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GENERAL SESSIONS OF THE PEACE,

County of New York, Part V.

3215

THE PEOPLE OF THE STATE OF NEW YORK

vs.

PATRICK MULLIGAN.

Before:  
HON. CHAS. C. NOTT, JR., J.,  
and a Jury.

New York, December 22nd, 1919, etc.

Indicted for murder in the first degree.

Indictment filed November 10th, 1919.

A p p e a r a n c e s:

For the People:

ASST. DISTRICT ATTORNEY JAMES E. McDONALD.

For the Defendant:

MESSRS. JOHN J. CUNNEEN and WILLIAM B. O'CONNOR.

THE CLERK: Patrick Mulligan, if you desire to challenge an individual juror, do so when he appears and before he is sworn. Do you waive the further giving of this notice?

MR. CUNNEEN: Yes.

The jury was then examined and duly sworn.

JAMES E. LYNCH,  
Official Stenographer.

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Mr. McDonald opened the case on behalf of the People, as follows:

Gentlemen of the Jury, as I have already told you, the defendant, Patrick Mulligan, has been indicted, and the People expect to prove that on the 30th day of October, 1919, the deceased, Nathan Bromberg, was employed as a ticket seller in the subway, and was stationed at the Rector and Greenwich streets subway station in a booth there. On the same day the defendant was employed as a ticket chopper. Bromberg had been employed, I think, for four or five months at that same station, and on the 30th of October he went to work at his regular time; at about 9:30 in the morning of the 30th of October the superintendent of the section, Mr. Newkirk, - he arrived at the subway station at about twenty minutes after nine. It is rather a long subway station, and he was at one end talking to one of the ticket sellers down at that end of the platform. He came up to the booth occupied by the deceased. When he arrived there he saw the defendant Mulligan in the doorway of the booth with a civilian hat on. He spoke to Mulligan and asked him why he did not have his uniform on, and at that time he heard the voice of Bromberg say, "Look out for him, he has got a gun."

Then Newkirk went into the booth and looked around and did not see Bromberg. While he was in the booth a cry came again from Bromberg and he looked up and he saw Bromberg on the top of the stairs at the door, holding his hand.

He looked around the booth then, Mulligan still remaining in the same position, but on a shelf just above the head of

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Newkirk, which would be about five and a half feet up, he saw the butt of a revolver, and as he was reaching for it, the defendant Mulligan took it and handed it to Newkirk.

A minute or two thereafter the officer on Wall street and Broadway, one of the traffic policemen, who had been told by a citizen, went into the station and the pistol was then handed to the police officer.

The defendant was detained at that time by the police officer while the deceased was at the top of the stairs, and just as the policeman came, the deceased told the officer in the presence of the defendant that the defendant shot him twice.

The defendant, when asked by the police officer, either at that time or sometime later said, "Self defense," and nothing else.

The deceased Bromberg was taken to the hospital and died three days afterwards.

Those are the facts in a general way against the defendant upon which the People will ask you for your verdict.

B E N J A M I N S C H W A R T Z, M. D., called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence: 361 East 7th street).

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you are a regularly licensed physician? A Yes, sir.

Q Licensed to practice medicine in the State of New York?

A Yes, sir.

Q How long have you been so licensed? A Twelve years.

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Q During that time you have held various public offices, have you? A Yes.

Q What position do you now occupy? A Acting Deputy Chief Medical Examiner.

Q Your duties as such are what? A To perform autopsies and to determine the cause of death in suspicious cases, or cases of actual murder.

Q And during your occupancy of that position you have performed numerous autopsies? A Yes, sir.

Q In order to tell what the cause of death was? A Yes, sir.

Q Did you perform an autopsy upon the body of one Nathan Bromberg? A Yes, sir.

Q When and where? A November 3, 1919, at the City Morgue.

Q Did you form any opinion as to what was the cause of death? A Yes, sir.

Q What was the cause of death? A General peritonitis, due to a bullet wound of the large intestine.

Q That was the cause of death? A Yes, sir.

Q Did you find any other wound upon the body of the deceased, any other pistol wound? A There was a bullet wound of the left hand.

Q What? A An in-and-out wound of the left hand.

Q What does that mean? A There was one wound on the back of the left hand and another one on the front of the left hand. There was an operation wound on the abdomen, with gauze drains protruding.

BY THE COURT:

Q Where was the point of entrance of the wound in the intestine?

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A In the intestine, pardon me, your Honor?

Q Yes? A The left side of the abdomen, four and one-half inches to the left of the middle line and one inch below the free margin of the ribs.

BY MR. McDONALD:

Q That is just about where you are pointing now, Doctor, is it? A Right about there (Indicating).

Q That is all, Doctor.

CROSS-EXAMINATION BY MR. CUNNEEN:

Q Doctor, did you find any bullet in the man? A No, sir.

Q You said this man died of general peritonitis? A Yes.

Q And that you had found he had been operated or there had been a cutting of the abdomen by an operation wound? A Yes, sir.

Q Where did you find that operation wound? A An inch and a half to the left of the middle line. It was a vertical wound.

Q You have performed operations in appendicitis, Doctor? A I have not, no.

Q Have you performed any operations for any opening of the abdomen? A I have not, no.

Q Is it not a fact that general peritonitis often follows an operation for appendicitis? A If the appendix is diseased, yes, but the appendix was normal in this case.

Q Peritonitis might follow any opening of the abdomen, might it not? A How do you mean?

Q Well, I mean, the cause of peritonitis, any opening of the abdomen, even an opening that might be made for a rupture, an opening that might be made for similar troubles inside the abdomen,

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any such opening might, if not properly attended to, cause peritonitis? A It might.

Q You did not perform this operation, did you, Doctor? A No, sir.

Q Where did you find the opening, the operation opening, will you tell the jury again? A There was a laparotomy incision, nine inches in length, to the left of the middle line, one and a half inches.

Q By laparotomy what do you mean? A An operation wound through the abdomen, where the peritoneal cavity is opened.

Q So that there had been an operation wound that opened into the abdomen? A Yes, sir.

Q Clear through inside the inner wall of the abdomen? A Yes, sir.

Q And that was an operation wound? A Yes, sir.

Q You were not there when that operation was performed, were you? A No, sir.

Q And over that wound that you found that was made as a result of the operation, you say you found a drain, did you? A Two drains.

Q Those drains were put in by the operating surgeon, probably, or some one assisting him? A Yes, sir.

Q That is, they are put in in all operations usually, of the abdomen? A Yes, sir.

Q Well, they are not so, in operations of the abdomen and are changed, are they not? A They are put in where you might suspect sepsis or peritonitis.

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Q You do not know when that operation was performed, do you, personally? A No.

Q How long was this operating incision that you found, the operating wound? A Nine and one-half inches.

Q How deep was that operation wound? A It went through the peritoneal cavity. It was through the entire thickness of the abdominal wall.

Q This operating wound went clear in, inside the operating wall, about a line west of the centre and below the ribs, and out off towards one side for a distance of about nine inches? A No, sir, not in a horizontal plane, but in a vertical plane.

Q In a vertical plane about nine inches? A Yes.

Q Where did the top of this vertical line begin? A Just below the free margin of the ribs.

Q About that position (Indicating)? A No, further to the left and further upwards.

Q Just below the rib? A Yes, sir.

Q And extended down nine inches? A Yes.

Q And that is apt to cut clear in through the abdominal wall, and that was the cutting made by the operating surgeon? A Yes, sir.

Q Now, such a cut, if it is not properly attended to, might develop peritonitis? A No, there is no reason why a cut like that should cause peritonitis.

Q That is not what I asked you, Doctor? A What do you mean by "not properly attended to?"

Q Well, what attention do you give when you cut a body clear in through the abdominal wall, into the inner wall of the abdomen,

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to cut it down a distance of nine inches? A Why, the skin is sterilized.

Q You mean the skin should be sterilized, isn't that so? A Yes.

Q And if it is not sterilized there is a possibility of poisoning and peritonitis setting in, isn't there? A I don't know - that is, not always.

Q But doesn't it often happen? A No, sir, it does not.

Q Well, what is the object of the sterilizing then? A Well, to prevent infection from entering.

Q If it is not properly sterilized infection will occur, won't it? A Yes, if you take a knife and stick it into the belly without doing anything.

Q And this body had a knife stuck in by the doctor? A He had a laparotomy incision.

Q Well, that is what you mean by a laparotomy incision, if they cut it down a distance of nine inches? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, did you receive the bullet? A I forgot to mention that there was a cut also on the lower portion of the right side of the chest, an inch and five-eighths in length, near the middle line, and about this wound which was sutured, was a bluish area of about two inches in diameter and I had presumed that this was the region where the bullet was removed from.

MR. CUNNEEN: I move to strike that out, your Honor.

Q You presumed it was what, Doctor?

MR. CUNNEEN: I object to what he presumed.

THE COURT: Yes, objection sustained.

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Just give your best recollection.

A Well, I concluded --

BY MR. McDONALD:

Q You concluded that it was what, Doctor? A That that was where the bullet had been removed from when the operation was performed.

Q Did you receive the bullet from the operation? A No, but I saw the bullet in the Medical Examiner's office, labelled by Dr. Hohman.

MR. CUNNEEN: I object to that as incompetent, immaterial and irrelevant.

THE COURT: I will allow him to say he saw it. Objection overruled. Exception.

THE WITNESS (Continuing): It was a .32 calibre lead bullet.

BY MR. McDONALD:

Q Who brought the bullet up? A I did not see Dr. Hohman.

Q You have not got the bullet with you, have you, Doctor?

A No.

MR. McDONALD: May the witness leave the chair so as to look and see if the bullet is in his overcoat?

THE COURT: Yes.

(The witness leaves and then returns to the witness-stand).

MR. McDONALD: That is all, now, Doctor.

