

START

605

CASE

CASE # 604

-: INDEX :-

	Direct	Cross	Re-D.	Re-C.
Opening address for the People	2			
Frank Grady	7	13		
William B. Noll	14	20	22	23
Florence J. Driscoll	23	24		
Abraham Postman	24	33		

CASE # 604

I N D E X.

	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross.</u>
Abraham Postman,	38			
William B. Noll,		47		
Samuel Cummings,	57	63	76	
Harry Tillman,	67	72	74	
Natale LaCicero,	76			
Frank Grady,				77
Salvatore Caradonna,	78	80		
Guiseppe Tocco,	81			
Guiseppe Tocco (No. 1)	82	85		
Philip F. O'Hanlon,	91			
Mr. Train's Summing-up,	94			
The Court's Charge,	112			

CASE # 604

1000
COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK. PART IV.

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-vs.-

GUISEPPI TOCCO.
-----X

Before HON. JOHN W. GOFF, Recorder, and a jury.

Indictment filed September 26th, 1906.

Indicted for murder in the first degree.

New York, October 24th, 1906.

-----oOo-----
A p p e a r a n c e s .

For the People, Assistant District Attorneys ARTHUR C. TRAIN
and AMOS PINCHOT.

For the Defendant, MR. JAMES W. RIDGWAY.
-----oOo-----

Peter P. McLoughlin,
Official Stenographer.

CASE # 604

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

May it please the Court, Mr. Foreman and gentlemen of the jury:

The defendant, whose name is Guiseppe Tocco, is accused by the Grand Jury of this county of the crime of murder in its first degree, committed on the 31st day of July last. The name of the deceased whom he is charged with killing was Salvatore Gianenico, or however it was pronounced.

The Constitution and laws of this country guarantee to every man the right to life, liberty and the pursuit of happiness. No man's life can be taken away save by due process of law, that is to say, by a fair trial with a jury of twelve men who find him guilty beyond a reasonable doubt.

Now, every man who comes to this country and settles here and takes up his abode here becomes entitled to the right of life, liberty and the pursuit of happiness, and at the same time, becomes charged with every responsibility, duty and obligation which goes with the privileges which this country gives to him.

There is no right of private vengeance in this the United States of America.

Your duty, as jurymen, as you all know, is to assist

CASE # 604

in the doing of justice by rendering a verdict on the facts. That is your simple duty and your sole duty, to hear the evidence and determine what the facts were surrounding whatever the charge against a particular defendant at the bar happens to be. You are to take the law from the Court, and after the Court has charged you as to what the law is, you are to apply that law to the facts, as you find them. The Court has nothing to do with the finding of the facts; that is your sole province, and, in the same way, you have nothing to do with what the law is. You must accept that, under your oaths, from the Court.

Now, the defendant in this case is charged with the crime of murder in the first degree, and it becomes your duty to render a verdict either of guilty or of not guilty, and if guilty of an appropriated degree of crime upon the evidence which the prosecuting officer of the county submits to you, and upon the evidence which the defendant submits to you. Just as you are under an oath to perform your functions I am under an oath to perform mine, that is to say, I am the People's lawyer for the time being in this case, and as the defendant is one of the People it is my duty to present everything at the disposal of the District Attorney which bears, in any way, upon this homicide.

The defendant is entitled to counsel and all these privileges which the Court will instruct you that you

must accord to him, that is to say, to the presumption of innocence and to have his guilt proven beyond a reasonable doubt.

Now, the defendant is charged with a particular crime and that crime is murder in its first degree. The elements of that crime are these: The taking of a human life with the intent to take it and with, what the law calls premeditation and deliberation.

Now, in determining whether that crime has been made out, by the evidence which will be submitted against him, it will be your duty to consider all the facts surrounding the homicide, how the homicide was committed, what length of time it required, whether there was any opportunity for premeditation and deliberation or whether any motive which may be adduced by the evidence bears, in any degree, on the crime itself.

It appears that the defendant in this case was engaged or interested in the fish business as also was the deceased. He was interested in that business and on the morning of July 31st, about a quarter of six, there was a dispute between the defendant and the deceased and various other people down at the new fish market on South street. Just what the nature of that dispute was will be outlined to you by some of the witnesses.

The deceased in the case, the man whom the defendant

CASE # 604

is alleged to have killed, procured a revolver and at this new fish market, in the course of a quarrel, discharged that revolver at one of the persons in the crowd. He then fled with the revolver in his hand, he ran up South street as far as Beekman street and up Beekman street, through Front street until he reached Peck Slip. He was caught in front of No.22 Peck Slip.

I am now talking about the deceased, not about the defendant in this case.

A large crowd followed this man with the revolver and when he was apprehended gathered around him. He was caught by two men, I believe, both of whom were special officers or at least one of them was a special officer detailed in that district in plain clothes. His revolver was taken away and while he was in the custody of these two men, who were assisted by a third man, the defendant in this case, Guiseppe Tocco, stepped out from the crowd, with a knife in his hand and reaching past the men who stood in front of the deceased, who was then under arrest, raised the knife and plunged it into his breast, almost instantly killing him.

It appears, from the evidence in this case, and or at least it is reasonable from what I have learned of the evidence to believe that the defendant has had been told that the deceased, when he fired the revolver, had

CASE # 604

shot one of his relatives. In point of fact that was not the case at all, as I understand. The man who was shot recovered from the wound.

In other words, gentlemen, the charge against the defendant simply is this: That whatever his motive may have been, whether it was to revenge an assault which he supposed had been committed on a relative or not, he did, so far as my evidence goes, deliberately take the life of a man who was at that time in the custody of officers of the law. He struck but one blow and that blow pierced the heart of the deceased.

Now, that, in a very few words, is the charge against the defendant. I shall call all the witnesses at my command who have any light to shed upon the transaction and at the conclusion of the case, when we have had a chance to determine what the facts are, after listening to the witnesses for the defendant, it will then be my duty to sum up the case to you and for Mr. Ridgway to sum up his side of the case, and for you to receive the law from the Court and to render a verdict in accordance with the law upon the facts as you find them and that, I know, you will do conscientiously and fearlessly.

Here is a diagram of the general district. I have marked the place where the quarrel took place and I have drawn a line showing the flight of the deceased.

CASE # 604

(The diagram referred to is admitted in evidence and marked People's Exhibit A.)

FRANK GRADY, a witness called and sworn by the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Officer, you are attached to the Fifth Precinct, are you not? A Yes, sir.

Q Were you on duty on the 31st of July last? A Yes, sir.

Q What was your post? A Well, I had South street that morning.

Q South Street and Peck Slip? A Yes, sir; South street across Peck Slip.

Q Just speak so that the jury can hear every word you say. A Yes, sir.

Q Was there anybody in your company at that time, about 6.45 in the morning? A Yes, sir; Officers Driscoll and Noll of the Fifth Precinct.

Q Were you doing patrol duty? A Yes, sir.

Q Driscoll was in plain clothes? A Doing his tour in plain clothes.

Q Driscoll was doing a plain clothes tour? A Yes, sir.

Q Who was the other one? A Officer Noll.

Q He was on post with you? A He was on Peck Slip.

CASE # 604

Q The two posts joined together? A Yes, sir; the two posts joined together.

Q Now, were you in his company? A Well, I was in his company.

Q At that time? A Yes, sir.

Q Did you get to the corner of Peck Slip and what street--
A Peck Slip and South street.

Q South street? A Yes, sir.

Q Did anything attract your attention? A Yes, sir; a crowd turning from Front street into Peck Slip.

Q You saw this crowd? A Yes, sir; I saw a crowd turning from Front street into Peck Slip.

Q That is to say they were a block to the west of you?
A That is the idea.

Q How many people were there in this crowd? A Well, I should judge about--

Q Keep your voice up. A About seventy-five or a hundred.

Q Were they running or walking? A They were all running.

Q Was anybody in advance of them or were they together, apparently? A Well, to me they appeared to be all together.

Q What did this crowd do and what did you do? A Well, I walked-- I ran up, I ran up and Officer Nell ran up ahead of me. I ran kind of slow thinking it was just a general fight around there amongst the fish peddlers around there, and all of a sudden the crowd turned around and ran towards me.

CASE # 604

Q When the crowd turned where were you? A I was about between Front and Peck Slip-- Front and South street, on Peck Slip.

Q On Peck Slip? A Yes, sir.

Q About half way on the block? A Yes, sir.

Q Going west? A Yes, sir.

Q Where was the crowd when the crowd turned? A Near Water street on Peck Slip.

Q They had almost gotten to Water street? A Yes, sir; that is the idea.

Q Then they turned? A Yes, sir.

Q What did the crowd do? A They ran out towards the center of Peck Slip with a man in the lead--

Q There are a lot of car tracks out there? A He appeared to be in the lead, he happened to be the defendant.

Q The defendant? A Yes, sir; in the lead of this crowd. They ran right out to the center of Peck Slip, running back towards South street again.

Q The crowd seemed to be following the defendant?
A Yes, sir; that is the idea.

Q What did you do? A I ran out and headed this defendant off and caught him and they told me he stabbed a man and I brought him back to where the man was sitting. He was in a sitting position.

Q You caught the defendant? A Yes, sir.

MR. RIDGWAY: I wish to object to that part of the officer's testimony where he said he was told that a man was stabbed.

MR. TRAIN: We will strike that out by consent.

Q Just about where was it that you arrested the defendant?

A In front of No. 37 Peck Slip.

Q Thirty-seven? A Yes, sir; I think it is up about No. 37.

Q Was that east of front street? A Well, that was--

Q Or west of Front street? A That was corner of Front street and Peck Slip, on the other side of the street, on the opposite side of where they turned the corner first.

Q You arrested him on the northwest corner? A The northeast corner they were near.

Q The northeast corner of Front street? A Yes, sir; the northeast corner of Front street.

Q And Peck Slip? A Yes, sir.

Q The crowd had turned around and ran back? A Yes, sir.

Q Practically? A Yes, sir.

Q They had come around Front street and ran up towards Water? A Yes, sir; and then back again.

Q And ran back and crossed the street? A Yes, sir; right in the center of the street.

Q The crowd got to the center and you caught the defendant on the northeast corner? A Yes, sir.

CASE # 604

Q Then you took the defendant back where? A Where this man, the deceased, was sitting. He was in a sitting position.

Q Where was he? A In front of 22 Peck Slip, that was near the corner of Water street.

Q The deceased was sitting on the curb or on the step?
A He was sitting on the sidewalk, near a building.

Q You brought the defendant back for the purpose of identification? A Yes, sir; that is it.

Q Was the deceased, or the man that we will call the deceased, was he able to speak? A No, sir; he was not able to recognize the man.

Q He was not able to speak? A No, sir; he was not able to speak.

Q Did you place the defendant in front of him? A Yes, sir.

Q Then what did you do? A I placed him under arrest.

Q What is that? A I placed him under arrest and took him to the Fifth Precinct.

Q You had apprehended him? A Yes, sir.

Q After you had taken him back to the deceased you regarded him as under arrest? A Yes, sir.

Q You took him where? A To the station house, the Fifth Precinct.

Q Well, I suppose there was a large crowd around all the time, was there not? A Well, there was down where this deceased was lying, but there was no crowd followed me to the

station house.

Q Now, did you receive the custody of a knife? A I received that from Officer Noll.

Q This is the knife which I show you? A Yes, sir.

MR. TRAIN: I ask that that be marked for identification.

(The knife referred to is marked People's Exhibit B for Identification.)

Q Where was it that Noll handed you that knife? A In the station house.

Q You did not see it? A No, sir.

Q Prior to that time? A No, sir.

Q You saw none of the affair that occurred in front of 22 Peck Slip? A No, sir.

Q You only arrested the defendant? A Yes, sir.

Q You observed the condition of the man you have described as the deceased? A Yes, sir.

Q Did he have any wound on his body? A Well, I did not see the wound, but I saw a lot of blood up here on his -- I think it was the-- I ain't sure which shoulder it was, but I think it was the right shoulder.

Q Do you know whether it was the right or the left shoulder? A Well, I would not be positive really now about which it was.

CASE # 604

CROSS EXAMINATION BY MR. RIDGWAY:

Q I only have a question or two to ask you. Did you see a revolver in the possession of the deceased? A No, sir.

Q Did you see a revolver that was said to have been taken from him?

Objected to. Objection sustained. Exception.

Q Did you see any revolver when you went up to the man who was stabbed, who was sitting on the stoop? A No, sir.

Q Now, did you receive any information at that time, or about that time which led you to make inquiry as to whether some person had been shot? A No, sir.

Q You did not go down then to the fish market, did you?
A No, sir.

Q Did you see any man there who had been shot? A About two hours after I did, not at the market, in the hospital.

Q Where did you see him? A In the hospital.

Q What hospital? A St. Gregory's.

Q Where was he shot, what part of his body? A He was shot right up here in the right chest.

Q Do you know who shot him?

MR. TRAIN: I object to that. The officer has not been called upon to identify him or anything about him.

Q What was the name of the man in the hospital that you saw, who had been shot? A His last name I think was Caradona.

Q I don't suppose you would be able to remember all the

names, as I cannot remember them myself. Do you see this man (pointing to a man in the court room)? A Yes, sir.

Q Is that the man that you saw in the hospital? A Yes, sir; that is the man.

Q That is the man that was shot in the breast? A Yes, sir.

MR. RIDGWAY: What is your name?

(The person at the bar gives the name of Salvatore Caradona.)

Q Now, you know no knowledge-- I want to abbreviate your examination-- as to who shot him, you have no personal knowledge?

A No, sir.

Q You did not see him shot? A No, sir.

Q Nor the pistol that he was shot with? A No, sir.

Q Nor did you see this defendant do any other thing than running away? A That is all, running away.

Q And there was a crowd running at the time? A yes, sir.

Q And you arrested him? A Yes, sir.

MR. RIDGWAY: That is all.

WILLIAM B. NOLL, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Speak so that the jury can hear you. You are attached to the Fifth Precinct? A Yes, sir.

CASE # 604

Q On the 31st of July last were you on duty about 6.45 in the morning? A Yes, sir.

Q Were you talking with the last witness? A Yes, sir.

Q Where were you standing? A Southwest corner of Peck slip and South street.

Q Did you see a crowd running, turning up Peck Slip from Front street? A Yes, sir.

Q Did you notice anybody in the crowd that you knew?
A I noticed an officer from the First Precinct.

Q Was he in plain clothes? A No, sir; in uniform, running with the crowd.

Q What was his name? A Officer Frost.

Q Was there any other officer in the crowd that you recognized? A Yes, sir.

Q Was anybody running in front of this crowd or were they running all together? A I did not quite get that question.

Q (Question repeated.) A They were running all together.

Q What did you do? A Well, on seeing the officer in the crowd I knew there was something wrong and I ran towards the crowd and as I got to the crowd they stopped in front of No. 22 Peck slip.

Q Did you go into the crowd or did you walk by them?
A I just got to the crowd when they came to a standstill at 22 Peck Slip.

CASE # 604

Q At that time did you see any person whom you now see?

A Yes, sir.

Q The defendant? A Yes, sir.

Q At that time where was he? A He was just about drawing the knife from the deceased; the deceased was just falling into the hands of one witness who is not here named Lawson.

