Dear Readers,

I am so sorry to not have finished writing what I had given you the title of some months ago! Attached is a prologue and early chapter of the “Chicago Husband-Killing and the New Unwritten Law” draft book-length manuscript, to give you a sense of the project, and a VERY UGLY draft of the work I will be presenting called “The Justification is Perfect.” I very much look forward to our engagement and I thank you for your patience with the state of the draft chapter, on which I hope to focus.

All best,
Marianne Constable
A political cartoon prepared between 1909 and 1913 by Harold R. Heaton of the Chicago Inter Ocean shows two nicely-dressed men standing on the littered sidewalk of a blustery winter street, with two little birds perched on a nearby wall.

“But why is the premium so much higher for married men?” asks Chicago Husband, looking up from the life insurance policy he is reading.

“Why? Greater risk, my boy!” answers the smug-looking Insurance Agent. “No woman is ever punished in Cook County for killing her husband!”

Letters in the lower left of the document that Chicago Husband holds appear to spell R I S and possibly K. Hair standing on end, sweat rolling down his cheeks, cigarette dropping from his mouth, Chicago Husband is stepping on a newspaper on which can be made out the words

EXTRA,

Mrs. — ( I L I or R I ... ?) ---

A C Q U I T T E —

M U R D E R

Entitled “Will it Come to This?” the original drawing is part of the Heaton collection at the Newberry Library in Chicago. The folder containing the cartoon is labeled “Life insurance companies plan to raise premiums for married men.”

Chicago Husband’s question seems to form a reasonable basis for the inference drawn by
the latter-day cataloguer as to the subject of the cartoon. Insurance Agent takes up this question and replies to it.

Additional writings supplement the men’s verbal exchange, however: the original title, the incomplete headlines in the newspaper underfoot, and the barely legible letters depicted on the policy. So too does the blackbird’s response to the plump little dove who is cooing at him: “Don’t look at me like that! I’m a confirmed bachelor!” A combination of word and image, the tongue-in-cheek cartoon draws attention to the claim of the solidly-grounded Insurance Agent: “No woman is ever punished in Cook County for killing her husband!” This exclamation appears to shake up Chicago Husband at least as much as rising insurance costs.

Chicago newspapers in the 1910s and 20s regularly expressed concern about what one Tribune writer called the “march of liberated gunwomen from the courtroom.”

Newspapers asked, for instance, as did this June 1912 Inter Ocean article:

Has some intangible defense taken growth that renders [a woman] immune from the treatment that would be accorded a man under similar circumstances? ... It has been the cumulative effect of year after year of acquittals that has forced on [the minds of thousands of newspaper readers who are in the habit of reflecting on what their eyes have scanned] a suspicion of the existence of a new “unwritten law,” holding a protecting wing over the heads of the weaker sex.

1Chi Trib (date?)

2Chi I-O 6/22/1912 “No Chicago Woman Convicted of Murder; Scores of Fair Sex Arraigned and Tried for Killing but In Every Case Jury Has Failed to Hold Guilty”
The article just quoted cites “almost a score” of women charged with and then acquitted of murdering their husbands or other members of their families in Chicago during the previous four years. It also mentions “an almost equal number of women, originally ... hail[ing] from Chicago, [who] have been arraigned on charges of like crimes committed in other portions of the country.” Mrs. Gertrude Patterson of Illinois was said to have killed her husband in Denver and, upon acquittal, to be living – even now! – in a flat on the South side of Chicago.

If the Insurance Agent in the cartoon refers in his utterance to the treatment of just such Chicago women, while drawing attention to actuarial modes of accounting, the scattered newspaper whose front page Chicago Husband’s foot has just stopped from blowing away announces a particular case. Newspapers followed particular stories closely and also kept running tabs of local women who killed. In 1914, for instance, the Chicago Tribune and the Evening Post both reported that a white woman had killed her “negro” husband and, upon arrival of the police, was found to have nothing in her handbag but a clipping stating that women could not be convicted for murder in Chicago and listing the dates and names of 14 women who had been acquitted.3 A 1919 article reported that Emma Simpson was the 29th woman to be tried for murder (men as victims; women as sole defendants) in Cook county since 1907; she was the first to have a “guilty but insane” verdict against her.4 In 1924, the Inter Ocean, like the Chicago Daily Tribune, reported that 31 such lady-killers had walked free in 12 years. The papers congratulated State’s Attorney (or prosecutor) Robert E Crowe for “a big increase in the number

3 Chi EP 11/21/1914; Chi Trib 11/21/1914) [Cite more?]

4 Trib cite
of indictments and convictions, especially of women offenders, always difficult to convict.”

Documents held in the hands of Chicago Husband and Insurance Agent, along with their reference to risk, conjure up images of calculation. Pen in hand, Insurance Agent looks ready to inscribe Chicago Husband into his “Life Ins Co.” book. Risk also implies uncertainty though and the indecipherable letters of the legal document and the incomplete newspaper headlines in the cartoon suggest that neither writings, speech, nor images tell the full story.

Newspaper coverage focused on women who came to trial, who were thereby acquitted or convicted. According to police records, approximately 260 women killed their partners in Cook County between 1870 and 1930. Court records and legal documents show that many of these women never came to trial, having been exonerated or exculpated at an earlier stage in the process by coroner’s or grand juries. And while formal legal records show that many women were never tried, they show that others were convicted and pardoned; yet others served time.

In the 1910s and 1920s and beyond, however, stories of spectacular acquittals circulated, attesting - as in the cartoon - to a new unwritten law that was revealed in documents even when it was not named as such. By the late 1970s, when feminist legal reformers were criticizing the disproportionate punishments that they claimed women received for crimes comparable to men’s, the exoneration of Chicago women who killed had become part of popular culture. and stood out (along with Susan Glaspell’s “Jury of Her Peers”) as an ostensible exception. The long-running Broadway hit musical and 2002 film “Chicago,” itself the subject of recent books and based on a play written by a female Tribune reporter who covered some of Cook County’s husband killing cases in the 1920s, repeats and embellishes tales of exonations of Chicago

\(^5\) (Jan 2, 1924, both papers).
women who killed.

The exonerations (a general term here being used here to include acquittals and all manner of other exculpations) of the vast majority of the 260+ Chicago women who killed their husbands or partners between 1867 and 1930 occur as recognizable legal acts, even though there is no evidence - *contra* at least one later historian⁶ - that a “new unwritten law” was ever formally invoked. In materials ranging from coroner’s reports to jury instructions, inscribed in carbon-copy trial transcripts and legal briefs, and represented in all manner of dramas from tall tales to blockbuster screenplays, that is, formal legal speech acts or events of exoneration, such as discharge, acquittal, and pardon, occur, although one cannot pin down any specific doctrine of new unwritten law.

Formal written records do not indicate use of the phrase. It is impossible to confirm or deny that “new unwritten law” was used as such at trial or in other formal legal proceedings. Although newspapers from the 1910s to 1920s used the phrase to refer to women accused of killing who walked, records of legal proceedings reveal only what the supposedly-exonerating new unwritten law was not. Records appear only after the ostensible new unwritten law defense fails, that is. Grand jury indictments, for instance, occur only if coroners do not release a suspect. Prosecutors go to trial only after grand juries fail to discharge an accused. Prison records, and those of probations, pardons, and appeals, exist only when a defendant is not acquitted. Investigating the new unwritten law thus means turning, paradoxically, to the very writings that indicate its prior failure in any given case.

Even these records are incomplete. Chicago (Cook County) criminal court records for

⁶ Adler, to be discussed further below
1902 to 1927 have all been destroyed. Perusal of pre-1902 and (sampled) post-1927 criminal court files often do contain jury instructions, both those that were given and those which were requested but refused. None of these instructions use the term. Further, because trials resulted largely in acquittals, there are but two appellate cases during this 60-year period. Those cases, as one would expect, are quite atypical; they lead all the way to the Illinois State Supreme Court with nary a mention of “new unwritten law” or of “unwritten law” as such. The Chicago Tribune’s story on November 24, 1919, following up on Emma Simpson’s release from Elgin (Insane Asylum) and protesting against the leniency of her treatment, even notes that “the unwritten law she relied upon was not formally pleaded.”