RE-CROSS EXAMINATION BY MR. CUNNEEN:

Q Doctor, you said you found another wound in the body? Where did you say you found that wound? A It was a wound an inch and

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five-eighths in length, more transverse than vertical, and the <sup>10</sup> inner margin of this wound was located one-eighth of an inch to the right of the middle line, and at the lower margin of the chest, on the right side in front. This wound was sutured, and about this wound there was a bluish area of ecchymosis, about two inches in extent.

Q Where was the other wound that you found besides that one?

A On the left side of the abdomen, four and a half inches to the left of the middle line and one inch below the free margin of the ribs.

Q You found one wound nearer to the middle line, did you, and one further over? A The wound near the middle line was the operation wound, and the wound on the left side of the abdomen four and a half inches to the left of the middle line, that was the bullet wound of entrance. It was circular.

Q Will you just indicate to the jury where you think that wound that you think was the bullet wound of entry was? A (Indicating) About here.

Q And that was on the left side? A Yes.

Q And the this wound, or how big around was that wound? A Three-sixteenths of an inch in diameter.

Q Do you know the length of that wound? A Three-sixteenths of an inch in diameter.

Q That is the size of the wound? A That is the diameter of the wound. It was a circular wound. It had no length. I have given you the diameter.

Q Well, you are giving me the diameter of this which you say

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was a shot wound? A Yes.

Q What I want to know is if you know the length of that wound?

THE COURT: Do you mean the depth?

MR. CUNNEEN: Maybe it is the depth, I should have said.

THE WITNESS: Well, the wound, or the only organ injured was the large intestine. That is right behind the abdominal wall.

BY MR. CUNNEEN:

Q Yes, the large intestine comes out nearest to the surface of the body, doesn't it? A Yes, sir.

Q And that was the only one that was injured by the bullet?

A Yes, sir.

Q That is all, Doctor.

CHARLES F. NEWKIRK, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence: 1357 St. Marks avenue, Brooklyn).

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Newkirk? A Station master, for the Interborough Rapid Transit Company.

Q And your duties as station master are what? A Well, they are various. I have charge of agents, porters, gatemen and the condition of the stations.

Q Keep your voice up, please? A The condition of stations as to cleanliness and inspecting in general.

Q You say you have charge of the ticket agents? A Yes, sir.

Q The ticket agents are those men in the booths who sell tickets? A Yes, sir.

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Q You also have charge of the ticket choppers? A Yes, sir.

Q Is that what you call the men who are guarding the ticket boxes, where they drop the tickets in? A The gatemen or ticket choppers.

Q Did you know Nathan Bromberg? A Yes, sir.

Q Was he employed by the Interborough Rapid Transit Company?

A Yes, sir.

Q What was his position with the Interborough Rapid Transit Company? A Ticket agent.

Q Do you know how long Bromberg had been employed at that station? A Not exactly.

Q Approximately? A Possibly four months.

Q And during all that time he was employed as a ticket agent?

A Yes, sir.

BY THE COURT:

Q At what station? A Rector street station, subway division.

BY MR. McDONALD:

Q What subway station was it that Bromberg was employed at?

A The Rector street station.

Q Rector and where? A Greenwich.

Q Does that station run north and south? A I believe so, yes, sir.

Q Approximately north and south? A Yes, sir.

Q How do you get to the booth where Bromberg was employed, from the street? A Well, you could come in immediately above the booth where Bromberg was.

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Q Above the booth? A Yes.

Q Do you descend stairs? A Yes.

Q At the foot of those stairs is there a booth? A Yes, sir.

Q Is that the booth that Bromberg was stationed at on the 30th of October, 1919? A Yes, sir.

Q That was the same booth that he had been previously stationed at, isn't that right? A Yes, sir.

Q And after you get to the booth where Bromberg was employed, as ticket agent, where is the ticket-chopper's box then? A Well, it is possibly fifteen feet immediately in front of the booth. There is a stairway on the right in front of the booth and there is a passageway that leads downstairs to the trains.

Q And in order to get down that second flight of stairs you have to pass the gateman's box? A Yes, sir.

Q The booth or the place where the booth and ticket box are, is that on one floor? A Yes, sir.

Q Below the street? A Yes, sir.

Q And you take the trains on that floor? A No, sir.

Q Do you have to go down then another floor? A Yes, sir.

Q In order to take the train? A Yes, sir.

BY THE COURT:

Q In other words, this booth is not on the station, practically?

A No, sir, it is on the mezzanine platform as we call it.

Q The mezzanine platform, it is at the head of a flight of stairs leading down to the platform? A Yes, sir.

BY MR. McDONALD:

Q And what side of the street is the station, or is the plat-

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form or mezzanine floor on which Bromberg was employed as ticket agent? A The uptown side.

Q The uptown side?, A Yes, sir.

BY THE COURT:

Q That is, the up-bound side? A The north-bound, yes, sir:

BY MR. McDONALD:

Q Do you know the defendant? A Yes, sir.

Q Was he also employed in the Interborough Rapid Transit Company? A Yes, sir.

Q What was his duty? A Gateman.

Q Gateman? A Ticket chopper or gateman.

Q Do you know how long he had been employed by the Interborough? A I don't know.

Q About how long, how long had he been at that station? A Possibly three months.

Q He was under your jurisdiction at that time? A Yes, sir.

Q For three months prior to October 30, 1919? A About that, yes.

Q Was he employed at the ticket box in front of the booth? A He was.

Q (Continuing): Of which Bromberg was ticket agent? A Yes, sir.

Q Now, do you remember going to the station at Rector and Greenwich streets on the 30th day of October, 1919? A Well, I came over on the Lexington avenue line and got off at Bowling Green, at the north end of the station.

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Q Keep your voice up, Mr. Newkirk? A I got off at the north end of Bowling Green station and walked across to the Morris street entrance of the Rector street station.

Q To the Morris street entrance of the Rector street station?

A Yes, sir.

Q And were you up on the south-bound or north-bound side?

A The north-bound.

Q What did you do then? A (No answer).

BY THE COURT:

Q At what hour was this? A (No answer).

BY MR. McDONALD:

Q Yes, what time of the morning? A I should judge that was about 9:30.

Q All right. Now, where did you go when you went down? A I went down and talked to the agent a little while.

Q Where was this agent that you talked to? A He was on another mezzanine platform at the south end of the station.

Q Of the same station that Bromberg was employed at? A It is the same station but it is a different entrance. It is the Morris street entrance.

BY THE COURT:

Q Is this man's name Bromberger or Bromberg? A Bromberg, I believe.

MR. McDONALD: It is Bromberg in the indictment.

BY MR. McDONALD:

Q You say that you entered in the Morris street entrance and

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that is only a different entrance to the same station? A Yes.

Q There is an agent, you say, on the same floor? A Yes, sir.

Q Is that agent's view shut off by a wall of any kind from the other agent's view? A Yes, sir.

Q How long did you remain there? A About ten minutes, nine or ten minutes.

Q And then where did you go? A I went down on the train level and walked along the platform to look at the other end of the station and see how things were going.

Q That is the station -- A (Interrupting) At the Rector street end.

Q That is at least part of the station that Bromberg and Mulligan were employed at? A Yes.

Q All right, what did you do then? A I went up the stairs, and when I got up to the top I saw the gateman, Mulligan, standing in the ticket office doorway. My first question to him was, "Where is your cap, why don't you go on the box?"

Q Your first question to him was what? A "Where is your uniform cap?" I meant that he ought to have his cap on and be on his box where he belonged.

Q Did he have any cap on at the time? A He had a civilian cap.

Q Was he dressed in any uniform? A No, sir.

Q The only part of a uniform that you put on them is a cap, is that it? A Yes.

Q You saw Mulligan without this cap on? A Yes, sir.

Q Was he in the booth? A He was standing half in and half

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way out of the door.

Q Which way was he facing? A He was facing towards the money window.

Q Towards the money window? A Yes, sir.

Q Would that be in the same direction as you were coming?

A Well, not exactly.

Q More to the south? A It would be more to the west, possibly south-west.

Q What did the defendant say, if anything? A Well, as I went in the booth --

Q (Interrupting) You walked by the defendant? A I walked by him to get in the booth, and as I started to walk by I heard some one holler, "Look out, he has got a gun," and with a voice on that mezzanine platform a sound carries very peculiar, and it sounded to me as if it came from the booth. I immediately looked around inside the booth to see where the noise came from or who was calling to me. At the same time I got a smell of powder smoke, and I thought something was wrong some place, but I didn't see any one.

Q You mean you did not see anybody outside of Mulligan?

A No, I didn't see any one in there. In fact, I was looking for Bromberg and I didn't see him, and I turned to Mulligan, and I said, "What's the matter?" And just as I said that I heard some one holler again, "Look out, he has got a gun, I am shot twice." Well, I got the voice that time and it seemed to come from the stairs, and I looked up and then I saw Agent Bromberg with a handkerchief around his left hand, and then I turned quick to Mulligan and he said, "Here,

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here, take it," he said, "Here, take it," and he started to reach with his hand for a little bookcase that is in over the safe, a steel case, and as he started to reach, I followed his hand with my eyes. Then I saw as he got his hand part way up, the butt of a revolver, and I put my hand along with him, as much as to say to give it to me, and he gave it to me, and I put it in my pocket.

MR. CUNNEEN: I move to strike that out, "as much as to say."

THE COURT: Well, it may be stricken out, though it does not do any harm.

BY MR. McDONALD:

Q Now, did you open the revolver? A I did not.

Q Did you see whether it was loaded or not? A I looked in through the side.

Q I show you this pistol and ask you if that is the pistol that was handed to you? A Yes, sir.

MR. McDONALD: May we have it marked for Identification?

(It is marked People's Exhibit 1 for Identification).

Q You say that you looked at the revolver? A Yes, just glanced a quick glance.

Q You say you looked in the chambers? A I turned up the barrel towards me.

