

Q Were you at Coney Island any Sunday in July? A Well, no, sir, about the beginning of August I was once in Coney Island.

Q Do you remember the day of the month? A No, sir; it was on a Sunday, but I don't recollect.

Q Well, that is, ^{not} as far away as June; is it? A No, sir.

Q And is your memory clearer about what happened in August or about what happened in June? A In August, I recollect, because I belonged to a Society and I didn't go; I went to Coney Island.

Q Then your memory is clearer about things that happened in August and yet you cannot tell me the day of the month on which you went to Coney Island? A The first Sunday in August.

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Q And what day of the month was it? A I don't recollect.

Q That will do. Don't talk so much to the interpreter.

A I recollect that I didn't go to the Society, but went to Coney Island.

Q But you don't remember the day of the month? A No, sir.

Q Well, then, how do you know that this Sunday that you went to New Jersey was the 3rd of June? A Well, because there was a confinement of the woman.

MR. SCITTA: Not confinement, the miscarriage, interpreter.

THE FOURTH JUROR: No, the miscarriage.

THE INTERPRETER: Well, then, the miscarriage.

BY MR. VANDIVER:

Q And where were you on the Fourth of July, last year?

A Well, I remained home.

Q What day of the week was it? A I don't recollect what day of the week it was.

Q Where were you on Thanksgiving day of last year? A I always am home.

Q What day of the week was Thanksgiving day? A I don't know. I know there was a day, such a day, but I don't recollect what day it was.

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Q Well, where were you on Christmas day? A Home.

Q Did you work that day? A No, sir.

Q What day of the month was that? A 25th.

Q What day of the week was it? A I don't know the day of the week, but I know that the 25th is Christmas.

Q Where were you on New Years day, the first day of this year? A Home.

Q Did you work on that day? A No, sir, no. On holidays we don't work.

Q And what day of the week was that? A I don't recollect.

Q And that was two weeks ago? A I don't remember.

Q Where were you on the 14th day of January, 1907?

A I was in New York.

Q Well, what day of the week was the 14th of January, 1907?

A I don't recollect.

Q What day of the week is to-day? A Its Wednesday.

Q What day of the month is it? A I don't pay attention to those things.

Q But you do remember that the third day of June was A Sunday? A I recollect because that happened, that misfortune. If not, I wouldn't recollect.

BY THE COURT:

Q How do you remember that that event occurred on June 3rd? A Because that friend of mine, he comes frequently to New York, a friend of ours, he is a druggist. I met

him and he said, "On the 3rd of June, my wife had a miscarriage and was almost dying."

Q Now, when did you first hear that your son was accused of having an act of sexual intercourse with the complaining witness, on June 4th, 1906?

MR. SCITTA: No, no; if your Honor please; the interpreter is putting these questions improperly.

THE COURT: See that the question is put properly, Mr. Scitta.

A When the subpoena came.

MR. SCITTA: May the question be repeated by the interpreter, and may he put it correctly?

THE COURT: Certainly.

(The question is repeated by the interpreter.) A. When I received the subpoena.

BY THE COURT:

Q What month did you receive a subpoena? A I think it was in September; I think it was in September, I am not very sure.

Q Was it about three months after the time that you visited your friend in North Bergen? A I don't recollect how many months after.

Q Well, about how many months after, as near as you can state? A I don't recollect. I think it was in September.

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I don't know exactly.

Q Well, what means did you take to ascertain where you were on June 4th, 1906? A I, myself?

Q Yes.

THE FOURTH JUROR: Put the question again. The witness didn't understand the interpreter. He don't put it properly.

THE COURT: It may be repeated.

(The question is repeated by the stenographer.)

A Because we were thinking about where he was

A Because we were thinking about where he was on the 4th of June, our son. Then my wife, said "Don't you recollect that we were there, in Hoboken, on the 4th of June?"

BY THE COURT:

Q Well, now, at what time on June 4th did you leave Hoboken? A In the evening, about ten or half past ten.

Q At night? A Yes sir.

Q And was the defendant with you all day of June 4th? A Yes sir; I swear a hundred times he was with us.

Q And what business had the defendant there, that day? What was required of him? A Well, because, that day, we were all there, and the day was spoiled, we couldn't go to work any more, and so we remained all day.

BY MR. VANDIVER:

Q Did you ever go down to the place where your son worked? A We worked together.

Q In Vandewater Street? A Yes.

Q Do you work there now? A No sir; I work in another place, in Cliff Street, 97.

