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## ARTICLES

### THE GIRL-WIFE AND THE ALIENISTS: THE FORGOTTEN MURDER TRIAL OF JOSEPHINE TERRANOVA

JACOB M. APPEL\*

The testimony offered by seventeen-year-old “girl-wife” Josephine Terranova at her sensational trial for murder in 1906 was probably the most unnerving tale many of the listeners had ever encountered.<sup>1</sup> The *Brooklyn Daily Eagle* reported that “[i]t was worse than anything heard before in a New York court room”—so awful, in fact, that it “could not be printed.”<sup>2</sup> Her story, agreed the *New York Herald*, was “[a]s revolting as any narrative ever heard,” and “moved all the normal minded hearers to revulsion.”<sup>3</sup> One female spectator fainted and had to be carried from the room only

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1. The term “girl-wife” comes from the coverage in the *Brooklyn Daily Eagle*. For its first use, see *Selecting Terranova Jury*, BROOKLYN DAILY EAGLE, May 15, 1906, at 1.

2. *Josephine Terranova Tells Her Life Story*, BROOKLYN DAILY EAGLE, May 22, 1906, at 1.

3. *Tells of Voice That Said “Kill Your Uncle and Aunt,”* N.Y. HERALD, May 23, 1906, at 5.

ten minutes into the proceeding, an event that the *New York Sun* said “best describes the revolting nature of the story.”<sup>4</sup> During an era when newspapers rarely covered criminal proceedings beyond their own metropolitan boundaries, this young girl’s trial attracted national attention. The “unspeakably horrible story of the life she was forced to live” earned top billing on the front page of the *Philadelphia Inquirer*, and daily coverage in the *Boston Herald*, *Baltimore Sun* and *Washington Post*.<sup>5</sup> Day after day, jurors and the public were subjected to a harrowing account of incest, torture, murder and madness, which featured such odd episodes as one man writing extortion letters to himself, and another attending a family summit with an axe under his coat. The electrifying trial and its controversial outcome—a verdict that the *New York Times* condemned as “a fantastic travesty of justice,” and “a blot upon our criminal jurisprudence,” but that the *New York World* hailed as one that even “[t]he district attorney could not reasonably object to. . . .”—are alone enough to make the *Terranova* case the most notable forgotten trial of the twentieth century.<sup>6</sup>

Yet far more turned out to be on trial at the criminal branch of the Manhattan Supreme Court than an abused Italian immigrant. The days of conflicting expert testimony brought forth by both the prosecution and the defense on the question of Josephine’s sanity helped spark a crisis in the field of forensic psychiatry. At the same time, the speed with which the jurors returned their verdict—one at odds with the charge of the presiding judge—led some to clamor publicly for the reform, or elimination, of juries. Others used the verdict to argue for the abolition of capital punishment. Yet the judgment’s most significant impact was the role it played in shaping how future lawyers, courts, and even journalists handled “crimes of honor” at major subsequent trials, most notably the two trials of Harry Thaw for murdering architect Stanford White (the first in 1907 and the second in 1908) and the 1908 trials of the Hains brothers for their roles in the fatal shooting of publisher William Annis. What began as an ordeal for one young woman and her family set

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4. *Kill Your Uncle, Said Voice*, N.Y. SUN, May 23, 1906, at 1.

5. *Girl Wife, Cheeks Aflame, Tells Story of Her Shame*, PHILA. INQUIRER, May 23, 1906, at 1. The *Washington Post* called Josephine Terranova’s testimony “a story so brutal in its details, as the girl told it, that there were men in the courtroom who felt uncomfortable because they had to be there to listen to it.” *Voice Said, “Kill Him,”* WASHINGTON POST, May 23, 1906, at 3. Significant—although not daily—coverage also appeared in the *Chicago Tribune* and the *Atlanta Constitution*.

6. *Following the Insanity Experts*, Editorial, N.Y. TIMES, July 11, 1906, at 6; Editorial, N.Y. WORLD, June 2, 1906, at 6.

in motion a chain of events that eventually undermined the “unwritten law” that had shaped American legal culture during the nineteenth century.

### I. “A LIFE OF DRUDGERY AND ABUSE”<sup>7</sup>

Josephine Pullare was born on April 21, 1889, in the Sicilian town of San Stefano.<sup>8</sup> Her father, by various accounts a drunkard and a ne’er-do-well, died when she was four. Approximately five years later, her mother arranged for a family friend, Guiseppi Raina, to bring the girl to live with her aunt and uncle in the Williamsbridge section of the Bronx. Gaetano Riggio, who was also Josephine’s godfather, operated a lucrative bakery in the basement of his two-story frame home at 110 East 220th Street from which he supplied bread to various “road houses and hotels” in the neighborhood.<sup>9</sup> He and his wife, Concetta, also operated a rooming establishment that at times boarded between eleven and twenty tenants.<sup>10</sup> Josephine’s aunt and uncle welcomed her at Ellis Island with kisses, and her first few months with her family in New York were “very pleasant;”<sup>11</sup> she attended school regularly and even enjoyed church services on occasion.<sup>12</sup> Yet after about six months, the Riggios’ attitude toward their niece altered drastically.<sup>13</sup> They refused to allow her to attend school and instead compelled her to do “all the housework” for the family and their tenants.<sup>14</sup> This “washing, scrubbing and ironing” often lasted from four a.m. until mid-

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7. This phrase is from *Says God Cried “Kill,”* N.Y. TRIB., May 23, 1906, at 12.

8. Her date of birth and maiden name are drawn from the death certificate issued on July 16, 1981, in San Angelo, Marin County, California. Some discrepancy exists as to the spelling of her maiden name. The *N.Y. Herald* refers to Josephine’s mother as “Mrs. Theresa Pullare;” see *Sees Fatal Knife in Murder Trial*, N.Y. HERALD, May 17, 1906, at 22. The *Brooklyn Daily Eagle* refers to Josephine as “Josephine Pullari Terranova;” see also BROOKLYN DAILY EAGLE, Feb. 24, 1906, at 2. I have chosen the death certificate orthography. No transcript survives from the *Terranova* trial. The account of Josephine’s childhood and of the crime is a composite of her testimony as it appeared in and was reported by the *N.Y. Times*, the *N.Y. Evening Post*, the *N.Y. World*, the *N.Y. Herald*, the *N.Y. Sun*, the *N.Y. Tribune*, the *Brooklyn Daily Eagle*, the *Trenton Times*, the *Philadelphia Inquirer*, the *Boston Herald*, the *Baltimore Sun*, the *Chicago Tribune*, the *Washington Post* and the Italian-language *L’Haraldo-Italiano*.

9. *Stabbed Aunt and Uncle Who Forced Her to Wed*, BROOKLYN DAILY EAGLE, Feb. 23, 1906, at 3.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

night.<sup>15</sup> Josephine was never permitted to leave the house or to play with other children; she was beaten severely, often with a stick, for such minor infractions as speaking in English or talking with the boarders.<sup>16</sup> Often she was given very little to eat—"generally what was left when the rest had been fed"—and she was also denied necessary medical care on at least one occasion.<sup>17</sup> Yet the ultimate indignity did not occur until she reached the age of eleven, when her aunt "carried her from her bed to her uncle's."<sup>18</sup> If we are to believe Josephine's testimony, this sexual abuse continued until her marriage.<sup>19</sup>

It is unclear to what extent the adolescent Josephine even understood that her uncle's treatment of her was wrong. In January of 1905, she apparently asked her maternal aunt, Marie De Angelo, for advice about what to do when her uncle was "teasing her" and "trying to kiss her;" then she begged the aunt "not to say anything to anyone" about her secret.<sup>20</sup> Of course, Marie De Angelo did tell her husband, and the couple immediately paid a visit to the Riggio residence. Guiseppe De Angelo concealed an axe under his jacket. When De Angelo demanded to know if Riggio had "insulted" the girl, the baker insisted that he had done no such thing.<sup>21</sup> Much shouting ensued. Riggio finally demanded that Josephine explain what she had told Marie De Angelo, but the terrified girl responded by denying that she had ever made such an accusation. Shortly thereafter, Riggio adopted new tactics to frighten his niece into silence. He wrote himself threatening letters purportedly from the "Black Hand," a secret terrorist organization associated with the Mafia and the Camorra that extorted money from the businesses of Italian immigrants.<sup>22</sup> Josephine believed that Riggio had even arranged for one of his enemies to be dropped into the river.<sup>23</sup> By this time, Josephine's own mother had moved from Italy to 124 Sheriff Street on the Lower East Side of Manhattan, but Gaetano Riggio refused to let his niece live with her; in fact, he agreed to

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15. *Id.*

16. *Id.*

17. *Id.*

18. "Kill Your Uncle," *Said Voice*, N.Y. SUN, May 23, 1906, at 1.

19. *Stabbed Aunt and Uncle Who Forced Her to Wed*, BROOKLYN DAILY EAGLE, February 23, 1906, at 3.

20. *Girl On Trial For Life Will Testify Today*, N.Y. WORLD, May 18, 1906, at 18.

21. *Id.*

22. *Say Girl Was Sane When She Killed*, N.Y. WORLD, June 1, 1906, at 18.