Q Did you see anything in there? A I found there were two places that had been exploded, two shells that had been exploded.

BY THE COURT:

Q What did you subsequently do with the revolver? A I put it in my pocket and turned it over to the City Officer, Cunningham.

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Q You gave it to him in just the same condition that you got it? A Yes, sir.

BY MR. McDONALD:

Q Did you have any talk with the defendant after you found the gun? A Well, I was very busy, I telephoned - no, I asked him what was the trouble and he kept still. He didn't say anything at all and he would not talk.

Q I cannot hear you? A He would not say anything. I asked him what was the trouble and he would not say anything, just simply kept quiet.

Q Did you see Bromberg come down? A I called to him then to come downstairs, that I had the gun, and he came down.

Q How was Bromberg dressed at the time you saw him that morning? A About the same as you are.

Q He had a sack suit on, sack coat? A I believe so, yes.

Q He was not without a coat? A No, sir.

BY THE COURT:

Q Did you observe any injuries about him? A Well, I opened up his shirt and pants and saw the wound in his left side.

BY MR. McDONALD:

Q You say you opened up his trousers? A Yes, sir.

Q And his vest? A Yes, sir.

Q And you saw a wound? A I pulled his shirt up and looked in there and I could see there was a bullet hole there and it seemed as if it came out here (Indicating).

Q When Bromberg came down where was the defendant? A Standing in the booth.

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Q In the booth? A Yes, sir.

Q And you were also in the booth? A Yes, sir.

Q Did Bromberg go into the booth? A Yes, sir.

Q Did you say anything to Bromberg or did Bromberg say anything to the defendant? A Yes.

Q What did Bromberg say to the defendant? A He wanted to know what he done it for. He says, "I never done anything to you," and such things as that. I can't remember exactly the words used, but it was to that effect, "Why did you do it, what did you want to do that for?" I can't remember the exact words.

Q What did the defendant say? A Nothing.

Q Nothing at all? A No, sir.

Q You remained there you say for some time? You telephoned?

A Well, I was very busy, I tell you, I telephoned for the ambulance and did all I could for him.

Q The deceased was taken away in the ambulance, was he? A Yes, sir.

Q When was it that the officer came? A Well, it was not long after Bromberg came downstairs, possibly five minutes. It seemed that to me.

Q This was about what time in the morning? A About 9:30.

Q You say you remained there until the officer came? A Yes, sir.

Q Did you find anything around the booth? Were you looking for anything or did you look for anything in the booth? A After they had taken the gateman away, Mulligan, I looked around to see if I

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could find a bullet but I couldn't find any.

Q Did you find anything else? A No, sir.

Q Did you notice anything about Mulligan outside of the fact that he had a civilian hat on? A No.

Q Did you see any marks on his face? A No, sir.

Q If they were there you would have seen them? A Yes.

MR. CUNNEEN: I object to that, your Honor.

THE COURT: I will allow him to state that he looked at him, so he could make that assertion.

Objection overruled. Exception.

BY THE COURT:

Q He had no marks about him that you saw? A No, sir.

Q What was the approximate age and size, and so forth, of Bromberg? A Why, about thirty-five, I should judge, a man about the size of this attorney, (indicating).

BY MR. McDONALD:

Q Whom do you mean? A This gentleman here, I believe (indicating).

Q This man here (indicating)? A Yes, (indicating Mr. Cunneen).

BY MR. CUNNEEN:

Q You mean me? A Yes, about your size.

MR. McDONALD: Counsel says he is five feet, eight and three-quarters, and he weighs two hundred pounds.

BY THE COURT:

Q Would you say he was about that weight? A About that,

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yes, sir.

BY MR. McDONALD:

Q You say that this booth, or what was the inside of it made of? A Well, the facing of it is steel.

Q You mean by that the covering on the inside of the booth? A Yes, sir. The facing is steel and the inside is concrete or tile work.

Q Did you see Nathan Bromberg after that? A No, sir.

Q You have not seen him since? A No, sir. Well, I was at the funeral, yes.

Q Oh, you went to the funeral? A Yes, I beg your pardon.

BY THE COURT:

Q Did Dr. Schwartz say who identified the remains to him?

MR. McDONALD: No, sir, he did not. I will have to bring him back anyway with regard to the bullet. Dr. Schwartz is still here. May I withdraw this witness at this time so as to get rid of the doctor?

THE COURT: Yes.

BENJAMIN SCHWARTZ, M. D., witness for the People, resumes the witness-stand and testifies as follows:

BY MR. McDONALD:

Q Doctor, have you now with you a bullet? A Yes, sir.

Q Where did you get it? A It was attached to the papers in the case.

Q Part of the official records of the case? A Yes, sir.

Q And these papers are kept officially by the Medical Examiner's office? A Yes, sir.

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MR. CUNNEEN: I object to that, your Honor, and move to strike it out.

Motion denied. Exception.

Q And you have that bullet now, with you? A Yes, sir.

Q Will you please open that envelope? A Yes (Handing).

MR. McDONALD: May I have it marked for Identification?

(It is marked People's Exhibit 2 for Identification).

Q Doctor, can you tell us what calibre bullet that is?

A .32.

Q .32 calibre? A Yes, sir.

BY THE COURT:

Q Whom did you receive that from?

MR. McDONALD: He said he received it from the Medical Examiner's office.

Q Was that the first time you saw it, in the office of the Medical Examiner? A The office of the Chief Medical Examiner, yes, sir.

BY MR. McDONALD:

Q Now, Doctor, who identified this body to you? A Officer Cunningham of Traffic A.

Q This was the body that you performed the autopsy upon?

A Yes, sir.

Q All right, Doctor. Thank you.

CROSS-EXAMINATION BY MR. CUNNEEN:

Q This which is marked for Identification People's Exhibit 2, from whom did you receive that? A That was in the office of the

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Chief Medical Examiner.

Q The first time you saw it, it was there? A It was there, yes, sir.

BY THE COURT:

Q Do you mean it was not in anybody's particular custody, or who had charge of it? A It was kept with other bullets in the office of the Chief Medical Examiner.

Q I understand, but has anybody special custody of it or charge of it? A Miss Casey.

Q Was it she that gave it to you? A Yes, sir.

BY MR. CUNNEEN:

Q Doctor, there is one question I do not think I got a direct answer upon. I may ask it again. I asked you as to the depth of the wound. Could you tell me in inches, the depth of the wound from the bullet? A The depth? You mean the entire length of the bullet track?

Q Yes, I said length before but then you corrected me, the depth? A You asked me for the length of the bullet wound. The diameter of the bullet wound was 3/16ths of an inch.

Q All right. The length of the bullet track, then? A The length of the bullet track?

Q Yes? A Yes. Five inches - no, yes, five inches.

Q Had the bullet gone through and come out, do you know or don't you know? A It was extracted in the region that I stated.

Q Did you extract it? A No, but from my conclusion, from the appearance of the incision, from the hemorrhagic zone, I con-

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cluded that was the region where the bullet lodged and had been removed.

Q Well, the bullet had not gone through and come out, had it?

A No, sir.

Q You said you saw a wound on the hand? A Yes, sir.

Q Will you describe that to the jury? A There were two wounds in the region that I located here (Indicating); one wound here in the front part of the left hand and the other wound in back of it.

BY THE COURT:

Q Could you determine which was the wound of entrance and which was the wound of exit? A I determined this was the wound of entrance in the back and the wound of exit in front (Indicating).

BY MR. CUNNEEN:

Q How did you determine that, Doctor? A The wound of entrance was regular in contour and had a margin of contusion about it, and the wound of exit was an irregularly lacerated wound, and was larger in diameter than the wound of entrance.

Q Now, the wound where the bullet came in you say, had lacerations about it? A Yes, sir.

Q And that there was something else, some other word you used, about the wound of entry? A Yes, had a margin of contusion about it. It was round in contour.

Q Now, by margin of contusion, - let us understand that? A Well, that is a bruising of the skin about the wound.

Q And you noticed that, did you, Doctor? A Yes, sir.

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Q It was a little darker on that side than on the other? A There was no contusion on the wound of exit on the hand.

Q Well, it was darker on the side where you say was the wound of contusion? A Yes.

Q When you speak of these two wounds, do you mean to indicate that they were places where something had gone in and come out?

A Yes, sir.

Q And was this through the fleshy part of the hand on both sides or was it near the bones? A Well, it went through the flesh.

Q It did not go through any bones? A No, sir.

Q And that was on the left hand? A Yes, sir.

Q That is all, Doctor.

THE COURT: Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you and please do not discuss the case among yourselves or allow anybody to refer to it in your presence.

We will take a recess until two o'clock.

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## After Recess.

CHARLES F. NEWKIRK, resumes the stand, testifies as follows:

DIRECT EXAMINATION CONTINUED BY MR. McDONALD:

Q Take a look at this diagram, Mr. Newkirk. Do you see the directions there north, south, east and west? A Yes.

Q Is that a fairly correct diagram of the position of the stairs and the booth and the ticket-chopper's box? A Yes, sir.

Q As it was on the 30th day of October, 1919? A Yes, sir.

MR. McDONALD: I offer it in evidence subject to any corrections that counsel may desire.

THE COURT: Any objection?

MR. CUNNEEN: I don't object, no.

(The diagram referred to was marked People's Exhibit 3 in evidence).

Q As I understand this diagram, the stairway comes from the north and goes to the south, does it, the stairway leading from the street to the mezzanine? A That leads north.

Q It leads north? A Yes, sir.

Q And is that where the ticket box is? A Yes, sir.

Q Approximately? A Yes, sir.

Q And the ticket office is located here in the diagram (indicating)? A Yes, sir.

Q This stairway, that is the lower part of the diagram, that leads where? A To the train level.

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Q Inside the ticket office is there a shelf, there is a part of a shelf extending out from the window where you put in your money? A Yes, sir.