What then was the new unwritten law? In drawing attention to the exoneration of women who killed their husbands, the new unwritten law seems to refer to different things: to something like a “battered woman syndrome defense” before its time, to a temporary insanity defense, to the official law of self-defense as it applies to married women, to a female analogue to the male “old unwritten law” (or crime of passion or provocation or honor defense), and to what we now call jury nullification. These alternatives are neither exhaustive nor exclusive of one another. Nor were they explicitly associated in any particular case with a clear definition or statement or rule of new unwritten law. [Despite Adler’s claim: specify]

The new unwritten law invoked by newspapers thus appears to be an incompletely and imprecisely articulated practice. When spoken or written of at all - as in the cartoon - the new unwritten law can only imperfectly be considered law. Or rather, to be more precise: as law, the new unwritten law is itself “imperfect”: it reveals the imperfection, in a grammatical sense, of law. Grammatically speaking, the imperfect aspect of a verb (such as “speaking”) refers to
incomplete, ongoing, routine, habitual and interruptible activity from which an action verb or predicate (such as “refers”) stands out. Speech acts or events of law, such as exonerations, stand out like action verbs, from an imperfect background or ongoing activity of law. The new unwritten law reveals this dynamic. It also shows how conventional acts of law may appear to be or may become routine aspects or elements of background practices, in turn awaiting the attention that may transform them into notable events of law or of history.

As “new” and “unwritten,” the late-19th- to early-20th-century law that exonerated women who killed their partners both challenges and illustrates the way many now think about law and about doing - or writing - its history. Both law and history today largely rely on writings as sources of evidence and of authority. Contemporary law is most often identified as a positivist “system of rules,” and even those with more sophisticated views consider formal writings to be the authoritative texts on which statements and interpretations of law must be based. In today’s modern realist understanding, law is taken to be empirically-knowable and propositionally-articulable.

The new unwritten law, as a legal practice that is at once manifest through particular speech acts (of exoneration) yet nevertheless cannot be equated with any articulation of doctrine or of rules, epitomizes more than itself. It shows how “law,” despite the various definitions or meanings it receives, actually operates. The common law, for instance, is also manifest through particular judgments that emerge from out of an imperfect - ongoing and yet to some extent habitual and interruptible - background. Such judgments, like the “sources” of the common law

7 But see Leora Auslander, “Beyond Words” and stuff on material history (which she admits is still dependent on words)
fade in and out of notice, depending on need and use. So too, legislative enactments are not all created equal; some are more routine than others. While they may escape notice for a while, their inscription in records and indices allows them to be recalled from a codified background when required. Even the acts or behavior of officials that sociolegal scholarship would privilege as law, over what it calls law-on-the-books, reveals a similar dynamic: particular acts (of the police, for instance, or of a court clerk) or events may be distinguished from the habitual norms of which they form part. Likewise, a constant engagement with the relation between customary practice and its instantiations characterizes the identification of law with tradition.

The new unwritten law carries implications not only for understanding the multiplicity of meanings of law, but also for the emergence of stories of legal history. Attention to the new unwritten law has so far suggested that from out of an imperfect background activity that is law, particular speech acts of law stand out as events worthy of note. Different events will stand out in different kinds of histories (legal, social, cultural). [EXPLAIN - Adler as not legal historian]

Both as event and as practice, the new unwritten law accompanies the emergence of new technologies of inscription (such as typewriting and stenography), new modes of expression (such as newspaper cartoons and insurance policies), and new forms of expertise (such as psychology and statistics). Such phenomena enable different practices of recording, representing and producing events, and hence enable different sorts of events. Newspaper accounts in the 1910s and 20s, for instance, seldom if ever refer to court records kept before 1905 in discussing the new unwritten law. Nineteen-oh-five was the year in which the new coroner declared “This is an age of statistics.” During the next 7 years, both Chicago and Illinois introduced the standardized methods of record-keeping on which news reporters almost exclusively relied in
coming up with their figures about husband-killings. (And such news stories, especially those from the Tribune, the first of the Chicago papers to be available online through ProQuest, would in turn become the prime source for popular historians.) Along with such reliance, came the neglect of pre-1905 Chicago husband-killing cases which, in their own day, had also received spectacular notice.

The development, during the end of the 20th century and beginning of the 21st, of an online interactive Chicago Historical Homicide Project database from the Cook County police register covering 1870 to 1930, has likewise made easily accessible statistical information about crime in Chicago. It has served as the basis for fresh comparisons and criminological insights. (DESCRIBE/TRANSITION). A few decades earlier, the claims of what has come to be called second-wave feminism had prompted many to argue that women accused of violent crimes against men in the US were disproportionately convicted and received heavier sentences than men. (CITE) Today, criminologists and legal historians increasingly recognize the need to differentiate among women, among crimes, among jurisdictions, and among eras in making claims as to the criminal sentencing of women. The story of the new unwritten law, showing that even before women were allowed on juries, most coroner’s juries, grand juries, and petit or trial juries exonerated most women who killed their husbands, speaks to such developments at the same time as it attends to the stories of particular women who killed ... 

* 

The folder containing Heaton’s drawing does not indicate whether the cartoon was published. Marked “Tuesday” in the same script as Heaton’s signature and as the title “Will it Come to this?” it may well have appeared. Chicago Husband grasps the policy uneasily and
looks like he is being blown away, even as he keeps the newspaper in place by stepping on it. Insurance Agent stands firm, notebook open and writing implement set to go. Additional copies of life insurance forms stick out of his pocket. He holds under his arm what appears to be a still neatly folded newspaper, as blank as the wall that forms the background against which the two men stand. The unmarked pages awaiting inscription and the empty wall framing the exchange remind us of potential interplay between event and context, speech act and practice, in the naming of law and the telling of its history.
SABELLA NITTI’S DEATH SENTENCE

Thereupon it is considered ordered and adjudged by the Court that the said defendant Isabella Nitti otherwise called Sabella Nitti is GUILTY of said crime of Murder upon the Indictment in this cause on the said verdict of Guilty and that she be taken from the bar of this Court to the Common Jail of Cook County from whence she came and be confined in said Jail in safe and secure custody until the twelfth day of October A.D. 1923 and that on that day between the hours of sunrise and sunset, the said defendant Isabella Nitti otherwise called Sabella Nitti be by the Sheriff of Cook County according to law within the walls of said Jail or in a yard or enclosure adjoining the same, hanged by the neck until she is dead, and that the said Sheriff is hereby required and commanded to take the body of the said defendant Isabella Nitti otherwise called Sabella Nitti and confine her in said Common Jail of Cook County in such safe and secure custody and upon the said
twelfth day of October A.D. 1923 between the hours of sunrise and sunset to hang
the said defendant Isabella Nitti otherwise called Sabella Nitti by the neck until
she is dead. (Judge Joseph B. David, Judge of the Superior Court of Cook County
and Ex-Officio Judge of the Criminal Court of Cook County, July 14, 1923,
proceedings of The People of the State of Illinois VS Peter Crudele and Isabella
Nitti otherwise called Sabella Nitti under Indictment #30948)
Names in this Chapter (cheat sheet)

Frank (Francisco) Nitti: Sabella’s first husband

James (Vincenzo), Michael, Charlie (Pasquale): Sabella’s 3 sons

Maria and Philomena: Sabella’s 2 daughters

Peter (Pietro) Crudelle (Crudele): Sabella’s second husband

James Dasso, deputy sheriff

Eugene Moran, Sabella and Peter’s defense attorney

Jonas, Smith, and Michael Romano, state’s attorneys (prosecutors)

Cirese, deStefano, Mirabella, Bonelli, Gualano, Allegretti: Sabella and Peter’s appellate attorneys

Joseph B. David, trial judge

Anna and Jimmie (Vicenzo) Volpa, neighbors

Mike Besanti (or DeSanto), neighbor

Mr. Witte, James Nitti’s lawyer

Genevieve Forbes, Tribune reporter

Maurine Watkins, Tribune reporter
Endings

In 1940, the year women were finally allowed on juries in Illinois, photogenic president of the National Association of Woman Lawyers Helen Cirese reflected on a criminal case that she had worked on seventeen years earlier. Italian-born Isabella Nitti-Crudelle in 1923 had been the "first white woman in Illinois" to be sentenced to "to hang by the neck until dead." A jury had convicted Nitti and farmhand Peter or Pietro Crudelle of killing Nitti's first husband, Frank or Francisco Nitti.¹ As word spread about the lethal sentences to be carried out on the 12th of October, Columbus Day, six Italian-American attorneys took Nitti's case to the formal law courts and to the courts of public opinion.