Q Do you know Lawson's full name? A Yes, sir; I have it in my note book.

Q Now, I want to know just where the man that you describe as the deceased was when the defendant was pulling the knife from his breast? A Why, he was amongst two or three men, I didn't really recognize him; they were around him and just as I got there he was just as though he was taking the knife from the direction of the man that had fallen.

Q Well, did you see the defendant with a knife in his hand? A Yes, sir; I did.

Q Well, were there any other persons near him? A Yes, sir; there were persons whom I did not know at the time.

Q You did not know? A No, sir.

Q Do you know now who they were? A Yes, sir; I found out.

Q Who were they? A They were Special Officers Postman, Tillman, and Cummings.

Q Are they all special officers? A Postman is.

Q Who is Tillman? A Employed at the Fulton street

CASE # 604

Market.

Q Who was the other man? A Cummings, another man employed in the market.

Q You say the defendant was drawing the knife from the body of the deceased?

MR. RIDGWAY: I object to that. This witness did not say he saw him drawing the knife from the body.

THE WITNESS: From the direction of the body.

Q From the direction of the body, what do you mean by that?

A From the direction of the body just about falling into this Lawson's hands; he was so weak he fell; as he did the knife was coming from that direction, I did not see him deliver the blow.

Q Was the knife at the time that you saw the defendant with his hand on it in the body or partly in the body of the deceased? A No, sir.

Q How far from the body of the deceased was the point of the knife? A It would be about approximately about twelve inches.

Q About a foot from his body? A Yes, sir.

Q In what direction was the defendant moving his hand?

A Outward from the direction of the body.

Q You say at that time the deceased was falling into the arms of some one? A Of John Lawson.

Q Of John Lawson? A Yes, sir.

CASE # 604

Q Where was the crowd? A At the time they were gathered around the deceased.

Q All around? A Yes, sir.

Q You were in the crowd? A Yes, sir; I just about reached the crowd when I saw what I told you.

Q Now, I show you a knife, People's Exhibit B for Identification, and I ask you when you first saw that knife or whether you can identify it? A Well, that is the knife that the defendant had in his hand; I gave that to the--

Q That is the knife which the defendant had in his hand? A Yes, sir.

Q And concerning which you have testified? A Yes, sir.

MR. TRAIN: I offer it in evidence.

(The knife referred to is admitted in evidence and marked People's Exhibit B.)

Q Will you show us, Officer, -- step down here and take this knife in your hand as you saw it in the hands of the defendant and regarding me as the person whom you have described as the deceased, show what you saw the defendant do? A At the time that I first saw him?

Q The first thing you saw the defendant do? A Just coming from the man like that, with the knife in his hand (illustrating); when I first saw him he was about a foot away going backwards towards the center of the street and he wheeled around and I heard him hollering, "You killed my brother!"

Q What did he do with the knife? A He was thrusting it in the air when I pursued him; throwing it in the air.

Q Did he throw it out of his hand? A No, sir; not until I got almost upon him; when I got near him he took it and threw it in the street and that is how the point was broken.

Q As he drew his hand back, as you have described, he used the words, "He killed my brother"? A Yes, sir.

Q Repeated that more than once? A In kind of broken English, more than once, yes, sir.

Q Did you approach him to place him under arrest?

A Yes, sir; I did, and Officer Grady approached me from somewhere beyond a truck.

Q Officer Grady? A Yes, sir.

Q What did the defendant do after he waved this knife?

A (No answer.)

Q He was in front of 22 Peck Slip, wasn't he? A Yes, sir; when I saw him he was making a backward movement, he ran towards the center of the street, Peck slip;; I tried to pursue him; he ran down Peck Slip to about 37 and as he did he still had the knife in the air, moving it that way through the step stuff, boards and stuff, and he threw the knife--

Q Where was he stopped? A Stopped about almost opposite 37 Peck Slip.

Q By whom? A By Officer Gady and myself, both of us came together.

CASE # 604

Q You both made the arrest? A Yes, sir.

Q And took him back to the deceased? A Yes, sir; and tried to get an ante mortem statement.

Q Now, did you see at this time any revolver or weapon in the hands of the man described by you as the deceased?

A No, sir; I did not.

CROSS EXAMINATION BY MR. RIDGWAY:

Q Where was the deceased at the time-- you say you did not see any revolver with him? A The deceased was in the hands of Special Officer Postman.

Q How far was he away from you? A Well, I ran right into them, as I ran up they had stopped just when I got there; they were just about to stop.

Q Let me see if I understand you and can make it plain. Your attention was attracted, you say, by some crowd in the street running? A Yes, sir.

Q You observed in that crowd an officer in uniform? A Yes, sir.

Q Then you directed your steps towards the crowd? A Yes, sir.

Q They were all running in one direction? A Yes, sir.

Q You saw this defendant you say with a knife, flourishing it? A Just as he was drawing it from the deceased.

Q Where was the deceased standing, still? A He was

CASE # 604

standing, two or three persons had him by the hand, trying to find out-- trying to take the gun away from him.

Q When you saw him drawing it from the direction of the deceased and flourishing it in the manner in which you have described to the jury, you heard him say in broken English one or more times, "He killed my brother"? A Yes, sir.

Q That was the person that said that? A Yes, sir.

Q Meaning that the man who had been stabbed had killed his brother? A Yes, sir.

Q Killed this prisoner's brother? A Yes, sir.

Q Then the prisoner you say ran some little distance, did he? A Yes, sir; he did.

Q About how far? A Well--

Q I don't mean just in feet and inches, but approximate it as nearly as you can from observation? A Well, about a very short block.

Q About a short block? A Yes, sir.

Q So that from the place where he flourished this knife to where you took him into custody was about a short block?

A Yes, sir.

Q There was a large crowd following? A Yes, sir; there was Q Throwing missiles of various kinds at this prisoner?

A Yes, sir.

Q And the knife was thrown into the street? A Yes, sir.

Q The knife, you say, was thrown into the street?

CASE # 604

A Yes, sir.

Q you took him into custody, did you? A With Officer Grady, yes, sir.

Q The last officer was Officer Grady? A Yes, sir; he was.

Q Then you took him back to where this wounded man was?

A Yes, sir.

Q He was unable to talk or say anything? A yes, sir.

Q Or recognize him? A Yes, sir.

Q This defendant was in your custody at the time that this stabbing was done? A No, sir; he was not.

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Did you see the deceased when he was placed in the ambulance? A Yes, sir; I was there; I put him in the patrol wagon and we took him to the station house.

Q Was he dead at that time? A Yes, sir.

Q Did you go with the body to the Morgue? A No, sir; I did not go with the body; I brought the deceased to the station house and had him identified in the rear of the station house.

Q What person made this identification? A His brother-in-law LaCeasare, Nicholas LaCeasare.

Q You did not see the body again? A yes, sir; I did. I got the clothes of the deceased for Assistant District Attorney Cardozo.

CASE # 604

Q Did you go down to the Morgue? A Yes, sir; I did.

Q Did you see the body of the deceased there? A Yes, sir; I did.

Q Was anybody present when you saw the body? A There was Edwards.

Q Assistant to the Morgue keeper? A Yes, sir.

RE CROSS EXAMINATION BY MR. RIDGWAY:

Q One or two questions that I neglected to ask you. Did you see this man Salvatore that walked up here to the bar a few moments ago? A I did not see him, no, sir.

Q I am just asking him whether you saw him when he walked up here a few moments ago? A Yes, sir; I did.

Q Do you remember seeing him that day? A No, sir; I did not.

Q You did not assist in taking him to the hospital? A No, sir.

FLORENCE J. DRISCOLL, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Now, officer, you were with Grady and Noll, weren't you? A Yes, sir.

CASE # 604

Q On the morning of the 31st of July last? A Yes, sir.

Q You saw this crowd? A Yes, sir.

Q Run up Peck Slip? A Yes, sir.

Q Now, in point of fact, you did not get to the place where the crowd was collected, did you? A Yes, sir.

Q You did? A yes, sir.

Q Did you see anything which occurred there? A No, sir; I was on special duty in plain clothes, and I came up and I saw Officer Noll and Officer Grady standing on the corner of Peck Slip and South street. While we were talking there for a few moments we saw the crowd coming running through Front street and turned towards Water street and Peck Slip. Immediately afterwards they turned the other way and they ran back towards South street again. Officer Grady and I ran together and we saw quite a crowd of men chasing the defendant and Officer Grady and I ran and Officer Grady caught hold of him. In the meantime I got back of Officer Grady to see that no one interfered with him on the way and somebody says--

Q Never mind what anybody said. What did you do?

A I got in the back of Officer Gady and went back pretty near as far as where the man, the deceased, had been sitting.

Q Then where did you go? A I heard him cry,--

Q Never mind what you heard, don't say what you heard?

A I went back to South street and then in Fulton Market.

CASE # 604

Q That is all you did in the arrest of this defendant?

A Yes, sir.

Q Then you went back to South street? A Yes, sir.

Q You saw this man that came to the bar here, didn't you?

A Salvatore Caradone? He said--

Q Never mind what he told you. He had a wound in his breast? A Yes, sir.

CROSS EXAMINATION BY MR. RIDGWAY:

Q What did you do with Salvatore when you found him wounded, did you take him to the hospital? A Yes, sir.

Q Where was he shot? A I think it was about the right breast.

Q Was it a pistol shot wound? A Yes, sir.

Q Where you indicate with your hand now? A Yes, sir.

Q Right about here (illustrating)? A Yes, sir.

ABRAHAM POSTMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Postman, are you a special patrolman? A Yes, sir.

Q Connected with what? A The fish market.

Q The new fish market on South street? A No, sir; I am down in Delancey street two days and three days in the Fulton

Market.

Q Keep your voice up and speak as loud as you can so that the jury can hear you? A Yes, sir.

Q Were you on duty about seven o'clock on the morning of the 31st of July? A Yes, sir.

Q were you there working in the fish market or were you there as a special officer? A I was there as a special officer.

Q Did anything attract your attention? A Well, there was a man hollering for me to stop some fellow, a fellow named--

Q Where were you standing? A Corner of Peck Slip and Front street.

Q Peck Slip and Front street? A Yes, sir.

Q Where was this person that hollered to you? A On Front street. He hollered to me to stop this deceased, this fellow that--

Q Did you see any man who was running or doing anything?

A No, sir; I seen him running.

Q You saw a man running? A Yes, sir.

Q And that is the man that was subsequently killed?

A Yes, sir.

Q Was he not? A Well, I stopped this man.

Q He was the man who was later killed, wasn't he?

A Yes, sir; he was killed.

Q At that time he was running in what direction?

CASE # 604

A Towards Front street, up towards Peck Slip and I stopped him there.

Q Was he running through Front street? A Right through Front street.

Q Were there any other people running after him? A Yes, sir; a large crowd running after him.

Q How far behind him was the crowd? A Oh, about twenty or thirty feet anyway.

Q Now, after you stopped this man what did you do?

A I stopped him, I did not know what it was and he drew the revolver towards me.

Q He pulled a revolver on you? A yes, sir.

Q Did you stop him entirely? A No, sir; I stopped him entirely and he drew the revolver out of his pants, kind of like this, brought it up to me and I let him go and another man stopped him on the corner.

Q After you let him go, as you say, where did he go?

A Towards Peck Slip.

Q Continued running towards Peck slip? A yes, sir; towards the north.

Q Did you run after him? A After him.

Q How far behind him? A About two or three feet behind him.

Q Right behind him? A Yes, sir.

Q Now, you say another person attempted to stop him?

CASE # 604

A yes, sir; and did stop him.

Q Who was that? A I don't know his name now.

Q Is he in court? A yes, sir.

Q (Stand up Mr. Cummings) Is that the man you saw stop him? A yes, sir.

Q You indicate a man named Cummings? A Yes, sir.

Q Where was this deceased when Cummings stopped him?

A Running up towards him.

Q Well, in what part of the street, at what street was he on? A Peck slip.

Q Then he turned into Peck slip from Front street?

A Yes, sir.

Q He was running west? A He was running north.

Q Running north? A Yes, sir.

Q Running up Peck Slip away from the water? A yes, sir.

Q Did Cummings walk back? A yes, sir; he stopped him there.

Q He stopped him? A Yes, sir.

Q Now, did you see the deceased? A Yes, sir.

Q From the time that you stopped him up to the time Cummings stopped him? A As quick as Cummings stopped him I got right with him.

Q You were right after him? A Yes, sir.

Q Did you grab hold of him? A We caught hold of him, his two hands.

CASE # 604

Q Did each one of you grab one hand? A No, sir; me and Cummings had his hand where the gun was, and the first thing we--

Q You grabbed him on the hand where the gun was?

A Yes, sir.

Q Which hand was that? A We had it in his right hand.

Q Did you both grab that hand? A Yes, sir; he struggled for to get away from us and somehow or other we seen some fellow there struck him this way. (Illustrating)

Q What is that? A Some fellow struck him.

Q Did you see anybody strike him? A ~~As~~ seen-- I could not see him because it was behind me; I could not see the man who struck him.

Q Now, let us see. Did you see anything done? A No, sir; I could not see anybody strike him.

Q You did not see anybody strike him? A No, sir.

Q Did you see anything done by the hand of the person whom you could not see? A No, sir.

Q Did you see the defendant at all? A I seen this fellow.

Q Where was this defendant when you saw him? A Right alongside of me.

Q Was he behind you? A He was right alongside of me.

Q What was he doing? A I could not tell you what he was doing but I seen this other fellow hollering out--

Q Don't say what the other people told you. You say the defendant was standing at the back of you? A Right

alongside of me.

Q Besides you? A Yes, sir.

Q Was he doing anything? A I could not see whether he done anything or not.

Q At that time did you have hold of the deceased?

A He was struggling for the gun.

Q At that time you were struggling for the gun? A Yes, sir.

Q At that time did both you and Cummings have hold of the hand of the deceased in which he held the gun? A No, sir; Cummings happened to go away with some officer; I don't know how he got away; it was done so quick you know, I could not just tell you.

Q Do you know where Cummings was? A He was right in back of the man.

Q What is that? A Right in back of him.

Q Cummings was behind the deceased? A Yes, sir.

Q Now, was there anybody on the other side of the deceased?

A A fellow by the name of Neill.

Q Were you on the right side of left side of the deceased?

A I was on his right side.

Q You were on his right side? A Yes, sir.

Q You both had hold of him? A Yes, sir, we had hold of him.

Q Will you just show me how you had hold of the deceased

CASE # 604

at this moment. You take hold of me just as you held the deceased? A We had hold of him this way. (Illustrating)

Q Not we, you? A I caught hold of him like that. (Illustrating) He tried to get this hand-- he had the gun in this hand and we tried to bend it over.

Q You stand right there and you point out to the jury where Cummings was? A Right here trying to hold this arm back.

Q He had hold of him too? A Yes, sir.

Q Now, where was the other man? A Neill was on this side of him but he disappeared afterwards.

Q Neill was on that side? A Yes, sir.

Q What was O'Neill doing? A Trying to hold his hand.

Q Did he have hold of the left hand? A Well, I couldn't tell.

Q That you don't know? A No, sir.

Q You are not the man who has the one bad eye? A No, sir.

Q Which man has only one eye? A O'Neill.