Q Now, is there a shelf on the level of that on the inside of the booth? A Yes, sir.

Q And is that on a level with the outside part of the ticket office, I mean that shelf that is on the outside of the ticket office? A Yes, sir.

Q Now, why is that, do you know? A That is the money board.

Q Is that what they call the money board? A The change board, the money board, yes, sir.

Q Is there a drawer under that? A Yes, sir, underneath, yes.

Q What else was in this booth at the time that you were there on the 30th of October? A A safe; possibly hats and coats.

Q Any shelves? A There is a bookcase, a steel bookcase.

Q Where is that? A That is immediately over the safe.

Q Where was the safe? A To the right hand side of the edge as you were selling the tickets, facing the window.

CROSS EXAMINATION BY MR. GUNNEEN:

Q Mr. Newkirk, do you know how wide this office is exactly?

A Do you mean how deep it is, where you point?

Q Wide (indicating)? A This way?

Q Yes? A About five feet and a half or six foot.

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Q The measurement shows that it is five feet four inches across there. Would you say that is correct? A I don't know, I didn't measure it but I guess that is about it.

Q And the length is about nine feet and one inch? A About that.

Q You stated to the jury that there was a board on here?  
A Yes, sir.

Q This place here, what you call the money board isn't it?  
A Yes, sir.

Q Now, the door is where, just indicate there? A Yes, sir.  
Q On the right as the jury now looks at this diagram? A Yes, sir.

Q (Indicating) This pointer is north, is it? A Yes, sir.

Q And that is east? A Yes, sir.

Q And that is south? A Yes, sir.

Q You know the points of the compass are marked on here?  
A I do.

Q Now, on the east side of the ticket office as you approach it is a door? A Yes, sir.

Q Just inside that door and to your left as you come in is the board? A Yes, sir.

Q That is known as the money board? A Yes, sir.

Q That part you said was a foot wide? A I imagine it is somewhere around there, it may be 12 or 14 inches, I don't know exactly how wide it is.

Q Now, that board runs all the way from this corner here clear up to nearly the door, doesn't it? A Yes, sir.

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Q Right along there (indicating)? A Yes, sir.

Q A square edge on it? A I believe the edge is a little rounding right where you have your pencil.

Q Right there? A Yes, sir, possibly a little rounding.

Q And that extends in a distance of about a foot? A Yes, sir.

Q It extends in to about where this corner comes, doesn't it? A Yes, sir.

Q That same distance? A Yes, sir.

Q And runs nearly into that corner? A I believe it does.

Q Now, at the northwest corner of the ticket office in this corner, on this mark, there was a safe, wasn't there?

A Yes, sir.

Q Do you know the size of that safe? A About that square (indicating), possibly that high.

MR. CUNNEEN: When he says it is about that square do you agree with that?

MR. McDONALD: Yes, sir.

MR. CUNNEEN: About two and a half feet one wide this way and two foot and an inch that way.

MR. McDONALD: Yes, sir.

Q Would those distances approximately be correct, Mr. Newkirk, that the safe was two and a half feet in length from north to south, this way, and about two feet and one inch in width across? A Yes, sir.

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Q That is right? A About that.

Q The door in this safe, did it open that way with the hinges at the further or north side? A I don't remember.

Q Now, the safe stood about how high from the ground? You indicated it a little while ago. A I should imagine about like that. (The witness indicates about the height of his waist).

Q About three and a half feet? A Approximately, yes.

Q Now, the money board, about how high from the ground is that money board? A I should judge that would be close to four feet.

Q A little bit higher than the safe, wasn't it? A Yes.

Q A very little bit higher, wasn't it? A Possibly nine inches high I should imagine.

Q You didn't measure it, did you? A No, I didn't measure it. I didn't take any measurements.

MR. McDONALD: If you have measured it I will take your measurements, sir.

Q The measurement showed that it was three feet six inches from the ground, you think that is approximately correct, do you? A Approximately, yes.

Q On the north side of the ticket office and about the center of it and near to the wall is a little heater, isn't there? A Yes, sir.

Q About fifteen inches in length or so? A It is about like that.

Q And extends up to about a foot and a half? A Yes-- about

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a foot and a half, yes, sir.

Q Now, in the northwest corner of the ticket office isn't there a little cupboard? A Yes, a bookcase, we call it a bookcase.

Q That is above the safe? A Yes, sir.

Q And extends over the top of the safe up towards the ceiling? A Yes, sir.

Q That bookcase is about nine inches in width as it extends out from the wall it is about nine inches? A Yes, sir.

Q And in length it is about two feet seven inches? A About that.

Q It is just a little longer than the safe, isn't it? A I think it is, a little bit.

Q Now, from the top of the safe to the bottom of the cupboard it is about a little over an inch? A Yes, just the clearance, a nice clearance from the safe to the top.

Q From the top of the cupboard to the ceiling it is about ten inches? A About a foot.

Q When you came in there, did you see a chair there, Mr. Newkirk? A Yes, sir.

Q Where was the chair? A Well, it was back from the money window a little bit.

Q That chair is a sort of a high chair, is it? A It is.

Q That a man sits on when he makes change at the window?

A Yes, sir.

Q And the seat turns? A Yes, sir, a swivel chair.

Q Now, the distance on here is about four inches or six-

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teen inches to the top of the ticket box, isn't it? (Indicating) A That is about correct.

Q And the ticket box is a little nearer to the stairs and to the side of the entrance, isn't it? A Yes.

Q Do you know how many steps in the stairway which runs up from the street? A No, I do not.

Q About sixteen, do you think? A About that.

Q And then these stairs that go down to the trains just at the south end of the station, it is a little further down from this floor that the ticket office is on to the train platform floor -- A About ten more steps.

Q Well, it is further down there than it is from this floor to the street, isn't it? A Yes, sir.

Q Now, Mr. Newkirk, when you came up to this Rector Street station ticket office from Morris Street you walked along the platform just below what is marked on this diagram as "Entrance to trains", didn't you? A Yes, sir.

Q So that a man standing at the ticket office here could see you as you walked along, could see your feet and gradually as you came into view before you could see him? A He can't see very far.

Q Now, when you came along that train platform and came up the steps where were you when you first saw Mr. Mulligan that morning? A About five or six feet back of the cancelling box.

Q You had gotten clear up north to the cancelling box before you saw Mr. Mulligan? A A little further back where you have

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your pencil.

Q (Moving pencil)? A About there.

Q You had gotten between the stairs and the cancelling box before you saw him? A Yes, sir.

Q And when you saw him at that place he was at the doorway of the ticket office? A I believe he had one foot in the doorway and one out, just stood halfway in the door and halfway out.

Q Was he moving or did he just stay there? A He was standing still.

Q Now, you stated that you came in to where he was in the ticket office? A Yes, sir.

Q And that about the time that you reached the door you heard someone say, "Look out, he shot me," or some such thing?

A "Look out, he has a gun."

Q Then you went into the office? A Yes, sir.

Q And then you heard some remark given? A I went on in the office and looked around to see if I can see where the sound came from because the ceiling is low and I could not get the sound at all right. I imagined it came from inside the booth.

Q You imagined that? A Yes.

Q Did you then come out of the booth? A No.

Q Before you came out of the booth and without your asking Mr. Mulligan for the pistol he reached up and took this revolver and handed it to you, didn't he? A Yes, sir.

Q You didn't ask him for it? A No, sir.

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Q And he said you better take this? A Yes, sir.

Q Then after he said that you came out to the door, did you, of the ticket booth? A I went to the corner by the telephone, the telephone was near the door, right at the corner.

Q The telephone on the money board near the door? A Yes, right there where you have your pencil now.

Q Rightthere (indicating)? A Yes, sir.

Q Did you get the revolver from this little cupboard -- that is where he took it from and then he handed it to you?

A Yes, sir.

Q And then did you go to the doorway and say to Bromberg, "Come on, it is all right"? A Yes, I hollered from the doorway.

Q And then you took up the telephone, did you? A Yes, sir.

Q And you said a little while ago you were pretty busy then? A Yes, sir, I was busy from then on.

Q Didn't you tell Mr. Mulligan to get out on the box then? A I don't remember, I might have.

Q Wasn't he out here at the box when the policeman came? A No, he was inside.

Q That is your recollection? A Yes, sir.

Q You don't recall his going out immediately, do you? A No, sir.

Q You don't recall whether you told him to go out or not? A No, I do not, because I was very busy on the 'phone at that time. Mr. Bromberg came down when I hollered to him that he had

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the gun.

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Q When Mr. Bromberg came down did anybody come with him or did he come alone? A There was a young fellow with him at the time, I can't think of his name.

Q And when he came down with him, where did he go to?

A Where did the young man go?

Q Where did Bromberg go and where did the young man go?

A Came right in the booth and stood right against the chair, leaned right against the chair.

Q And Bromberg remained then in the booth until the policeman came? A Yes, sir.

Q Who came first, the doctor or the policeman? A The policeman.

Q The policeman came and then the ambulance surgeon?

A Yes, sir.

Q And during that time Mr. Mulligan remained there, did he? A Yes, sir.

Q Did Bromberg say anything as to how long prior to that time the shooting had occurred? A No, sir.

Q Or where? A Well, I took it for granted that it was in the booth.

Q Well, did he say anything about it? A No, he didn't say anything about that.

Q Didn't he say that he had pushed the old man or shoved the old man? A Yes, he told me that he had remonstrated with Mulligan for going away and getting a shave and that when he came

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down -- that is when he came down he remonstrated with him.

Q That was while Mulligan was in the booth? A No.

Q Did he say this? A Yes, when Mulligan was in the booth he was telling him this when I asked what was the matter.

Q Well, you said he said he shoved or pushed him. Why did he say that? A He said when he remonstrated with Mulligan Mulligan struck him and he said he was an old man and he didn't want to hit him and he said, "I just pushed him away from me, and," then, he said, "Mulligan whipped out a gun and shot him twice".