Q And how long ago did you cease to work in Vandewater Street? A Oh, a long time.

Q That conveys nothing to my mind. When did you stop working for the same firm that your son worked for in June?

A I don't know; about two or three months.

Q Were you working in Vandewater Street in June, 1906?

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A I don't know. It is a long time. I don't recollect now.

Q Were you working in Vandewater Street when you visited your friend in New Jersey? A Yes sir.

Q And then, on the fourth day of June, you were employed by the same firm that your son was employed by; were you? A Yes; we were working together.

Q Did you work the day after the 4th of June? A Yes sir.

Q And, at the end of each day's work, you make out your time slip; do you not? A No sir.

Q Now how do you know that you were working there the day after the fourth of June? A Of course, because we went away in the morning to go to work. I recollect.

Q Well did you work there all the month of June?
A I don't recollect. I know we worked there. I don't recollect exactly.

Q Did you work in July? A I told you I don't recollect.

Q How many months ago was it that you ceased to be employed by the firm in Vandewater Street? A I don't recollect.

Q Where was your son Phillip in the month of August, 1906? A He was in the country; he was sick, and he went there for a change of air.

Q When was that? When did he go for a change of air?

A Well, he was treated by a doctor, and, in the month of September, he went for a change of air.

MR. VANDIVER: If your Honor please, I am informed that Mr. Perkins, of the Indictment Bureau, very much desires the services of Mr. Dellin. May he step upstairs?

THE COURT: Yes.

MR. VANDIVER: And we will substitute Mr. Fontana.

(Victor A. Fontana is sworn as interpreter.)

BY MR. VANDIVER:

Q When, in September, did your son go to New Jersey, for a change of air? A About the 25th or 26th day of August.

Q Do you know, Mr. Serio, whether your son had received a notice to come to court, before he went to Jersey for a change of air? A He had already gone to change the air.

Q Before he got the notice to come to court? A Yes sir; he had gone to the country before he received the notice.

Q How long after he returned was it before he was arrested? A A couple of weeks afterwards.

Q During his absence in New Jersey, for a change of

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air, did any police officer come to your house, and inquire for your son? A Yes; one came while I was absent, but my wife was there.

Q Your son was then in New Jersey? A Yes sir.

Q And where was your son when he was arrested? A In New York.

Q Was he in your house? A No sir.

Q How long had it been since he had been in your house, when he was arrested? A He was there always, but he used to go around and look for a job.

Q Wasn't he employed over in New Jersey? A Yes.

Q And where did he sleep, when he had a job in New Jersey? A At the house.

Q Was he sleeping at the house, the night before he was arrested? A Yes sir.

Q And he was arrested in November? A Yes sir.

Q And he went to New Jersey for a change of air in September? A What can I say? I don't remember. I don't remember if it was in the month of September or not.

Q Do you remember when he left his employment in Vandewater Street? A No. Since he was sick, he didn't go there any more.

Q Has he had a job in New York City or County since you heard that he was wanted in court? A When my son came from

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the country, he found work.

Q Whereabouts? A In New York. I don't remember. I know he was working.

Q How long did he hold that job? A Two or three weeks.

Q Is he employed now? A No.

Q How long has it been since he was employed?

A Since this case has been pending.

Q Since he was arrested? A About fifteen days.

Q Did he work in the month of December? A I think, yes.

Q Did he work in November? A I don't remember.

Q And he didn't work for several weeks prior to his arrest? A Because he was sick.

Q Yes. He was in New Jersey for a change of air then was he? A Yes.

Q Did you ever have any conversation with your son about his marriage?? A No.

Q Did you ever tell him that you didn't wish him to get married until he was twenty-five years of age? A Yes sir.

Q Did he ever tell you that he wished to marry any girl? A No no.

Q Did he ever tell you that he was keeping company

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with Mrs. Casioli's daughter? A No sir.

Q Did you know he was? A No.

Q Did you ever know that he kept company with any young lady? A No.

Q You did not? A No sir.

Q Is not North Bergen just opposite Fort Lee -- Fort George, I mean? A No. In Hoboken, in the hill, there is several amusements, ~~xxx~~ carrouseles, and it is called "Little Coney Island".

Q And that's on the Jersey side? A Yes sir.

Q And what ferry do you take to go there? A I don't know the street. There is a market there.

THE COURT: The Seventh juror has a very important engagement, Mr. Vandiver, at one o'clock.

MR. VANDIVER: I shall be but a few minutes longer.