Q When was it you noticed the defendant? A When he ran towards South street.

Q You say you noticed him standing right besides you?

A Yes, sir; he kind of ran away from me.

Q Now, were you partially facing the man? A Yes, sir.

Q As you have described? A Yes, sir.

Q Just point out to the jury where the defendant was?

CASE # 604

A Right alongside of me.

Q Besides you? A Yes, sir.

Q In front of the man with the gun? A Yes, sir.

Q Was he doing anything at that time, when you first saw him? A This man here? No, sir, I didn't see him.

Q What was the next thing that he did? A He ran away. I seen this fellow falling over his feet.

Q You saw the deceased fall off his feet? A Yes, sir. you know, weaken.

Q Did you notice what became of the defendant? A No, sir.; he ran and I ran after him then; I ran after this man.

Q You ran after the defendant? A Yes, sir.

Q Did you catch him? A Well, this Officer Gzady stopped him at No.37 Peck Slip.

Q A large crowd ran after him? A Yes, sir, and a coal driver, one of Barber's coal drivers-- they fired soft coal at him and he could not see and we stopped him there.

Q Now, do you say that you did not see the defendant in this case do anything? A No, sir; I did not see what he done because I could not see.

Q Did you see him make any motion of any sort towards the deceased? A Yes, sir; I seen him make a punch for him.

Q I want to know what you saw if you saw anything?

A I didn't see him draw no knife, but he-- but I think I seen him make that punch for him.

CASE # 604

Q What did he do, what did you see the defendant do, if anything? A I could not tell you sure what he done because I had my attention to that gun, you know, to the revolver.

Q But did you see him do anything, make any motion?

A He made like a punch down on him.

Q He did make a punch? A Yes, sir.

Q Did you see anything in his hand? A No, sir; I could not see -- after that I seen the knife.

Q After that? A Yes.

Q When? A After he started on the run.

Q Well, where was the knife? A He threw it up in the air, right in his hand.

Q Did you see the defendant throw the knife in the air?

A Yes, sir.

Q Did you see the knife that he threw into the air?

A Yes, sir; after he started on a run.

Q It was in his hand? A Yes, sir; in his hand.

Q But you did not see any knife in his hand when he made this motion (illustrating)? A No, sir.

Q Now, did you see him make a motion of that sort?

A Yes, sir; he made a kind of a punch down on him.

Q Do you know whether he hit the man that you were struggling with? A No, sir; I could not say as to that.

CASE # 604

CROSS EXAMINATION BY MR. RIDGWAY:

Q Are you a special officer? A Yes, sir.

Q Are you paid by the city or the Market Association?

A The Market.

Q Did you have that badge that you have upon your coat now on that day? A Not this one but a different one. We had the old badges at that time.

Q Did you have it exposed as you have it now, or was it in your vest? A No, sir; it was in my pocket at that time.

Q It was in your pocket? A Yes, sir.

Q Now, see if in a few words I can understand your position. Your attention, you say, was attracted to some people who were running, a crowd of people running?

A Yes, sir; a crowd of people running.

Q They were running from the direction of the fish market?

A Yes, sir.

Q That is the fish market down at Fulton Ferry?

A Yes, sir.

Q You saw a man running ahead of them? A yes, sir.

Q You saw that he had a revolver in his hand? A Yes, sir.

Q The man that the crowd was then running after had who had a revolver in his hand was the man who was afterwards stabbed? A yes, sir.

Q Wasn't he? A yes, sir.

Q You grabbed hold of him you say? A Yes, sir.

CASE # 604

Q And he pointed this revolver at you? A yes, sir; and I let him go.

Q Did you let him go? A yes, sir.

Q Then he went on a little further and he ran into somebody else, I suppose, didn't he? A Yes, sir; Cummings caught hold of him.

Q He still kept this revolver in his hand, didn't he?

A Yes, sir.

Q And while he had the revolver in his hand this prisoner, who was one of the pursuing crowd, came up to him? A Well, I did not see which way he came up but he was standing alongside of me after that.

Q The crowd that you had seen pursuing him then got up, I suppose, didn't they? A Yes, sir.

Q Then you discovered this man standing there, that was the first that you saw of him there? A Yes, sir.

Q The deceased still had the revolver in his hand?

A He had the revolver in his hand.

Q Do you know what became of that revolver? A Well, after that we took it away from him and Cummings had it; I don't know what he done with it.

Q Now, after this affair that you have described, did you go down to the market and discover the man Salvatore who had been shot? A No, sir.

CASE # 604

Q You did not go back? A No, sir; I did not know there was anybody shot at first.

Q You did not know that? A No, sir.

Q You did not know that the man who was running away and who had the revolver in his hand and who afterwards was stabbed had shot a man at the market? A No, sir; I did not know anything about it.

BY MR. TRAIN:

Q Now, just a moment. You are still employed at the market? A Yes, sir.

Q At the time that this occurred did you know any of these Italians? A Sir?

Q Did you know any of these Italians at the time that this occurred? A No, sir; I did not know any of them.

Q Do you know any of them now? A Well, I know one fellow there.

Q Who do you know? A Tony.

Q Who is he? A That big fellow there. He is sitting there.

Q Is he a witness in this case? A I don't know if he is a witness or not.

Q Have you ever talked to him about the case? A He came up and talked to me.

Q How long ago? A Well, about a week or two weeks after that he came down into the new market.

CASE # 604

Q Now, you testified at the Coroner's inquest, didn't you?

A Yes, sir.

Q Is your memory any better-- was it any better then than it is now?

Objected to. Objection sustained.

Q Have you stated everything that you now recollect as to what occurred in front of 22 Peck Slip? A Yes, sir.

Q Keep your voice up? A Right in front of 22 Peck slip?

Q Have you stated everything that you saw? A Well, I think I did.

Q Did you read over this morning in Mr. Pinchot's office your previous statement? A Yes, sir.

Q And say that it was correct? A Yes, sir; I did.

Q Now, has anything occurred to lead you to change your testimony? A No, sir; I would not change it.

Q Now, did you not testify in the Coroner's court that you saw this defendant stab the deceased?

MR. RIDGWAY: I object to that.

THE COURT: Objection sustained.

THE WITNESS: I did not see him stabbed and I told the--

MR. RIDGWAY: Witness, won't you kindly refrain from answering when I object, and wait until his Honor rules?

Objected to. Objection sustained.

CASE # 604

THE COURT: We will suspend here.

Do not talk about this case, gentlemen, or form or express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you.

(The Court then took an adjournment until tomorrow morning, Thursday, October 25th, 1906, at 10.30 o'clock.)

CASE # 604

New York, October 25th, 1906.

TRIAL RESUMED.

ABRAHAM POSTMAN, a witness for the People, resumes the stand.

DIRECT EXAMINATION (CONTINUED) BY MR. TRAIN:

Q Where do you live? A. 50 Eldridge Street.

Q How long have you lived there? A. About a year.

Q Are you married? A. Yes, sir.

Q How long have you been a special officer? A. About two years.

Q What did you do before that? A. A driver.

Q For whom? A. Jacobs & Company.

Q Born in New York? A. Yes, sir.

Q Yesterday afternoon, on cross examination, you told Mr.

Ridgway, in answer to the question as to where the revolver was when you first saw the defendant in this case, that the deceased still had the revolver in his hand when you first saw the defendant? A. Yes, sir.

Q Is that the truth? A. Yes, sir; he had it here (indicating in the pants) with his right hand.

Q He still had it in his hand? A. Yes, sir.

Q Who have you talked to about this case? A. What?

Q Who did you talk to about this case? A. To nobody.

CASE # 604

Q No one? A. No, sir.

Q Did you testify truthfully before the Coroner? A. Yes, sir, but I did not ----

Q Now, did you or did you not? A. I did.

Q Did you sign a paper on the 18th day of August, 1906? A. Yes, sir.

Q As to what you knew about this case? A. Yes, sir.

Q Was that true? A. Yes, sir.

Q Now, for the purpose of refreshing your recollection on the question of where that revolver was, let me ask you this question: Did you not testify before the Coroner that before you saw the defendant in this case and before you saw him do anything to the deceased, Cummings had taken the revolver away from the deceased?

MR. RIDGWAY: I object to that question.

Objection overruled; exception.

MR. RIDGWAY: Allow me to state the ground, your Honor. It is an attempt upon the prosecution to impair, contradict or impeach their own witness upon a statement made by him.

THE COURT: Inasmuch as you have stated your ground, I may state the ground of my ruling and that is, that from the attitude and demeanor of this witness and the manner of his testimony, I deem

CASE # 604

it in the interests of justice to direct the District Attorney to put the question to him. Exception.

Q Answer the question. A. I told them that I ----

Q Will you answer it yes or no? A. Repeat the question.

Q (Question repeated) A. No, sir, I did not tell them that way.

Q Did you not testify before the Coroner in this fashion, in these words: "That this defendant here, Tocco, came running up through Peck Slip, came around towards my right hand with his knife up in the air and hit the deceased about in the shoulder"? A. No, sir, I did not.

Q You did not testify to that? A. No, sir.

Q Were you not asked this question: "At the time that the knife was thrust, then you had hold of the deceased?" and did you not answer "Yes"? A. I did say ----

MR. RIDGWAY: I object to all this. May I consider my objection to all this noted?

THE COURT: Yes.

Q Was this question asked you: "At the time this knife was thrust, then you had hold of the deceased?" and was not your answer to that question "Yes"?

MR. RIDGWAY: Objected to on the same grounds.

Objection sustained.

CASE # 604

A. No, sir, I don't understand you.

MR. TRAIN: This is preliminary.

THE COURT: I sustained the objection, but the witness answered the question.

Q Was this question asked you: "This other gentleman here (meaning Mr. Cummings) who has testified also, had hold of him", and did you not answer "Yes" to that question? A. Yes, sir, we held him.

MR. RIDGWAY: Objected to. What is the need of my objecting? I will appeal to the Court to instruct the witness to wait until your Honor rules.

THE COURT: I have so told him. I sustain the objection.

Q Now, let me ask you this question ----

THE COURT: I would not proceed any further on that line, Mr. Train.

MR. TRAIN: I understood your Honor to rule that the witness might answer.

THE COURT: As to the question that you propounded.

Q Now, in regard to the affidavit which you say you signed on the 18th of August, 1906, you say it contained the truth?

A. Yes, sir.

Q Did you in that affidavit testify or swear that "three of us had hold of him"? A. Three of us.

Q "I had hold of his hands; this fellow took the gun out of his hand. I turned his hand and he took the gun out, and there was another fellow caught hold of his left hand. One of those fellows that had hold of this man was named O'Neill. Then I seen this defendant run up to him and stab him. He came around up and he made a hit down. I thought first he was going to punch him. He drew the knife right through him between the shoulder and the heart". Did you not swear to that on the 18th of August, 1906?

THE COURT: That part of the question where the witness says: "I thought he was going to punch him", is incompetent.

BY THE COURT:

Q How long are you a policeman? A. Two years.

Q Have you not learned what it is to obey orders? A. Yes, sir.

Q Now, obey the orders you receive here and keep silent until you are told to speak. A. Yes, sir.

THE COURT: That part of the question that the District Attorney has propounded, excepting the words "I thought he was going to punch him" -- with that eliminated I will allow the question

CASE # 604

to be put and overrule the objection.

Exception.

MR. TRAIN: I wish to add this sentence: "We three were holding this man all the time".

Q Now, did you not swear to that in an affidavit which you signed? A. Yes, sir.

Q On the 18th of August, 1906?

MR. RIDGWAY: I object to that question and I move to strike out the answer of the witness.

Objection overruled, motion denied; exception.

Q Now, in view of the fact that you now testify before this Jury that on the 18th of August last you swore that the defendant came up and stabbed the deceased while you and two others were holding him and that you had taken the deceased's gun away, how do you explain the fact that you yesterday testified that the gun was still in the hand of the deceased when you first saw the defendant and that you saw the defendant do nothing? A. The gun ----

Q Answer my question. How can you explain it?

THE COURT: Explain how it is that you testified yesterday in the manner described by the District Attorney, in view of the statement that he has read from this affidavit which you say is true. Do you understand that?

CASE # 604

THE WITNESS: It was done so quick. We had hold of him and he came around aside of me, and when he struck down I seen the knife and I ran after him.

Q Did you see him strike down? A. Yes, sir.

Q Did you not swear yesterday afternoon you saw him do nothing?

A. I think he came down, I did not know with what he hit down, but I did not see with what, did not see what was in his hand.

Q How do you explain your affidavit in which you say that when you saw the defendant the gun of the deceased had been taken away from him, when yesterday you swore in cross-examination to Mr. Ridgway that he still had the revolver in his hand?

A. I told the Coroner at that time, or the Coroner's Jury, that it was done so quick that we could not see it.

Q Did you say that to the Coroner? A. Yes, sir.

Q Did you not say to the Coroner that at the time the knife was thrust you had hold of the deceased and that Cummings had hold of the deceased and that the gun was taken away before the thrust was made? A. Well, there was some mistake there; I don't know.

Q You say it is a mistake? A. Yes, sir; there must be some mistake there; I told them when we caught hold of him he was running around me.

CASE # 604

Q You are telling us what you testified to before the Coroner?

A. Yes, sir.

Q Then you deny that before the Coroner you said that the gun had been taken away before the knife thrust was made? A.

No, sir, I told the Coroner it was quick.

Q Do you deny that you made that statement before the Coroner, that the gun had been taken away before the thrust was made?

A. No, sir, I did not say that; I said it was done so quick, like a flash of lightning, no more than we had him, he was around at our side.

Q You can read? A. Yes, sir.

Q Cast your eye over these minutes. A. That is what I told him.

Q Did you make that statement to the Coroner, that the gun had been taken away before the thrust was made?

MR. RIDGWAY: You asked him to read. Now, let him state.

THE WITNESS: We had hold of him and Cummings had the gun taken away.

Q Cummings had taken the gun away? A. Yes, sir.

Q Before the thrust was made? A. No, sir; I could not say that, you see.

Q Didn't you say that before the Coroner? A. No, sir, he

CASE # 604

was away with the gun at the time.

Q Didn't you say before the Coroner under oath that the gun had been taken away by Cummings? A. Yes, sir.

Q Before the thrust was made? A. We had his hand twisted and we had the gun taken away.

Q Before? A. I could not say which it was.

Q Didn't you say it had been taken away before? A. I don't know how they had it down there. I must have said it if it was put in there; I don't know how I came to say it.

Q Do you know how you came to say it on the 18th of August?

A. At the Coroner's Jury I told them it was so quick, done like a flash of lightning; that is what I told them.

Q Now, if it was so quick as all that, how did you come to swear in your affidavit? A. I don't know how it is in there.

Q You signed it and swore to it? A. Yes, sir, but it never read that way to me.

Q Then if it was done so quick as all that, how could you swear to Mr. Ridgway yesterday that the deceased still had the revolver in his hand when you first saw the defendant? A. We seen the defendant at the same time when we was taking the gun away.

Q You say now it was done so quick you don't know whether he had the gun or not? A. Yes, sir.

CASE # 604

was away with the gun at the time.

Q Didn't you say before the Coroner under oath that the gun had been taken away by Cummings? A. Yes, sir.

Q Before the thrust was made? A. We had his hand twisted and we had the gun taken away.