Q You didn't tell us that on the direct, did you? A What is that?

Q You didn't tell us that on the direct examination, did you? A What do you mean?

Q I mean the District Attorney asked you and you didn't tell us that, did you?

MR. McDONALD: I object to that, sir, because Mr. Gunneen knows that I couldn't ask the question.

THE COURT: It was not asked and he did not so testify.

Q Was the officer there at the time this was said? A I think he was.

Q That was after the officer arrived that that was said, was it? A I think it was.

Q Did the officer tell Mulligan then that he was under arrest? A Well, I believe he did but I say I was busy on the telephone and I tell you I didn't have much time to think about

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anything except keep on the telephone.

Q Now, you say you were busy on the telephone. You telephoned to whom? A To my office at 96th Street.

Q You telephoned for an ambulance, did you? A As soon as I telephoned them that goes all through my office, that is related.

Q No, I don't want you to answer that way. I say you telephoned for an ambulance? A Yes, immediately.

Q And did you telephone for anything else? A Then I had to answer a lot of questions through my office, they wanted to know all about it and whatever I knew.

Q Well, who was it you talked with, do you know? A Why, one of the clerks in Mr. York's office I think, Lobold.

Q Do you remember what you told him first? A Oh, I told him there had been a shooting affair.

Q What did he say? A He said "Who is hurt?" And I told him Bromberg.

Q Now, after the telephoning by you and after you had finished telephoning the officer came there, did he? A Yes.

Q Did the officer come there before the ambulance came there? A Yes.

Q Did anybody come there with the officer? A I don't remember.

Q Did Bromberg tell you that he had been up and downstairs a couple of times before the officer came? A No.

Q Do you remember what day of the week it was, Mr. New-

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kirk? A I don't remember what day. I only know it was October 30th.

Q Did you make a little notation of it? A I think it was on a Friday.

Q Did you make a notation of it? A No, I made a report of it, the same as I do all things unusual. We have an unusual occurrence sheet.

THE COURT: The Court takes judicial notice that the 30th of October was Thursday.

MR. CUNNEEN: Yes, the 30th was Thursday, I believe.

Q When Mr. Bromberg was taken out from the booth was he carried or did he walk upstairs? A Well, he was supported by the officer and I believe the doctor.

Q And where was Mulligan? A Standing inside the booth.

Q And Mulligan stood there and then walked up the stairs, did he? A The officer took him and they walked up the stairs, yes.

Q Well, did the officer help Bromberg upstairs, didn't he? A There was another officer.

Q Another officer came? A Yes.

Q And was Mulligan and Bromberg taken away in the ambulance together? A Well, I don't know where Mulligan was taken to. I stayed right in the booth.

Q But someone came then? A I beg your pardon? I know he was taken over to the police station. I don't know whether he was taken over in the ambulance.

Q Do you know who the other officer was who came there?

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A No, sir, I do not.

Q Which officer was it came there first? A Cunningham.

Q And which way did he come to the place, do you know?

A I don't know.

Q Do you know whether he came down the stairs from the street or whether he came up from the platform? A I believe he came from the street.

Q This People's Exhibit 1 for identification I think you said was in the same condition as when you first saw it? A I believe it is.

Q All empty? A There were some bullets in it then.

Q Do you remember how many? A I think there was three.

Q Had Bromberg been there continuously during these three months that you say before this accident, before this occurrence?

A I believe he was, all but his regular days off.

Q You don't recall any sick leave? A No, sir, I do not.

Q Had you known Mr. Mulligan since he came there? A Since he came to this station?

Q Yes. A Well, I had him at Chambers Street for awhile before that.

Q He had been at Chambers Street? A Yes, sir, Chambers Street, uptown side.

Q And had he been with your company before that? A I believe so, he was on one of the stations in the Bronx some place.

Q Do you know how long? A I do not.

Q Now, you stated I think that in your opinion Mr. Bromberg

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was about thirty-five years old? A About that, yes.

Q Would you think it was erroneous if he was about 28 years old? A Well, he looks to me to be about 35.

Q Where was Mr. Bromberg sitting in the office after you came in there, after you arrived? A About -- run your pencil in there.

Q (Mr. Cunneen moves the pencil over the diagram)? A Right about there.

Q And was he there when the ambulance doctor came? A Yes, sir.

Q And the ambulance doctor dressed him in there? A No, sir.

Q No. A No.

Q Did he examine him in there at all? A He examined him, yes, I think he took a little piece of gauze and just laid it there and went right upstairs.

RE-DIRECT EXAMINATION BY MR. McDONALD:

Q The name you said of the man who brought Bromberg down there was -- was it John First? A Well, I guess that is it. The name didn't come back to me, that is all. I thought it was Fry.

Q Now, while you were in the station did you hear any shots fired? A No, sir.

Q None at all? A None at all.

Q Were there any trains running back and forth, north and south, during the time that you were in the station? A There was

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W one went downtown, there was a train went downtown.

Q Would it be possible for you, talking to that other agent down on the Morris Street side, to have heard any shots while that train was coming south? A I think it would have been impossible.

Q You know the location? A Yes, I don't think I could have heard it.

BY MR. CUNNEEN:

Q You said you thought there was a train went down as you came up? A Yes, sir.

Q Do you recall about where you were when that train went down? A Well, I was just coming down out of Morris Street, coming down from the other end.

Q As you came up to this other station at Rector Street do you recall any trains then? A No.

OFFICER THOMAS F. CUNNINGHAM, residing at 108 East 124th Street, attached to Traffic A, Shield No 7809, called as a witness on behalf of the people, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Officer, you are a member of the Municipal Police Force of the City of New York and you were such on the 30th day of October, 1919? A I am, sir.

Q And you were stationed where on the morning of the 30th of October, 1919? A At Broadway and Wall Street.

Q You were regulating traffic there? A Yes, sir.

Q Now, at some time on that morning did a citizen or one or

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Q two citizens come over and talk to you? A Yes, sir.

Q You don't remember -- what time was it that these two citizens talked to you? A About 9:30 or 9:40 A. M. in the morning.

Q And after these two citizens talked to you, did you go anywhere? A Yes, sir.

Q Where did you go? A I went to Rector and Greenwich Street in the subway on the uptown side.

Q Now, you went to Rector and Greenwich Streets. Where is the entrance to the subway, right at the corner or where? A Of Rector and Greenwich Street.

Q Right on the corner there? A Yes, sir.

Q What part of the subway did you go to? A The uptown side.

Q You went on the stairs leading on the uptown side of the street? A Yes, sir.

Q Now, how many flights of stairs did you walk down? A I believe two. I am not sure. I went down the stairs anyway.

Q Where did you go when you went downstairs? A I went right on the platform there. There is a platform running from the ticket office.

Q Is that where the ticket booth is? A Yes, sir.

Q Now, what did you do when you got down there? A I seen the defendant Mulligan standing at the ticket box.

Q And this ticket box that you talk about is where, where the passengers drop their tickets as they go through and from the trains? A Yes, sir.

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Q Did you see anything else? A That is all I seen then.

Q Did you go any place then? A I went over towards the defendant Mulligan and as I did, my attention was attracted by a man who afterwards was proven to be Nathan Bromberg. He said, "Arrest that man, officer, he has just shot me."

Q Yes. And what did Mulligan say to that, anything at that time? A No, sir.

Q And what did you do then? A I grabbed hold of Mulligan and I started to frisk him to see if he had any weapon.

Q Now, frisk him -- that may be very intelligible to you and to me. A It means a search I believe.

Q What do you mean, you placed your hands on his clothes and outside of his clothes? A I ran my hands over the outside of the clothing.

Q Now, after that what did you do? A Well, as I was doing that, my attention was called to Mr. Newkirk, the station master. He said, "Here is the pistol".

Q What ~~did~~ he give you then? A He gave me a United States revolver, a 32 caliber pistol.

Q I show you this pistol, and ask you if ~~xxxxxx~~ that is the pistol (showing witness People's Exhibit 1 for identification); is that the pistol he gave you?

MR. McDONALD: May the officer take it over to the window?

THE COURT: Yes.

A Yes, sir.

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Q What was its condition in regard to whether it was loaded or unloaded? A The pistol was loaded. That is, there was three cartridges loaded and three unloaded.

Q What did you do with the contents of the chambers of that revolver? A I broke them open.

Q Put any marks upon them? A Yes, sir.

Q What marks did you put on them? A I put a cross.

Q Scratch? A Yes, sir.

Q On the head of each bullet? A On the head of each bullet.

Q Just look at them, please? A Yes, sir.

Q Are those the bullets that you took out? A Yes, sir.

Q Also the discharged shells? A Yes, sir.

Q And are they in the same condition now as they were at the time when you took them out of the People's Exhibit No. 1 for identification? A Yes, sir.

MR. McDONALD: I offer that in evidence.

THE COURT: Received.

(The cartridges are marked People's Exhibit 4 in evidence).

Q Now, this People's Exhibit 1 for identification, is that in the same condition now as it was at the time you received it from Newkirk? A It was loaded when I got it. The cartridges were in it. It is empty now.

Q With the exception of the cartridges being extracted from the chambers is it in the same condition now as when you received

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it from Newkirk? A Yes, sir.

MR. McDONALD: I offer it in evidence.

THE COURT: Received.

(People's Exhibit 1 for identification is marked  
People's Exhibit 1 in evidence.)

Q Now, when you heard Bromberg say what you have just said,  
where was Bromberg? A He was just stepping out of the ticket  
office at the subway station there.

Q Well, how was he dressed? A How was he dressed, sir?

Q Yes. Did he have a business on, a sack suit like this  
(indicating)? A He had an ordinary business suit.

Q I mean, he did have a suit on? A I don't know. I don't  
believe he had a uniform suit. I am not quite sure of that, sir.