THE COURT: Well, I just wanted to call your attention to the matter. I will adjourn at ten minutes to one, and that will give you an opportunity of reaching the place that you desire to go to.

BY MR. VANDIVER:

Q When your son was arrested, did you have any conversation with him as to the charge against him? A Yes. I

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says to him -- I spoke to him about it, and I says to him, "What,s this about?" He says, "No; I never had anything to do with that girl."

Q Since your son's arrest, have you been visited by Josephine Casioli? A No sir.

Q By any of the relatives of Josephine Casioli?

A I never saw any of her relatives, at all.

Q Has Josephine Casioli, or any of her relatives, demanded of you that your son marry Josephine? A A lady that keeps as tore in Oliver Street, yes; and she said to me, "Why don't you have your son to marry the girl?" And I said --

Q Was that lady --

THE COURT: Let the interpreter finish the answer.

MR. VANDIVER: Yes sir. I may wish to ask to have it stricken out, as irresponsible.

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MR. VANDIVER: Yes, sir, I may wish to have it stricken out as irresponsible.

A (Answer continued) And I said, "You will have to ask my son about that. I haven't any charge on my shoulders about this thing."

Q What is the name of that lady? A I don't know her at all. I know her by sight.

Q Is she outside? A She keeps a candy store in Oliver street.

Q Is she any relative of the prosecutrix, Josephine Casilli? A I don't know whether she is a relative or from the same part of the country.

MR. VANDIVER: Then I ask to have it stricken from the record, sir.

MR. SCITTA: They have called it out, if your Honor please.

THE COURT: Yes. Motion denied.

MR. SCITTA: I let them have their own way.

BY MR. VANDIVER:

Q So far as you know that lady is no relative of Josephine's? A I don't know.

Q You would like to see your son freed of this charge, wouldn't you?

MR. SCITTA: Objected to.

THE COURT: Sustained.

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JOSEPH I INZINNA, a witness called on behalf
of the defense being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SCITTA:

Q Mr. Inzinna, what is your business? A My business
is barber business.

Q Where do you reside? A I was in North Bergen, New Jersey.

Q And do you reside there now? A No, sir.

Q Where do you reside now? A 1210 Washington street,
Hoboken.

Q Are you married, A Yes.

Q Have you a family? A Yes, sir.

Q How many children? A I got three children.

Q And you are now living with your family? A Yes,
sir.

Q June, 1906, in the early part of June, May and June,
where did you reside? A My business is a barber shop in
North Bergen.

Q Where? A Bull's Ferry Road, No. 14.

Q And you recollect the 3rd day of June, 1906?

A Yes, sir.

Q Did you, on that day, see the defendant? A Yes, sir.

Q Where did you see him? A I saw him half past two
or three o'clock in the afternoon, Sunday afternoon.

Q Where? A In my place.

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Q Who was together with the defendant? A It was him, his mother, his young brother, two children and his father.

Q Did they remain there that afternoon? A Yes, sure.

Q During the afternoon, did anything occur at your house?
A Yes, sir; I had trouble about my wife, as, on Sunday morning, about nine or ten o'clock, she told me she had a pain.

Well, I was excited, because there is business, the whole shop is full of customers.

Well, I left my business and I go inside, and I say, "You go in bed, and I go for the midwife," because she was hope to have a baby. That's all right. And I couldn't get a midwife, because the midwife was in Fort Lee, that time.

Well, she cried, cried, and half past two or three o'clock, Mr. Serio come, and I say, "Mr. Serio, you are just in time, you send your wife inside, she got a lot of trouble. That's all right."

And Mr. Serio stayed all day with his family in my place and he wanted to go away about seven or eight o'clock on Sunday, and I said, Mr. Serio, you do favor for me, please, because I ain't got nobody, because my wife don't talk English, leave your wife here, and you go away, she help my wife."

And he said, "I couldn't stay because I got to go to work, and I lose my job, me and my son."

Well, I had two workmen there, me and two workmen, and somebody else, and he live there all night, when I ask him

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to stay for a favor to me. And about ten or eleven o'clock on Sunday night ---

Q Well, did he stay there all night? A Yes; and my wife lose the baby.

Q She had a miscarriage? A Yes, sir.

Q And she was attended by whom? A Mr. Serio's wife attended to my wife.

Q Now, on Sunday night --- A On Sunday night, yes.