Q Before? A. I could not say which it was.

Q Didn't you say it had been taken away before? A. I don't know how they had it down there. I must have said it if it was put in there; I don't know how I came to say it.

Q Do you know how you came to say it on the 18th of August?

A. At the Coroner's Jury I told them it was so quick, done like a flash of lightning; that is what I told them.

Q Now, if it was so quick as all that, how did you come to swear in your affidavit? A. I don't know how it is in there.

Q You signed it and swore to it? A. Yes, sir, but it never read that way to me.

Q Then if it was done so quick as all that, how could you swear to Mr. Ridgway yesterday that the deceased still had the revolver in his hand when you first saw the defendant? A.

We seen the defendant at the same time when we was taking the gun away.

Q You say now it was done so quick you don't know whether he had the gun or not? A. Yes, sir.

CASE # 604

- Q Yesterday afternoon you swore to Mr. Ridgway, did you not, that the deceased still had the revolver in his hand? A. I told him ----
- Q When you first saw the defendant? A. We were trying to get the gun away while this was done.
- Q Did you not swear yesterday that the deceased still had the gun in his hand? A. Yes, sir; he had the gun there and we were trying to get it away.
- Q Now you say it was done so quick that you don't know. A. It was done so quick that I don't know.
- Q Who is this Italian you left the court room with yesterday, the tall man with the mustache? A. Tony. That is the deceased's nephew.
- Q The nephew of the deceased? A. Yes, sir, or a cousin.
- Q Is he any relation to the defendant? A. No, sir, he is a relation of the dead man; he lives over in 11th Street.

MR. RIDGWAY: I wish to call one of the officers back for further cross-examination.

WILLIAM B. NOLL, recalled.

CROSS EXAMINATION (CONTINUED) BY MR. RIDGWAY:

- Q Your name is what, Officer? A. William B. Noll.
- Q You were a witness yesterday on the stand? A. Yes, sir, I was.

CASE # 604

Q For the People? A. Yes, sir.

Q Did you testify before the Coroner? A. Yes, sir, I did.

Q Were you called over there? A. Yes, sir.

Q When you testified before the Coroner, did you say anything about having seen a knife? A. Yes, sir, I did.

Q Did you say anything before the Coroner about seeing a knife in the hands of the man? A. Of the defendant?

Q Yes, of the prisoner? A. Yes, sir.

Q You did? A. Yes, sir.

Q Did you say anything about having seen the prisoner stab the deceased? A. No, sir, I did not.

Q Did you say anything about seeing him drawing a knife out of his breast, or anything of that kind? A. I did not see him draw the knife ----

BY MR. TRAIN:

Q You testified that you saw him drawing it through the air?

A. Drawing it from the direction of the deceased, and the deceased had fallen into the hands of John Lawson, a witness who is dead now, he is not here.

Q Let me ask you a question. When you brought the defendant back to where the deceased was, did you hear anybody say anything to him, or did he say anything to any person? A. Yes, sir.

CASE # 604

Q Now, speak up and tell us what it was? A. When I brought the defendant back for means of identification by the dead man to take an ante mortem statement, I had him kneeling down, and I asked the Italian in English, "Why did he kill you?" and I could not get him to answer; and I asked an Italian ----

Q He made no reply? A. No, sir.

Q At that moment was anything said to the defendant by anybody and did he make any reply? A. There was somebody standing there. I did not know him. I was kneeling down, and somebody said, "Don't be afraid" he said, "he killed your brother"; and I heard him reply that he was glad that he did it, as though he was satisfied he had done the crime.

THE COURT: Strike that out.

MR. TRAIN: What part of it?

THE COURT: There are so many vicious elements in it that I cannot segregate one from the other, and I can only dispose of the motion by granting it.

Q Let me put you this question: Was any statement or question put to the defendant by any person at that time in your presence, and if so, tell the Jury what it was? A. The statement made to the defendant was, "Don't be afraid"; it

CASE # 604

sounded like that.

MR. RIDGWAY: Objected to. This is a statement made by some undescribed promiscuous person and it is not binding upon the defendant.

BY THE COURT:

Q Did you see the person who spoke to the defendant? A. No, sir, I did not; I was kneeling at the time, trying to get an ante mortem statement from the deceased.

Q How far away from you was the person who spoke? A. Directly in the rear. I was kneeling and the deceased had fallen to the ground in the arms of Lawson.

Q Where was the defendant? A. The defendant was -- I had him by the hand, in the hands of Patrolman Grady and myself. I was trying to get a statement from him, putting him face to face ----

Q That is the deceased you are speaking of. Where was the defendant? A. Exactly in front of the deceased. We had him -- there must have been about two yards difference between them.

THE COURT: I will permit the question to the witness to state what he heard said to the defendant, if the defendant replied to it.

Q You say you heard a person whom you did not know state something to the defendant? A. Yes, sir, I did.

CASE # 604

Q Did you hear the defendant reply? A. Yes, sir.

Q To whatever the statement was? A. Yes, sir.

Q Go on and state it?

MR. RIDGWAY: Objected to upon the ground that the defendant was not bound by the statement of any outsider.

THE COURT: It is not for the purpose of permitting statements made by another unknown person against the defendant. Your objection there would be well founded and I would not permit it, but it is only for the purpose of showing the nature of the reply made by the defendant to that statement, and if that reply contains anything in the nature of an admission by the defendant, I consider it would be competent evidence against him, notwithstanding that the statement had been made by some unknown person. I will permit this testimony to be given, subject to its being stricken out, and I warn the Jury that until I tell them to take it into consideration they are not to consider it.
Exception.

Q Now, what was the statement you heard made to the defendant

CASE # 604

at this time and place? A. While kneeling, some person whom I did not know -- I was kneeling, trying to get an ante mortem statement.

Q Give us the words? A. "Don't be afraid"; it sounded like "Frank, he killed your brother".

Q "Don't be afraid Frank, he killed your brother." Did the defendant say anything to that? A. Yes, sir; he said he was glad that he -- it sounded like that -- he was glad.

Q Is that all that was said? A. Yes, sir, that was all at that time.

THE COURT: I will strike that out and direct the Jury that they are not to consider it at all.

MR. RIDGWAY: Do you strike it all out, your Honor?

THE COURT: Yes.

MR. TRAIN: Will your Honor hear argument on that?

THE COURT: Yes.

MR. TRAIN: Of course, your Honor did not state the reason for striking that out, but it seems to me that it is competent as an admission, if a man says that he is glad that he has done a thing.

THE COURT: He did not say that. I took the answer as the witness gave it, because it might be construed -- of course, gentlemen, this discussion between the Court and Counsel must not

affect you. It might be argued that the words "I am glad" uttered by the defendant in reply applied equally to the fact of the deceased having killed his brother as it did to another act that the deceased himself might have done.

MR. TRAIN: If you believed a man would say "I am glad" when somebody said "Your brother has been killed".

THE COURT: Unless it is a clear admission by the defendant of something incriminatory against him, it cannot be admissible.

MR. TRAIN: The statement, as I understood it, was, I may be wrong, "I am glad I did it".

THE COURT: No, I take the witness's statement. He says, "I am glad".

MR. RIDGWAY: I object to this.

THE COURT: My ruling will stand.

MR. TRAIN: Well, there is one more thing I would like to say and that is this, that the statement made by the defendant was this: "Don't be afraid, Frank, he killed your brother". Now, it is clear that the answer given by the defend-

CASE # 604

ant relates to the statement not to be afraid, and he said "I am glad", instead of being afraid, "I am glad".

THE COURT: It might equally apply to the statement "He killed your brother -- I am glad he did it." It is as applicable to one part of the statement as to the other. Where evidence is sought to be introduced of an admission made by an accused person regarding a crime of which he is accused, the admission must be clear and unequivocal. There is no doubt about that.

MR. TRAIN: I understand, but if he said, "I am glad I did it", your Honor would permit it?

THE COURT: That is another thing. I am ruling on the question.

BY MR. RIDGWAY:

Q You said you testified before the Coroner's Jury and you told the Jury here that you swore there that you saw the stabbing?

A. No, sir, I did not see the stabbing; I seen the defendant draw the knife from the direction of the body.

Q Let me call your attention to this: Do you remember a question being put to you in this way: "Describe to the Jury everything that took place that morning." Do you remember that question asked you? A. When, yesterday?

CASE # 604

Q No, before the Coroner's Jury, I am talking about now, when you were a witness under oath? A. Yes, sir.

Q And here is your answer: "About 6:55, we noticed a crowd running out of Front Street, and I says to the officer with me, 'There must be something doing'!" Do you remember that?
A. Yes, sir.

Q "I ran around on Peck Slip and ran towards Water Street"?

MR. TRAIN: I object to this, because it appears that it does not contradict anything that the officer has stated. He should call his attention to some specific point.

THE COURT: I sustain the objection.

MR. RIDGWAY: I want to show, if possible, by the reading of this that he swore to nothing of that kind. It is all embodied in these few lines.

Objection sustained; exception.

Q Did you swear to this: "As I got there I noticed a man kind of falling and I noticed the defendant Tocco running out with a knife"? A. Yes, sir, he did draw the knife.

Q Did you swear to that? A. Yes, sir.

Q "Is that the man right here (indicating the defendant)"?
A. Yes, sir.

CASE # 604

Q "And as he ran with the knife I pursued him". Now, did you say that? A. Yes, sir.

Q Is that your testimony before the Coroner? A. Yes, sir.

THE COURT: He said it was.

MR. TRAIN: I move that the last two questions and answers be stricken out.

THE COURT: I will allow them to stand.

CASE # 604

SAMUEL CUMMINGS, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

- Q Mr. Cummings, what is your business? A. I am in the fish business.
- Q You have to talk louder than that in the fish business? A. Yes, sir.
- Q Talk louder here. A. Yes, sir.
- Q Where do you live? A. 1422 Broadway.
- Q Where do you work? A. That is my place of business.
- Q 1422? A. Yes, sir.
- Q What is the name of the concern that you work for? A. My own business, a fish market.
- Q You have a fish market? A. Yes, sir.
- Q How long have you been in that business? A. About fourteen years.
- Q Born in New York? A. No, sir, Brooklyn.
- Q Brooklyn? A. Yes, sir.
- Q Now, were you at work on the morning of July 31st, 1906? A. I was going to market.
- Q Going to market? A. Yes, sir.
- Q We want to hear from you without your being interrupted by me or anybody else, everything you saw, as nearly as you can

CASE # 604

58

recall it and in the order that you saw it, and in such a tone of voice that the Jury all can hear your testimony. Now, will you try and tell the Jury everything you saw? A. I was going to Market on Tuesday, July 31st, I believe, and I came along, I went along through Gold Street into Peck Slip, and going through Peck Slip I saw a crowd running. I joined in the crowd and I caught a man with a light coat. I grabbed hold of him by the right hand and then as I grabbed him the crowd hollered, "Look out for the pistol." Then I stuck my hand under here (indicating) and took the pistol out and I turned him around and walked him down towards the Market.

Q Did you take the pistol away from him? A. Yes, sir; I held the pistol in my right hand and I walked him down towards the Market and a man coming along gave him a blow.

Q Do you see that man anywhere? A. Yes, sir.

Q Where is he, the defendant? A. Yes, sir; and then a policeman came. I don't know his name, I seen him over there, sitting there, and he said to me, "Where did you get the" -- he asked me where I got the pistol. | He was going to arrest me. |

Q Did you see where the defendant came from when he gave that blow? A. He came from towards the Market, as near as I can judge.

CASE # 604

3

Q He came from in the direction of the Market? A. Yes, sir.

Q Did you see anything in his hand when the blow was given?

A. No, sir.

Q Did you see a knife at any time? A. No, sir.

Q What did the defendant do after he had given this blow?

A. He ran away.

Q In what direction? A. Towards the Broadway Ferry.

Q The defendant ran away towards Broadway Ferry? A. Yes, sir.

Q Now, did the crowd run after him? A. There was the whole crowd run after him.

Q What became of the man that you were holding? A. He dropped on the sidewalk. I walked him about from here to the desk there.

Q You walked him from about where you are sitting to the desk, five or ten feet? A. Yes, sir.

Q He sank or dropped down? A. Yes, sir.

Q Did you notice anything on him when he went down? A. I saw blood coming.

Q Where? A. When he dropped down.

Q Whereabouts, out of his body? A. Right here (indicating the left side of the breast).

Q Describe this man you had hold of when he was struck by the

defendant? What did he have on? A. He had a light coat on.

Q What did he have underneath that; do you remember? A. I could not say.

Q You remember he had a light coat? A. Yes, sir.

Q Now, do you see a man in Court called Postman; do you know him? A. No, sir.

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

Q Did you know him on that day? A. No, sir.

Q By sight? A. No, sir.

Q Now, at the time the defendant came up and struck the deceased, struck the man that you had caught and whose pistol you had taken away, did this man Postman have hold of the deceased? A. No, sir, I had him all alone.

Q Was anybody else there? A. Not until I walked him down. O'Neill caught hold of him on the left side.

Q After the blow was struck or before the blow was struck? A. Before the blow was struck.

Q O'Neill had hold of him before the blow was struck? A. No, sir; I had hold of him when the blow was struck and I turned him around and walked him down.

Q When did O'Neill have hold of him? A. After I had hold of him and walked him down.

CASE # 604

- Q Before the defendant came up to you or after the defendant came up to you? A. After the defendant came up.
- Q After the defendant came up? A. Yes, sir.
- Q Postman was not there? A. I did not see him.
- Q Well, you know how many people had hold of the deceased? A. I don't know, I ran away, I was afraid.
- Q You ran away? A. Yes, sir.
- Q When did you first see Postman? A. The first day I was called here as a witness.
- Q Where, down in the Coroner's Court? A. Yes, sir, the Coroner's Jury, I believe.
- Q The first time you ever knew Postman at all? A. I never knew the man before.
- Q Will you tell us where you were when you first saw the crowd? A. I was, -- I don't know these streets very well, about half way between Front and Water, I should judge.
- Q What direction were you walking in? A. I walked down Peck Slip.
- Q You were walking down Peck Slip? A. Yes, sir.
- Q Walking on which side of the street? A. On the right hand side.
- Q That is the side on which you caught the deceased? A. Yes, sir.

Q Where did the deceased come from? A. He came from towards the Fish Market.

Q Did he come from Peck Slip or through Front Street? A. He came through Front Street.

Q When he turned the corner were there other people waiting for him? A. There was about fifty or a hundred people.

Q A big gang? A. Yes, sir.

Q How did you catch him; did you see the revolver in his hand? A. Yes, sir.

Q Show us how you caught him? A. Now, this is Peck Slip here (illustrating), and I passed him. I guess I was about as far as that gentleman there, and I saw a crowd running. I ran up and grabbed hold of him, and as I grabbed hold of him, they said, "Look out for the pistol".

Q You grab me. Let me be the deceased. You are going down Peck Slip or you are coming up Peck Slip? A. Yes, sir.

Q You grabbed him? A. I passed the man at the time and then I joined in and ran after him, and as I ran after him I grabbed hold of him and somebody hollered "Look out for the pistol" and I pulled the pistol out.

Q What did you do with it? A. Kept it in my hand and handed it to a policeman.