Q Where did Bromberg go when he came out? A To the tick-  
et office.

Q He went back into the ticket office.

Q After he had said this thing to you he went back in the  
ticket office? A Yes, sir.

Q What did he do then? A Then the defendant Mulligan and  
I went into the ticket office.

Q Now, what was said by the deceased Bromberg in the pres-  
ence of the defendant, was anything said? A I said to Bromberg,  
"Who shot you?" And he pointed to Mulligan saying, "Mulligan  
shot me."

Q Did Mulligan say anything then? A No. I said to Mulli-  
gan, "Did you shoot him?" And Mulligan said, "Self-defense".

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Q What? A Mulligan said, "Self defense."

Q Just those two words? A Yes, sir.

Q Did he say anything else? A No, sir.

Q Did Bromberg say anything else? A So I says to Bromberg, I says to him, "What was the matter? How did you get into this fight, if there was any fight?" And Bromberg said, "I didn't have no fight with him." Well, I says, "There must have been something." So he said, "Well," he said, "we made arrangements to go out, and the arrangement was that Mulligan was to go out first and when he came back I was to go out. Mulligan went out".

Q Was Mulligan there all this time? A Yes, sir, all this time he was right there.

Q This conversation took place in the booth? A Inside the ticket booth. Mulligan was there. Bromberg said, "Mulligan went out to get a shave and he took three-quarters of an hour and when he came back, " Bromberg thought it was too long and he told him so. I said to Mulligan, "Is that right," and he said, "Take me out of here."

Q What? A He said, "Take me out of here".

Q Anything else said by Bromberg? A I said to Bromberg, "Did you strike this man," and he said, "No," pointing to Mulligan. He said, "I wouldn't hit him because he was an old man." Defendant Mulligan was standing right there. I was there and Bromberg was there.

Q Was anything else said, if you remember at that time by

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Bromberg? A Well, I think I have covered it all.

Q Now, then, did you say anything to the defendant Mulligan about a gun? A I asked Mulligan was it his gun and he said it was. I asked him did he have a permit to carry a gun and he said no. I guess that is about all I can think of.

Q Did you ask him about how long he had had it? A I think I spoke to him there in the station house or up at the Magistrate's Court and he said he had had it in his possession for six months.

Q And what did you do then after you had this conversation with Bromberg and Mulligan in the booth, what did you do then? A Well, Mulligan stated that it was self defense, and I naturally looked around to see if there was any sort of weapons. I didn't know if there was anything or not, but I looked around, anyway. The office was in very good condition. Nothing seemed to be disturbed. The money was there in a little pile. The tickets were there. There was a chair, a sort of high chair, and that was standing erect. Mulligan's appearance seemed to be --

MR. CUNNEEN: I object to this, your Honor, this description by this witness. It is evidently some time after Mr. Newkirk had come there.

THE COURT: I will overrule the objection on that ground. Don't say what seemed to be. Tell us what was.

THE WITNESS: Well, what it was, it was in very good condition there, it didn't seem to be --

MR. CUNNEEN: I move to strike that out.

THE COURT: Strike it out.

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Q You cannot tell us what seemed to be. Tell us what you saw. A It was not a place where a life and death struggle between two men had taken place.

MR. CUNNEEN: I move to strike that out.

THE COURT: Yes.

BY THE COURT:

Q You saw no overturned furniture or anything of that kind?

A No, your Honor.

Q Was there any mark of violence or disorder on the defendant? A None that I seen. He showed none.

Q Clothing torn? A No. His clothes were in very good condition, neat and clean, his hair was combed and very excellent condition.

BY MR. McDONALD:

Q What happened then, Officer? A Well, while we were waiting for the ambulance --

Q Did you see any wounds upon Bromberg, did you see any blood? A He had a handkerchief tied around his left hand and there was blood soaking through the handkerchief. He said he was shot in the left hand and the stomach. I didn't see the wound in the stomach at that time.

Q Now, some time later you saw the ambulance come? A The ambulance doctor came, yes, sir.

Q And did you see the ambulance doctor open his trousers or were you doing something else at that time? A I looked over the ambulance doctor's shoulder and seen the wound there in his stomach.

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Q Did you go with the deceased to the hospital? A Yes, sir.

Q Who took charge of the defendant Mulligan? A I did. We went together in the ambulance.

Q All of you went in the ambulance? A Yes, sir.

Q And then did they take Bromberg up to the hospital? A Yes, sir.

Q What did you do with Mulligan? A I brought him to the station house.

Q Did you afterwards see the body of the deceased? A I did, sir.

Q Where? A At the morgue.

Q Do you remember what date it was? A It was on November the 3rd at 12:30 P. M.

Q And you there identified the body as the body of Nathan Bromberg, the man whom you found in the subway on the 30th day of October, 1919? A I did, sir.

Q You identified it to Dr. Schwartz the medical examiner? A I did, sir.

Q After you heard the defendant say "self defense", did you do anything with regard to the deceased? A I gave him a frisk, I ran my hands over the outside of his clothing. I didn't find any weapon or anything on him so I didn't think that there was any weapon there. There was no weapon mentioned by Mulligan; this defendant Mulligan, wouldn't hold out --

MR. CUNNINGHAM: I move to strike out the last part of

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that. Is that an answer to the question?

THE COURT: I will allow it to stand.

Q Did you have any further conversation with the defendant that you remember? A No, I don't think I did.

Q You saw the clothes of the deceased afterwards? A Yes, sir, I did.

Q And did you tag them? A I did, sir.

Q They were the same clothes that the defendant wore on the 30th day of October, 1919? A I believe they were.

Q Well, don't you know? A They were the clothes I got from him so I suppose they must have been his clothes.

MR. CUNNEEN: I move to strike out the last answer.

THE COURT: Objection sustained.

Q I show you this coat and ask you if you remember whether that was the coat that the deceased wore on the 30th of October, 1919? A That is the coat I tagged.

Q I didn't ask you that, Officer. I asked you if that was the coat the deceased wore on the 30th day of October, 1919?

A Well, I can't say because it looks exactly like it. It is the coat I tagged. I didn't examine the coat on him that day.

Q Was it a blue suit? A It was a dark colored suit, yes, sir.  
BY THE COURT:

Q Where did you get that coat, where was it when you got it?

A I got it from the morgue, sir.

Q The keeper of the morgue? A Yes, sir.

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BY MR. McDONALD:

Q I show you this and ask you whether you remember if the deceased wore that on the 30th day of October? A Yes, I will identify that, yes, sir.

Q Is it now in the same condition as it was at the time you saw it on the 30th of October with the exception of whatever wrinkles may be in it? A Yes, sir.

MR. McDONALD: I offer it in evidence.

BY THE COURT:

Q Do you identify that as the vest he actually had on or the vest which you tagged? A I identify that as the vest he had on. There is a hole in the pocket there (indicating).

THE COURT: I will allow that in.

(The vest referred to is marked People's Exhibit 5).

Q I show you this shirt and ask you if you can tell us whether that was the shirt that the deceased wore on the 30th of October? A I tagged it. I couldn't swear that he had it. That is the one I got from the morgue.

MR. McDONALD: May I have it marked for identification?

(The shirt referred to is marked People's Exhibit 6 for identification).

MR. McDONALD: May I also have the coat marked for identification?

THE COURT: Yes.

(The coat is marked People's Exhibit 7 for identifica-

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tion).

CROSS EXAMINATION BY MR. CUNNEEN:

Q Mr. Cunningham, you said that you were told by some citizen that there was some trouble on the street, is that what you were told -- just what was it? A That is what I was told, yes, sir.

Q Do you know who it was told you? A No, sir.

Q Didn't you take the name of the person who told you?

A No, sir.

Q Did you make a memorandum of this occurrence in your book? A You mean did I make a memorandum of this man speaking to me about this?

Q No. Did you make a memorandum of this occurrence, the things that happened in this book? A Oh, yes, sir.

Q You have that book with you, have you? A Yes, sir.

Q May I see it please? A (Witness hands book to Mr. Cunneen).

Q Did you ask Bromberg how old he was? A Yes, sir.

Q How old was he? A The book states that, doesn't it?

Q Do you recall? A I believe 32.

Q Now, is this what you wrote in your book, "At about 9:40 A. M. Nathan Bromberg, Bronx, 566 Beck Street, apartment 5-B, 32 years, U.S. The ticket seller. White. Suffered from pistol shot wounds in the left hand and also one puncture wound and abrasion of the abdomen. Was attended in the subway station at Rector Street, Dr. Page, Broad Street Hospital." A Yes,

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sir.

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Q That is the entire memorandum you made on that occasion?

A Yes, sir.

Q Now, officer, you were examined before the City Magistrate, weren't you? A No, I don't believe we were. We went before one but there was no examination. It was postponed I believe you call it or an adjournment.

Q You weren't asked any questions before Chief City Magistrate McAdoo? A No, I don't think I was.

Q Now, did you arrest this man on any charge, Mr. Mulligan, at the time of this occurrence? A Yes, I arrested him for felonious assault.

Q You did? A Yes, sir.

Q Was that the charge you made before Judge McAdoo? A Yes, sir.

Q Wasn't the charge you made against him there for having a pistol? A That was one of the charges.

Q Wasn't that the only one? A No, sir.

Q Sure about that, officer? A Positive.

Q Now, you have a pretty good memory, haven't you, officer? A Well, fairly

Q And you don't recall being asked any questions or making any answers before Judge McAdoo? A No, I don't think -- I think the case was adjourned; I think we went up before him and I believe it was adjourned.

Q Now, let me see if this refreshes your recollection:  
"Before Hon. William McAdoo, Chief City Magistrate. Statement by

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Thomas T. Cunningham. Examination by the Court:

"Q. Tell me substantially what you know about it? A. I was called in the subway, Rector and Greenwich Streets, October 30, at about 9:40 in the morning and I found Nathan Bromberg who told me this man shot him twice.