In a newspaper interview, Cirese recounted that:

The sentence followed hard upon the freeing of five beautiful women charged with murder in separate trials ... I delved into criminal law, and eventually we got a reversal from the Supreme Court and the woman was allowed a new trial.

We simply re-conditioned her. I got a hairdresser to fix her up every day. We bought her a blue suit and a flesh colored silk blouse. We taught her to speak English, and when she walked into that courtroom she was beautiful -- beautiful and innocent.

I'll never forget how she looked. You wouldn't have known her. She was freed. She looked 38 and not 68 years old. She married again, and today is very happy.²
If Cirese's "spin" (as we might say today) on the case does not quite fit the facts, as we shall see, six Italian-American attorneys - Rocco de Stefano, Frank Mirabella, Nuncio Bonelli, Albert N. Gualano, Francis B. Allegretti, and Helen M. Cirese - nevertheless did present a persuasive legal challenge to the ostensibly final judgment. On appeal, they submitted a transcript of the trial. They argued to the court, as in many death penalty cases today, that their clients - Sabella Nitti and her new husband, the young Peter Crudelle - had had incompetent counsel at trial and that there was insufficient evidence to support a conviction. Justice Thompson of the Illinois Supreme Court agreed and, in April 1924, reversed the trial judgement. Remanding the case to the Cook County criminal court, he maintained that "Before the dread sentence of death is finally passed upon this man and woman on evidence as uncertain and unsatisfactory as that on which this conviction stands, there ought to be a further investigation with competent counsel representing the accused." Thus, he wrote, "Safety and justice require that this cause be submitted to another jury."\(^3\)

Originally set for May 1924, the second trial was postponed several times. In mid-June, Nitti and Crudelle were released on two $12,500 bonds. Counsel for both sides agreed to continue the case rather than go to trial as scheduled in September, then in October, then in November. On December 1, the court granted the State's Attorney's motion to strike off the case, with leave to reinstate. The cause was never reinstated and no new trial was held.\(^4\)

If in contrast to the documentary evidence, Cirese implied that the made-over Nitti was acquitted at a new trial, other stories of the case followed quite different trajectories. A young journalist for the Chicago Tribune during 1923 to 1924 reported on several women in Cook County jail awaiting murder trials. A year or so later, in graduate school at Yale University, she
made the stories of two of these women - Beulah Annan and Belva Gaertner - the centerpiece of a script she wrote for a playwriting class. The drama, originally entitled "The Brave Little Woman," was first performed in New York in 1926. It served as the basis for a 1928 silent movie, for a 1942 film adaptation, for a 1970s jazz rendition, and for the recent musical and movie hit "Chicago." Though Sabella Nitti was not a character in Maurine Watkins' original play, she later serves as the model for the non-English-speaking Hungarian convict Katalin Halenscki, the only one of the six female inmates in “Chicago” whom it seems did not "do it." The " Hunyak," as the character is called, loses "her last appeal" and spectacularly becomes "the first woman in the state of Illinois to be executed."\footnote{5}

How comes Sabella’s tale to have such spectacularly different endings - a new trial from which she walks away and a hanging? What makes the story of her sentence the focus of repetitions, even with a twist? How is one to understand her sentence? Let us return to the documentary evidence.

**Sabella’s Sentence**

Early one morning in July 1922, Italian-speaking Sabella Nitti visited the local police magistrate of the Village of Stickney near Berwyn. She reported that her husband, Francisco Nitti, leaseholder of a small farm at the outskirts of Cook County, Illinois, had gone out the previous evening and had not returned. Some two hours later, at the magistrate's urging and in some distress, she repeated her story (again through an English-speaking friend) to Berwyn’s Chief of Police at his home. Later that day, the Chief of Police informed her that he could not find her husband. “She wept and pulled her hair and scratched her face,” he would recall in an
A couple of months later, on September 14, 1922, Sabella and Peter Crudelle were jailed on the basis of an adultery and fornication warrant. Frank still had not been found. While Sabella was in jail, sixty-year-old, Italian-born Deputy Sheriff Paul Dasso visited the Nitti farm several times to investigate. He spoke with Frank and Isabella’s Italian-born oldest son, 25-year old James (or Vincenzo), who had returned from Wisconsin to Illinois shortly after his father’s disappearance. He also spoke with Mike Nitti, the middle son who lived in Chicago and sometimes worked on the farm. He questioned Charles (or Pasquale) Nitti, Isabella and Frank's 15-year-old English-speaking son who, after some prodding, indicated his readiness to make a statement.

Some time after their confinement had begun, Sabella and Peter were taken into a crowded office in the courthouse. Ten or twelve persons, including Deputy Sheriff Dasso, State's Attorney Michael Romano, and sons James and Charlie spoke animatedly in Italian and English. Non-English-speaking Sabella, confused, said nothing, and apparently wanted nothing other than to hold one of her little girls in her arms. Or perhaps “she was moaning and sobbing” or “she was repeating [something] to herself,” as Dasso - who admitted to not consistently understanding Sabella - later testified. Romano translated for first assistant State’s Attorney Jonas. He asked Sabella whether she knew what had happened to Frank and she may have said, in her Bari dialect and in a voice that it seems that only James heard, that it was as Charlie said - or words that could be translated to that effect.

In late September, accompanied by another deputy sheriff and by Charlie, Dasso took Peter Crudelle by “machine” (or automobile) from the jail to the farm. Once there, Dasso had
Peter drive a wagon from the farm along the circuitous route that Charlie described as the one he had taken with Peter on the night that Frank had disappeared. Charlie recounted that on the evening of July 29, Sabella had handed Peter a hammer with which to strike Frank, as he lay sleeping under the wagon outside the farm. Charlie directed Dasso for a mile and a half or so to a place on the prairie near the drainage canal of the Santa Fe Railroad. Here, Charlie said, they had stopped and he had with Peter carried the body from the wagon toward a bridge, which he had been afraid to cross. While waiting for Peter, he had heard a splash, he said, although he had not seen what had happened. Peter himself had said nothing until this point, when he ejaculated two words in English: "Bull shit!"

Around October 12th or 14th, at a preliminary hearing before Justice of the Peace McKee in Oak Park, a new accusation against Peter and Isabella, this time for murder, was nolle prossed due to lack of a body. On December 6, Judge George Kersten struck off both the adultery and the murder charges, and after 2 months and 21 days Sabella left the jail.

Upon her release, she went to the Probate Court to ask for widow's benefits to support herself and her two minor children, Maria and Philomena – only to be challenged by her older son James. While Sabella had been imprisoned on the adultery charge, James had successfully petitioned to be made administrator of his father’s estate, valued at $350. With middle brother Mike, James had sold the farm’s vegetable crop and, at the end of the season, disassembled the farmhouse. He moved it to a lot that he bought adjacent to that of another Italian family, the Volpas, where he also moved three horses before selling them for cash. Through the attorney Mr. Witte (or Witty), James now countered his mother’s Probate Court claim by contending that there was no proof of his father’s death.
Sabella moved into the house of Mike Besanti or DeSanto and his wife, both of whom had worked the previous year on the Nitti farm. On March 9, 1923, she wed the younger Peter, variously reputed to be from 8 years her junior to half her age. (Sources report different ages for her, as for all of her family members, but she seems to have been around 42 in 1923.) In May, James visited the couple at the DeSanto’s for a few days. On May 9th, the last day of James’ visit, Deputy Sheriff Dasso arrived, loaded revolver in hand, to take Sabella and Peter into custody again. A half-decomposed body had been found in a catchbasin - some mile or so from the drainage canal to which Charlie had led Dasso - and a formal criminal process was to begin the next day. Sabella, by all accounts, was terrified. She fainted. She clutched her daughters to her, crying that she would be away a long time or perhaps that she would be put away forever.