23. *Id.*

board another daughter, ten-year-old Rosina.<sup>24</sup> Riggio apparently began to sexually abuse the younger sister shortly after her arrival; the availability of a new girl may have played a role in his decision to marry-off Josephine.<sup>25</sup> Whatever his motives, Riggio soon arranged for the engagement of his niece to Joseph Terranova, a modestly well-off Brooklyn contractor.<sup>26</sup> Terranova had actually encountered the girl on many occasions over the preceding five years, but the Riggios' strict prohibition against speaking to men kept the two from becoming acquainted. Whether Josephine had consented to the engagement remains uncertain. Her husband told the police that the girl was "really forced to marry," and that "she was in a condition that justified the conclusion that her uncle had an object in coercing her into becoming a bride," presumably a reference to pregnancy.<sup>27</sup> In any event, Josephine appears to have told her aunt that she liked Terranova "very much."<sup>28</sup> She certainly made no open objections to the marriage plans. The couple were married in a civil ceremony on January 28, 1906, and in a religious ceremony three days later.<sup>29</sup> Josephine continued to live with the Riggios during the interim. She worked until ten o'clock p.m. on the evening before her civil marriage ceremony at City Hall, and shared her uncle's bed the night after.<sup>30</sup>

Joseph Terranova moved his bride to his home at 1491

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24. It is not entirely clear that Josephine's mother, Theresa, was either desirous or economically capable of raising Josephine. The *New York Sun* reported that after the allegations of incest and abuse became public, "she went to her mother, who had heard the story, but the mother wouldn't have anything to do with her because she had two daughters at home." *"Kill Your Uncle," Said Voice*, N.Y. SUN, May 23, 1906, at 1.

25. *Id.*

26. Joseph Terranova's economic circumstances remain ambiguous. The *Brooklyn Daily Eagle* described him as a "prosperous Brooklyn contractor." *Terranova Murder Trial: Brooklyn Girl-Wife Assists Her Counsel in the Selection of a Jury*, BROOKLYN DAILY EAGLE, May 17, 1906, at 1. But Terranova himself told a reporter for the *New York World*: "I want to tell you one thing. Some people say I spend no money for her lawyer. How can I? I had only \$1,500. I spent all that for our flat and to buy her clothes—her uncle and aunt gave her nothing. How can I get a lawyer when I have no money?" *Girl Wife On Trial For Her Life, Her Husband, and Eleven of the Jurors Who Will Determine Her Fate*, N.Y. WORLD, May 16, 1906, at 20.

27. *Stabbed Aunt and Uncle Who Forced Her to Wed*, BROOKLYN DAILY EAGLE, Feb. 23, 1906, at 3.

28. *"Kill Your Uncle," Said Voice*, N.Y. SUN, May 23, 1906, at 1.

29. Some tension over the incestuous relationship and the marriage must have existed between the Riggios themselves, because Josephine testified that at the wedding Concetta Riggio had knelt down and prayed: "Dear Lord, let them both die before they get home." *Voices Cried 'Kill' Says Girl Slayer*, BOSTON HERALD, May 23, 1906, at 4.

30. *Stabbed Aunt and Uncle Who Forced Her to Wed*, BROOKLYN DAILY EAGLE, February 23, 1906, at 3.

Herkimer Street in the Broadway Junction section of Brooklyn, but the couple's marital happiness was fleeting. They had been living together less than two weeks when they paid a visit to the Riggios, and Gaetano alluded to his relations with his niece. As soon as the couple returned home, the young husband confronted his new wife. Josephine immediately related her tale of abuse and degradation. Informing her that he could not live with her and that she "was no longer his wife," Terranova retreated to the downstairs apartment of his married sister, Margaret Farrallo.<sup>31</sup> It was this sister-in-law who cared for Josephine during the following ten days of hysteria and heartbreak when the girl began to hear the ringing of bells, buzzing, and an imaginary voice in Italian.<sup>32</sup> She believed this voice to be the voice of God. When it commanded her to kill her uncle, she purchased a revolver and a long potato knife at a Park Row pawnshop and went in search of Gaetano Riggio. On the way to his home, she ran into her husband's brother, Charles, and dramatically gave him her wedding ring to return to Terranova.

The final confrontation between uncle and niece occurred at seven-thirty on the evening of February 22, 1906. When Josephine arrived at the Williamsbridge bakery, Gaetano Riggio immediately ordered her upstairs to assist her aunt. She replied—allegedly at the behest of God's voice—by calling him "a traitor."<sup>33</sup> "You are an outcast!" the baker shouted back at her.<sup>34</sup> The conflict soon proceeded up the steps into the dining room, where Josephine drew the knife from her skirt and stabbed her uncle three times. When her aunt attempted to intervene, Josephine stabbed her twice as well. Then she brandished the revolver and was preparing to shoot the injured couple when one of Riggio's drivers, Dominic Ciccio, responded to the aunt's screams and attempted to disarm Josephine.<sup>35</sup> Two shots were discharged in the ensuing struggle before Josephine fled down the stairs and into the nearby woods. The couple's wounds proved fatal. Gaetano died at Fordham Hospital on February 24th; Concetta lingered on until March 2nd. Meanwhile, Josephine managed to hide out for nearly thirty-six hours while being sought by the authorities. She eventually was apprehended at

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31. *Josephine Terranova Tells Her Life Story*, BROOKLYN DAILY EAGLE, May 22, 1906, at 1.

32. *Voice Said, "Kill Him,"* WASHINGTON POST, May 23, 1906, at 3.

33. *"Kill Your Uncle," Said Voice*, N.Y. SUN, May 23, 1906, at 1.

34. *Tells of Voice that Said Kill Your Uncle and Aunt*, N.Y. HERALD, May 23, 1906, at 5.

35. *Id.*

her mother's house in Manhattan—where, in a powerful indication of early twentieth century society's attitude toward women and crime, she was permitted to bathe and comb her hair before being conducted to her jail cell in the Tombs.<sup>36</sup> District Attorney William Travers Jerome quickly brought her case before a grand jury and she was indicted for both murders on March 21, 1906.<sup>37</sup>

## II. "ELECTRICITY AND NEEDLE"<sup>38</sup>

The prosecution team, led by Assistant District Attorney James R. Ely, decided that they had a stronger case in the murder of Concetta Riggio and opted to try Josephine for this crime first. Former Republican City Court Judge John Palmieri acted as counsel for the defense. The trial opened on Monday, May 14, 1906, in the courtroom of Justice Francis M. Scott on Franklin Street in the Five Points section of Manhattan. Several hundred men and more than forty women were in attendance. Some were friends and family of the accused or members of the tightly-knit Italian immigrant community, including a sizeable number of Italian-American women who publicly championed Josephine's cause, and many curiosity-seekers who wanted a peek at the "pretty little Italian girl" whom the papers referred to as a "black-eyed beauty."<sup>39</sup> Josephine's appearance and her attire, always "the same gray tailor-made suit she had on yesterday with black gloves," were themselves front-page material.<sup>40</sup> Her equanimity in the face of possible exe-

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36. While in the Tombs, Josephine shared her living quarters with Frenchwoman Bertha Claiche, the accused killer in the period's other sensational murder case with a female defendant. Claiche was charged with conspiring with New York City police officer Harry Morton to murder her lover, Emil Gendron. She claimed self-defense and was the beneficiary of "a certain maudlin sentiment which prevailed and which was backed up by popular clamor." But the state initially prosecuted her for first-degree murder with the intention of seeking the death penalty. Assistant District Attorney James R. Ely, who would soon present the state's evidence against Josephine Terranova, tried the case. But the state and the public appeared uneasy with the prospect of executing a woman, and Claiche was allowed to plead guilty to manslaughter. She was sentenced to 2 1/2 to 4 years at Auburn Prison. *Bertha Claiche on Trial for Murder of Gendron*, BROOKLYN DAILY EAGLE, Feb. 26, 1906, at 20; *Claiche Girl Sentenced*, N.Y. TRIB., June 5, 1906, at 5.

37. Although the trial transcript has not survived, the indictment papers have. They are available at the New York City Municipal Record Archive, indictments #54656 and #54657.

38. This phrase is taken from *Insanity Tests Start Tears of Terranova Girl*, N.Y. WORLD, May 28, 1906, at 4.

39. *Stabbed Aunt and Uncle Who Forced Her to Wed*, BROOKLYN DAILY EAGLE, Feb. 23, 1906, at 3.

40. *Selecting Terranova Jury*, BROOKLYN DAILY EAGLE, May 15, 1906, at 1.

cution filled columns of newsprint. Josephine appeared “calm and unemotional” through much of the trial. “But as for composure,” wrote the *New York World*, “no one else in the room could compare with her;” she even yawned while one of the prosecution’s chief witnesses described the murder scene.<sup>41</sup>

Josephine readily admitted to having stabbed her aunt and uncle. Yet in doing so, she insisted that she had “obeyed the order of Heaven.”<sup>42</sup> To the press this meant she had obeyed the Victorian era’s “unwritten law” that justified homicide in defense of honor. The *New York World* reported that Josephine “comes from Sicily, from a community in which for many generations private vengeance is the higher law.”<sup>43</sup> “According to the code of her country,” opined the *Brooklyn Daily Eagle*, “there was nothing left for her to do but to seek revenge on the man whom she held responsible for her trouble.”<sup>44</sup> Such a “higher law” was often the grounds for acquittal in the Italian judicial system of the era.<sup>45</sup> Yet this “unwritten law” must have held at least some appeal that transcended ethnicity, for the *Eagle* also noted that when Josephine told of her abuse at the hands of her aunt and uncle, “people in the court room wondered why she had not killed them years before.”<sup>46</sup> Of course, avenging one’s honor was not a legitimate cause for acquittal in New York State Criminal Court. Instead, ex-Judge Palmieri defended his client on the grounds of temporary madness. Josephine had “the taint of hereditary insanity,” claimed the defense attorney; the murders occurred because years of abuse had exacerbated her underlying predisposition.<sup>47</sup> The paradox here was lost upon no one: if the girl’s treatment were such that any normal person would respond with violence, then her behavior could not be considered

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41. *Yawns As Story of Her Murders is Told in Court*, N.Y. WORLD, May 17, 1906, at 18.

42. *Say Girl Was Sane When She Killed*, N.Y. WORLD, June 1, 1906, at 18.

