



Eyewitness

By Frederick Skerry

DISTRICT ATTORNEY HUGH VEILLE believed he could now write *finis* to the long record of Guido Scalzi. No headliner in the roster of public enemies, Scalzi, apparently immune from punishment, was a recurrent irritation to society, and society—in the shape of Veille's electorate—was beginning to question the ability of its choice for prosecuting officer. And Hugh Veille fretted under carping criticism.

He felt morally certain that Scalzi had done the killing. The evidence at hand was purely circumstantial—but then, so was that in the majority of convictions for murder, and Veille believed he had a case.

Scalzi was known to have been in the back of the saloon at nine-thirty on that night; the saloonkeeper had seen him go in with Krouse, the victim—between whom and Scalzi a lively rivalry existed—and a third man, a stranger. Being busy later, he had not seen anyone from the two back rooms pass through the bar on the way out. An assistant who served drinks in the back rooms when occupants rang knew both Scalzi and Krouse, but not the third man. After ten o'clock he had served no drinks in either room and had seen nobody—until closing time, when only Krouse was in one room, a lifeless Krouse with a head that had been savagely battered.

Scalzi, arrested two hours after discovery of Krouse's body, insisted that he had stayed in the room only half an hour and left Krouse and the strange man who was with him. He could not recall the man's name. But the patrolman on that beat remembered having seen Scalzi, a few minutes after eleven o'clock, hurrying from a narrow street to which, from a short alley, the saloon's rear door gave access. This, Scalzi claimed, was merely because of his having taken a short cut. But he could make no satisfactory accounting of his time between ten and eleven o'clock. Hence he had been remanded for trial.

The district attorney had heard defense cross-examination discredit the testimony of his witnesses. The saloonkeeper admitted that Scalzi and the stranger might have left by the back

door—even a stranger might easily find that door; neither he nor his assistant had positive knowledge of the time of the men's departure. The patrolman admitted the right of anyone to pass through that narrow street—even to hurry. And through it all Scalzi sat unperturbed and strangely confident.

As noon of the second day approached the defense recalled both saloonkeeper and his assistant. Asked if they could see a familiar face near by, each pointed out a man whose name was unknown to them but who was a regular customer. On the night of the murder he had been in one back room.

The man they had indicated, one Nicholas Dubruc, was called and sworn. With unwonted solicitude, the witness-bullying defense counsel drew forth Dubruc's story. . . . Yes, on that night he'd been in the other back room. . . . Yes, alone. He disliked the noise at the bar and always drank in the back room. . . . No, he didn't know Guido Scalzi, he'd only heard the name. . . . Yes, he'd read about the murder in the papers and seen Scalzi's picture. The picture was what made him go to tell what he'd seen that night. . . . To you, yes, sir.

A surprise! An eyewitness! Hugh Veille guessed. Between Scalzi's remand and this trial they'd dug up an eyewitness. That would ditch his case.

THE witness continued to answer. . . . He'd heard talking in the other room—sounded like an argument, though he didn't pay much attention; people often get into arguments when they're drinking. But the noise disturbed him, and he decided to go home. . . . Well, he didn't have a watch on him, but he guessed the time was about ten-thirty. He went to the door, but didn't open it then because he looked through a crack in the partition boards—they'd shrunk, he guessed, on account of the radiator. And he could see—

"Just a moment," said the defense counsel. "About how wide was this crack?"

"Oh, more than a quarter of an inch—maybe half an inch."

"You could see the whole room?"

"No, sir, only a piece. But I could

see one man sitting at a table. And another man was walking up and down, and I could only see him when he was up my way near the door."

"Then what? Go on and tell the court."

"Well, the man at the table says, 'You'll wait till hell freezes over, then.' When he said that the other man was behind him, and he turned and took a gun out of his pocket and belted the man at the table over the head—and he kept hitting him until I almost got sick, looking. The other man fell off the chair. Then the one with the gun looked himself all over and took a newspaper off the table and folded it around the gun—just as if he had only a paper in his hand. Then he opened the door and went out—very quiet."

"Now, Mr. Dubruc," said the defense counsel, pointing dramatically at Scalzi, "is that the man you saw strike down his unsuspecting victim while you looked through that crack?"

The witness gazed at Scalzi for a moment, and Scalzi, dark and slick, gazed brazenly back. "No, sir. The man I saw was bigger—heavier—and lightish complected. No, that ain't the man I saw."

The judge hushed buzzing comment from the benches.

There were still perfunctory questions by the defense. Veille was downcast. Of course he could question the credibility of Dubruc, but it would be wasted effort. Yet he had both listened and watched, and something about the witness puzzled him. A phlegmatic type, he told a plausible enough story. But Veille was observant, and he noticed that, while the opposing counsel walked before his witness as he questioned, Dubruc turned his head whenever the lawyer went to the left of him. Like a dog, he pointed in the direction of the sound. Why? Deaf in his left ear? Evidently he had heard well enough in that back room. Then why?—And suddenly Veille wondered. What if he had hit it? At any rate, it was a hunch worth playing. He remembered that crack in the partition.

Presently defense counsel turned to Veille. "Your witness," he said.

The judge looked at his watch. "I sug-

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gest, Your Honor," said Veille, "that my cross-examination be deferred until after recess." Nodding indifferently, the judge called a recess.

FORGOING luncheon, Veille and an architect friend visited the back room from which the eyewitness had viewed the killing. The cracked partition would be on the right of one leaving the room. This partition was of matchboards three inches wide, and the crack was between the first and second board from the corner by the door, which was hinged on that side. The door casing being against the inner partition, its thickness reduced the width of the first board from three inches to slightly more than two.

When court reconvened Veille had admitted as evidence a full-size drawing which showed existing conditions in the corner of the back room. Then he handed two cards to the judge. "With the court's permission," he explained, "I wish to verify the witness' clearness of vision." The judge nodded.

Handing the witness one of the cards, Veille asked him to read it aloud. Dubruc read, rather stumbingly, a fragment from the Constitution. "Very good," said Veille. "Now, place your hand tightly over your left eye and read it." Dubruc did so. He blinked a little. Veille took the card from him and gave him the second card. "Now, please hold your hand tightly over your right eye and read." But the witness silently handed back the card and looked fearfully at the defense counsel.

"I thought so!" Veille exulted. He described the location of the crack to the court. Then, "Your Honor and gentlemen of the jury, it is absolutely impossible for one to look through that crack except with the left eye. And the left eye of this perjured eyewitness is a glass one! Your honor, in the name of the State I demand . . ."

Hawaii Rebound

By Gilbert Wright

Presenting the surprising Hollywood adventures of Barney the Great—and of Mary the Greater

ILLUSTRATED BY JON WHITCOMB

She was completely absorbed in scratching a fish. He seemed to enjoy it, too. I had to see her eyes, so I said, "How do you know he itches?" She started