"Q. Where did you find him? A. On the sidewalk.

"Q. Where did you find him on the sidewalk? A. No, on the subway, on the platform inside, inside the ticket box. This defendant was at the ticket box -- chopper -- Nathan Bromberg, the man injured, was inside the ticket box where they sell tickets.

"Q. Was Bromberg the ticket man? A. Yes, sir, he was the ticket seller.

"Q. He was the man that sells tickets? A. Yes, sir.

"Q. And this man was standing outside and the wounded man inside? A. Yes, sir." You don't remember anything about that? A. I don't believe it is as lengthy an examination as that.

Q. You don't remember that at all? A. No, that is true, I don't.

Q. Then, was this further asked you, "Q. What was the position of the man -- what was he doing when you found him? A. Standing at the ticket box, chopper's box. He was standing there when I entered the subway station.

"Q. Did you have any talk with him? A. Yes.

"Q. What did he say? A. He said he would not make any statement. Only, 'Self-defense'. I asked him did he shoot this man. He said, 'Self-defense.' That is what he said.

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"Q. Did you find any weapon on the wounded man? A. No, sir.

"Q. Did you search inside the box? A. Yes, sir. I looked in and didn't see any weapon there.

"Q. The wounded man was inside the enclosure, the office?  
A. Yes.

"Q. Where they have the little window and hand the tickets out? A. Yes, sir.

"Q. Did the wounded man say anything? A. The wounded man said that this man shot him first for nothing." Do you recall that? A. No, sir, I can't recall all that, no, sir.

Q. Do you recall Judge McAdoo then saying, "As I won't take bail for him on this charge I will take bail for carrying a weapon \$300 bail on the pistol charge. I will take no bail in the case of manslaughter. Committed without bail until Wednesday morning." Do you remember that? A. Yes, he committed him without bail, that is right.

Q. But you don't remember that you were asked those questions and that you made those answers? A. No, I don't remember that we went into such a lengthy examination.

MR. CUNNEEN: Do you concede that this took place?

MR. McDONALD: If you say that is a copy of the Magistrate's Court minutes, of the record of this proceeding, I will concede that.

MR. CUNNEEN: I want you to concede that what I have read I have read from these minutes. The point I am getting at is this man's memory more than anything else, Mr.

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McDonald.

THE COURT: As I understand, the District Attorney concedes that he made those answers and also concedes that such an examination took place.

MR. McDONALD: All right. I would just as leave have the entire evidence go in, the entire record in this proceeding.

THE COURT: The District Attorney has made the concession. Now, does it appear what the date is of that hearing?

MR. CUNNEEN: On November the 3rd, that he was examined before Chief Justice McAdoo, and the questions I have read were asked him and he made the answers which I have read.

THE COURT: That was after the death of the deceased?

MR. CUNNEEN: Yes.

THE COURT: Do you concede that, Mr. McDonald?

MR. McDONALD: Yes, I will concede it.

Q Now, do you recall these questions being asked you, Mr. Witness, on November 3rd, "The Court, to Officer Cunningham,

"Q. When does the doctor seem to think he would come out?

A. I was at the Broad Street Hospital this morning. The complainant is dead. He died November 2nd, 6 P. M. I was told to report at 10 o'clock at the morgue by direction of the Coroner's office.

"Q. Was there any testimony taken before this man died?

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A Not that I know of." Do you recall that? A Yes, I recall that, yes, sir. 55

Q The balance you don't recall that I read? A The other part, no, I don't think we went into it as deep as that.

Q After you told Mr. Mulligan he was under arrest and the doctor came there from the hospital, did you help Bromberg up the stairs into the ambulance? A No, sir.

Q You did not? A No, sir.

Q Now, were you here when Mr. Newkirk testified? A No, sir.

Q You weren't in the room at that time? A No, sir.

Q Now, you are sure, are you, that when you came down there Mr. Mulligan was out at the ticket box and was not in the ticket office, are you? A Mr. Mulligan was standing right at the ticket box, at the chopper's box.

Q The chopper's box? A Yes, sir.

Q And he wasn't in the office when you came down?

A No, sir.

Q And Mulligan walked along with you all right, officer?

A Yes, sir.

Q And he went up into the ambulance? A Yes, sir.

Q And rode over in the ambulance to the Broad Street Hospital? A Yes, sir.

Q And then from there you left the ambulance and you walked with Mr. Mulligan up to some police station? A Yes, sir. Old Slip, First Precinct.

Q He walked along with you? A Oh, yes.

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Q He wasn't handcuffed or anything? A No, sir.

Q He didn't make any trouble, did he? A No, sir.

Q Do you recall anyone else telling you down there at Wall Street other than the men you have spoken of that there had been some trouble down in the subway? A No, sir.

Q Did a man tell you there had been a shooting there?

A A man came up and said, "I think you are needed down at the Seventh Avenue Subway, I think there is a shooting," so I didn't think any more, I went right down.

Q Do you recall who that man was? A No, sir.

Q Now, you said that Mr. Mulligan looked very well and didn't look mussed up at that time? A He didn't look mussed up, no.

Q Didn't he tell you he had gone and just got a shave?

A He didn't tell me that. Nathan Bromberg told me that. Bromberg said he had got the shave.

Q Was Mr. Newkirk there at that time? A I believe Mr. Newkirk was there, standing outside the door or inside the door near the booth.

Q Did you hear Bromberg say he had shoved the old man in the presence of Newkirk while you were there? A No, sir, I didn't hear him say that.

Q Do you recall Mr. Mulligan showing you an injured knuckle at the time? A Mr. Mulligan showed me a knuckle on his right hand in the station house like as he had rubbed his hand up against a hard substance. The skin wasn't broke but it was red.

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Q The skin wasn't broken but it was red? A No, sir.

Q He showed it to you, did he? A Yes, sir.  
BY THE COURT:

Q How did he come to show you that? A I don't know. He was just standing there in the door and he just happened to show it. That is the first I knew anything about his hand.

Q Which hand was it? A The right, sir.

BY MR. CUNNEEN:

Q Did you particularly note that it was his right hand, did you? A Yes, sir.

Q Now, isn't it a fact that it was his left hand? A No. To the best of my recollection, sir, it was his right hand.

Q And didn't he tell you how he got it? A No, sir.

Q Don't you recall that? A He didn't say how he got it.

Q And that is all he did? A That is all he did.

Q And when you went in this ticket office did you see the safe there? A Yes, sir, there was a safe there.

Q Did you notice the door of the safe, whether it was open or closed? A To the best of my recollection it was closed.

Q Did Mr. Mulligan say anything about the safe to you?  
A No, sir.

Q You don't recall anything? A He didn't say anything about the safe, no, sir.

BY MR. McDONALD:

Q Did you get the name of John First? A I did, sir.

Q From whom did you get that? A I got that from John First right at the ticket office.

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Q After you arrived there? A Yes, sir.

Q Was he the citizen that spoke to you before you had left your post at Wall Street and Broadway? A I hardly think so, sir.

D R. L A W R E N C E P A G E, attached to the Broad Street Hospital, called as a witness for the people, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you were an interne and an ambulance doctor on the 30th day of October, 1919? A I was.

Q And you were attached to the Broad Street Hospital?

A Yes, sir.

Q And as a result of an ambulance call did you go to the subway station at Rector and Greenwich Streets? A Yes.

Q And did you there see anyone? A Yes.

Q Did you there see one Nathan Bromberg? A I saw a man who gave his name as such.

Q That is what I mean, a man who gave his name as such?

A Yes.

Q Did you make any examination of him at that time? A Yes.

Q What did you find as a result of your examination, doctor? A Two puncture wounds of the left hand, one on each side.

Q Two puncture wounds on the left hand? A Yes, and one puncture wound and an abrasion of the abdomen.

Q Do you remember what part of the abdomen it was? A The

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A The puncture wound was in the left side.

Q Just about where you indicate? A Yes, sir.

Q Where was the abrasion? A The abrasion was right in the middle where my hand is (indicating).

Q The abrasion was in the front of the stomach? A Yes.

Q In the region of the navel? A Yes, in the region of the navel.

Q Is he the only man you treated there in the subway?

A Yes.

Q What did you do then? A I put on clean dressings and brought him to the hospital.

Q And is that the last you saw of him? A I saw him in the hospital. He was brought to the X-ray room, I think I brought him to the X-ray room.

Q Did you see him again after that? A I saw him some few days, but I don't remember when I did see him. I didn't attend to him after that.

Q That is all you know about it, doctor? A Yes.

CROSS EXAMINATION BY MR. CUNNEEN:

Q Doctor, when you got to the subway where did you see this Mr. Bromberg? A If I remember correctly, he was just inside or outside the door of the ticket office, I am not positive.

Q Did you make this dressing of him inside the ticket office? A I don't know. I forget.

Q Sir? A I don't know. It was wherever I found him.

Q You say there was a puncture wound on the left side

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abdomen? A Yes.

Q And an abrasion in front? A Yes.

Q Now, what do you mean by an abrasion? A The skin was broken.

Q And what was the nature of that break in the skin, was it crossways or down or up or hor? A It was crossways, -- oh, probably an inch in length, and probably a quarter of an inch in breadth, just superficial.

Q Did that little abrasion that you saw in front have any connection whatever with this wound that you saw on the side?

A I do not think so.

Q Did you probe that wound in the side at any time? A I just smeared iodine in it and around it. I didn't probe it, just with a steril gauze I just daubed iodine on it.

Q And you didn't make any opening there to indicate where that wound led to, did you? A No, sir.

Q You didn't at any time after that? A No.

Q Did you have any talk with this man? A Well, not other than professionally.

MR. CUNNEEN: That is all.

MR. McDONALD: That is all, doctor, thank you.