43. *Husband Says Girl Wife Did Right to Kill*, N.Y. WORLD, May 16, 1906, at 20.

44. Widely-held beliefs regarding the Italian criminal justice system also played into stereotypes about Italian-American attitudes toward “unwritten law.” *The American Review of Reviews*, for example, printed an editorial quoting Italian Senator Signor Garofalo as saying: “Here in Italy a murder arouses indignation only if the motive happens to be a base one, or if the delinquent happens to cut a vile or contemptible figure.” *Sentimentality in Murder Trials—An Italian View*, AM. REVIEW OF REVIEWS, Nov. 19, 1908, at 608.

45. *Id.* at 607.

46. *Josephine Terranova Tells Her Life Story*, BROOKLYN DAILY EAGLE, May 22, 1906, at 1.

47. *Hereditary Insanity; Terranova Defense*, BROOKLYN DAILY EAGLE, May 21, 1906, at 1.

insane. Josephine insisted on her own sanity. If the law did not condone her behavior, then the law itself conflicted with morality. But Palmieri did not dare challenge the authority of the murder statute, so his next best choice was to cloak his “unwritten law” defense under the guise of psychiatric diagnosis.<sup>48</sup>

The defense rested its claim of insanity both upon Josephine’s family and personal histories and upon the expert testimony of leading alienists. A widespread turn-of-the-century belief that the “mental types” of alien immigrants “fell below average” probably added to the plausibility of Palmieri’s claims.<sup>49</sup> The defense counsel may also have benefited from the writings of Italian criminologist Cesare Lombroso, whose theory connecting physiognomy and behavior was widely believed at the time; the *New York World* reported that Josephine’s jutting cheek bones were associated with “the ability to do acts of great violence.”<sup>50</sup> Inside the courtroom, a parade of witnesses, including Josephine’s ailing mother, testified that the girl’s father and all four of her grandparents were “addicted to drink.”<sup>51</sup> Five of her eight siblings had “died of convulsions.”<sup>52</sup> Josephine herself had been subject to these “convulsions” and often “they lasted for hours.”<sup>53</sup> Dr. Herman Appel testified that he had treated Josephine’s mother for epileptic fits. John Giantapifta, a local barber, offered a detailed account of how he had witnessed Josephine’s elder sister “taken with a fit on the stairway.”<sup>54</sup> Adele Vasta, a Catholic parish missionary, told of how she

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48. Martha Merrill Umphrey, *The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law and Narratives of Criminal Responsibility*, 33 *LAW & SOC’Y REV.* 393 (1999), attempts to make sense of the narrative discourses surrounding honor and insanity at the Harry K. Thaw Trial. She suggests that the spectacular trials of this period reflected a “crisis in the law of criminal responsibility” that reflected “a broad set of conversations about social norms and relations, cultural codes and nodes of resistance.” *Id.* at 419. She may indeed be correct—although much more work is needed to understand the exact nature of this society’s transformation from one that accepted unwritten law to one that rejected it. Here I argue that the *Terranova* trial not only reflected this conflict between Victorian honor and Progressive expertise, but also played a critical role in shaping this discourse.

49. *Increase of Insanity*, Editorial, *BROOKLYN DAILY EAGLE*, Feb. 26, 1906, at 4. An excellent analysis of the perceived association between immigration and mental incapacity can be found in DIANE B. PAUL, *CONTROLLING HUMAN HEREDITY* 97-114 (1995).

50. *Trial For Life a Dull Drama to Girl Slayer*, *N.Y. WORLD*, May 15, 1906, at 18.

51. *Terranova Defense On*, *N.Y. TRIB.*, May 19, 1906, at 4.

52. *Id.*

53. *Id.*

54. *Hereditary Insanity; Terranova Defense*, *BROOKLYN DAILY EAGLE*, May 21, 1906, at 2.

had called upon Josephine in her cell to give her "religious consolation" and of how the girl had hung her apron on the wall to cover "her uncle's spirit" that "had appeared to her in the night."<sup>55</sup> However, the capstone of Palmieri's case was the evidence of four prominent medical authorities. Dr. Henry Tyson, an oculist at the College of Physicians and Surgeons, examined the defendant's eyes and discovered "an abnormal twitching" and "an abnormal affection of the pupil of the right eye" that one "usually associated with cases of mental disorder."<sup>56</sup> Dr. Burton Evans, the superintendent of the New Jersey State Hospital at Morris Plains, told of his examination of the defendant during which Josephine spoke of her aunt appearing to her as a butterfly and her uncle "in the form of a worm."<sup>57</sup> Evans told of how "he had pricked her with pins and touched her with hot irons" during his examination in order to prove that certain parts of her body were not susceptible to pain.<sup>58</sup> He relied on twenty years of psychiatric practice to pronounce the girl "unsound" and "absolutely not" capable of faking insanity.<sup>59</sup> Dr. L. Pierce Clark of the New York University Medical College spoke of an abnormal heart that offered evidence of "a heredity basis for the development of insanity" that must have been aggravated by her years of abuse.<sup>60</sup> Finally, Dr. Graeme Hammond, another leading alienist, testified that Josephine "did not have the power of distinguishing right from wrong" when she committed the crime.<sup>61</sup> A leading newspaper poked fun at Palmieri's handling of these experts, particularly one ten-thousand word hypothetical question that "was the longest ever framed in a case of this kind" and lasted more than an hour.<sup>62</sup> Yet far more "genuine surprise" was expressed at the assertions of the defense psychiatrists that Josephine had remained insane during her testimony. "To an untrained observer," wrote the *Boston Herald*, "she gave no indication of mental unsoundness, but was rather quick witted . . . Nor did she appear other than sane as she heard physicians declare that,

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55. *Stares at the Girl From Wall of Cell*, ATLANTA CONST., May 24, 1906, at 1.

56. *Terranova Girl Insane, Says Dr. Burton Evans*, BROOKLYN DAILY EAGLE, May 23, 1906, at 1.

57. *Id.*

58. *Experts Say Girl's Insane*, N.Y. SUN, May 24, 1906, at 3.

59. *Terranova Girl Insane, Says Dr. Burton Evans*, BROOKLYN DAILY EAGLE, May 23, 1906, at 1

60. *Experts Say Girl's Insane*, N.Y. SUN, May 24, 1906, at 3.

61. *Terranova Defense Closed By Palmieri*, BROOKLYN DAILY EAGLE, May 24, 1906, at 3.

62. *Testify Terranova Girl Is Incurable*, BOSTON HERALD, May 24, 1906, at 4.

not only was she insane, but incurable.”<sup>63</sup>

The first rebuttal witness in the prosecution’s army of experts clouded the court’s understanding of Josephine’s mental state even further. Dr. Francis McGuire, a physician at the Tombs, explained that he had used Josephine as an interpreter to communicate with inmates who spoke only Italian. She managed this task well—an indication of mental competence. At the same time, McGuire scored for the defense with his observation that circumstances of Josephine’s life caused her to not understand the immoral actions she had taken. This surprise testimony apparently forced the prosecution, already on the defensive, to change tactics entirely. District Attorney Jerome made an unexpected motion to put the trial on hold while a commission of experts examined the current mental competence of the defendant. If this were not a case of mere *temporary* insanity and if Josephine was still insane at the present time, argued Jerome, it would be unreasonable to continue the trial. Palmieri viewed the District Attorney’s maneuver as an effort to let him ‘down easy.’<sup>64</sup> Justice Scott granted the motion over the defense counsel’s desperate objections. The so-called “lunacy commission” consisted of leading physicians Louis Balch, William Martin and Edward L. Parish. Josephine “objected very strongly to the examination of the specialists”—“she crouched in the farthest corner of her cell and begged to be let alone”—and the panel needed to use “a considerable degree of moral suasion” to compel her to undergo its probing.<sup>65</sup> A brief account of one battery of these tests, this one by prosecution expert Alan McLane Hamilton, may help explain why:

Dr. Hamilton applied an electrical test. He removed the globe from an incandescent lamp and attached a coil of wire to a dampened sponge, which he applied to the girl’s face and hands. Dr.

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63. *Id.* at 4. The precise definition of criminal insanity was itself in flux during this period. The traditional rule—“that a defendant was to be considered responsible if he was aware of the nature and consequences of his act and knew it to be forbidden by law”—was formulated for the trial of M’Naughten by the judges of the Queen’s Bench in England in 1843. The M’Naughten rule had been widely adopted in the United States, but by the late nineteenth century had come under attack. Some courts interpreted its guidelines more broadly than did others. The best source on the history of the insanity defense during this period is CHARLES E. ROSENBERG, *THE TRIAL OF THE ASSASSIN GUILTEAU* (1968).

64. *Terranova Trial Stops to Test Girl’s Sanity*, *BROOKLYN DAILY EAGLE*, May 25, 1906, at 1.

65. *Josephine Terranova Scared by the Doctors*, *BROOKLYN DAILY EAGLE*, May 26, 1906, at 1.