Q Where did the defendant come from? A. From behind, over this way.

Q Passed in front of him? A. Yes, sir.

7

Q And delivered the blow? A. Yes, sir.

Q You had the pistol like that (illustrating)? A. Yes, sir.

Q You had hold of the deceased the way you have me? A. Yes, sir.

Q From which direction did he come, from the same direction as the crowd? A. Yes, sir.

Q And struck the deceased? A. Yes, sir, right here.

Q It was done so quickly you did not see the knife at all?

A. No, sir.

Q You saw the defendant run? A. Yes, sir.

Q You took this man some five or ten feet? A. Walked him down five or ten feet. The policeman came along at once and I gave him the pistol. He took the pistol off me and then I ran away.

BY THE NINTH JUROR:

Q What kind of a man was the deceased man? A. A tall, thin fellow.

Q The man with the pistol? A. Yes, sir.

CROSS EXAMINATION BY MR. RIDGWAY:

Q Have you, Mr. Cummings, ever had any experience similar to this before in your life? A. No, sir, never.

CASE # 604

Q It was an event of an exciting nature to you, wasn't it?

A. Yes, sir. It was bothering me for a week.

Q This occurred very early in the morning, didn't it? A.

About a quarter to seven, as near as I can judge.

Q At the time the fish people were gathered around the Market there? A. Yes, sir.

Q Was this crowd running towards you or were they going away from you? A. They were coming towards me after the deceased.

Q You observed a very large crowd of people, you say? A. About a hundred or a hundred and fifty.

Q They appeared to be pursuing a man who had a light coat on? A. Yes, sir.

Q When you saw that man approaching you you saw that he had a revolver in his hand? A. Yes, sir.

Q You did not know the man, did you? A. No, sir, never saw the man before.

Q You did not know anybody around there? A. No, sir, never saw one of them before.

Q Policemen or anybody? A. The policeman I never saw before.

Q So they were all, substantially, strangers to you? A. Strangers, yes, sir.

Q When you grabbed the man, as you have described to the Jury,

CASE # 604

how close was this great crowd of people to you? A. About from here to this gentleman there; they seemed afraid to catch him; about eight feet, I should judge.

Q As you grabbed him they told you to look out for the pistol?

A. Yes, sir.

Q And you did look out for the pistol? A. I certainly did.

Q You were very much excited too, were you not? A. Yes, sir, I was.

Q You saw somebody, you say, whom you believed to be this defendant or described as this defendant, strike a blow?

A. Yes, sir.

Q But whether he had anything in his hand or not, that you don't know? A. No, sir, I could not say.

Q Now, how close was the policeman to you, how close? A. Right alongside of me when I gave him the pistol.

Q When you gave him the pistol, but I mean when you took hold of him did you see him in the crowd? A. No, sir, I did not see him at all.

Q You did not see him until he appeared suddenly alongside of you? A. Yes, sir.

Q For the first time you saw that there was a policeman there? A. Yes, sir.

Q And you handed him the pistol? A. Yes, sir, with my hand.

Q Have you ever seen that pistol since? A. No, sir.

CASE # 604

Q Would you know it if you saw it now? A. Yes, sir.

Q Do you know what became of the pistol; have you any knowledge of what became of it? A. I gave it to the policeman.

Q What policeman did you give it to? A. That gentleman over there; I don't know his name.

Q You mentioned some other man's name to Mr. Train. A. O'Neill -- yes, sir, I saw him. He wanted me to give him the pistol and I said "No," I says, "I am going away." So he had hold of him and I went away, I was afraid.

Q Is that all you know about the case? A. Yes, sir.

Q Have you stated it all? A. Yes, sir.

BY THE FIFTH JUROR:

Q Did the man with the pistol, did he make any struggle when you stopped him? A. No, sir.

Q Did he make any struggle? A. No, sir.

Q This man who was running? A. Yes, sir.

Q He made no struggle at all; you caught hold of him and stopped him, and you did not require any assistance to stop him?

A. No, sir.

Q Then you took the pistol away from him, and after he was quiet? A. Yes, sir.

Q He made no resistance to that? A. No, sir.

BY THE TENTH JUROR:

CASE # 604

Q Are you sure this man struck that blow? A. Yes, sir.

BY THE TWELFTH JUROR:

Q How close was that crowd? A. About from here to that gentleman there (illustrating).

Q When this gentleman struck this deceased? A. Right behind him.

Q How close was the crowd to this man? A. This man here, about from here to this gentleman here (indicating about six or eight feet.

Q How far from you? A. (Witness indicates the same.)

H A R R Y T I L L M A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Now, Mr. Tillman, what is your business? A. Truck driver.

Q Will you address your remarks to the twelve jurymen, and then they all can hear you? A. Yes, sir.

Q You live where? A. 37 Orchard Street.

Q How long have you been a truck driver? A. About four or five years.

Q Who do you work for? A. Jacobs & Company.

Q Now, when you drive you have to speak to your horse, don't you? A. Yes, sir.

Q You don't speak to them in that tone of voice. Speak to us

CASE # 604

as you would speak if you were telling your horse to get up. Do you remember Tuesday morning, the 31st of July?

A. Yes, sir.

Q Why don't you speak up. A. Yes, sir.

Q Are you a truck driver now? A. No, sir.

Q What is your business now? A. I am out of work two weeks now.

Q Please try to speak louder, because we cannot hear you. What were you doing that morning? A. That morning I was coming through Water Street and I turned into Peck Slip.

Q Were you driving? A. Yes, sir; so I stopped in Front Street, corner of Peck Slip and watered my horse.

Q You watered your horse corner of Front Street and Peck Slip? A. Yes, sir, and I seen a man with a revolver in his hand and a crowd of people running after him. So they hollered "Catch him, catch him"; so I looked to see who it is.

Q Who did you see? A. A man with a revolver.

Q Where was he? A. Running in Water Street and Peck Slip, and at the corner he got caught.

Q Did you see who caught him? A. A man in citizen's clothes and a policeman.

Q Have you seen the man in citizen's clothes in Court? A. Yes, sir.

CASE # 604

- Q Is he the last man on the stand? A. Yes, sir, sitting over there.
- Q Cummings? A. Yes, sir.
- Q Is that the man you speak of in ci tizen's clothes? A. Yes, sir .
- Q How far were you from the place where Cummings and the policeman caught the deceased? A. About half a block.
- Q On your truck? A. Yes, sir.
- Q Did the crowd come past you? A. Yes, sir.
- Q They were all around, I suppose? A. Yes, sir.
- Q When Cummings and this officer, you say, caught hold of the deceased, what else did you see? A. I saw them trying to walk him down where the man was shot. They walked him about a foot or so; this Tocco there run right into the crowd while walking down. I seen him take up his hand and strike. I don't know whether he had a knife or not.
- Q You did not see any knife at that time? A. No, sir.
- Q You did see the defendant strike the deceased? A. Yes, sir.
- Q When in the hands of ---- A. Of Cummings and this officer, yes, sir.
- Q Then he started to run west on Peck Slip -- did you see what he did? A. No, sir; he started to run and so a coal truck

CASE # 604

man hit him with a handful of coal in the face.

Q A truck driver threw a handful of coal in his face? A. Yes, sir.

Q So he stopped? A. Yes, sir.

Q Then did you see him caught? A. Yes, sir; then I seen a man in citizen's clothes take the knife up off the ground and handed it to the policeman.

Q Is that the first you saw of the knife? A. Yes, sir.

Then they walked him down by the dead man, and I went up and looked at him and he unbuttoned his shirt and I seen he was struck.

Q After you saw this blow struck by this defendant, what happened to the deceased, what became of him? A. Tocco?

Q Of the deceased, the man who was struck by Tocco? A. He fell down.

Q Then you saw Tocco brought back afterwards? A. Yes, sir.

Q Now, do you know Postman? A. Yes, sir; he worked with me by the same boss.

Q What is that? A. He worked with me by the same boss.

Q He was working with you, then? A. Yes, sir.

Q Working for the same boss then? A. Yes, sir.

Q Was he a special policeman? A. Yes, sir.

Q Now, did you see him that morning? A. I seen him when he was trying to go after the man with the revolver, and then

CASE # 604

I did not see him any more.

- Q Did you see Postman go up and try to take hold of the man when he was running? A. No, sir.
- Q What did you see him do? A. I seen him going after him about a half a block; then I don't know what became of him.
- Q You saw Postman running after the deceased? A. Yes, sir.
- Q Did you see Postman at any time have hold of the deceased? A. No, sir.
- Q Did you notice what Postman did at any time? A. No, sir.
- Q Did you see Postman standing up against the wall? A. Up against the wall?
- Q When he was standing up against the wall? A. When the Italian grabbed the revolver and had it placed in front of him?
- Q When the deceased? A. Yes, sir. Then he stepped aside against the wall, and then he went after him.
- Q Then the Italian ran on? A. Yes, sir.
- Q Did you see what Postman did? A. No, sir, he ran after him.
- Q Then after that what happened, when the Italian pointed the revolver at Postman, what happened after that? A. The Italian kept on running.
- Q Kept on running? A. Yes, sir.
- Q That was at the time that you saw Cummings with the other

officer grab him? A. Yes, sir.

CROSS EXAMINATION BY MR. RIDGWAY:

Q See if I understand you correctly. Do you say that you saw this prisoner strike the deceased? A. Yes, sir.

Q And at that time a policeman had hold of him? A. Yes, sir, and a man in citizen's clothes.

Q And a man in citizen's clothes? A. Yes, sir.

Q So that at the time that the blow that you saw struck was struck, a policeman had hold of the deceased? A. Yes, sir.

Q A policeman in uniform? A. Yes, sir, and a man in citizen's clothes.

Q Which one of these policemen, point him out? A. Officer Grady.

Q Officer Grady? A. Yes, sir.

Q Is that the officer (pointing to Officer Grady)? A. Yes, sir.

Q Officer Grady? A. Yes, sir.

Q You saw him having hold of the deceased at the time that the blow was struck? A. Yes, sir.

Q Did you see the crowd when it was running after this man that was struck? A. Yes, sir.

Q Did you see the man who was running away with a revolver in

CASE # 604

his hand? A. Yes, sir.

Q Did you see him point it at Postman -- did you see him point the pistol at Postman? A. Yes, sir.

Q Then did you see him continue to run on? A. Yes, sir.

Q Did he still keep the pistol in his hand? A. Yes, sir.

Q Did he have the pistol in his hand when these two men grabbed him? A. They grabbed him right away and they took it away from him right away.

Q What is that? A. They caught hold of him right away by the hands and took it away.

Q Did he have it in his hands when they grabbed hold of him?

A. When they grabbed hold of him?

Q Yes. A. He had it in his hand.

Q You could see it very plainly? A. Yes, sir.

Q How far were you away from the deceased? A. Half a block.

Q Half a block? A. Yes, sir.

Q Show the Jury how he had it in his hand that you could see at a half a block away? A. This way (indicating), with the arm upraised so.

Q Held out that way? A. Yes, sir.

Q Did you see this defendant in the crowd? A. Yes, sir.

Q He came up? A. Yes, sir.

CASE # 604

Q It was at that time that this blow was struck? A. Yes, sir.

BY MR. TRAIN:

Q At that time, where was the pistol, when the blow was struck?

A. They took it away from him.

Q They had taken it away? A. Yes, sir.

Q Did you see who took it away? A. Yes, sir.

BY THE COURT:

Q Do you remember who took the pistol away? A. No, sir.

Q You do not? A. No, sir.

Q Will you describe how the policeman and the man in citizen's clothes held the deceased when the defendant struck the blow? A. Yes, sir; I can do that.

Q Describe how they held him? A. Each had hold of him.

THE COURT: The policeman had hold of the deceased by one arm and the citizen had hold of him by the other arm.

THE WITNESS: Yes, sir.

THE COURT: Is that so?

THE WITNESS: Yes, sir.

BY MR. TRAIN:

Q And it was while they had hold of him by each arm that you say you saw the defendant strike the blow? A. Yes, sir.

Q Which hand did the defendant use in striking the blow? A.

CASE # 604

The right hand.

Q Did you see anything in his hand? A. No, sir.

Q Did you see what part of the body of the deceased the blow reached? A. The left shoulder.

Q The left shoulder? A. Yes, sir.

BY THE FIRST JUROR:

Q You were half a block away from this accident? A. Yes, sir.

BY MR. TRAIN:

Q How high above the ground? A. I was on top of the truck.

Q Standing up? A. Yes, sir.

Q What kind of a truck was it? A. An open truck.

Q Describe it; what is it used for carrying? A. Packages of fish; a big truck.

Q A fish truck? A. Yes, sir.

Q Was the truck loaded? A. No, sir.

Q You were sitting on the seat or standing up? A. Standing up.

Q Standing on the seat? A. Yes, sir.

Q On top of the seat? A. Yes, sir.

Q Do you generally drive the truck that way? A. No, sir; but just then I was standing up while the crowd was running.

BY THE NINTH JUROR:

Q After he got the blow, did you see any marks? A. Yes, sir.

CASE # 604

Q Did you see anything else? A. I seen blood running.

Q You saw blood running? A. Yes, sir.

SAMUEL CUMMINGS, recalled:

BY MR. TRAIN:

Q Now, Cummings, you said when you grabbed the pistol ----

THE COURT: This is in answer to a question put
by a Juror.

BY THE EIGHTH JUROR:

Q When you grabbed the pistol, you took it from under his
pantaloons? A. No, sir, under his coat.

Q Under his coat? A. Yes, sir.

Q He had hold of it? A. Yes, sir.

BY THE TENTH JUROR:

Q Was it in the pocket or just loose? A. I did not say any-
thing about his pocket; right under here.

Q Was he holding it with his hand? A. Yes, sir.

NATALE LACICERO, a witness called on behalf of the
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Did you know Salvatore Germanco? A. Yes, sir.

Q Where do you live? A. 522 East 14th Street.

Q You come from the same town in Sicily that Germanco came from,

CASE # 604

do you not, and that little town is Sferocavallo, Province of Palermo? A. Yes, sir.

Q On the 1st of August, 1906, did you go to the Morgue? A. Yes, sir.

Q Did you there see the body of Salvatore Germanco? A. Yes, sir.

Q Did you point this body out to any person who was there? A. Yes, sir.

Q Describe this man that you pointed the body out to? A. He was a thick-set young man with reddish hair and a blond mustache.

MR. TRAIN: Will your Honor take judicial notice of the fact that he described Dr. O'Hanlon?

THE COURT: The Doctor might object to the description.

Q Had you already identified this body on the 31st day of July at the Oak Street Station House? A. Yes, sir.

FRANK GRADY, a witness for the People, recalled:

BY MR. RIDGWAY:

Q Mr. Grady, you are a police officer? A. Yes, sir.

Q You are the officer pointed out by the witness Tillman? A. Yes, sir.

CASE # 604

Q Did you have hold of the deceased at the time he was struck?

A. No,, sir.

Q You were some distance away? A. Yes, sir.

Q You did not see him struck, did you? A. No, sir.

Q Was he handed into your custody afterwards? A. No, sir.

MR. TRAIN: The witness already testified that he
was on the corner and did not see anything.

D E F E N S E.