Q What did the Serio children do? A The Serio children, the small children sleep with my children. This fellow, (indicating the defendant) and the two workmen was asleep on a chair, and talked; and me and Mr. Serio was inside in the kitchen to cook some broth and something else for my wife, and his wife was attend to my wife.

Q And did they remain there all day, next day? A Yes; because on Monday I telephoned to Mr. Bionzi's drug store on Oak street and called my sister-in-law; and at ten o'clock at night, or a quarter after ten, comes my sister-in-law to my wife, her sister, and Mr. Serio go away, half past ten or eleven, something like that.

Q During Monday --- A On Monday, yes.

Q Did the defendant remain at your place? A Yes, all day he was there; and he was at my dinner too.

Q And he had dinner with you too? A Yes, sir, he had dinner with me and my workmen.

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Q And you have no interest in this case, have you?

A What you say?

Q You have no interest in this case except to tell the truth, have you? A Nothing at all.

Q And since the occurrence of this miscarriage, you have spoken about it, haven't you? A Yes.

Q In the family? A In the family.

Q And with Mr. Serio? A Only to Mr. Serio; not to the young fellow (indicating the defendant.)

CROSS EXAMINATION BY MR. VANDIVER:

Q When did you see the defendant after he was at your house on the 3rd of June? A I see him the 3rd of June.

Q And when after that? A Last week, he come into my shop at 1210 Washington street, and he said, "Mr. Inzinna, you do this favor for me, somebody call me in Court, some girl, and sure you remember I was in your place on the 3rd of July -- on the 3rd of June", and I said, "Yes, I remember that, and you stay there Monday, sure."

Q And when was that? A Some day last week; I don't remember for sure.

Q And your wife's miscarriage occurred on the 3rd of June? A Yes; in the night.

Q Six months ago? A Yes, sir.

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Q When did you move to 1210 Washington street? A I moved ---

BY THE COURT:

Q And what month was your wife, that is, as to pregnancy?

A Well, I don't understand that word.

(It is repeated through the interpreter, and the witness testified from this point on through the interpreter.)

BY THE COURT:

Q Now, what stage of pregnancy was your wife in at the time? A She was four months; after four months she had the miscarriage.

Q Did you have any doctor? A No, sir; no doctor. I called the doctor after, two days after.

Q What is the name of the doctor? A Dr. Elstein. I don't know how you spell it.

Q Did you make any memorandum of the date of your wife's illness? A No; because there was no ---

Q There was no occasion for it? A No.

Q When did you first hear of the trouble of this defendant? A I don't remember well, but I knew he was in trouble. I didn't think I would be called in this case.

Q What month? A He told me last month.

Q In December, 1906? A In the first or second week in December.

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Q And were you told by anybody that June 4th was an important date in the defendant's case? A No, I remember the date because my wife had that displeasure.

Q And is that the only reason why you remember that date?
A Yes, sir.

Q Did you make a memorandum of the date? A I remember that very well positively; and if you want my wife, I will produce her.

Q No, we do not need your wife. How long have you been in this country? A Its seven years.

Q What year did you arrive in? A 1899.

Q What day of the month? A The 26th of December. I no remember sure what year. I know sure its seven years, because I had my citizen papers last year.

Q What was the date of the birth of your first born child? A She is six years old, the first girl I have.

Q What is her birthday? A I don't remember that.

Q When was the last child born? A He has got twenty-six months old, and three months after he is born, my wife is up again.

Q No, what is the date of the birth of your last child?
A I don't remember.

Q How many days are there in June? A Thirty.

Q And how many days in this month, January? A Thirty-one.

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Q Now, the third of June you say was a Sunday? A Yes, sir, the third of June was on a Sunday.

Q Well, what occurred on June 10th? A Nothing in my house; my wife was sick.

Q Was she in a very serious condition on the 3rd of June? A On the 4th she was, yes.

Q No; on the 3rd of June? A Yes, on the 3rd of June.

Q Did you call in any doctor? A I called a doctor two or three days after.

Q No, did you call a doctor Sunday night? A No, I don't call a doctor on Sunday night, because I don't think its necessary; I want to call a midwife.

Q Well, your wife was very sick that night? A Yes, sir.

Q And Sunday afternoon and night? A Yes, sir, Sunday afternoon and Sunday night and Monday, too.

Q And she was very sick and you didn't call a doctor? A I don't call a doctor because I don't think a doctor was necessary; only a midwife was necessary.

Q Then you called a doctor after? A Yes; after. Because she lose too much blood.

Q And what was the defendant doing there? What did he do there? A Nothing, fooling with my men in the barber shop, my workmen.