Clark, the expert for the defense, looked on, but Dr. Hamilton did not communicate to his fellow-scientist what conclusions he reached from this or subsequent tests. Continuing the neurasthenic investigation, the doctor pricked the girl's cheeks with a needle. The right cheek appeared to be insensible to the pain of this process, - as the girl, blind-folded, gave no sign of feeling. But when the left cheek was pricked[,] she jerked her head back and made an exclamation. Then the doctor commanded her to lift her skirts, and applying a thin steel bar to the lower part of her leg, he tapped sharply with a piece of stone, or something that looked like stone, with a sharp point, just above the ankle.<sup>66</sup>

These tests continued over a period of seventy-two hours; at least eleven physicians and psychiatrists offered evidence to the commission.<sup>67</sup> When Josephine next appeared in court, she "presented a pathetic sight"—her nerves were "almost shattered" as a result of the suffering she experienced "at the hands of the alienist who stuck needles into her face and body" and her left cheek was "highly inflamed and swollen;" the *Philadelphia Inquirer* worried that "blood poisoning may ensue."<sup>68</sup> Yet what drew significantly more public attention than Josephine's physical suffering was the inability of the prosecution's own experts to agree upon the girl's mental state. Hamilton concluded that Josephine was "practically insane" and "unable to go on with her trial and consult intelligently with her counsel," while Drs. Carlos McDonald and Austin Flint attested to her present sanity.<sup>69</sup> Meanwhile, one of the defense's star witnesses, Dr. Graeme Hammond, who had previously told the court that the girl was insane at the time of the murders, testified before the commission that she "was now rational enough to understand the proceedings of the trial."<sup>70</sup> All of this confusion delayed the proceedings several days. During one interview, Dr. Hamilton

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66. *Insanity Tests Start Tears of Terranova Girl*, N.Y. WORLD, May 28, 1906, at 4. I have eliminated the paragraph breaks for convenience.

67. A twelfth, Edward G. Craigin, a "gynecological expert" at the College of Physicians and Surgeons, was denied access to Josephine after Palmieri objected to his examination. Craigin was "a bustling little man and carried in his hand a small black bag;" when he announced his intention to conduct a "minute examination" in an ante-room, Josephine herself "sprang to her feet" and objected. *Terranova Commission Slow in Its Work*, BROOKLYN DAILY EAGLE, May 27, 1906, at 8. Josephine later refused to be examined by the defense's own expert gynecologist, Dr. Kingsland B. Page. For an excellent discussion of attitudes toward gynecology in New York during this time period, see REGINA MORANTZ-SANCHEZ, *CONDUCT UNBECOMING A WOMAN* (1999).

68. *Terranova Girl in Pitiable Shape*, PHILA. INQUIRER, May 29, 1906, at 6.

69. *Id.*

70. *Josephine Terranova Scared by the Doctors*, BROOKLYN DAILY EAGLE, May 26, 1906, at 1.

asked Josephine: "What is this trial about?" She answered: "I think it is to let the doctors talk."<sup>71</sup> The public most likely agreed. When the commission finally ruled that Josephine was presently sane, thus permitting the trial to continue, Palmieri must have sensed the jury's frustration with the psychiatric profession. He had initially constructed much of his case around expert testimony, and even several of the prosecution's psychiatric witnesses seemed to favor his side. Yet in his closing argument he unexpectedly urged the jurors to "throw out all the testimony of the experts" and to "judge of the facts" for themselves.<sup>72</sup>

This protracted conflict among the medical authorities produced a backlash outside the courtroom as well. Some question arose at the trial as to whether Josephine might be faking her hallucinations. Dr. Flint characterized them as "shams" and Dr. Hamilton testified that he "did not regard them as real."<sup>73</sup> All of the other experts for both prosecution and defense believed these voices and visions to be genuine.<sup>74</sup> The *Terranova* case was still fresh in the public's mind less than one month later when Martin J. Tighe, sent to an asylum after the murder of his wife in 1901, revealed that he had managed to fool the psychiatric experts for over five years in order to avoid trial.<sup>75</sup> The *New York Times* used this disclosure to blast the use of expert testimony in the *Terranova* case. After observing that "the science of the alienist is notoriously not an exact science," the *Times* argued:

The result in that case was, of course, a direct encouragement to the resort to the insanity defense in other cases. It has become a public scandal. A man who with proved deliberation and planning has slain a fellow-being ought, if the laws of New York are

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71. *Declares Girl Sane*, N.Y. TRIB., May 29, 1906, at 4.

72. "Not Guilty," *Says Jury, for Terranova Girl*, BROOKLYN DAILY EAGLE, June 11, 1906, at 1.

73. *See Point for Terranova Girl*, N.Y. SUN, May 25, 1906 at 4; *Dr. Hamilton on Delusions*, N.Y. POST, May 31, 1906, at 2.

74. Dr. John T. Weeks, an eye specialist, offered a diagnosis of Josephine that was at least in part medical rather than psychiatric. He suggested that "scars on the membrane of her right ear, due to previous inflammation . . . probably accounted for the ringing and buzzing sounds which she accredited to supernatural sources." *Declares Girl Sane*, N.Y. TRIB., May 29, 1906, at 4. It is possible that some sort of scarring might also account for Josephine's lack of sensation on the right side of her face.

75. After five years at the Asylum for the Criminal Insane at the Mattewan asylum, Tighe decided that he "preferred a long sentence in Sing Sing with freedom afterward" to indefinite confinement at the psychiatric facility. He eventually pled guilty to manslaughter. *See A Defense Like Thaw's*, N.Y. TIMES, July 3, 1906, at 2; *For A Standing Board of Insanity Experts*, N.Y. TIMES, July 12, 1906, at 7.

to be respected, to be put to death by the executioner. But lawyers flock to his side, experts are hired by the tens and fifties, family history is searched for the "taint," the minds of the jury are confused by listening to complex hypothetical questions, the experts gravely offer their so-called professional opinions, until the courtroom atmosphere becomes so surcharged with uncertainty and doubt that the jury, bewildered and very much at sea, hesitating to send the prisoner to his death, takes the short and easy way out of the trouble by acquittal or conviction of a crime of lower degree. It is a scandal to which the courts should put an end.<sup>76</sup>

After the *Terranova* case and Tighe disclosure, members of both the medical and legal professions brought forth proposals for reform. One of these, touted by Dr. Hamilton and endorsed by a committee of the New York State Bar Association in 1908, called for the appointment of a "permanent board of experts."<sup>77</sup> This plan was endorsed both by former Assistant District Attorney John F. McIntyre, who according to the *New York Times* had "probably prosecuted more murder cases where insanity was set up as a defense than any other lawyer in this State," and by attorney Abraham Levy, "of whom his associates say that he has appeared for the defense in a greater number of murder cases where the plea of insanity has been entered than any other living lawyer in the country."<sup>78</sup> The commission they advocated was to be composed of ten or more members from which experts were to be drafted for any given case. They were to "draw a fixed salary from the State and not be permitted to receive outside fees or retainers"—this to ensure impartiality.<sup>79</sup> Compensation for expert witnesses was itself a

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76. *Fooling the Insanity Experts*, N.Y. TIMES, July 11, 1906, at 6.

77. Dr. Allan McLane Hamilton, *Why Experts Are Discredited*, N.Y. SUN, April 16, 1907, at 8. See also Alphonso T. Clearwater, *Medical Expert Testimony*, NORTH AM. REV. 821, 821-830 (1909). Clearwater also chaired the Bar Association's committee.

78. *For a Standing Board of Insanity Experts*, N.Y. TIMES, July 12, 1906, at 7. See also Allan McLane Hamilton, *Expert Testimony: Dr. Hamilton Defends It and Censures The Newspapers*, N.Y. TIMES, July 18, 1906 (arguing for tighter regulation and control of medical experts; he believed the courts needed more expertise rather than less):

[a]s to the alleged abuse of expert testimony in courts generally, it may be said that there are all kinds of doctors as well as lawyers, and that there is not a standard of conscience or education. Many of us have recognized the growing evil which attends the indiscriminate hiring of men with bad reputations and without adequate knowledge of their profession, who, in fact, are not experts at all, and who are willing to build up theories or break down histories of actual insanity for pay, and it is not difficult to find the reason for all this.

79. *For a Standing Board of Insanity Experts*, N.Y. TIMES, July 12, 1906, at 7.

highly charged subject in the wake of the *Terranova* trial. The combined bills sent to the state by various physicians and psychiatrists after that trial totaled “the respectable aggregate of \$5,955.”<sup>80</sup> Maybe both this cost and general frustration with the uncertainties of psychiatric testimony drove others to argue for the elimination of alienist experts from the courtroom entirely. The Majority Leader in the New York State Assembly, Sherman Moreland, introduced such a bill to the legislature in early 1907.<sup>81</sup> Josephine Terranova’s case was also an integral part of the backdrop against which Progressives such as legal scholar Edwin R. Keedy and psychiatrist William A. White sought to reform the insanity defense in the early 1910s.<sup>82</sup>

### III. “VERDICT OF THE ‘TWELVE FATHERS’”<sup>83</sup>

The lunacy commission’s finding placed Josephine’s fate in the hands of the jury. These twelve men were themselves the subject of much public interest and scrutiny;<sup>84</sup> they momentarily became ce-

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Such a system was modeled upon the “lists of experts” used to appoint commissions that existed at that time in both France and Germany.

80. *Experts Got \$1,000,000 In a Few Murder Cases*, N.Y. TIMES, July 14, 1906, at 7. The breakdown included \$1,695 for Dr. Carlos McDonald, \$1,470 for Dr. Allan Hamilton and \$1,440 for Dr. Austin Flint. These figures were actually dwarfed by the \$66,000 the state spent in the Roland Mollineux case and the approximately \$100,000 paid to experts in the trial of Albert T. Patrick, but the *Terranova* expenditures drew considerable public attention. A person “closely in touch with the working of the courts of criminal jurisdiction” told the *Times*: “I can hardly think of an item of expenditure which, judging from the results achieved, seems less justified.” *New Life for Terranova Girl*, N.Y. TIMES, June 12, 1906, at 10. In contrast, ex-Judge Palmieri received only the \$500 allotted by the court for his services. He told the *New York Tribune* that all of this money “went in fees and expenses for the experts,” leaving him “a little out of pocket.”