S A L V A T O R E C A R A D O N N A, a witness called on behalf of the defendant, being duly sworn, testified through Official Interpreter Morrossi as follows:

DIRECT EXAMINATION BY MR. RIDGWAY:

Q Where do you live? A. Union Street, Brooklyn.

Q What do you do for a living? A. Fish dealer.

Q Do you remember the day of this trouble? A. Yes, sir.

Q Where were you doing business that day? A. Well, we go every day to the fish market.

Q Where was the Fish Market located? A. Fulton Market.

Q Did you know the deceased? A. I knew him a short time.

Q When did you first see him that morning? A. When he came to the Market.

Q About what hour? A. Half past six or seven o'clock.

Q What took place there, if anything? A. Well, there was

CASE # 604

Domenico Mansueto; he was the man who had the quarrel, who started the quarrel with Tocco, and then came the dead man, Germanco, and he undertook to defend Mansueto, and then that quarrel was apparently quenched. There was there first this Mansueto, Domenico Mansueto, the man who had started the quarrel with Tocco, and then there was another man who took the part of Mansueto, the dead man. He was the man that took the part of this Mansueto, who had started the fight with Tocco, and then it seems there was an end of it, but after the quarrel had ceased, apparently, there, we all went to our respective places where we have the fish and where the watchman is there to watch the fish. Then we all engaged in a conversation together, and there was among us also Giovanni Tocco, talking with us all. When all at once this Salvatore Germanco drew a revolver and said, "What is the matter with you brigands of favorotta", and almost in that moment Giovanni Tocco ----

- Q Who is Giovanni Tocco? A. The brother of Guiseppe Tocco.
- Q A brother of the prisoner? A. Yes, sir. Germanco attempted to shoot Giovanni Tocco and Giovanni got scared and puts himself, hides himself behind me and I said to the deceased, "Look out, don't shoot me", and he shot.
- Q What was the result of the shot he fired? A. The result was that he hit me.

CASE # 604

Q Then what became of you? A. (Witness indicates the part of the breast where he was hit.)

Q He shot you? A. Yes, sir, because I was there in that position.

Q I don't want any reasons. A. But he was shooting at the brother.

Q What became of him after he was shot? A. Well, I was there and the ambulance came and I was carried to the hospital.

Q That is what I wanted to know. After being shot he was taken to the hospital some place. How long was he there suffering from the effect of that wound? A. Twenty days.

Q You did not run after this man, the deceased? A. No, sir. How could I run while I was wounded?

Q I simply want to get the fact on the record that you did not run. You did not run after the deceased? A. No, sir; I tried to walk, but it was very difficult.

CROSS EXAMINATION BY MR. TRAIN:

Q What relation are you to the defendant? A. No, relation at all.

Q What relation are you to the defendant's father? A. We are friends, we are countrymen from the same country and we in

CASE # 604

measure call ourselves just cousins, although we are not.

BY THE SEVENTH JUROR:

Q Where was the defendant, this gentleman here, when you were shot? A. He was not present.

G U I S E P P E T O C C O (No. 2), called as a witness for the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RIDGWAY:

Q Now, what is your name? A. Guiseppe.

Q Are you related to this defendant? A. Yes, sir.

Q What is your relationship? A. We are cousins, brother's children.

Q Brothers' children? A. Yes, sir.

Q What was your business? A. Fish dealer.

Q Do you remember the day of this trouble? A. Yes, sir.

Q Did you see anything of it? Tell what you saw? A. I was going to the dock and was twenty or thirty steps distant from the dock when I saw Salvatore Caradonna and Giovanni Tocco seated, one near to the other, and all at once I heard the report of a fire-arm, and I saw Giovanni Tocco fall down, and I was just turning towards them when I saw Guiseppe, and I said to him, "Guiseppe, they have killed your brother."

Q Who is the Guiseppe that he speaks of, this defendant? A. Yes, sir; that is Guiseppe down there.

CASE # 604

- Q This defendant? A. Yes, sir (indicating the defendant).
- Q That is the defendant here? A. Yes, sir.
- Q Now, you told him that his brother had been shot? A. Yes, sir.
- Q Now, just tell what took place then, from that point on. A. I did not see anything any more.
- Q Did you see anybody run away? If so, state who? A. Yes, sir, Guiseppe, I saw him running.
- Q The defendant? A. Yes, sir.
- Q Did you see many other people running too? A. Yes, sir, there were people running.

NO CROSS EXAMINATION.

G U I S E P P E T O C C O (No. 1), the defendant, called a s
a witness in his own behalf, being duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. RIDGWAY:

- Q What is your name? A. Guiseppe Tocco.
- Q Where did you live before you were arrested? A. 183
Columbia Street, Brooklyn.
- Q How old are you? A. A few months of 30 years of age.
- Q How long have you been in this country? A. Three years,
about.

CASE # 604

Q Are you a married man? A. Yes, sir.

Q What was your business at the time this trouble was had?

A. Well, I have a fish store.

Q Where at? A. 181 Columbia Street, Brooklyn.

Q What were you doing in New York that morning? A. I was buying fish.

Q Did you know the man who was killed? A. First I did not know him, before I did not know him.

Q Did he know him when he shot him? That is all I want to know. A. I just had known him from sight up there, having seen him a couple of times in the Market.

Q About what time did you leave your home and what time did you reach the Market, on that morning? A. It might have been four o'clock.

Q Now, just state what took place, and state the events in the order in which they occurred. A. I had this fish store, as I stated, and I went to the Market, and as I needed the first thing a knife to clean the fish, I bought such a knife for the purpose and put it in my pocket. When after the lapse of an hour and a half I had walked more or less. While I was walking on my business, I heard the report of a fire-arm and I met my cousin, Guiseppe Tocco, and he said to me, "They have shot your brother", and hardly had he said those

CASE # 604

words when Salvatore Germanco was running, and I, having heard that he shot my brother, ran after him in order to have him arrested. When I had arrived at a certain spot at a short distance, he said with a curse, "I kill you too (indicating the attitude struck by the man)". When I saw that I was at the brink of being killed, I, having the knife, struck him before he had time to kill me, and if I had not done that, he would have killed me.

- Q Did you believe your life to be in danger at the time you took this knife from you pocket and struck him? A. Yes, sir.
- Q Did you believe that he had killed your brother? A. My cousin had told me so, and I believed him, because he was my cousin and would not have said otherwise.
- Q When this deceased made this threat that he has described to the Jury, was it in Italian or in English? A. No, sir, it was in Italian.
- Q Have you ever been arrested?

THE COURT: Question excluded.

Exception.

- Q Have you ever been convicted of any crime?

Question excluded; exception.

CASE # 604

CROSS EXAMINATION BY MR. TRAIN:

Q Ask him to show how the gun was pointed at him. A. (Witness illustrates). "By Madonna, by Madonna, I will kill you too!" My life was evidently in danger and he was about to kill me, and so I struck him.

Q Ask him if anybody else was there -- was the deceased alone at this moment? A. I had not seen anybody.

BY THE NINTH JUROR:

Q From the time he heard that his brother is killed, up to the time when he stabbed the deceased -- how long a time was that; how long was it? A. I could not reckon the time because I was walking and I had no mind to the time.

BY MR. RIDGWAY:

Q He said "running", didn't he, and not "walking"? A. After he had started to run I had also run after him, to have him arrested.

BY THE COURT:

Q Ask him if at the time that the deceased pointed the pistol at him did any person have hold of the deceased? A. I did not see anybody.

Q Ask him whether, at the time that he struck the deceased with the knife, did any person have hold of the deceased? A. I did not see anybody.

CASE # 604

- Q Did he strike the deceased with the knife immediately after the deceased said to him, "I will kill you too"? A. Yes, sir.
- Q Where did he strike the deceased with the knife, what part of the body? A. I cannot remember that. In that moment I had no mind to remember.
- Q What was the deceased doing when this witness struck him with the knife? A. He had the revolver pointed at me.
- Q Ask the witness where he aimed to strike the deceased with the knife? A. In that moment when I saw that revolver facing me, I did not look where I struck, I only saw the danger, I was to be killed.
- Q Was he standing in front of the deceased at that instant of time or one side of him? A. In front.

BY THE FIFTH JUROR:

- Q At the moment when the blow was struck by him, he said that the revolver was in the hands of the deceased? A. Yes, sir.
- Q Had it then dropped from his hand or did he still hold it in his hand after he was struck? A. I was not aware of what happened with the pistol, because I was in a state of fright.
- Q Did you run away? A. I was trying to look for a policeman. As soon as I saw the policeman, I stopped.

CASE # 604

Q You did run, didn't you? A. Because I was frightened, and I did not know, he might have killed me, and I went for a policeman.

BY THE FIFTH JUROR:

Q In what pocket did you carry the knife up to the time that you drew it? A. In the back pocket.

Q Was the knife loose or was it in a sheath? A. It was loose, nude.

THE COURT: Is the knife here that was used?

MR. TRAIN: Yes.

THE COURT: (To the Interpreter) Now, hold it in your hand and ask the witness to look at that knife and state if that is the knife with which he struck the deceased?

THE WITNESS: It was a knife like this.

THE COURT: You take it in your hand.

THE WITNESS: A knife for fish.

THE COURT: You take that knife in your hand and hold it and do not let the witness take it. You hold it in your hand and let him look at it.

THE WITNESS: I don't know if it was exactly this knife or another knife.

CASE # 604

Q Was the other knife like this? A. It was a knife to clean the fish.

Q Was it a knife like the one that you see now? A. It was a fish knife; I don't know if it was this knife.

MR. RIDGWAY: I think he already stated it was one similar to that.

THE COURT: Make it clear, if it was a knife similar to that.

THE WITNESS: It was a fish knife. I could not exactly tell, because I had just bought it and put it in my pocket.

BY MR. TRAIN:

Q Did he ever use it on fish? Ask the witness if the knife was not a whole knife, an unbroken knife?

THE COURT: He said the knife was a new knife and he had never used it and put it in his pocket.

BY THE COURT:

Q Ask the witness was the knife that he used broken in the blade or the same as that knife is now? A. Well, I put that knife in my pocket, and I could not now exactly tell whether it was broken or not.

BY MR. RIDGWAY:

Q But does he understand what you mean when you ask him whether the knife was in that condition, being broken off, or whether the knife was perfect, a whole knife, when he bought it?

A. It was whole.

BY MR. TRAIN:

Q After you were brought back by the officer, did anybody say to you, "Don't be afraid, Frank, he killed your brother", or don't be afraid; he killed your brother"? A. Nobody said anything to me.

Q Did you say, "I am glad, I am satisfied" or words to that effect? A. My cousin before had told me that he had been killed, and I believed that that was the truth.

Q Just ask the witness to say yes or no to the question whether he said "I am glad, I am satisfied" or words to that effect?

A. No, sir, I did not say that.

MR. RIDGWAY: That is the case for the defense.

MR. TRAIN: That is the case for the prosecution, with the exception of Dr. O'Hanlon's testimony. If Mr. Ridgway does not care to make the technical concession that the blow which the defendant now says he inflicted was the cause of the death of the deceased, I shall have to ask

CASE # 604

your Honor to give me time to produce Dr.
O'Hanlon.

THE COURT: Mr. Ridgway, have you the Doctor's
statement before the Coroner?

MR. RIDGWAY: I have it.

THE COURT: Will you look at it and see if you can
consistently with your duty have it read in
evidence without making any concession on your
part except as to the reading of it, instead of
calling the Doctor?

MR. RIDGWAY: I would not care to do that in a
homicide case.

(The Court admonished the Jury, calling their
attention to Section 415 of the Code of Crimin-
al Procedure, and took a recess until half
past two o'clock.

-----O-----

CASE # 604

AFTER RECESS.

PHILIP F. O'HANLON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q You are a regularly licensed and practicing physician and surgeon? A. I am.

Q One of the Coroner's Physicians of the Borough of Manhattan?

A. Yes, sir.

Q Were you such officer on the 1st of August, 1906? A. I was, sir.

Q Did you on that date at the City Morgue in 26th Street perform an autopsy? A. I did, sir.

Q Upon a body identified to you as Salvatore Germanco? A. Yes, sir.

Q Will you state what you found as the result of the autopsy?

A. On the 1st of August, I went to the Morgue and performed an autopsy upon the body of Salvatore Germanco. I found that the cause of his death was hemorrhage of the lung due to a stab-wound penetrating the lung, from which he died.

Q Can you describe this wound? A. The wound was about five inches in depth and pierced the apex of the lung, entered about the middle of this part of the bone here, the globular head of the humerus, passed obliquely downward and towards

CASE # 604

the center of the body, passing beneath the muscle, the deltoid muscle, under the left collarbone and over the first rib and into the tissue of the left lung near its top, resulting in hemorrhage which caused death.

Q Did the wound pass through any artery? A. No, sir; the wound passed into the lung tissue itself, and in doing so severed various pulmonary arteries which go to make up the lung in that particular region.

Q Do you recall the size of this man? A. No, sir, I do not think I recall his size.

BY THE COURT:

Q Do you recognize that person, Doctor (referring to Natale LaCicero)? A. I think I do, yes, sir.

Q Did you see him? A. I think he was at the Morgue, Natale LaCicero.

Q That is the man? A. Yes, sir.

Q Were you ever acquainted with him before? A. No, sir, I was not.

Q Or he with you? A. No, sir.

Q A stranger to you? A. Yes, sir.

THE COURT: Is there any question now on the record as to the proof of the identity of the body of the deceased having been the person who re-

CASE # 604

ceived the wound from the defendant? Is there any question as to the body upon which the Doctor performed the autopsy being the body of the person who received the wound from the hands of the defendant, the deceased mentioned in the indictment?

MR. RIDGWAY: I have listened to the proof and I have nothing to say.

THE COURT: Is there proof on that question?

MR. TRAIN: The evidence of this witness himself who knew the deceased and showed the body to the Doctor.

BY THE COURT:

Q Was it on the body that this person, who has come to the bar and who has been a witness in this case -- was it on the body that he pointed out to you that you performed this autopsy?

A. Yes, sir; he said it was his brother in law.

Mr. Ridgway closed the case on behalf of the defendant.

CASE # 604

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

May it please the Court, Mr. Foreman, and each of you gentlemen: At the conclusion of the evidence in any criminal case, it becomes the duty, not only of the defendant(s) counsel but that of the District Attorney, to sum-up briefly the evidence and to comment upon it.

Mr. Ridgway has fulfilled his task ably and fully. He has said everything which he could say in behalf of his client, and although it seems to me that there can be very little which requires my comment, it is customary and expected of me and my duty demands that I shall ask your attention for a very few moments upon the People's aspect of this case.

We live under a government of laws and not of men. Every person charged with a crime, no matter how heinous his offence, no matter how despicable he may be, no matter how patent his guilt, is guaranteed under our law his day in court, a trial by a jury which he shall himself select, a representation by

CASE # 604

counsel, and that his guilt shall be proven by evidence beyond a reasonable doubt, to the satisfaction of his judges.

Now, on the morning of July 31st last, a man was suspected of having committed a crime, and the man who was thus suspected and accused of having committed the crime was Salvatore Germanco. No person had a right to lock up Salvatore Germanco or to take his life or to punish him for the crime of which he was accused, until he had been brought to the bar of justice, until counsel had been assigned to him, and until he had selected his own jury and until those twelve men had been satisfied beyond any reasonable doubt that he, Salvatore Germanco, had taken the life of another.