At the coroner’s inquest held in Abram’s Undertaking shop in Berwyn on May 10th, Charlie again testified, in English, that at his mother’s instigation, Peter Crudelle had killed his father with a hammer, while his mother held his father’s arms. Sabella was under oath but “didn’t testify before the coroner. She just went into hysterics more than anything else.” (Dasso, Trial transcript 297). An indictment was then brought on May 25th against Isabella Nitti, Peter Crudelle (sic), and Charlie Nitti for Frank Nitti’s murder.

The trial, held during the hot first week of July, offered spectators quite a scene. Lawyers sniped at one another. At least three different interpreters had trouble with the Bari dialect. The judge sequestered the jurors over the 4th of July holiday and threatened and cleared the courthouse several times due to the unruliness of the crowd.

The bulk of incriminating testimony came from Paul Dasso and James Nitti. The State’s (or People’s) witnesses sought to identify the body that had been found in the catchbasin as Frank
Nitti’s. State’s attorneys Romano and Milton D. Smith offered the love of Isabella and Peter as a motive. Their witnesses (who included neither the deputy sheriff who had accompanied Dasso, Charlie and Peter in the wagon; nor State’s Attorney Jonas) introduced Charlie’s earlier statements as to what had happened. In answer to questioning from defense counsel Eugene Moran, they repeated, on the basis of Charlie’s story, their opinions that Sabella and Peter had killed Frank. Defense attorney Moran refused to heed the trial judge’s warnings that his questioning was introducing incompetent evidence against his own clients. Under the guise of attempting to impeach the credibility of the State’s witnesses, he allowed in more and more of their claims about Charlie’s earlier statements.

The defendants said very little. Charlie never repeated his story - nor was he asked about it - in his brief appearance on the stand. Peter, in pigeon English and with an interpreter, and Sabella, through interpreter Frank Mirabella, denied having killed Frank Nitti or even knowing whether he was actually alive or dead. Sabella claimed never to have seen a ring that was found with the body from the catchbasin before. The hammer that was the alleged death weapon, she said, was not hers; it came from the Volpa’s. On cross-examination, she testified that she knew “Pete” while he worked on the farm; she “was the supervisor of the force on the farm.”

Questioned about sleeping with him before their marriage, she replied, “I don’t know him.” As to being in love with him, she answered, “I don’t know, I know Peter Crudelle since the 9th of March” [their wedding date].

After the defense rested its case and before closing arguments, Judge Joseph B. David insisted - while saying he was not insisting - that the prosecutor nolle prossus the charge against Charlie. There was no evidence against Charlie except his own earlier statements - which had
been introduced at trial only by others - that he had been present when Peter took a hammer to
Frank and that under threat he had accompanied Peter in carting the body in the wagon to the
canal. Charlie had never been charged as an accessory. Either *nolle prosse*, said Judge David, or
he would instruct the jury to return a not guilty verdict for all three. The prosecutor agreed to
*nolle prosse* the charge against Charlie, and both sides proposed jury instructions from which the
judge instructed the jury. The jury could find either of the two remaining defendants not guilty or
guilty, fixing the punishment at death or imprisonment, for the term of the defendant’s natural
life or for a term of years of not less than fourteen.

After less than two hours of deliberation, the all-male, non-Italian-speaking jury returned.
Foreman Thomas Murtaugh handed the verdicts to the clerk, who read the first verdict against
Peter, and then the same verdict against Sabella:

We, the jury, find the defendant, Isabella Nitti otherwise called Sabella Nitti,
guilty of murder, in manner and form as charged in the indictment, and we fix her
punishment at death.

At that moment, according to the Chicago Tribune’s Genevieve Forbes, Sabella
ran stubby fingers, where the dirt was ingrained into broken nails, into her matted
hair. She shifted her stocky legs and smoothed out the dark blue skirt, made full
and short for work in the field.

She hadn’t understood a word. But she twisted up her face in a grotesque
angle of fear, and inferiority, and cruelty and hope.

There wasn’t a sound in the room until Attorney Eugene Moran, defense counsel, said “Motion for a new trial.”

Then the court room was cleared. Everybody thought somebody else had translated the startling words to Mrs. Nitti. And nobody had.  

An “exclusive dispatch” to the Los Angeles Times dated the same day as the Forbes’ Tribune article (sent, one suspects, by Maurine Watkins of later “Chicago” fame) reported that it was only the day after the verdict that “‘Fat’ Mike Desant” would interpret news of it to Sabella.

He told her through the iron grating, translating word for word the sentences as Eugene Moran, her attorney, framed them.

“Ask her if she understood what the jury said,” requested Moran.

Mrs. Crudelle clad in a pink gingham dress against which she occasionally rubbed her hands, shook her head.

... The interpreter, his voice choking, put the words into the soft Sicilian (sic) dialect. He explained that unless Judge Davis (sic) grants a new trial or an appeal is made to the Supreme Court or Gov. Small grants a pardon, her fate was sealed.

Mrs. Crudelle looked like a caged animal behind bars.

“God help me,” she screamed, falling upon her knees.

“Did you know that the same verdict had been passed upon Peter?” went
on the interpreter, determined to have it over...

“No–no,” gasped the woman and she began the wail of the south European peasant woman, swaying back and forth upon her knees, alternately moaning and shrieking as though in agony. 

The Chicago to Los Angeles dispatches continued into the week: “the woman, in a frenzy of fear at the thought of the rope, unable to understand that it is not tomorrow or the next day that she must die, has wept and pleaded with the authorities for her ‘babees’.”

At the end of that week, on Saturday July 14, Judge David denied motions to set aside the verdicts and for a new trial. He entered judgement on the verdicts, as quoted in the epigraph to this chapter. Both defendants were sentenced to hang on October 12. The Chicago Tribune reported that Mrs. Nitti (as it insisted on calling her) heard the judge speak the formal sentence but failed to understand the English phraseology. When the words “until dead” were spoken she started as though she understood. The next moment she cried out:

“They chokea me? They chokea me?”

A newspaper reporter standing at her side shook his head and turned away. The woman appeared relieved at the sign and walked out toward the elevator to return to the jail. As she passed out, Crudelle leaned over and whispered in her ear. What he said is not known but at the words the woman dropped into a swoon. This gave rise to the report that she had attempted to kill herself by jumping down
Stories

What story is being told here? Whose story is it? Where and when does it or will it end? Should the story begin with the sentence? Or end with it? With the trial that culminated in it? Stories told at a trial are of course not the same as the story of that trial. A trial is a hearing. Not only is the hearing of any story different than the story told, but the hearing itself has its own story, which is unlikely to be the same as that which is told - much less heard - on appeal. A trial is a performance. It is an event, or rather a series of events, which rehearse and repeat conventions that must be familiar - as they are to us, although apparently not to Sabella - to be understood.

Conventions enable understanding, but they do not determine what to do nor what to say. The story of Sabella’s sentence could have begun, like the conventional transcript of the trial, with the July 3, 1923, testimony of the first witness at trial, Mike Travaglio, Frank Nitti’s nephew, as to the identity of some nondescript water-logged shoes and a ring without a stone that were found with an otherwise unidentifiable decomposing body in a sewage catch basin. The legal story could be said to start with the formal indictment against Isabella and her new husband Peter Crudelle. Might it also be said to reach back to Charlie Nitti’s earlier testimony against his mother and Peter at the Coroner’s inquest?

The story of Sabella’s sentence might also begin, not with conventional speech acts of more-or-less formal testimony or indictment, but with breaches of law: with Sabella’s and Peter’s being taken to the Cicero police station by Dasso and held, without being booked, the day
before the inquest into a newly discovered body. Might the story begin with the original
dismissal of the earlier murder charges brought against Sabella and Peter for lack of a body?
Might the story have already begun in fall 1922 at the crowded meeting in State’s Attorney
Jonas’s office, to which the agitated Isabella was escorted from jail and about which she
remembered little? Or had it begun when Charles Nitti signed a statement - mentioned many
times but never formally introduced nor established at trial - at a presumably more intimate
meeting in the sheriff’s office following Dasso’s visits with Charlie?

Perhaps the story of Sabella’s sentence is not simply a story of criminal law and
procedure. Perhaps it is the story of the probate suit that Sabella pursued through attorney Moran
against James Nitti, from which James appealed to the Superior Court and which, at the time of
the criminal trial, was still pending. That story involves an award of up to $800 that Sabella was
entitled to bring against the estate, which estate James, in apparent contempt of court, had
disposed of without notice. Perhaps that story involves complicated subplots of property law or
even family law through which Frank and now James controlled the meager estate of the farm ...