81. *Against Insanity Experts*, N.Y. TIMES, April 13, 1907, at 3. Moreland introduced the bill entitled “An act to amend the code of criminal procedure relative to testimony as to the sanity or insanity of defendant” on April 15, 1907. The bill was printed as number A. 2321. It was sent to the Assembly’s Codes Committee, reported on April 25 and recommitted on May 14—where it apparently died in committee. See also N.Y. Legislative Index for 1907.

82. Janet A. Tighe, *Be It Ever So Little: Reforming the Insanity Defense In the Progressive Era*, 57 BULL. OF THE HIST. OF MED. 397, 397-411 (1983) (analyzing the effort to reform criminal insanity defenses between 1911 and 1922). See also Janet A. Tighe, *The New York Medico-Legal Society: Legitimizing An Unstable Union*, 9 INT. J.L. & PSYCHIATRY 231, 231-43 (1986) (discussing broadly the complex relationship between the medical and legal professions during the Progressive Era).

83. *‘Not Guilty,’ Says Jury, For Terranova Girl*, BROOKLYN DAILY EAGLE, June 1, 1906, at 1.

84. The jury pool was entirely male. New York State did not permit women to serve on juries until 1939 and did not repeal a statute granting women an automatic exemption from duty until 1975.

lebrities in their own right—most likely a first in the history of criminal proceedings in New York City. The *New York World* even ran a four column pictorial of Josephine and her husband surrounded by “the jurors who will decide her fate;” the Italian-language press also devoted considerable attention to the identities and backgrounds of the jurors.<sup>85</sup> Ex-Judge Palmieri refused to accept any jurors who weren’t “married men, with daughters,” under the belief that these family men would be more sympathetic toward Josephine. The court seated only seven of twenty-six talesmen on the first day of the *voir dire*; a surprisingly long three days were required to complete the selection process. The final panel included two builders, two brokers, two salesmen, a clerk, a restaurant employee, a flour merchant, a pensioner, and a retired manufacturer of handkerchiefs. Factory owner Owen T. Bugg, “a large man, somewhat more than fifty years old” with a gray mustache and “kindly aspect,” served as foreman.<sup>86</sup> Josephine herself took an active role in selecting the panel and Palmieri conferred with her before passing judgment on each prospective juror. The defense was apparently highly satisfied with the panel that was finally chosen. “All good men, kind men,” Josephine told the *New York World*. “I like all these men because they look so gentle. They have daughters. They know what a poor girl must do when treated so bad.”<sup>87</sup>

Josephine’s appearance and demeanor probably drew as much sympathy from this “jury of fathers” as did her tragic history. Many newspaper accounts emphasized her beauty. The seventeen-year-

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85. *Girl Wife On Trial For Her Life, Her Husband, and Eleven of the Jurors Who Will Determine Her Fate*, N.Y. WORLD, May 16, 1906, at 18. The photographs ran on the final morning of the jury selection process and the final juror, John T. Gibbons, had not yet been selected. See also *Processo Terranova*, L’HARALDO ITALIANO, May 17, 1906, at 1.

86. Bugg lived at 149 West 61st Street. In addition to Bugg, the other jurors were Reuben Krause of 78 West 131st Street, Ambrose Shea of 507 West 158th Street, James S. Dale of 563 Walton Ave., Thomas A. Longhurst of 135 West 56th Street, Charles W. Wilden of 117 West 64th Street, John J. McDonald of 680 East 186th Street, Samuel G. Hamilton of 155 West 18th Street, Henry F. Bruning of 7th Ave. at 116th Street, Frank L. Brooks of 25 Sheridan Avenue, Augustus C. Foster of 110 West 107th Street and John T. Gibbons of 331 East 57th Street.

87. *Husband Says Girl Wife Did Right to Kill*, N.Y. WORLD, May 16, 1906, at 20. It is not entirely clear that all twelve jurors had daughters. At one point Josephine says: “They all have daughters except two and they all have sisters.” But the *Baltimore Sun* wrote that the jury consisted of “only married men with daughters . . . with a single exception.” *Jury of Fathers Acquits*, BALTIMORE SUN, June 2, 1906, at 11. The *New York Tribune* wrote: “Every member of the jury is the father of one or more daughters.” *Terranova Case Begun*, N.Y. TRIB., May 17, 1906, at 14.

old possessed “great, clear, dark eyes” set under “delicately curved brows” and “a round, smooth, full white throat—the typical throat of a singer;” her figure too was “rather graceful.” The *Brooklyn Daily Eagle* thought her “bright and rosy,” but the *New York World*—conceding that Josephine was pretty—lamented that she was “a trifle too heavy.”<sup>88</sup> Prior to her testimony, most press accounts of Josephine were negative; she was widely perceived to be an “unfeeling animal creature” who was “altogether unmoved” by bloodshed.<sup>89</sup> Yet Josephine’s account of her suffering radically transformed this public persona and the papers soon devoted nearly as much time to *how* she told the story as to the story itself. They depicted a girl who was innocent, bashful and sweet. “Except when she became animated and excited,” reported the *Washington Post*, “her voice was soft, even musical.”<sup>90</sup> The *New York Herald* noted that her “cheeks tinged with flush” as she told her tale in “low and musical” tones.<sup>91</sup> The *Eagle* suddenly discovered “something very human and intensely appealing about her.”<sup>92</sup> The turning point in the media’s attitude toward the girl may have been the dramatic moment when she cut short her description of the indignities she had suffered at the hands of her uncle and told the court that she was “ashamed to tell” the rest of the story. She finally continued in a whisper, switching from English into Italian and speaking through an interpreter. The *Washington Post’s* account gives a hint of her impact on her audience:

Her manner was that of a child as she told this story. Her gestures were involuntary and many, not in any way suggestive of having been thought over. Her voice was clear and childish, with little accent. She seemed to be hiding nothing, but she became embarrassed and hung her head when her lawyer insisted on dragging from her the frightening particulars of the story.<sup>93</sup>

Josephine’s youthful innocence must have taken its toll on the jurymen. When Bugg finally announced the verdict, the foreman was

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88. *Trial for Life a Dull Drama to Girl Slayer*, N.Y. WORLD, May 15, 1906, at 18.

89. *Yawns as Story of Her Murders is Told in Court*, N.Y. WORLD, May 17, 1906, at 18.

90. *Voice Said ‘Kill Him,’* WASHINGTON POST, May 23, 1906, at 3.

91. *Tells of Voice That Said ‘Kill Your Uncle and Aunt,’* N.Y. HERALD, May 23, 1906, at 5.

92. *Josephine Terranova Tells Her Life Story*, BROOKLYN DAILY EAGLE, May 22, 1906, at 1.

93. *Voice Said ‘Kill Him,’* WASHINGTON POST, May 23, 1906, at 3. Some incest and sexual abuse victims stop maturing emotionally at the age at which they are abused—and this may help explain Josephine’s “childish” voice.

“so overcome by emotion that his voice was scarcely audible” and “[t]ears were in his eyes.”<sup>94</sup>

The prosecution did everything in its power to prevent emotions from swaying the jurors. In his opening statement, Assistant District Attorney Ely warned that “sympathy and sentimentalism” had no place in the courtroom.<sup>95</sup> Even at the outset of the trial, he appeared to fear an act of “jury nullification” in which the panel would ignore the criminal statutes in favor of its own sense of justice.<sup>96</sup> Another challenge to Ely’s case was public pressure upon, or even overt tampering, with the jury.<sup>97</sup> Josephine’s story became something of a *cause célèbre* in the Italian-American community, and one of the jurors, building contractor Frank L. Brooks, received a letter purporting to be from the Black Hand, which threatened to publicly accuse him of graft.<sup>98</sup> Yet the most significant challenge to the District Attorney’s case was that first-degree murder was a capital crime in New York State. Josephine, if convicted, faced a “shameful death in the electric chair.”<sup>99</sup> While she may not have feared this outcome—the girl told the *Philadelphia Inquirer* her hope that if they did not free her, they might kill her quickly—the execution of women was an exceedingly controversial matter in early twentieth century America. Jury nullification was quite common in capital cases with female defendants throughout this period; as a result, only five women had been executed in New York State during the entire century preceding Josephine’s trial.<sup>100</sup> Many observers believed that the prospect of execution led a Massachusetts jury to acquit Lizzie Borden in 1893.<sup>101</sup> The immediate backdrop

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94. *Terranova Girl Not Guilty of Aunt’s Murder*, PHILA. INQUIRER, June 2, 1906, at 1.

95. *Yawns as Story of Her Murder Is Told in Court*, N.Y. WORLD, May 17, 1906, at 18.

96. Jury nullification has a rich history in the United States, and particularly in New York State, that dates back to the seditious libel trial of printer John Peter Zenger in 1735. A discussion of the history of jury nullification is well beyond the scope of this article. For an excellent survey, see JEFFREY ABRAMSON, *THE HISTORY AND THEORY OF THE AMERICAN JURY: WE, THE JURY: THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY* (1994).

97. Jury tampering was perceived to be commonplace in early twentieth century America. For one notable example, see Josiah Flynt, *My Friend, the Jurymen*, HARPER’S WEEKLY, Feb. 4, 1905, at 159.

98. *Black Hand Threatens*, N.Y. TRIB., May 23, 1906, at 1.

99. *Trial For Life a Dull Drama To Girl Slayer*, N.Y. WORLD, May 15, 1906, at 18.

100. See Michael Madow, *Forbidden Spectacle: Executions, the Public and the Press in Nineteenth Century New York*, 43 BUFF. L. REV. 461 (1995).