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Q Was he required to be there to help around the house?

A No.

THE COURT: Gentlemen of the jury:

Do not talk among yourselves, or permit any one to talk with you concerning any matter connected with the subject matter of this trial, and do not form or express any opinion regarding the guilt or innocence of the defendant, until this case is finally submitted to you.

The Court will take a recess until two o'clock.

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AFTER RECESS.

MR. SCITTA: If the Court please, I ask to be allowed to withdraw the plea of not guilty to this indictment, and to plead guilty to assault in the second degree.

MR. VANDIVER: I think, sir, in the interest of all concerned in this case, the plea of assault in the second degree should be accepted.

THE COURT: Serio, in the interest of justice I have permitted you to enter a plea to the count charging you with assault in the second degree. I am sure, if this case had been presented to the jury that you would undoubtedly have been convicted of rape in the second degree. There could have been no escape from such a conclusion, because of the perjurious testimony submitted in this case; and I desire to say that, so far as Mr. Scitta, your counsel is concerned, he was not a party to it.

No one could believe the testimony of this scoundrel, Frank Bell, who wilfully and deliberately committed perjury. He is undoubtedly a member of a notorious East Side gang who sought by persuading this girl to write a statement, which she did, and does not deny, that it might appeal to the jury that this young girl attempted to urge Bell to commit perjury.

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I am informed that you have agreed to marry the prosecutrix. After all, if you had been convicted on account of your youth in all probability the Court would have committed you to the Elmira Reformatory. That would probably have been the punishment which you would probably have had to bear.

But it seems to me that since you have voluntarily made the suggestion, which is approved by your parents and the parents of the prosecutrix, and on account of your past good conduct -- I am told that you are an industrious mechanic, earning about twenty-five dollars a week -- there is no reason why two young people cannot live happily together.

Now, I want to say to you that, under this indictment, and under your plea of guilty, I can sentence you at any time within five years, and impose a severe punishment. If you are going to live happily with this girl, I will never be called upon to perform this duty by sending you to jail. But I assure you that, if you fail to keep your promise which you made to the Court and the District Attorney, and abuse this girl, and do not treat her as a husband should, why, I will show you no mercy.

I will suspend sentence in your case and parole

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you in the custody of Mr. Vandiver. And I wish, Mr. Vandiver, that you would exercise a great interest in this case.

Now, Bell, step around here.

MR. McQUIRE: If your Honor please, this boy here, Frank Bell, as your Honor has stated, and as I myself believe, has committed deliberate perjury on this stand, and I ask your Honor to commit him to the Tombs, to await the action of the Grand Jury on a charge of perjury.

THE COURT: Bell ---

MR. SCITTA: Will your Honor hear me before you make that order?

THE COURT: Yes.

MR. SCITTA: I understood Mr. Vandiver say that nothing would be done, and the whole thing would be dropped all around.

THE COURT: I think this man is a menace to the community, Mr. Scitta: He is a member of a notorious band of thieves.

MR. SCITTA: I know that, sir, but nothing was to be done.

THE COURT: And he resides at 159 Hester street, a notorious disorderly house, premises which have figured in Court proceedings, as the Court is aware. What kind of a place is 159 Hester street?

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BELL: It is a tenement house.

THE COURT: What business is conducted downstairs?

BELL: A butcher shop.

THE COURT: Is there a rear house there?

BELL: Yes, sir.

THE COURT: Do you live in the rear house?

BELL: Yes; I live in the rear house.

THE COURT: It has figured in many cases in which captains of police have been in trouble. It figured in the Donald Grant, and the Stephenson cases, and the Burk and Nesbitt cases.

MR. SCITTA: He hasn't lived there, I believe, long.

THE COURT: But he is familiar with the building.

BELL: I am only living there a month, that's all.

THE COURT: Well, I will commit you to the Tombs on the charge of perjury.

(After the marriage of the complaining witness and the defendant.)

MR. McGUIRE: I understand that, at the intercession of the newly wed bride, who has spoken very strongly in his behalf, and upon what Mr. Scitta has told me of his understanding of our arrangement, and prior to the defendant's plea in the Serio case,

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that everything has been wiped out, I ask that this boy be now discharged.

THE COURT: Now, Bell, this proceeding here to-day should be a lesson in the future to you to keep away from Court proceedings. If it were not for the application of the District Attorney I would be inclined to keep you in the Tombs and have you prosecuted on this charge of perjury. You are discharged.

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