Or perhaps “law,” whether by the letter or in its breach, provides too narrow a context
within which to tell the story of Sabella’s sentence. Perhaps this is a tale of poverty and hard
work on a vegetable truck farm, the tale of a small leasehold (now part of a Veterans Memorial
Park)

{ insert image }

for which Frank paid $400 per year, getting up at 2 or 3 in the morning to take produce to market.
The farm was operated by several farmhands (some of whom boarded at the Nitti’s), five horses
(two of which would die in James’ keeping), and three wagons that shared a single detachable
shaft. Only one wagon could be used at a time. When farm laborer Mike DeSanto would use a wagon to go home at night and return it early in the morning - which, it emerged only after trial, he had done the night of July 29, 1922 - the other farm wagons, such as the one that figured so heavily in Dasso’s repetition of Charlie’s tales, could not be driven.

Perhaps this is a tale of sometimes violent disagreements which marked the conditions in which Sabella and her five, sometimes-estranged children lived with and worked for the demanding Frank. There was:

* 25-year-old James Nitti, who had left town a year before his father disappeared and lived in Wisconsin under an assumed name.

* the slightly younger Mike Nitti, whose perhaps not-so-coincidental own weeklong disappearance began on the day that Frank had disappeared. Mike was known to have beaten up his father, doing more than blacking his eye, a week and a half earlier. Frank, whose disappearance with all of the Nitti’s $300, had recently denied Mike money. Mike Nitti never took the stand himself and had threatened Mike DeSanto with death should he say anything against him.

* Charlie Nitti, 15? 16? 17 years old? whose statements outside of the trial fueled what defense attorney Moran insisted on calling “Dasso’s theory” of the crime. Charlie appears in two 1922 Chicago Daily News photos (which may not actually have been published): in one, posing in a book-lined office with a sledge hammer; in the other, in the same room with deputy sheriffs Dasso and Laubenheimer. The latter holds a piece of paper, possibly Charlie’s statement. As Dasso explained at the Coroner’s inquest
Well, I immediately got after Charley. I thought Charley knew a whole lot about this thing. I drummed at him and drummed at him. I didn’t get anything from him. One Sunday morning, I went to the farm. I talked to Charley like a father. I said “Now, Charley, you know all about this, you know where your father has gone, why don’t you tell me the truth?” Well, he hesitated, and finally we went over to the house and Mrs. Volpe and her husband, they helped me persuade Charley and we talked to him and finally Charley said he would tell. (Trial transcript quotation from coroner’s record, Moran, 291)

Sabella complained that Charlie “was never in night or day” (428) and, in the context of questions about Frank, also recognized that even when Charlie worked like a dog, his father was not happy.

Q [Smith]: Isn’t it a fact that you hate your husband?

A: He was always my husband, I lived twenty-five years with him, and he never disturbed me.

Q: Did you like him? A. You bet, if I didn’t like him I would not go round walking around.

Q: Didn’t you try to have him arrested a short time before he disappeared?

...  

THE WITNESS: My husband was alway (sic) going to market, and Charley was working like a dog, and my husband was complaining about him about the work
Charley did, and Charley said, “pa, I cant do any more, the day is too long, you don’t know how it is to work on the farm”, and he struck Charley and Charley was attempting to strike my husband, and I got in between and he slapped me, and I said, “now it is enough, we all work like dogs here. We never stop,” and he wanted to beat me, and he beat me and Charley, and Charley says, “let’s go and see the judge near the house so we can quiet him down,” and the judge came and the police came and arrested him, and they found a razor and a knife, otherwise, they would not have arrested him.

(Trial transcript, 430-433)

* And finally, there are the “babies,” Maria and Philomena, somewhere between two and eight years of age, for whom Sabella pined in jail so much in 1922 that the younger was brought to her there for some time. When Sabella was arrested the second time in 1923, they were taken in by Anna Volpa, their godmother - despite Sabella’s desire that they be sent instead to “the sisters.”

Might this be a story of entanglements and factions within a small immigrant community too then? Like his sisters, James Nitti sometimes stayed at the Volpa’s. Mike Travaglio testified to knowing Frank and his children both in the US and in the old country. Peter Crudelle sought work from Nitti because they came from the same area. The DeSanto’s and the Volpa’s opened their homes, poor as those homes were, to extended family. James (or Jimmie or Vincenze) Volpa, Anna’s husband, collected the money to pay for James Nitti’s probate lawyer. With his wife Anna, Volpa guaranteed James Nitti’s bond in his appeal of the probate suit. Mike DeSanto, with whom Peter and Sabella lived for a time, appeared everywhere but on the stand.
Is this a community whose members would, like Anna Volpa, gossip about Sabella and cast aspersion on her relation with Peter while maintaining they had always been friends? Anna Volpa’s statement at trial, translated as “I have always been good to her and I always wished her well now,” caused such an uproar among Italian spectators in the courtroom that the court requested the interpreter to “please tell these people that apparently don’t understand the English language that they must keep quiet, and if they don’t they will go to jail or must be put out of the Court room?” (Trial transcript, 354-5).

Is this a story of the prejudgments and biases that those such as Sabella and Anna and their kin could expect to encounter in their new land? Even at trial, counsel invoked stereotypes of Italians: “temperamental” (Moran, 306), voluble, wine-drinking, and hence, because of Prohibition, law-breaking. As to the drinking of wine, defending attorney Moran asked: “Just like Italians always are, each drinking heavily?” Prosecutor Smith objected and Moran responded, “I am not speaking about the whole Italian community; we are speaking about the hospitality of the Italian people as they make it. I think it is a matter of public knowledge.” (152; cf 251).

Not only the lawyers, but also the press perceived Italian speakers and speech as chaotic and incoherent: Forbes, describing in the Tribune the “dialect jargon” that “makes ‘em dizzy at Nitti trial,” wrote of “the dialectic mes-alliance of Italian peasant jargon, and academic Genoese phrases: a benchful of Neopolitan gentlemen were threatened with jail for laughing at their kinswoman [Volpa] gesticulating from the witness stand; an infuriated judge called the linguistic battle a ‘disgrace’; an everlasting whirligig of Italian vowels, with gestures, and Chicago consonants with yells.” At the close of the trial, Forbes, who later wrote a series of articles
about Chicago’s loveliest lady killers, described Sabella as a “dumb, crouching, animal-like Italian peasant,” a “greasy woman” who “moaned and gibbered in her Sicilian (sic) dialect,” a “cruel, dirty, repulsive woman.” When, after the verdict, the warden visited Sabella, according to Forbes, Sabella “became a primitive, supplicating thing. She cried and fell on her knees, mixing prayers to the Madonna with pleas to know how many months before I see my babee.”

Is the story strictly a Cook County affair? Should it mention the journey from Bari to Boston in 1908 of 27-year-old Francesco Nitti, who lists his mother Rosa as his closest relative on the passenger list of the Canopic? Or note his marriage in Bari ten years earlier to then-16-year-old Sabella Trivoli with whom he by now had three children?

Just whose story is this? Does it belong to those professional tale tellers - the lawyers and reporters? Is it the story - as female attorney Cirese and other dramatists would have it - of five beautiful murderesses who have just been acquitted, plus one ugly peasant? Of five young male Italian-American attorneys who, like swains in a fairy tale, just match the number of murderesses, plus one female lawyer. Of “an army of lawyers, who must have stood by, waiting to see what the result of this trial would be” fighting, like American heroes, for an underdog’s freedom.

Is this the story of the founders of the Italian-American Chicago bar, which in 1921 numbered roughly 40 Italian lawyers whose offices were “in lower-rent older buildings (now gone) on north Clark, Dearborn and LaSalle Streets”? Of “articulate and formidable debater” Rocco de Stefano, young leader of the appellate team? Of Frank Mirabella, his partner, who volunteered to interpret at trial after two other interpreters proved inadequate to the job? Of charming Helen Cirese, one of eight children who at 20 was the youngest woman to graduate in
the 1920 “war class” from DePaul, the first Italian woman admitted to the Illinois bar? Of humanitarian Nunzio Bonelli, “friend of the underprivileged youth” (13), or of Francis Allegretti and his beautiful voice (34)? Is it a story of lawyerly rivalry and their besting of “eloquent, handsome and debonair” fellow Justinian Society member, prosecutor Michael Romano?