Now, that is not a mere form of law, it is common sense, and that it is common sense is evidenced by what occurred in this case. In point of fact, Salvatore Germanco had not killed a man but had shot him. He may have shot him wrongfully, he may have shot him rightfully, that is an aspect of the case in which it would never occur to me to go because whatever his guilt, whatever the moral equity

CASE # 604

of his act in discharging that pistol, it can have no bearing whatever upon this great fact that the moment he was accused of crime no man had a right arbitrarily to say "Off with your head" or "Away with you to prison". But anybody who believed him guilty of crime had to wait until his guilt was proven beyond any possibility of mistake. And had that law been violated, had he been accorded the privileges which the constitution and the laws guarantee to him, he would never have lost his life, because it appears that no man fell by his act; and the worst which could have happened to him, assuming that his act was a guilty one -- which is an aspect of the case into which we won't go -- the worst that could have happened to him would have been confinement in State Prison. Now, instead of that, he is cut down in his tracks without a chance to say "Give me a trial, find out whether I killed Tocco or some one else. Verify these rumors that I have done something. Give me a chance". But no one gave him a chance. A man approached him and with one blow of a weapon deprived him of that which was guaranteed to him under our laws, the same laws which this

defendant now claims in his own behalf.

Now you are here to accord to this defendant that which he was unwilling to accord to the man he slew, and however arbitrary his act, that is no excuse for any arbitrary act on your part. He is not only entitled to counsel free of charge assigned by the State, but he has secured himself one of the ablest advocates at the bar, he has chosen you to be his judges.

Upon me is placed the burden of establishing his guilt beyond what the law calls a reasonable doubt. Mr. Ridgway, I am sure, unintentionally said that the prosecutor came before you and said "I am going to prove this defendant's guilt, because I want to have his life."

Now, gentlemen, Mr. Ridgway, in the heat of his eloquence did not mean that. I am not here to take anybody's life. I do not want anybody's life here. I am performing a most unpleasant duty, a duty that is no more pleasant to me than your duty is to you, but it is a duty which I intend to perform as conscientiously as I can, just as I know that you twelve gentlemen under the solemnity of your

CASE # 604

oaths will perform your duty, no matter how much it wrings your heart to do it.

Now, my duty is to call all the witnesses.

The defendant has this advantage, that if I call all the witnesses, and one of those witnesses, for any reason, or for no reason, changes his story, is mistaken, or perjures himself, that will not relieve me from the fact that I have called him out of this general duty to call all the witnesses, but I am still, to use Mr. Ridgway's words, under the obligation of vouching for him. That, gentlemen, is not so. It is not true that because I call all the witnesses I am bound by the witness's statement, because you see how unfair that would be. The law says that the District Attorney, representing the People, shall go out and seek for the witnesses and place them on the stand. I am not to select only those who are going to prove my side of the case, I am bound to call everybody whom I believe is telling the truth and put them on the witness stand and let you hear their story. I have done that in this case, as appears from the fact that the defendant called no witness except himself as to the occurrence with which he is charged.

CASE # 604

Now, among those witnesses called was a man by the name of Postman. I had never seen Postman until he took the stand. He was one of the persons whose names were taken on the morning of the homicide. Postman says he is a special policeman in the employ of the fish dealers. That his duties carry him continuously among the class of people who frequent that locality. That he is their friend, their acquaintance with his business requires him to be on friendly relations with them. Now, I do not pretend to know what the truth about Postman is; I do not know whether Postman was telling the truth in his affidavit which he says he signed, or whether he was telling the truth before you yesterday afternoon, but there is no doubt, it is as clear as day, that Postman lied either when he signed his affidavit and lied in the Coroner's Court when he stated he saw the blow struck with the knife by the defendant after the pistol had been taken away from the deceased, or else he lied here last night when he said that the deceased still had the pistol and that the whole thing occurred so quickly that he was unable to tell. We know that he has lied, and that results in this, that I do not believe that his testi-

mony should be considered in determining this case.

I regard him as a witness who, having told two stories, should be disregarded. He is not a witness that I call and stamp with the seal of my approval, because the law charges me to call him and it does not charge me now with his testimony. If you ask me what the probabilities were, knowing this man's surroundings and knowing his duties, and knowing the fact that he is a friend of these men, that he has come and gone in the company of these Italians to the court room, I should say that common sense would seem to point to the fact that he was telling the truth before the Coroner and in his supplementary affidavit, and that for some reason since the occurrence he has found an excuse to change his testimony, but I do not say that is the case; I do not care. I merely say that Postman, because of his contradictions, is out of this case.

Now, Mr. Ridgway, by a curious assumption of logic, has told you that witnesses could not be expected to testify to exactly the same thing, and then he calls upon you to stamp each and every one of them as prejudiced, because if you accept the testimony

CASE # 604

of any single one of them -- and every one knows that if an occurrence took place in this court room, even here at the bar -- if I should attack my friend Mr. Pinchot before you, it is entirely improbable that each one of you twelve gentlemen would tell the same story. Particularly is that true when an occurrence takes place where there are a large number of people. Take each of the witnesses severally and apply your common sense to their evidence. Postman, I say, cannot be regarded. Tillman was half a block away on a wagon and there were people between him and the scene of the occurrence. He was looking down upon them. There is no doubt that Tillman saw what happened. Is it surprising that Tillman mistook Officer Grady for another officer, for the officer that was with Cummings and who had hold of the deceased immediately after Cummings had wrested the pistol from his hand, and I am going to read you Cummings' testimony in a minute, because I regard it as the most important thing in this case. All that Mr. Ridgway could find to attack in the testimony of Tillman is the fact that when he was called upon by Mr. Ridgway to identify in the court room if he could

a particular officer in brass buttons and blue coat that he saw having hold of the deceased's left hand, he picked out Grady instead of some other officer, a very natural inability on his part. But entirely apart from Tillman, you have here the testimony of one man who acted, as it seems to me, with heroism on this morning. You saw Cummings, an honest fellow, a man in humble circumstances of life, but a man who saw his duty and he did it. He did not balk the way that Postman admits that he balked, but the instant he saw this man running with the pistol and the crowd following him, and the crowd said, "Look out for the pistol", what did Cummings do? Cummings wisely approached him from behind and seized his arm. Now, Cummings was there and Cummings was the man who seized the arm of the deceased and took the pistol away from him, which was the very first thing that any man would do from a sense of self-preservation.

What does Cummings tell you? There is nothing equivocal whatever about his statement. In his very ordinary language, he boiled the thing down to a few words and he said, "I was going to Market on Tuesday and I came along through Gold Street and into

CASE # 604

Peck Slip, and going through Peck Slip I saw a crowd running. I followed the crowd and I caught a man with a light overcoat. I grabbed hold of him by the right hand and as I grabbed him the crowd hollered, "Look out for the pistol", and then I stuck my hand under here where he was holding the pistol and took the pistol out. I turned him around and walked him down towards the Market. Q. Did you take the pistol away from him? A. Yes, sir; I held the pistol in my right hand."

There is no doubt or ambiguity about that:

"I held the pistol in my right hand. I walked him down towards the Market and a man came along and gave him a blow and then a policeman came -- I don't know his name, I seen him over there -- and he said to me, "Where did you get the pistol or how did you get the pistol.'"

Now, that is his untutored story of what occurred. There are no frills about it. He has not the gift of language, but he tells you plainly and simply that he saw a man running, saw a crowd, that he caught the man and took the pistol away; that then he turned around, and as he walked back the de-

CASE # 604

fendant came up and struck the blow. He came down here and in actions that spoke louder than words and far more eloquently than he could speak with his face, he acted out the thing before you and you saw him wrest the pistol from the grasp of the deceased, you saw the defendant approach and strike the blow that killed Salvatore Germanco.

Now, is there anything ambiguous about that? Is the fact that Tillman, who is half a block away, picks out the wrong officer, any reason to disbelieve Cummings? Why, if you had no one in this case but Cummings, you would have the clearest history of any criminal act that was ever painted before a jury. I say to you, gentlemen, that this defendant Tocco had no more right to approach the deceased in the custody of the law until his guilt had been proved and plunged that knife into his breast, than I would have now to take the same knife and walk over there to that bar and plunge it into his breast, not one jot or one tittle.

Now, the reason that I read to you that last statement was in view of Tillman's testimony. There was an officer who seized the deceased almost immed-

CASE # 604

ately, and Tillman saw that officer.

Now, that is, practically, all there is that I have to say. The evidence is practically uncontradicted. I say practically, because there is no witness except the defendant who contradicts it. If the deceased pointed his pistol at the defendant and said, "I will kill you, do you not suppose that in that crowd of one hundred persons, of Italians and of Americans, there would not be some man to substantiate his story? But the defendant's own story is so unsupported that he cannot even tell you whether or not at the time that he struck this blow there was any person near the deceased, and he does not give you a single detail, and the fact that he does not give you a single detail practically renders his story simply a plea of not guilty, a general denial of the People's evidence, because he does not give you anything in its place.

If the defendant took the stand and explained to you that the officers were holding the deceased or that one of them was holding the deceased, and that the deceased broke away from the officers or something of that sort, you would have some substitute

CASE # 604

for the perfect picture which the evidence of the People paints before you, but you do not get that, the witness does nothing but take the stand and say, "I did not do it, I killed in self-defense." He is no better off for taking the stand than he was when he entered his plea of not guilty, which was a general denial to the indictment against him.

Now, the real question in this case, gentlemen, is not whether the defendant is justified; that is the cloak under which Mr. Ridgway appeals to you. That is the cloak under which he appeals to you for an acquittal or for leniency. The real question for you to determine and the difficult question, perhaps, for you to determine, in view of the fact that only one or two of you have ever sat in murder cases before, is, to determine how under the law your verdict shall be rendered, in what degree or of what character of offence should the defendant be found guilty. The learned Court is required by the law of this State to submit to you not only the charge in the indictment, which is murder in the first degree, but is compelled under the decisions to give you an opportunity to find the defendant guilty of

CASE # 604

some lower degree of crime. He is bound to submit to you not only the charge which the Grand Jury have filed against this man, but also the crimes of murder in its second degree and manslaughter in its first degree. The real question here is whether under the evidence the People have not proven the defendant's guilt here of murder in the first degree. That is the question to which I shall address myself in the last moment or two that I speak to you.

Now, what is it that my duty and the indictment filed by the Grand Jury has placed upon my shoulders? It is the task of proving by the evidence that this defendant was guilty of these different combinations of mental and physical acts which go to make up what is called murder in the first degree. Now, what is that? It is the taking of a human life. Conceded. By the defendant. Conceded. With the intention to take it and with what the law calls premeditation and deliberation. There are only two elements there which are not conceded and those elements are, first, the evidence. Now, how are you going to fathom the recesses of a man's mind six months back? You cannot perform any operation upon

his brain and determine by an analysis chemical or otherwise what intention was in his mind when he struck that blow. You have got to take the nature of the act, the part of the body struck, the weapon used, and the surrounding circumstances and make out of them, if you can, what his intent was. Now, the law presumes that a man intends the natural and reasonable consequence of his act. That is to say, if you should take up an ink-well and throw it out of the window, the law would presume that you intended to do that act and were responsible for it. If a man levels a pistol at another man's breast or his head and pulls the trigger, the law presumes that he intended to fire on that particular subject and intended the natural results of his act, and that natural result was death.

Now, what did the defendant do? Dr. O'Hanlon has just testified to you that he plunged the knife, which is in evidence, five inches into the left part of the body near the shoulder of the deceased.

Now, it seems to me, gentlemen, that that act speaks for it self. The act accomplished its purpose. The man died almost instantaneously, sinking

CASE # 604

down like a dumb creature that has received the stroke of the axe. The knife was plunged into a fatal spot. He did not select the ribs but down, the familiar stroke, ^{gentlemen,} _A in the world's history, he cut down behind the ribs for five inches with this knife, and I say to you, gentlemen, that I do not see how any reasonable men can come to any other conclusion but that this defendant did intend to take the life of the man that he struck down. Why should he attack him, if not to take his life? He believed that his own brother had been killed.

Now, the only other element, assuming that this defendant intended his act, is whether he deliberated it and premeditated it in the eyes of the law. Now, although the language of the decisions is that the words of the statute, have their ordinary and accepted meaning, that is to say, that deliberation and premeditation mean in law just what they mean in daily life, yet you observe that deliberation and premeditation in the business that we are transacting here relates not to physical acts but to mental acts. What is the act? The thrust of the knife. That must be deliberate. It is the

action of the mind of the defendant in forming the intent to kill. That must be deliberated upon, and the language of the decisions is to the effect that the human mind acts with celerity that it is almost impossible to measure, and that you all know. I really feel, gentlemen, that the thing speaks for itself. A thing is premeditated when you have thought whether you will do it or not, whether you will kill or not kill, and I have no doubt that the learned Recorder will charge you almost in haec verbae, as we say in the law, that if the defendant chose to kill or not to kill, to take away the life or to let the deceased live, and he elected to kill, elected to take away that life, and he had time to come to that decision, then he had all the time which the law requires for premeditation and deliberation. It is a mental and not a physical calculation.

If you find, gentlemen, here, that Tocco intended to take the life of the man, that he had thought killed his brother, from the moment that he ran after him having heard that this deceased had killed his brother, or whether he formed that intention when he

CASE # 604

saw that his victim was helpless and in the hands of the officers and disarmed, and then ran up and plunged the knife into his breast, he nevertheless had all the premeditation which the law requires. On the question of intent to kill, there can be no possible doubt whatever.

So, gentlemen, I leave the case with you, as far as I am concerned, and I know that in treating this case and in determining it, your verdict shall be influenced only by a feeling of doing your sworn duty as your oath imposes it upon you, that is to say to find a true verdict, without sympathy and without prejudice, under the law as the learned Judge lays it down to you, and I believe that under that law your verdict can be but one thing and that is, guilty of murder in the first degree.

-----0-----

CASE # 604

112

THE COURT'S CHARGE.

Goff, R.

GENTLEMEN OF THE JURY: The Grand Jury of this County charge in an indictment that the defendant Guiseppe Tocco killed one Salvatore Giamance on the 31st day of July in this year in this County and that in said killing he committed the crime of Murder in the First Degree. That is briefly the charge contained in the indictment. That is the charge against the defendant which you are empanelled to try and it is upon that charge that the evidence has been taken before you as to whether or not he committed the crime set forth in the indictment.

Every killing of a human being in this State is a homicide, no matter under what circumstances it may occur, no matter how a human life may be taken, either by wilfulness or by accident, it is a homicide. Homicide is a generic term applied to the taking of human life by any or all means of violence.

Homicide therefore is the charge against this defendant; that is, it is charged against him that he committed homicide by committing murder in the first degree. In considering that charge it is proper that you should hear from me a few simple rules for your guidance, which

CASE # 604

2

you will observe and obey during your consideration as jurors of this case.

You are the exclusive judges of all questions of fact.

The Judge is the exclusive authority upon all questions of law. You must obey such instructions upon the law ^{and definitions} and definitions as I will give you and obey such definitions and instructions without question. When you are in possession of knowledge of the law applicable to the case you will then be in a position to determine on the facts proven to your satisfaction whether or not the defendant committed the crime charged against him.