101. See FRANK SPIERING, *LIZZIE* (1984). For an excellent account of the Borden trial that offers alternative explanations for the jury’s finding, see also Cara W. Robert-

against which the *Terranova* deliberations occurred was the execution of Mary Rogers in Vermont on December 8, 1905.<sup>102</sup> Governor Charles Bell's staunch refusal to commute her sentence produced a heated uproar that flared across editorial pages throughout the nation; more than 30,000 women in Cincinnati alone petitioned to prevent her death. The *Rogers* case produced both "hysterical supplication" and "frenzied abuse," leading the *New York Times* to speculate that maybe "there should be a discrimination of sex in allotting punishment for murder."<sup>103</sup> Yet it was not until shortly after Josephine's case that the *Times* called for the outright abolition of the death penalty. The *Times* editors emphasized the gender-based component of the problem:

It is true that, with the law as it is, many of our murder trials are farcical in both progress and result, the "benefit of the doubt" is carried absurdly too far, and many a criminal whose guilt is known to all gets no punishment at all, or less than he should, simply because the gallows and "the chair" have become too horrifying for modern contemplation in any except cases of particular atrocity. When women are the murderers, it is openly admitted that only a "colorable excuse" is needed to save them from the legal penalty.<sup>104</sup>

Palmieri had made capital punishment an issue during the *voir dire*, asking each of the talesmen his attitude toward the death penalty; he even asked directly if they possessed any specific qualms about executing a woman.<sup>105</sup> The public debate on the subject most likely weighed heavily on their minds. Yet their own thoughts—and more importantly their decision—also played a critical role in shaping the public debate surrounding capital punishment in the coming decade.

Another controversy upon which the *Terranova* jurors had a significant impact was the ongoing debate over the often proposed reform of juries. Shortly after the *Terranova* decision, Judge T. C. O'Sullivan observed in the *New York Times*: "In the discussion of

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son, *Representing 'Miss Lizzie': Cultural Convictions in the Trial of Lizzie Borden*, 8 YALE J. L. & HUMAN. 351 (1996).

102. *Mrs. Rogers Calm as She Walks to the Gallows*, N.Y. EVENING WORLD, Dec. 8, 1905, at 16; *Mrs. Rogers Hanged; Bell Upholding Law*, N.Y. TIMES, Dec. 9, 1905, at 1.

103. *Hanging a Woman*, N.Y. TIMES, Dec. 9, 1905, at 7; *Mrs. Rogers Hanged; Bell Upholding Law*, N.Y. TIMES, Dec. 9, 1905, at 1 (The national campaign to spare Mrs. Rogers was led by the writer and anti-death penalty advocate Jesse M. Partlon). See also *Mrs. Rogers Expects To Hang Today*, N.Y. WORLD, Dec. 8, 1905, at 16.

104. *Topics of the Times: Murder Trials Farcical*, N.Y. TIMES, July 21, 1906, at 1.

105. *Trying Bride For Murder*, N.Y. SUN, May 16, 1906, at 5.

trials of famous criminal cases one hears often enough sneering allusions and unqualified censure of the jury system as a method of bringing justice to the guilty" as well as "a general lack of confidence in jury decisions appears to be gaining ground with some people as a result."<sup>106</sup> Contempt for juries, seemingly on the increase throughout the first years of the twentieth century, had reached epidemic proportions. "So widespread [was] the dissatisfaction," according to Judge O'Sullivan, "that lawyers and even judges [had] talked seriously of abolishing juries altogether."<sup>107</sup> Among those who advocated doing away with juries was Secretary of War William Howard Taft, the future President and Chief Justice of the Supreme Court, who told the Yale Law School graduating class of 1905 that the jury system was "a glaring and alarming failure."<sup>108</sup> The widespread dissatisfaction was attributed to several causes. One observer noted that "the number of available jurors is so small that they have to serve too frequently and the time of service is intolerably long," and therefore anybody with any sense avoided service entirely.<sup>109</sup> Another was troubled by the "trivial methods adopted oftentimes for reaching a verdict."<sup>110</sup> Yet the far greatest source of frustration was that juries, far more than judges, were easily swayed by flimsy evidence. Critics of the system used the *Terranova* trial as their primary exhibit in the case against juries. The verdict was "an alarming example of the gullibility of juries," argued a *New York Times* editorial.<sup>111</sup> Of course, proponents of the jury system also placed stock in the outcome of Josephine's case. "Law is a human institution to be executed by human agencies," opined the *Brooklyn Daily Eagle*:

The jury is the most useful of these agencies, but sometimes the jury takes law and facts both in its teeth and in its decision establishes what its members believe to be justice. This was one of those cases, and if ever disregard of the law in the interests of

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106. *Is Our Jury System a Failure?*, N.Y. TIMES, July 8, 1906, at 1.

107. *Id.* See F. J. Cabot, *Is Trial By Jury In Criminal Cases A Failure?*, ARENA, May 1905, at 510; *Should Trial By Jury Be Abolished*, AM. REVIEW OF REVIEWS, May 1908, at 607-608.

108. *Secretary Taft On Trial By Jury*, HARPER'S WEEKLY, July 15, 1905, at 1005. See also William Howard Taft, *Delays and Defects In the Enforcement of Law In This Country*, N. AM. REV., June 1908, at 851-61.

109. *Trial By Jury*, N.Y. TIMES, June 24, 1906, at 8. Jurors served for one month and were often seated for more than one trial.

110. *Is Our Jury System a Failure?* N.Y. TIMES, July 8, 1906, at 1.

111. *Fooling the Insanity Experts*, N.Y. TIMES, July 11, 1906, at 6.

justice was justified this is such a case.<sup>112</sup>

The debate over the relative merits of jury trials and bench trials continued to flare throughout the decade.

The actual jury deliberations in the *Terranova* trial lasted only approximately fifteen minutes.<sup>113</sup> Judge Scott's charge to the jury strongly favored the prosecution. He explained to the panel that "in default of justification, which plea, he said, had not been advanced, and there being little evidence of the abuse alleged as an excuse, except the prisoner's own testimony, they should properly find a verdict of murder in the first degree."<sup>114</sup> Josephine retired to an anteroom where she "waited in anxiety so overwhelming that she could not speak."<sup>115</sup> At the same time, the "jury of fathers" took a ballot in the neighboring chamber and discovered that they were of one mind as to Josephine's fate. The jury stayed out several minutes "merely as a matter of form."<sup>116</sup> When they returned to the courtroom, "the jury, to a man, was pale"<sup>117</sup> and "a few had moist eyes."<sup>118</sup> Foreman Bugg held onto the railing of the jury box to steady himself.<sup>119</sup> Judge Scott warned the audience of several hundred that the verdict "must be received in silence."<sup>120</sup> "Any infraction of order," he warned, would "be punished."<sup>121</sup> Then Scott called upon Bugg for the panel's decision. The factory owner "did not reply for several seconds, and seemed to have great difficulty in speaking."<sup>122</sup> Finally he whispered his comrades' unanimous deci-

112. *The Terranova Acquittal*, BROOKLYN DAILY EAGLE, June 2, 1906, at 8.

113. Estimates vary from a short thirteen minutes in the *Atlanta Constitution* to a mid-range seventeen minutes in the *Boston Herald* to a long twenty minutes in the *Brooklyn Daily Eagle*. See "Not Guilty," Says Jury, For *Terranova Girl*, BROOKLYN DAILY EAGLE, June 1, 1906, at 1; *Terranova Girl Given Freedom*, ATLANTA CONST., June 2, 1906, at 1; *Terranova Girl Found Not Guilty*, BOSTON HERALD, June 2, 1906, at 1.

114. *Terranova Girl Found Not Guilty*, BOSTON HERALD, June 2, 1906, at 1.

115. *Terranova Girl Acquitted; May Enter A Convent*, N.Y. WORLD, June 2, 1906, at 8.

116. *Girl Goes Free in Murder Case*, CHIC. TRIB., June 2, 1906, at 4.

117. *Terranova Girl Not Guilty Of Aunt's Murder*, PHILA. INQUIRER, June 2, 1906, at 1.

118. *Terranova Girl Acquitted; May Enter A Convent*, N.Y. WORLD, June 2, 1906, at 8.

119. *Terranova Girl Not Guilty of Aunt's Murder*, PHILA. INQUIRER, June 2, 1906, at 1.

120. *Terranova Girl Acquitted; May Enter A Convent*, N.Y. WORLD, June 2, 1906, at 8.

121. *Id.*

122. *Terranova Girl Not Guilty of Aunt's Murder*, PHILA. INQUIRER, June 2, 1906, at 1.

sion: "Not guilty."<sup>123</sup> There was "no qualification [to] the verdict"—absolutely "no reference" to the defendant's "mental condition at the time [of the killing]."<sup>124</sup> All of the experts seem to have testified for naught. Meanwhile, Josephine displayed "no emotion or even a suggestion of excitement."<sup>125</sup> However, Assistant District Attorney Scott was so "greatly surprised" and "displayed so much agitation" that he was unable to say whether the girl, acquitted in the death of her aunt, would still be tried for murdering her uncle.<sup>126</sup> Josephine was immediately remanded to the Tombs to face the second charge.

#### IV. "MORALS ARE IMAGINARY"<sup>127</sup>

The widespread publicity surrounding the *Terranova* trial should not be allowed to mask the fact that, in some regards, the entire affair was more commonplace than extraordinary. A whole industry of sensational newspapers had emerged by the turn of the twentieth century that profited by fanning the flames of public outrage. According to historian Phyllis Leslie Abramson, who has studied the phenomenon in her treatise *Sob Sister Journalism*, this low-brow crime reportage was produced by women reporters for a predominantly female audience.<sup>128</sup>

Papers like the *New York World* and the *New York Sun* often magnified minor crimes into major public calamities. Moreover, urban violence—rare as recently as the mid-nineteenth century—had become a distinctive feature of early twentieth century America. Patricia Cline Cohen, writing of the murder of prostitute Helen Jewett in antebellum Gotham, noted:

One simple reason for the attention [the Jewett murder received] was the rarity of such an event. Deliberate murder was surprisingly infrequent in the 1830s. New York City, with its 270,000 inhabitants, had only seven official homicides in all of 1835, and in 1836 only two capital murder cases reached trial.<sup>129</sup>

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123. *Id.*

124. *Terranova Girl Found Not Guilty*, BOSTON HERALD, June 2, 1906, at 1.