Or might this story belong to Chicago “sob sisters” Genevieve Forbes and Maurine Watkins and others, without whom there would be no story? Might it belong to readers of women’s pages and the spectators of crime who attended to the story? To those resisted, as we shall see, the story they heard? Were those who protested the execution of a woman in Illinois in 1923 the same as those who took offense at the hanging of Italian-Americans on Columbus Day? And if they are not, how is the story of Sabella’s sentence different than Peter’s? Is this a women’s story?

Might events of Sabella’s life and trial replay events in the life and trial of the unnamed “colored” woman whose sentence presumably made “white” a requisite qualifier in referring to Sabella as the “first white woman in Illinois” sentenced to hang? And whose sentence 30 years ago had likewise been put aside? Do the trials and tribulations of these two “first” women dovetail with those of other women - and the laws governing their marriages, families, property, civic identities and nonidentities?

There are many stories of Sabella’s sentence. The formal, legal speech acts that constitute the record of the trial and its proceedings through appeal do not exhaust the story Sabella’s sentence. Nor do they establish its meanings, its endings, or its beginnings. The law and judgement of a trial performance is always imperfectly - or incompletely - enacted. The endless contexts for and proliferating details of stories of legal judgements keep alive memories
and questions about law and about its justice and injustice. And at the center of these stories, however absent or silent she may appear, is “the said defendant,” the subject of the sentence.

**Suspended at the Center**

How comes Sabella to be the vexed subject of a massively wordy sentence that, in future references to it, would seldom if ever be cited in full? How does she, a plain - nay! ugly - and illiterate peasant woman come to be entangled in a morass of words and texts treating of death and justice? What conventions of law and of story-telling surround her: a condemned subject - “the said defendant,” “otherwise called,” whose “body” the sheriff is to “take,” “confine,” and “hang” - and a figure we here encounter awaiting, doubly, a sentence that she does not yet know has already come and an execution that we know never will?

The pronouncements of the verdict and the sentence against Sabella, poised as they are between the jury’s decision and its Supreme Court reversal, mark an uneasy moment in Sabella’s story. For, as newspapers pointed out, it was not clear that Sabella - the subject, the object, of these judgements - had heard them, nor even that she *could* hear them properly. Neither the verdict nor the judge’s pronouncement were, technically and grammatically speaking, addressed to her. One nevertheless awaits some recognition, some reception, some interpretation, some action on her part, for the story of her sentence to continue. Until such sign, the sentence and the story hang as if suspended. An uncomprehending Sabella disturbs the neatness of the ending of the trial. In the extended moment between the announcement of the trial court’s “final decision” and the stay (of execution) that precedes news of the Illinois State Supreme Court’s reversal of the decision and its call for a new trial, what does Sabella say and do? Sabella’s
incomprehension defers the judgement against her and suspends her sentence, holding her, like those who want to know what happened next, in an uncanny interlude of non-events.

Before the verdict, the roles offered Sabella are deceptively clear. She is either “a poor unfortunate woman,” as her own lawyer put it, or “our famous lady MacBeth (God forgive the comparison)” as prosecutor Romano put it. The woman, Romano argued, was “the main culprit,” actively advising and encouraging her “paramour” to kill her husband. (481) As “ugly as she was,” Smith argued in his closing argument against her, Peter “was in love with her, gentlemen of the jury. That is something we cannot understand” (511). Smith and Romano presented the jury with an account of a woman who was both passive and active. “The motive for the murder was the motive that swine and animals feel who have their stomachs full of swill and corn; they must satisfy their souls of lust.” (480) She was both the object of animal needs and in control of Peter, “a poor dupe, a poor fool” who was himself also a “direct agent.” (481) “She isn’t a woman, she is a fiend,” claims Smith in calling for a verdict of “the extreme penalty” (523).

At the moment this verdict is pronounced however, Sabella displays an incomprehension so great that she can no longer be figured as either active nor passive. In such incomprehension Sabella becomes a legally-unrecognizable cipher whose story has yet to be filled in.

Now, one notes retrospectively that even before the verdict was read, all was not quite as it should be. Sabella’s own counsel, Eugene Moran, defending Sabella against Dasso’s claims that she “took on something awful at the time of her [second] arrest[,]” in closing argument asks, “Why shouldn’t she? She is demented. They are all demented, you saw them on the stand.” (499) Like all the Italian-speaking witnesses - and even some of the interpreters and other
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officials - Sabella had trouble understanding what was expected of her in the courtroom.

Prosecutor Smith complains that Sabella answers every question by “giving a lecture” (431). Interpreters translate such ostensible lectures, Moran objects, with a short yes or no. The excitable Anna Volpa, interrogated in English by Italian-speaking prosecutor Romano, whose English an interpreter translates for her into Italian, tries to answer Romano directly. “You tell her she must not talk English, either talk English or Italian altogether,” the court instructs Anna’s interpreter (319) and other witnesses repeatedly. Following Moran’s objection to Romano’s questioning of Anna Volpa, the court states: “You put your questions ... No, not to the interpreter, you are talking to her, you put your question to her and she waits for the interpreter.” (320-321). Smith points out that this system allows Moran, who seems to know some Italian words and to use DeSanto to translate for him on the side, time to object: “As soon as the witness answers he says no.” (323-324) “Go on,” says the Court. “I guess I will have to stand right here all the time.” (324)

Moran interrupts the proceedings continually, asking to hear more fully what was said in Italian or objecting before the Italian can be translated into English. Romano disagrees with the court’s current interpreter as to the translation of statements made by witnesses he is examining. Non-Italian-speaking Smith offers suggestions for different wording. Interpreters forget in the course of objections just what they were about to translate. Spectators in the courtroom mutter in Italian. They call out their own emendations and opinions of witnesses’ claims, before they are warned or ejected.

Sabella is hardly the only one bewildered, but a story must emerge in which she, the defendant, figures. All that the defense has offered though, as prosecutor Smith says in a
surprisingly apt mixed metaphor, “has flopped that way, just like a flag in the wind, trying to hold on somewhere.” (504) The prosecution by contrast has offered a conventional, if still not everyday, tale of a woman who, with her lover, killed her husband that the two could marry. Even this story, ostensibly witnessed and testified to by her younger son and coherent as it seems, is one to which Sabella’s own utterances appear ill-matched.

The prosecution relies heavily on statements that were made when the defendants were absent. Judge David had indicated at one of many points where Charlie’s statements were repeated at trial that only statements about the defendants made in their presence constituted competent evidence against them. Defense attorney Moran had not taken his cue however. He failed to object to second-hand accounts of Charlie’s tale. Major testimony showed that Charlie had made statements four times: in the wagon at the farm in September 1922; in State’s Attorney Jonas’ crowded office a short while later; at the preliminary hearing in October 1922 when the earlier murder charge was dropped; and at the coroner’s hearing in May 1923. Sabella had been present only once, in Jonas’ office. Peter had been present in the wagon and in Jonas’ office. Peter’s responses were relatively easy to characterize, however ambiguous in meaning: “Bull shit” and silence.

Sabella’s response while in Jonas’s office is harder to discern. Testified to at trial by her son James, appearing ostensibly in English translation, the transcript reads that in Jonas’s office Sabella said: “Come parle, Charlie, all right.” (…) The statement is taken to mean that Sabella agrees that what Charlie says is how it was. There is confusing testimony though about the language in which Charlie spoke and what he said. On appeal, Sabella’s attorneys will claim her phrase is meaningless even in Italian. Thus even the utterance in which Sabella ostensibly defers
her own speech to that of another (Charlie) appears for the first time at trial and comes confusingly from the mouth of yet a third person, James. Sabella’s inability to speak thus goes beyond simple ignorance of English or even of the more correct Italian of her interlocutors. Sabella not only does not speak in the terms that are called for in law, but seems unable to grasp what is being said and, in being said, what is being done.