The defendant like every person accused of crime comes to the bar presumed to be innocent and that presumption remains with him throughout the case until his guilt be proven.

You are the judges of the credibility of every witness that has testified before you. It is for you to determine what if any witnesses have testified untruthfully, or you can determine what part of ^{their} testimony was given untruthfully or truthfully, as the case may be, and it is in your power to reject the testimony or a part of

CASE # 604

the testimony of any witness that has testified.

The defendant had the right to take the stand in his own behalf and he has done so. In doing so he became a witness and therefore subject to the tests as to his credibility which you may apply to each and every witness who testified in your hearing. Those tests you may generally apply by judging his demeanor, the manner of his giving testimony, whether or not he had a motive in testifying falsely or truly and every circumstance and incident about him which may help you to judge for yourselves whether or not the witness spoke the truth.

The prosecution is bound to prove the charge against the defendant beyond a reasonable doubt. That is, the burden of proof of all crime rests with the prosecution throughout the case and at no time during the trial was the defendant bound to prove his innocence.

On all the evidence and the lack of evidence in the case the defendant is entitled to the benefit of a reasonable doubt and on every material question necessary to his conviction.

Where a crime consists of several degrees of

CASE # 604

as the crime of murder does, the defendant is entitled to the benefit of a reasonable doubt as to each degree of crime. That is if you should believe that he committed murder in one of its degrees and you entertain a reasonable doubt that he committed the crime of murder in the first degree, it would be your duty to give him the benefit of that doubt as to first degree and proceed and consider the question of his guilt or innocence of murder in the second degree and so on through all the various degrees of crime with which he is charged.

I shall read to you the definition of the statute defining the crime and its degrees, eliminating from the statute the language which I deem to be unnecessary so that you will have the rule of law in as clear and as concise a manner as possible and that you will be enabled also to bear it clearly in your minds when you retire to the jury room.

Homicide is either murder, manslaughter, justifiable or excusable homicide.

Murder in the first degree is the killing of a human being when committed from a deliberate and premeditated design to effect the death of the person

killed, but without premeditation and deliberation.

Manslaughter in the first degree is when the killing is committed without a design to effect his death, in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

Manslaughter in the second degree, gentlemen, I don't think applicable to the evidence in this case and unless Mr. Ridgeway especially requests me to charge it to you I will not do so.

Now gentlemen, these three degrees of crime of which I have read you the definitions, may at first appear to be a little confusing, but I am sure that on reflection you will be able to clearly perceive the distinction and marked difference between each degree and in order to aid you in having a clear appreciation of this difference, I will re-capitulate them.

Murder in the first degree must have certain essential elements in order for that degree of crime to be committed; first there must be the killing of a human being and then there must be a design to kill, and premeditation and deliberation upon that design.

Of the elements of premeditation and deliberation I will have something to say to you later on in

CASE # 604

my charge, but you will remember these essentials - the killing of a human being with a premeditated and deliberate design to effect the death of the person killed, so that there must be a design to kill and premeditation and deliberation upon that design, and then the killing, or the execution of the design. When those elements are present and are proven to the satisfaction of the jury beyond a reasonable doubt, there is proof of murder in the first degree having been committed and it is your bounden duty to so declare by your verdict. If any one of those essential elements be not proven to the satisfaction of the jury, then they cannot declare a verdict of guilty of murder in the first degree.

Murder in the second degree consists in the killing of a human being with a design to kill, but without premeditation and deliberation, so that the difference between murder in the first degree and murder in the second degree is that in murder in the first degree there must be premeditation and deliberation upon the design to kill, whereas in murder in the second degree there need not be any premeditation and deliberation, but simply a design to kill and its execution.

Now I hope you understand the distinction between

115

the two degrees of crime. The absence of premeditation and deliberation marks the line between murder in the first and murder in the second degree.

Manslaughter in the first degree consists in the killing without a design to kill, but in the heat of passion and by means of a dangerous weapon. The elements there are that a man for instance acting under the impulse of sudden passion, without time or opportunity to conceive a design to kill and to premeditate and deliberate upon the design and who seizes a weapon suddenly and in the height of his passion strikes the victim a blow and kills him; that would not be murder in the first nor in the second degree, but it would be manslaughter in the first degree.

Now the distinctive difference I will repeat to you; that in murder in the first degree there must be premeditation and deliberation upon the design to kill. In murder in the second degree there must be a design to kill without any premeditation and deliberation. Manslaughter in the first degree must be the killing without a design to kill, but done in the heat of passion and by means of a dangerous weapon.

I hope gentlemen that you understand now the

CASE # 604

difference between those three degrees of crime.

I have a few words to say to you upon the elements of premeditation and deliberation, because sometimes they may confuse the minds of jurors and possibly lead to erroneous beliefs as to what the law requires. The terms premeditation and deliberation must be taken by you in their ordinary accepted meaning. There is nothing occult or mysterious about the law. It is framed in language that can be understood by every man of even ordinary intelligence and when those terms are used in the way that the words are that I have just mentioned, the jurors must take them in their ordinary signification. You all know what premeditation and what deliberation means. It is not necessary for me to give to you any definition of the meaning of those words beyond what is contained in the opinion of the Court of Appeals, an extract from which I will read.

In *People against Mazzone*, it was said by the Court, speaking by Judge Earl:

"Under the statute there must be not only an intention to kill, but there must also be a premeditated and deliberate design to kill. Such design must precede the killing by some appreciable space of time, but the time

CASE # 604

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

Now, gentlemen, that is the rule of law laid down by the highest court of this state and the rule of law which must be observed by judges and juries. It is for you to say whether or not upon the evidence before you that if the defendant did kill the deceased, did he do it as the result of a premeditated and deliberate design to kill the deceased and if after he formed that design was there such a lapse of time between the formation of that design and its execution as would enable him to choose whether to kill or not to kill, whether to re-consider his design or not. The Court of Appeals lays down the rule that if there was sufficient time for him to reflect and to choose whether to carry out the design to kill or not there was sufficient time for deliberation and premeditation upon that design to

kill. If the defendant executed the design under those circumstances he committed the crime of murder in the first degree.

The prosecution contends on this evidence that the defendant ran after the deceased and struck him with a knife while the deceased was in the custody of some persons or held by some persons. I do not mean now gentlemen to narrate the evidence to you at all. It is simply for your consideration, but I in substance state to you what the understanding of what the contention of the District Attorney is, that at the time the blow was struck the deceased was either under the care or in the keeping of some persons who held him, or in some way was surrounded by them and that while he was in that position the defendant struck the blow. If I recollect aright one witness testifies that he had him by the left hand, that is, that a witness held him by his left hand, having taken the pistol from the deceased with the right and that while he held him in the position described by him before you that the defendant ran up and struck him this blow, which is claimed was the cause of his death. Another witness testified that as he stood upon his truck some half a block away, that he saw the

deceased between two men, whether officers or not escapes my mind and that each had hold of him by the sleeve of the coat or in some way touching his person, when the defendant ran up and struck the deceased this blow with the knife. If you believe that the defendant formed a design to kill the deceased and that he seized the dangerous weapon which he had in his hand, on his own admission, the knife, and followed the deceased with the purpose of design of killing him and that he struck the deceased in the manner described by the witnesses, and you believe that he had time to reflect upon his purpose and to choose whether to kill or not to kill and that he chose to kill, then you can find upon the law that there was premeditation and deliberation upon this act. If there was his act constituted murder in the first degree.

As I before instructed you, if you have a reasonable doubt of the guilt of the defendant on that degree of crime, it is your duty to give him the benefit of that doubt and consider the next degree of crime. A few words of reminder to you that I have already defined that, in the language of the statute, that is, if you find that the defendant formed a design to kill the deceased and that he carried out that design without deliberation and

CASE # 604

premeditation upon it, then he committed murder in the second degree and the same rule as to the reasonable doubt upon that degree of crime that applies to the first degree of murder applies to that degree of the crime.

If you entertain a reasonable doubt as to the defendant's guilt of that degree of crime, consider the crime of manslaughter in the first. The elements of that degree of crime, as I have already instructed you, are that the defendant killed the deceased without a design to kill him, that he struck the blow in the heat of passion and by a dangerous weapon. In other words if you believe that the defendant killed the deceased, but that he killed him without intending to kill him, that he struck him in the heat of passion with this knife that he had in his possession, you may then find him guilty of manslaughter in the first degree.

The defense interpose what is known in law as self-defense. The defendant admits having struck the deceased with a knife, similar at least to the one marked in evidence before you. He admits having purchased the knife that morning for use in his business and he had not used that knife in his business as a

fish dealer, that he had the knife in his pocket. Someone, I believe it was his cousin, informed him that the deceased had killed his brother and that he, the defendant, then ran after the deceased for the purpose of having him arrested and handing him over to the police. That when he reached the deceased the deceased pointed a pistol at him and said "I will kill you too" and thereupon the defendant believing that the deceased had killed his brother and believing that he would kill him and seeing a deadly weapon pointed at him, struck the deceased with the knife, in order to save his own life.

That is in substance the defense interposed before you. If I am in error in stating the case of the prosecution in any of its details or in stating the defense of the defense in any of its details, you must disregard the error and rely upon your own memory of the evidence in the case. I simply present the two sides to you in concrete form so that you will be able to appreciate the various distinctions which arise under the law touching the case of the prosecution and the case of the defense. That defense comes under a division of the crime which I will read to you, namely just-

CASE # 604

ifiable homicide. I will not instruct you as to what constitutes excusable homicide, because it does not apply. There is no claim here that the homicide was excusable, but there is a claim that it was justifiable and I will read you the law defining justifiable homicide. I avoid reading all unnecessary statutes to you for the purpose of relieving your minds of what might be an incumbrance or a multiplicity of laws among which you might find yourselves confused.

The law says that "Homicide is justifiable when committed in the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer and there is imminent danger of such design being accomplished" so that, gentlemen, if the defendant had reasonable ground to apprehend a design on the part of Salvatore, the deceased person, to commit a felony upon his person, to kill him for instance, which is a felony, or to do him some great personal injury and that there was imminent danger of that design being accomplished, the defendant had a right to defend himself to the extreme point of

killing his assailant. That is the definition of the statute as to what constitutes self-defense.

Many years ago in this state our Court of Appeals laid down a rule which has been followed without departure by our courts since and today is the law of the state regarding self-defense. I will read it to you. The Court in the case of the People against Shorter used this language:

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

CASE # 604

review."

In the case of the People against Constantine the same Court said:

"When one believes himself about to be attacked by another and to receive some great bodily injury it is his duty to avoid the attack if in his power to do so and the right to attack for the purpose of self-defense does not arise until he has done everything in his power to avoid the necessity."

It was said in the case of the People against Johnson that

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

So that gentlemen, if you shall find that the defendant pursued the deceased for the purpose of having him arrested and that when he confronted the deceased that the deceased held towards him a pistol in the manner described, with the words "I will kill you too" and that the defendant believed, honestly believed, at

the time and had reasonable ground to believe that the deceased would carry that threat to kill him into execution, the defendant was justified in slaying the deceased, but you would have to find, if what the defendant says was true, that he pursued him for that purpose and not for the purpose of killing him or assaulting him and herein lies a very clear distinction which I wish you would bear in mind and that is that even though the defendant believed that Salvatore had killed his brother, no matter what his feelings of natural resentment may have been, no matter how wounded his feelings of fraternal love may have been, he was not justified in killing Salvatore because Salvatore had killed his brother. Self-defense cannot arise where there are feelings of revenge. If the defendant believed that Salvatore had killed his brother and he entertained feelings of resentment against him, natural in their way, and even if he went so far as to entertain feelings of resentment to the extent of conceiving a design to kill him for killing his brother, the law does not defend that. That would be murder from revenge and that would furnish a motive for the killing. We recognize under our law no such thing

CASE # 604

as what is known among some peoples of the world as a blood feud. That where one man kills a member of the family some member of that family is bound in honor to take his life. That is not the law in our country, so that if you find that the defendant acted from that motive I charge you that you cannot entertain a plea of self-defense upon that ground alone, but if you find that the defendant was honest in his desire to capture the deceased and arrest him and hand him over to the officers of the law and that when he confronted the deceased that the deceased threatened to kill him, you may take into consideration the effect upon the defendant's mind of the belief that the defendant was laboring under or entertained, that the deceased had already killed his brother. There it would be proper and your duty to consider, if that be the case, what effect that belief had upon the mind of the defendant in the formation of the design to kill the deceased in order to save his own life, because it is argued by the learned counsel for the defense in substance, if not in words, that the defendant being under the honest belief that Salvatore had killed his brother was also of the honest belief that he would kill him while he held this weapon in his

CASE # 604

hand and being of that honest belief that he had reasonable ground to believe that Salvatore would carry out his threat because he had already killed his brother and if the defendant acted upon that belief and to save his own life drew this knife and struck the deceased the blow that caused his death - I do not apprehend upon that I can add anything to the instruction I have given you upon the law applicable to the case.

This case has been tried with great dispatch by the learned Assistant District Attorney and the learned counsel for the defense and I compliment each of them upon the expeditious way and the clear, concise way in which each has presented to you his side of the case. You are to be congratulated in having a capital case submitted to you so clear in its issues and I apprehend that in so far as the judge is concerned that the judge has presented to you the law in a manner which you can clearly understand.

In submitting this case to you I am sure that you will give it that calm, clear and just consideration which each one of you said you would do, irrespective of this defendant's nationality, irrespective of the

nationality of the deceased, putting aside any popular feeling, whether correct or erroneous is not for me to say that men of his nationality are passionate and hot blooded and quick to resentment, and treat him as you would treat a native born American. He is here, an inhabitant of this state and entitled to the protection of our laws and to every rule that inures to the benefit of every man accused of crime. If he has violated the law he must be held to a responsibility for that violation.

When you come to a conclusion after a fair and impartial consideration of the evidence in this case, each juror conferring with his fellow jurors and honestly trying to reach a just conclusion, not defying or challenging each other upon a pride of opinion, but each man feeling himself to be a judge, a judge of the facts, and the sacred duty devolving upon a judge, reach a just conclusion and when that just conclusion be reached by you you should then act as judges should, without regard to blame or praise, without regard to consequence, declare your judgment in the form of your verdict, no matter what consequences may follow from it. The law takes care of the consequences. You have no responsibility for that. Have you any request?

MR. RIDGEWAY: None whatever.

THE COURT: Your verdict will be either guilty of murder in the first degree, or guilty of murder in the second degree, or guilty of manslaughter in the first degree, or not guilty. You may retire.

The Jury returned to Court at 6:10 p. m. and stated that they had found the defendant guilty of manslaughter in the first degree.

MR. RIDGEWAY: All I have to say to your Honor is that in view of the verdict of the jury in imposing sentence I ask you to be as merciful to this poor man as you feel the circumstances of the case will justify. Now that the verdict is rendered I will say this to your Honor; that the witness upon whom this conviction is founded voluntarily approached me in the corridor since the trial and told me that he was mistaken in regard to his evidence and that the deceased had the pistol in his hand, pointed at the defendant. It is too late now to remedy that, but he voluntarily came up to me and stated it to me in the corridor.

The defendant was remanded for sentence.

CASE # 604