125. *Terranova Girl Not Guilty of Aunt's Murder*, PHILA. INQUIRER, June 2, 1906, at 1.

126. *Id.*

127. Quotation is taken from an untitled column by A.W. Herzog, M.D., in HARPER'S WEEKLY, July 21, 1906.

128. See PHYLLIS LESLIE ABRAMSON, SOB SISTER JOURNALISM (1990).

129. PATRICIA CLINE COHEN, THE MURDER OF HELEN JEWETT: THE LIFE AND DEATH OF A PROSTITUTE IN NINETEENTH-CENTURY NEW YORK 19 (1998).

Circumstances had changed considerably by 1906. One contemporary estimate by Arthur Cheney Train, a former New York City Assistant District Attorney turned legal commentator, placed the national homicide rate in 1903 at 112.0 murders per one million people. That figure considerably eclipsed the estimate for 1881 of only 24.7 murders per one million people—at a time when the national population was less than two thirds as large.<sup>130</sup> Spectacular trials, far from offering the “once-in-a-lifetime” sensation that characterized the trial of Richard Robinson for the murder of Jewett, had become rather frequent affairs by the time Josephine murdered her aunt and uncle. Cohen argues of the Jewett trial that “[e]ven people who had never seen nor heard of Jewett were fascinated by her murder” because “it afforded [them] an opportunity to contemplate the forbidden, the taboo life behind the velvet curtain of her brothel.”<sup>131</sup>

This may be true of the *Terranova* case as well. Cultural prohibitions against incest probably run far deeper than those against prostitution and many newspapers played up this aspect of Josephine’s suffering. Yet while the lurid aspects of the crimes certainly explain the momentary attention Josephine’s trial received from the public, these alone would do little to distinguish it historically. At best they could—to paraphrase Cara Robertson writing of the Lizzie Borden trial—offer a lens onto early twentieth century culture and “make explicit prevailing ideologies” about women and about crime.<sup>132</sup> Yet the contention of this paper is that the *Terranova* case was far more significant—had “far longer walking legs,” so to speak—than the dozens of other widely publicized trials that took place in the immediately preceding years.<sup>133</sup> Maybe because it was the right case at the right time, the *Terranova* trial proved significant in two ways. First, it served as an object of scorn around which long-seething discontent with New York’s criminal justice system, particularly among Progressive middle-class reformers, might be expressed. Second, it created a public interest in—and possibly a hostility toward—“honor” defenses that helped shape

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130. ARTHUR TRAIN, *COURTS AND CRIMINALS* 87 (1912).

131. COHEN, *supra* note 129, at 20.

132. Robertson, *supra* note 101, at 356.

133. An exhaustive list of such trials is not within the scope of this paper, but the most familiar to readers are probably those of Roland Molineux (1899), Leon Czolgosz (1901), Albert Patrick (1902), William Van Schaick (1906), and Chester Gillette (1906)—this last trial providing the basis for Theodore Dreiser’s *American Tragedy*. Several of these cases proceeded through retrials and appeals for more than a decade.

the course of several more widely publicized trials that captivated the city in the following three years. The excesses of those trials, built upon lessons learned from the *Terranova* case, ultimately led to numerous judicial reforms.

Writing of turn-of-the-century Chicago, Elizabeth Dale argues that at that time many critics of jurisprudence worried that “there was too much justice and not enough law in the legal system.”<sup>134</sup> She points out that leading thinkers like Arthur Train and Harvard law professor Roscoe Pound feared that “legal rules were losing out to popular notions of justice.”<sup>135</sup> In New York City, concerns of this sort predated the rise of Progressive reformers and charges of “grotesque buffoonery” had been leveled at the criminal justice system since the 1880s.<sup>136</sup> Yet sporadic calls for reform suddenly cascaded into a widespread public outcry during the summer of 1906. For example, Andrew White’s keynote address at the Cornell Summer School that year lamented that the conviction of murderers was “dangerously uncertain;” he further regretted that, “[w]hile the number of murders is rapidly increasing, the procedure against them is becoming more and more ineffective, and, in light of the recent cases in New York and elsewhere, is seen to be a farce.”<sup>137</sup> The reference is to the *Terranova* trial that concluded several weeks earlier. White was not alone. While the seven major New York City newspapers had run a total of eight editorials and letters critical of the criminal justice system between April and July of 1905, this number exploded to forty-four during the spring and early summer of 1906.<sup>138</sup> One must note that this outcry occurred before the trial of Harry Thaw for the murder of Stanford White.<sup>139</sup> Rather than generating newfound discontent, the Thaw case merely tapped into already seething frustrations.<sup>140</sup> Progressive reformers like Pound, White, and Train sought a world in which law and justice mirrored each other and where a professional class of lawyers and

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134. ELIZABETH DALE, *THE RULE OF JUSTICE: THE PEOPLE OF CHICAGO VERSUS ZEPHYR DAVIS* 5 (2001).

135. *Id.* at 6.

136. ARTHUR TRAIN, *COURTS AND CRIMINALS* 57 (1912).

137. *Murder Procedure a Farce*, N.Y. TIMES, July 21, 1906, at 1.

138. The papers consulted were the *New York Times*, *New York Evening Post*, *New York World*, *New York Sun*, *New York Herald*, *New York Tribune* and *Brooklyn Daily Eagle*.

139. A.W. Herzog, M.D., *Morals are Imaginary*, HARPER’S WEEKLY, June 12, 1909, at 38.

140. *Id.*

judges meted out both. The *Terranova* case drew public attention to how elusive these goals remained.

Yet the *Terranova* trial is probably most significant for its role in the development of “honor” defenses. Josephine’s claim of a “higher law” defense was not, of course, original. It had appeared at least as early as in the trial of Congressman Daniel Sickles for the murder of his wife’s lover in 1859 and had reprised itself in the McFarland-Richardson love triangle murder of 1869-70.<sup>141</sup> Hendrik Hartog has convincingly argued that these cases were about empowering men at the expense of female autonomy.<sup>142</sup> Such was obviously not the case with Josephine Terranova. Her narrative, to the extent that it reflected power dynamics between genders, strengthened women. The helpless victim turned avenger—drawing the support of thousands of female followers. Maybe that helps to explain the public resistance to the verdict: rather than upholding the Victorian power dynamics which Hartog unpacked, the *Terranova* verdict undermined them. Public attitudes toward “crimes of honor” certainly changed after 1906.

Following Josephine’s trial, the impact of her case continued to be felt in the New York City criminal justice system. When Harry Thaw stood trial for the murder of Stanford White in January of 1908—the first “trial of the century”—the stated goal of the presiding judge was to avoid the carnival atmosphere that had surrounded the *Terranova* prosecution. The Thaw case also featured a defendant who justified his actions on the basis of “unwritten law” and yet pleaded the insanity defense in the courtroom. District Attorney Jerome oversaw the state’s case. Several of the same experts, including Dr. Alan McLane Hamilton, testified during the proceedings. A similar cast of characters appeared in the courtroom during the trials of Captain Peter Hains and his brother, Thornton, for the murder of William E. Annis, allegedly the lover of Peter Hains’s wife. Again the defense pled a strange combination of insanity and

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141. See THOMAS KENEALLY, *AMERICAN SCOUNDREL: THE LIFE OF THE NOTORIOUS CIVIL WAR GENERAL DAN SICKLES* (2002) (the leading work on the Sickles trial). See also Melissa J. Ganz, *Wicked Women and Veiled Ladies: Gendered Narratives of the McFarland-Richardson Tragedy*, 9 *YALE J.L. & FEMINISM* 255, 262 (1997) (detailing another leading case invoking “unwritten law” (also known as “the privilege of irresponsible killing”), the trial of Daniel McFarland for the murder of Albert Richardson). Ganz points out that this “unwritten law” actually became codified in Texas, Utah, and New Mexico. *Id.* at 263 n.76.

142. Hendrik Hartog, *Lawyering, Husbands’ Rights, and ‘the Unwritten Law’ in Nineteenth-Century America*, 84 *J. AM. HIST.* 67, 77-78 (1997).

unwritten law.<sup>143</sup>

While Josephine's trial reflected complex societal attitudes toward traditional systems of honor and progressive notions of expertise, her case also helped shape the nature of that conflict. One cannot understand the public's response to the Thaw and Hains acquittals—particularly the ensuing anger on the part of the bar and the press—unless one sees them as compounding an already existing set of problems. Even as Harry Thaw sat in the Tombs preparing his "Dementia Americana" defense for murdering his wife's former lover, critics like Train were publicly lambasting it. Whereas cases like those of Sickles and McFarland were seen in some respects to uphold the power structure, the post-1906 cases like those of Thaw and Hains now appeared to undermine it by threatening the rule of law. In that regard, the *Terranova* trial with its female defendant and threat to "law and order" marked the turning point at which "crimes of honor" and the power structure diverged.