The courtroom clearly presents Sabella with a very different world than that within which she was used to coping. And cope she had in the past, unrecognized though it may be to those encountering her in this new world. “I know all of the tools at my farm,” she states. She ran that farm while her husband went to market; she managed the farmhands, worked the fields, cared for her daughters. Sabella knows what to do in the context of farm, family, and neighbors. Asked directly by prosecutor Smith whether her husband “discharged Peter in May because of his intimate relations with you,” Sabella answered:

A No, no. My husband was insulted from Jimmie Volpe, when he told him I had something to do with Crudelle. I asked my husband and I told my husband to put out Peter Crudelle, because I cannot stand it, I am Sabella Nitti, and I couldn’t stand it.

Q You asked your husband to discharge Peter?

A I told my husband, he is a good man, I told my husband Peter is a good man, he is a good worker, and he helps around the farm, but my sons are bums, one of them [Mike] is a bum for two years in Chicago.

Q Did you ever tell your husband to discharge Peter?
The Court: Q Did you ever tell your husband to discharge Peter?
A Yes, if you have a bad head or a bad temper, put him out.
Mr Smith: Q What do you mean by that? (435-6)

What Sabella knows is of little use in the alien world of the court. And if Sabella does not comprehend this world, neither do its denizens know what to make of her or her language. Smith does not understand what Sabella says when she explains that although Peter, a good worker, is valuable, it is not worth keeping him if his presence disturbs her husband Frank. No one speaks her language, except those who have already taken sides in the affair. At trial and in the search for an interpreter who both understands the Bari dialect and is not already on one side, her language cannot quite be identified. It is called “almost Sicilian” and later stories often mistakenly call her Sicilian.

Uneducated and illiterate, neither grasping pronouncements made against her nor knowing how to speak, Sabella is both the subject and speaker of sentences not understood. Unfamiliar with the conventions of the extraordinary domain in which she has been thrown, she lacks knowledge of the speech or of the law that enables hearers to understand what is said and to judge what happens around them. Unlike even Kafka’s protagonists, Sabella has not even the consolation of understanding that this is not how it is supposed to be. No wonder she appears demented, contestably suicidal, a figure representing the uncanny brink of something extreme and unfathomable.

At the moment of the pronouncement of the verdict and sentence, Sabella’s noncomprehension challenges the possibility of attributing legal responsibility to her. Thrown
completely outside her everyday life, she is projected into a realm beyond the reach of her ordinary judgements. In this encounter, every one of the familiar conventions that render what count as events and actions in the world meaningful dissolve. Even language fails her. In her unwitting lack of response to what we know is the pronouncement of her death sentence, she presents us with a being whose story is beyond those for which law has the conventions to tell.

At the Prospect of Hanging

If the suspension of conventions renders her sentence illegible to the illiterate Sabella, then an accompanying uncertainty, among those who are more rational than she, as to who or what she is provokes them to fill her in. Immediately after the judgement comes a de-ciphering, a reinscribing of familiar meaning on the otherwise-impossible figure of Sabella. The prospect of Sabella’s hanging induces many to affirm the existence of an orderly, comprehensible world, and of her place in it. They insist on familiar conventions that render Sabella explainable and allow them - or the court - to judge.

The day after Forbes described Sabella as oblivious and animal-like at the close of the trial, women prisoners sent a letter to the newspaper criticizing “juries, prosecutors, and especially newspapers.” Described as “such a statement as a gathering of matrons, sitting and sewing on their piazzas might have made as they discussed ‘the Nitti verdict’,” the Nitti tragedy had “made normal women out of the ladies behind the bars at the county jail yesterday.” The letter itself was not published. It was the subject of an article with the by-line of none other than Genevieve Forbes herself. The women, she wrote,
rallied to Mrs. Nitti’s support because she was miserable and illiterate. Then they blamed a representative of THE TRIBUNE for pointing out that she was just that. ... they wince at the adjectives “dumb,” and “crouching” as used in THE TRIBUNE’s description of Sabelle.

They resent, they say, any reference to Mrs. Nitti as a “dirty, disheveled woman,” and call her “one of the cleanest women in the department, in her cell and her personal appearance.”

“Therefore,” the comrades write, “Mrs Nitti cannot be classed as a ‘dirty, repulsive woman.’ She is the mother of two small girls and has shown her motherly spirit here with the girls always.”

Others also strove to bring the unknowing Sabella back into a realm of interpretability. The Los Angeles Times in its dispatch from Chicago reported, in the context of discussion of Sabella’s “frenzy” and inability to understand the verdict, that her prayers were answered “by the voices of her ‘babees’ crying ‘mama, mama,’ as they were brought to her in the County Jail.” (Like “the Hunyak” in “Chicago,” Sabella had “been assigned to scrubbing the grim jail.”) She “dropped her mops and pails ... and gathered the children to her ... The girls giggled happily at seeing their mother again.” Sabella's industriousness suggested a stolid unfeeling character as the backdrop against which love for and of her small daughters offered a redemptive sensibility. (Familiar, trite interpretations were better than none ...)

Forbes and others made Sabella’s looks a commonplace issue. The same day that Sabella’s comrades in the jail sent their letter, Forbes cited the explanation of a “physician and
author of treatises on sex” for the Nitti verdict. “The death verdict was being prepared for Senora Nitti ... when men first chose pretty women to propagate their race,” she wrote. “It grew more certain, Dr. Stone believes, every time a primitive man discarded an ugly woman... ‘Men practice the basic principle of survival of the attractive every day,’ he explained. ‘The modern man doesn’t condemn the ugly woman to death, but he discards her, even in his most casual contacts’” - refusing to tip his hat, for instance. “Called upon to hang a defendant, in order to preserve the pretty women who propagate the race, it’s not impossible for him to shun the sexless ugly woman, legally, as he has always avoided her socially.”

The letter from the prisoners seemed to share Forbes’ preoccupations with Sabella’s looks, as did the trial attorneys from both sides when interviewed. “‘Perhaps’,” Forbes reported, “and here the women in the jail turn psychologists – ‘this verdict was reached because Mrs. Nitti is without “nice face – swell clothes,” and unable to talk for herself. But why should an example be made of her...?’”

Sabella got explained. She was understandably suicidal: “While her comrades were trying yesterday to vindicate her with pen and paper,” Forbes writes, “Sabelle, frightened into a frenzy because of the hanging verdict, twice attempted suicide. First she tried to choke herself to death, and later she rammed her head against the cell wall.” She was turned from an incomprehensible and uncomprehending figure into a woman whose fate was to have her looks discussed and a mother who elicited sympathy from other mothers and wives. Jury foreman Murtaugh’s wife, for instance, asked “How could he?” and declared that on the day of the hanging she would go home to her mother. The Tribune’s Inquiring Reporter - “Every Day He Asks Five Persons, Picked at Random, a Question” - asked “Would a jury of women have
Of the three women responding, two were against capital punishment. The third replied, “I don’t believe so ... I am a mother, and only a mother can realize the tragedy of some of these things.” Of the men, one recognized that the public was not fully informed by the press about the case and opined that male or female, “any fair minded jury” would render the same verdict. The other said that “If she were good looking - attractive – and wealthy, she would have gone free, male or female jury.”

Meanwhile, a Tribune editorial applauded the sentence for “discouraging gunwomen” and others praised the “courageous verdict.” Letters to the editor debated whether woman’s equality meant an equal privilege to the death penalty. Peter Crudelle came in for little attention. “Prominent Italians,” it had been reported, had begun to organize to “Save Woman.” The Olivet Institute “took action as a congregation, protesting against the execution of Mrs. Nitti.” Its pastor asked the Chicago Church Federation “to launch a crusade against all capital punishment and ‘especially in the case of this woman’.” Prominent Chicago women attorneys, such as Florence King and Leonora Zeder, active in the Society for the Abolition of Capital Punishment, wrote letters and planned protests to Governor Small. By the end of the year, a “substantial defense fund,” had been raised by Chicago Italians with the help of State Representative Michael Durso.

Through it all Judge David stood firm. Although he would not have chosen the death penalty himself, it seems, he could not change the law or overturn the jury, he said. The barrel of letters he had received and which he claimed not to have read would not sway him to undo the verdict that a hardworking jury had declared. “I will use every power vested in the court to apprehend the writers of letters giving me such advice,” he supposedly said. “They will be
brought before the court and severely punished for contempt of court.”