As a result of these later cases, all of which concluded in acquittals based on "unwritten law defenses" and provoked a rising tide of public outrage at the verdicts, physicians and lawyers began to work together to reform the insanity defense—to tailor it in such a way that it would not be capable of abuse. Janet Tighe has documented the work of Northwestern University Law School Professor Edwin Reedy and psychiatrist William A. White in effecting these changes.<sup>144</sup> Yet, the damage had been done. Writing in *Harper's Weekly* of the impact of the *Terranova* case and those that followed it, Dr. A. W. Herzog presented a compelling argument against "the so-called unwritten law:"

It is distinctly stated that one who kills another under circumstances which would otherwise amount to a murder cannot escape punishment on the grounds of insanity, unless it be shown that at the time his reason was dethroned or that he was laboring under an insane delusion which deprived him of his reason in

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143. See generally F. A. MACKENZIE, *THE TRIAL OF HARRY THAW* (1928). A detailed account of the Thaw and Hains trials is beyond the scope of this article. Much has been written on the Thaw case and a reader wishing to read the actual trial transcripts can consult this source. See also Gerald Langford, *THE MURDER OF STANFORD WHITE* (1962); *Jury Acquits Hains, He'll Write Novel*, N.Y. TIMES, Jan. 16, 1909, at 1; *Murders Rival In Gay Crowd*, N.Y. TIMES, Aug. 16, 1908, at 2; *Serious Menace In The Unwritten Law*, N.Y. TIMES, Jan. 17, 1908, at 2.

144. See Janet A. Tighe, *Be It Ever So Little: Reforming the Insanity Defense In the Progressive Era*, 57 BULL. HIST. OF MED. 397, 397-411 (1983). See also Janet A. Tighe, *The New York Medico-Legal Society: Legitimizing An Unstable Union*, 9 INT'L J.L. & PSYCHIATRY, 231, 231-43 (1986).

regard to the act charged . . . . Transitory homicidal mania is a term invented by ingenious lawyers to afford the jury a safe bridge upon which to pass from the disagreeable technical duty to the accomplishment of their desire to acquit a murderer whose victim, according to the consensus of opinion, ought to have been killed.<sup>145</sup>

Already, Herzog was arguing against a straw man. By World War I, the unwritten law—thanks largely to its successful use by a female defendant—had virtually disappeared from the American courtroom.

#### V. “A LIFE OF SECLUSION AND CHASTITY”<sup>146</sup>

If many newspapers and members of the bar condemned the *Terranova* verdict as a concession to lawlessness, a far larger number of ordinary citizens hailed the jury’s decision. These men and women—in truth, mostly women—may not have had any interest in or understanding of the testimony of newfangled psychiatric experts, but they did have strong opinions regarding old-fashioned notions of honor and right versus wrong. As she was being led out of the courtroom, Josephine “was followed by a crowd of women, many of whom thrust the officers aside and embraced and kissed her.”<sup>147</sup> The multitude waiting outside on the sidewalk was even larger and more exuberant. “[C]heers were raised by a throng of hundreds of Italians, to whom the news of the acquittal was made known by the prisoner waving her handkerchief as she crossed the ‘Bridge of Sighs’ leading into the Tombs.”<sup>148</sup> When it became clear to these well-wishers that they would not be permitted to see Josephine leave the jail that afternoon, they “made a rush for her counsel” and followed Palmieri “down Centre Street, cheering and jostling, all the way to Park Row.”<sup>149</sup> Eleven days later, when District Attorney Jerome formally dropped the remaining charges against Josephine, a much larger crowd appeared at the prison gates. The *Terranova* party—Josephine, her two sisters, and her lawyer—were nearly mobbed in the courthouse and had to sneak out of the building through a side door. Some of the curiosity seekers discovered the ruse and managed to chase after Josephine’s cab

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145. Herzog, *supra* note 139, at 32.

146. See *Josephine Terranova Free*, N.Y. SUN, June 13, 1906, at 14.

147. *Terranova Girl Given Freedom*, ATLANTA CONST., June 2, 1906, at 1.

148. *Jury of Fathers Acquits*, BALTIMORE SUN, June 2, 1906, at 11.

149. *Terranova Girl Acquitted; May Enter a Convent*, N.Y. WORLD, June 2, 1906, at 8.

for several blocks.<sup>150</sup> The seventeen-year-old immigrant, a household drudge only six months before, was now New York City's most sought-after celebrity.

Josephine told the press that she had expected the verdict, but even she appeared somewhat unnerved by the drama that accompanied it. "It seems now like a dream to me," she explained, "or as if I had been at a theatre, at a play, and had been watching it."<sup>151</sup> Immediately after her acquittal, the girl received an unexpected visitor at her quarters in the Tombs—"a tall, wiry old man with white hair and beard"—who introduced himself as James S. Dale. He was a building contractor from the Bronx, but was best known to the general public as "the fourth juror." During the much publicized encounter, Dale spoke to her "as a father" and advised: "[T]here is still a great deal in life for you . . . . Look up. Keep your eyes fixed on the stars."<sup>152</sup> From that moment forward, Josephine's future became a matter of widespread speculation as the city clamored to find out what she would do with her new-found freedom. One rumor, "generally accepted and published," was that "the girl and her husband would go to Father Lavallo and that he would bless their reunion."<sup>153</sup> Joseph Terranova had, after all, attended nearly the entire trial. Yet Palmieri immediately denounced this speculation as "ridiculous" and explained that the girl's husband was unwilling to take her home.<sup>154</sup> Josephine went further and declared that she would not return to Terranova "even if he should take her."<sup>155</sup> "My husband?" Josephine answered a *New York World* reporter, "I have no husband. Poor Giuseppe can be nothing to me. I can be nothing to him. We could not be happy. This terrible thing would always be between us."<sup>156</sup> The day after his wife's release, Joseph Terranova put an end to this conjecture with a public declaration that he intended to file for a divorce.<sup>157</sup>

Palmieri had indicated throughout the trial that Josephine, if

150. *Josephine Terranova Free*, N.Y. SUN, June 13, 1906, at 14.

151. *Terranova Girl Happy in Tombs*, N.Y. WORLD, June 3, 1906, at 1.

152. *Terranova Girl Acquitted; May Enter a Convent*, N.Y. WORLD, June 2, 1906, at 8.

153. *Josephine Terranova Free*, N.Y. SUN, June 13, 1906, at 14.

154. *Terranova Girl Not Guilty of Aunt's Murder*, PHILA. INQUIRER, June 2, 1906, at 1.

155. *Girl Goes Free In Murder Case*, CHI. TRIB., June 2, 1906, at 4.

156. *Terranova Girl Acquitted; May Enter a Convent*, N.Y. WORLD, June 2, 1906, at 8.

157. *Terranova for Divorce*, N.Y. TRIB., June 14, 1906, at 8. It may cast some light onto Terranova's financial situation that he hired "a colored lawyer" to pursue his case. This attorney was Rufus L. Perry of 375 Fulton Street.

she were acquitted, intended to retire into a convent; while in prison waiting the District Attorney's decision about whether to prosecute her on the second charge, the girl also let it be known that she intended to seek refuge with the Sisters of Charity. While "the life of a nun was impossible to her because of her former worldly relationships, she desired fervently to lead hereafter a life of seclusion and chastity."<sup>158</sup> Her goal was "to lead a new life" and "to receive religious instruction."<sup>159</sup>

Upon her release, she was accompanied by Father Pelsi, Tombs chaplain to the Italian inmates, to the rectory of St. Patrick's Cathedral. There she was taken to a private altar by Father Ferranti, Italian secretary to the Archbishop, who offered her the Church's blessing. She then departed immediately "for a place twenty-four hours distant by rail" from New York.<sup>160</sup> Palmieri told the press that "a mysterious good angel" had offered to provide temporary shelter for the girl, but that this benefactress did not wish to be identified.<sup>161</sup> Josephine was to be "whisked away to a secluded place known only to a very few."<sup>162</sup> And there she was to remain "until quite recovered from the effects of her long incarceration" and was to "be taught sewing and dress-making" so that she might "become self-supporting."<sup>163</sup> Several newspapers speculated that the benefactress in question was Countess Annie Leary, a prominent Catholic philanthropist who had recently been awarded her title by Pope St. Pius X. Josephine's counsel said otherwise. "Josephine's good angel is a countess, all right," explained Palmieri, "a countess by marriage, but she is not well known. Neither is she a multi-millionaire. Until within three or four days she had not taken anything more than a general interest in the case."<sup>164</sup> Yet the media and the public were led to believe that Josephine had left New York by a midnight train—to begin a new life "in which her own family and that of her husband" were to "have no part."<sup>165</sup>

Whether Josephine ever realized the impact of her case on

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158. *Josephine Terranova Free*, N.Y. SUN, June 13, 1906, at 14.

159. *Id.*

160. *Id.*

161. *New Life For Terranova Girl*, N.Y. TRIB., June 12, 1906, at 10.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Josephine Terranova Free*, N.Y. SUN, June 12, 1906, at 14. One of Josephine's granddaughters recalls Josephine telling her, "I owe my life to William Randolph Hearst," and it is certainly possible that he provided Josephine with assistance during this period. *Id.*

both law and medicine, and particularly on the decline of “honor defenses,” remains entirely unclear. She apparently fled to San Francisco during the summer of 1906 and—despite her earlier objections—was soon reunited with her husband. The couple had five children. On the day of Josephine’s acquittal, the *Brooklyn Daily Eagle* ended its editorial on the *Terranova* case with the thought that Josephine’s “horrible story should be remanded to obscurity.”<sup>166</sup> Josephine appears to have agreed. The closest she came to revealing the affair to her children was to tell them that “her father” had “died in a knife fight” back in the old country. She died on July 16, 1981, at the age of 91.<sup>167</sup>

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166. *The Terranova Acquittal*, BROOKLYN DAILY EAGLE, June 2, 1906, at 8.

167. Josephine Terranova’s obituary appeared in the *Marin Independent Journal*, July 20, 1981, at A4. Of her youth it says: “A native of Italy, she came to the United States as [a] young girl and settled first in New York with her family which then moved to San Francisco in 1906.” *Id.* The death notice makes no mention of her celebrated trial.