In the context of public flurry to get a grip on Sabella and to fix the norms that Sabella’s sentence threatened, law entered, in the form of Sabella’s Italian American attorneys. Stymied at the end of August by Judge David’s refusal to vacate the death sentence, (“The evidence in this case justified the verdict,” according to the Judge), they turned to the State Supreme Court. Manifesting the law’s usual preference for claiming that conventions had been misapplied, rather than acknowledging that they were in disarray or even suggesting that there were none, Sabella’s lawyers ultimately argued, not against the penalty, but against the verdict.

They argued that Sabella and Peter had had incompetent counsel and that there was insufficient evidence to convict them. The defense of the two had been characterized by “gross incompetency, stupidity and derelictions of counsel.” No direct or circumstantial evidence linked Sabella (or Peter) to the crime, they claimed. The only evidence against her was her ostensible admission to Charlie’s story. But Charlie’s story was physically impossible - as supplementary affidavits confirmed. At their closest point, the drainage canal and the catchbasin were a mile apart. The catchbasin’s only entries were a three-foot mancover and a six- or seven-inch-diameter pipe. If indeed Isabella had agreed to Charlie’s statements, she had only done so because she had received, as further affidavits showed, an illegitimate “promise of immunity.”

Here finally was a story about someone that law could recognize again. Here was the story of a “plaintiff in error.” The appellate story transformed Sabella from a cipher without speech into a person (from per-sonare; to sound or ring through), a subject of representation and of alleged misrepresentation.

Plaintiffs in error focused of course on defense counsel Moran’s errors and misdeeds.
(To today’s ears, the courtroom conduct on all sides sounds questionable.) The appeal touched gingerly on the ways the Court may have influenced the jury. It framed Dasso’s promises of immunity as primarily something that Moran had failed to introduce, rather than as impropriety by the prosecution. Ironically, the appeal left the trial opponents whom Moran had so antagonized to defend his performance.

As evidence of Moran’s incompetence, Sabella’s appellate lawyers’ brief pointed out that Moran had failed to show the physical impossibility of a body to move on its own from the drainage canal to the catchbasin. Further, it pointed out, Moran had invited hearsay testimony harmful to his clients. He had resisted the Court’s advice about asking jurors to leave the room at moments so as to protect his clients - evidence not only of his stupidity but also of the Court’s knowledge of it and hence of its failure to appoint qualified counsel. The brief also criticized Moran’s retort, made while rebuffing the Court’s admonitions, that he knew more about this case than anyone else; the brief suggested he had been derelict as to the facts.

Given Moran’s working relations with DeSanto and based on the questions he asked and on the objections he made, it is worth noting that Moran’s claim about how much he knew was probably true, at least vis-a-vis the Italian parties and witnesses. He seemed to believe, but be prevented by the Court from showing, that Mike Nitti had killed his father. (A seemingly incoherent story by Sabella that the interpreter at the trial said he could not understand - about “the boy” and stones in a field - becomes understandable if it is an accusation against her “bum son” Mike. And a news article reports Smith’s dismissal of Sabella’s post-trial accusation of Mike by saying that Sabella had already told this story.) In addition, Moran had tried to show that both Charlie’s story and Sabella’s response were somehow coerced. Forty years before
Miranda and using admittedly imprecise language about “the third degree,” “constitutional rights,” and a “right to know,” Moran did not follow proper form or legal conventions though. The questions with which he hoped to elicit proof of unfairness were constantly overruled. The objections he made, his articulation of reasons for them, and his asides, succeeded only in aggravating the Court. The questions he was allowed admitted all sorts of prejudicial testimony. He failed to exclude the jury when he was entitled to do so. He genuinely seemed to believe, as a non-lawyer well might, that the more that was brought out into the open, the better the jurors would be able to judge the case!

The State, now defendants-in-error or appellees, responded to the appeal with their own 50-page brief. They defended Moran somewhat faintheartedly, claiming that his actions were not grounds for retrial. They re-presented the evidence that they claimed supported the verdict. The case was perhaps less pressing to Illinois State’s Attorney Robert E. Crowe than it had been. Early election year articles had by now publicized his record of successful convictions. They pointed out “a big increase in the number of indictments and convictions, especially of women offenders, always difficult to convict.” Democratic Governor Small, the paper suggested, rather than the opposition Republican party’s State’s Attorney Crowe, could be held responsible for laxity in the pursuit of crime and corruption.

On April 14, 1924, the Supreme Court decision reversing the sentence and remanding the case for a new trial was filed. In his opinion, Judge Thompson discussed how attorneys and the court had treated the distinction between admissions and confessions. The issue received little public attention. The Daily News headline “New Trial to Mrs. Nitti” was followed by “Woman Receives the News with Stolid Air, Unable to Grasp It.” “For a few moments after newspaper
Sabella’s failure to comprehend this judgement was not as disruptive as her earlier failure to understand the final judgement that had so threatened, disturbed and excited the interpretive world around her. The News immediately continued: “Then, once assured that she was to have a new trial, she interpreted it as a certain means of freedom.”

“Mrs. Sabelle Nitti-Crudelle,” as the Tribune now called her, was “almost merry” as she walked into a court hearing to schedule proceedings that would culminate in her release on $12,500 bond. At trial, she had worn a “cheap faded blouse [that] hikes up from her sagging black skirt in spite of the sturdy safety pin, ... her hair, lot of it, ... matted into a festoon of snails, hairpins and side combs.”

She now wore “a nice looking black dress, with a soft gray hat set on top of the black hair that is curled now.” In contrast to trial where she had “hunche[d] restlessly,” unused to “the refinement of even the stiff wooden chair,” a back page photo showed Sabella Nitti Crudelle posing smilingly with her companions from the jail, pencil in hand.

Did Sabella become beautiful, English-speaking, and innocent - as Helen Cirese, who would go on to successfully defend husband-killer Lela Foster, would have it? Was Sabella tragically wronged in a series of events symptomatic of a system oblivious to justice and manipulated by journalists and lawyers - as "Chicago" would have it? Did she marry and live happily ever after? Or did she come to a proverbial unhappy end?

Should her story end with the 1930 Cook County census that lists “Isabella Nitti,” an
illiterate widow whose occupation is housecleaning, living with her 11- and 12-year-old daughters on a largely Yiddish-speaking block? Should it end with Sabella, the gendered figure of linguistic chaos in the law, giving birth to a flesh-and-blood daughter? Or with the 2001 death record of one “Angela Crudele,” who was born in the US in 1924 and collected US benefits in Italy where she resided when she died? Or ... with a reference to Sabella’s granddaughter, Charlie’s daughter, contacting a California professor in 2009 to find out what the professor who is writing about her grandmother knows?
NOTES

1. Names and their spellings vary - sometimes wildly - even within the same document or news article. Some attempt has been made to convey how particular sources referred to persons, while rendering spellings slightly more uniform. All criminal law documents refer to trial proceedings in The People of the State of Illinois vs. Peter Crudele and Isabella Nitti otherwise called Sabella Nitti under Indictment #30948; and to appellate proceedings in People of the State of Illinois vs. Isabella Nitti and Peter Crudelle, No. 15740, in the Supreme Court of Illinois, 1923-1924. Trial transcript page numbers in the text follow the (apparently third) renumbering on the carbon copy found in the Supreme Court Archives in Springfield, Illinois.


3. Thompson op., Docket No. 15740 - Agenda 39 - February, 1924; filed April 14, 1924

4. Docket Book 106, p. 467; Docket 56, p.57

5. Chicago, Condon screenplay, pp. 34-36, 93-94


10. see DN-0075051 and DN-0075052, Chicago Daily News negatives collection, Chicago Historical Society


13. Brief and Argument for Defendant in Error, No. 15740, S.Ct. of Illinois, December Term, 1923, p. 47


15. See Cirese Papers, UIC Daley Library, Special Collections


20. Forbes, “Mrs. Nitti’s Tragedy”


22. July 12, 1923


29. “Nitti Death Date Oct 12; Tries Suicide,” Daily News, Sat, July 14, p. 1


34. Forbes, “Dialect Jargon”


36. Forbes, “Dialect Jargon”

37. Photo captioned “Ladies’ Day,” Chi Daily Trib, April 22, 1924, p. 38