D R. L E S I E Y E S T L, called and sworn as a witness on behalf of the people, testified as follows:

(The witness states that he resides at the Lying In Hospital, 17th Street and Second Avenue, New York City).

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you were the house surgeon at the Broad Street

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Hospital during the month of October, 1919? A I was.

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Q Did you there have a patient come into your charge named Nathan Bromberg? A I did.

Q What was he suffering from at the time you saw him?

A He had a puncture wound on the left side of the abdomen, an abrasion in the front part of the abdomen in the region of the navel.

Q We cannot hear you. A He had an abrasion in the front and part of the abdomen in the region of the navel, a puncture wound on the left side.

Q What did you do for him, doctor? A Well, practically, he came in some time in the afternoon, he came in with ambulance dressings on and I looked at the wound and put on clean dressings and called up Doctor Fobs, the visiting surgeon. Dr. Fobs said he would attend as soon as he could to operate or see after the noon hour would be need it. Dr. Fobs came there ~~that afternoon~~ and examined the man and he saw the puncture wound going into the abdomen, so he decided that by the condition of his pulse, which was weak, that he was suffering from internal injury, so he was prepared to operate. He was taken to the operation room and his abdomen was opened.

DR. GUNNBERG: I don't understand that.

THE WITNESS: The abdomen was opened. I might say before he went under examination that as found on the right, directly across from the puncture wound on the left, you could feel a bullet underneath the skin. On the operating room table it was found that the bullet had pierced the

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abdominal wall on the left side, transversed the abdomen, went through the wall on the right side except the skin and the superficial tissue and crossing the abdomen and it pierced the transverse colon or the big bowel.

Q What is that? A The bowel. In going through the bullet pierced the big bowel and let some of the contents off, as I remember it, in the abdomen. That was the only wound of the intestines that could be found. The wound was closed and the bullet was taken from underneath the skin on the right side and the man was sent down to the third ward.

Q Do you remember what kind of a bullet it was? A I do not. I couldn't say.

Q Were you present during all the time the operation was going on? A I was present all the time assisting. I saw the bullet taken out. I swear that I saw the bullet taken out, but as to identifying the bullet I could not, because I have taken out two or three before and two since.

Q You didn't put any mark on this bullet that you took out to identify it in any way? A No.

Q Do you know what was done with the bullet? A It was given, I think, to the Chief Medical Officer or went to the --

Q Medical Examiner? A The Medical Examiner.

Q Do you know by whom? A I think myself.

MR. CUNNEEN: We can't hear back here.

THE WITNESS: It was given to one of the Medical Examiners.

Q Did you put it in an envelope and mark it? Is that your

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Q Is that your writing (indicating)? A No, that is not my writing. I think I know whose writing it is -- it is the operating room nurse's.

Q The operating room nurse's? A Yes, the Staff Operating Nurse.

Q Now, what was done then, Doctor?

BY THE COURT:

Q One moment. This bullet, Doctor, I understood you to say entered the left side of the abdomen and transversed the body crossways? A Yes.

Q Now, will you put your hand on the place of entrance? Just stand up. A (Witness complies).

Q Now, put it at the point where it was found? A Over here, sir. (Indicating).

Q Turn around so the jury can see? A (The witness complies).

Q So the course of the bullet was not through, not from front backwards, but was across the body? A Across the body.

Q It ran from left to right? A From left to right.

BY MR. McDONALD:

Q Now, then, doctor, did the patient remain in the hospital any length of time? A I think he was there two days after that.

Q And then what happened? A He died.

Q What did he die of? A Peritonitis, infection from the track of the bullet.

Q Infection of the track of the bullet? A Yes.

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CROSS-EXAMINATION BY MR. CUNNEEN:

Q Doctor, you didn't operate on this man, did you? A I did not.

Q You say this bullet entered on the left side? A Yes.

Q And went through and came nearly to the skin on the right side? A Yes.

Q Now, will you tell me about how far in from the skin into the body, about, it was at the deepest place that it went through?

A Well, it would be at least an inch and a half in, an inch and a half from the exterior of the abdominal wall.

Q The part that it punctured you say was the colon? A Yes.

Q And that is the nearest part of the abdomen, isn't it, to the outside of the abdomen under the skin? A Yes, that is the nearest.

Q The bullet wasn't pointed towards the inside of the body, only across the body? A Across the body.

Q And the place that it went in deepest was about from an inch to an inch and a half from the outer wall? A I could not say positively, I don't know.

Q This colon is one of the intestines that goes around inside? A Yes.

Q (Continuing) -- of the abdomen, and is the one that lies nearest to the outside of the abdominal wall? A It may not lie nearest because it comes up on the side across here (Indicating), and downward on the other side. In that "U" the small intestines lay and they lie next to the abdominal wall too.

Q Yes, but when this crosses it lies next to the abdominal

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wall? A Yes.

Q At this particular place it was next to the abdominal wall?

A Yes.

Q Now, Doctor, you say that this man died of peritonitis?

A Yes.

Q Isn't it a fact that peritonitis may follow any laparotomy?

A Yes, it might.

Q Now, when it occurs after there has been a laparotomy or opening of the abdomen, is there any way in which you can trace the peritonitis to any particular spot, or is it a thing that covers all around that? A Well, it is a thing --

Q Talk louder? A Yes. In the origin where the infection starts the inflammation is far greater than it would be in a more distant place.

Q Yes? A The thing that would point toward it coming from the wound is that the bowel was pierced, the contents of the bowel containing all manner of bacteria and that filling into the abdomen onto the peritoneum would be sufficient to set up a very severe peritonitis. This operation was carried out under the most aseptic conditions and just as carefully as any laparotomy was done, and we very seldom get them through ordinary laparotomy, and this came on directly in the spilling of the intestinal contents into the abdomen, and certainly we would suspect it came from that.

Q You suspected it came from that? A Yes.

Q That is as far as you want to go, isn't it, Doctor, that you suspected it came from that? A I couldn't swear that it came from

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that, but all signs points that it came from the spilling of the contents of the bowel into the abdomen.

Q Now, Doctor, that condition of peritonitis might follow, as you said, any opening or laparotomy of the abdomen? A It might.

Q And it could even, where care is taken in the hospital, happen, isn't that so? A Yes.

MR. CUNNEEN: That is all, Doctor.

MR. McDONALD: That is all, Doctor. We have tried to get Dr. Farb and he is in the midst of an operation. I thought he might be able to get here by the time we were through and then put him on the stand to-morrow.

THE COURT: Do you think it is necessary to call him to-morrow? With that exception do you rest?

MR. McDONALD: May I also reserve the testimony of another doctor who knows about the bullet, and Miss Casey from the Medical Examiner's office?

THE COURT: Is there any dispute that that is the bullet?

MR. CUNNEEN: Your Honor, I don't know whether this is the bullet or not, but as far as that is concerned I don't see any particular materiality about it. All bullets are pretty much alike.

MR. McDONALD: Then, if there won't be any objection to putting it in.

THE COURT: The defendant admits the ownership of this revolver and it is a .32 calibre revolver.

MR. McDONALD: Yes, sir.

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THE COURT: I don't see that the identification of this particular bullet has any materiality. If it becomes material I will allow you to call the witnesses later.

MR. McDONALD: All right, sir. The People rest.

MR. CUNNEEN: If the Court please, I ask the Court to dismiss this indictment and acquit the defendant of any charge of murder in the first degree pursuant to the terms and provisions of the Code of Criminal Procedure, section 410, to dismiss the indictment and direct an acquittal; also on the ground that the testimony as it now stands in finding of guilt of the defendant of murder in the first degree would be without basis in the evidence and without any law to support it; on the ground that there has not been any premeditation whatsoever shown; on the ground that there has not been any evidence of an intent to kill shown.

MR. McDONALD: May I be heard on that just a moment, your Honor?

THE COURT: I think we will let the jury go while you are arguing this.

MR. CUNNEEN: All right, sir.

THE COURT: Gentlemen, on the motion now to be argued the law is that the jury does not have to be present during the argument and I shall therefore let you go until to-morrow morning at 10:30 o'clock. Meantime, please do not talk among yourselves or express an opinion as to the guilt or innocence of the defendant until the case is finally submitted to you and do not discuss the case or allow anybody to speak to you about it, to you or

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in your presence. You are excused until to-morrow morning at 10:30 o'clock.

MR. CUNNEEN: May the witnesses be instructed to return to-morrow morning at 10:30?

THE COURT: Yes. Mr. Spinney, instruct the witnesses to return to-morrow morning at ten o'clock.

(The Clerk so instructs the witnesses).

MR. CUNNEEN: If your Honor please, in regard to this motion, it seems to me that from the evidence there is not the slightest bit of testimony here of any premeditation or deliberation in regard to any shooting of this deceased. All the statements of anybody in regard to it, even taking in the statement of Bromberg, made at one time or another is merely that the shooting occurred at that time and that before it happened he made some remonstrance, are, I believe, to this man, and he took out a pistol and shot him. I don't see that there is the least thing here to show premeditation whatsoever in regard to this case.

Second, as regards intentional killing: It is apparent here that after the shooting the deceased left, walked around, he went up the street and he came back down, that there were three shots still in this pistol and that they hadn't been used the man hadn't been killed, and was not, so far as the evidence shows, in such condition that death was expected of him at that time. He went up the street and came back down and came in the room there. The testimony in regard to every moment in the

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case was that when the officer came there and asked him about it he immediately said that what he had done was in self defense. There didn't appear to be any pursuit of the man who was injured and who subsequently died. From the evidence it appears that the shooting took place in the office. There wasn't anything to show an intent on the part of Mulligan at all to kill this man, nor any premeditation, and on those two grounds I don't think there is anything here that would possibly sustain a verdict of murder in the first degree.

THE COURT: You say there is no intent to kill shown here, that would make it murder in the second degree.

MR. CUNNEEN: Yes, sir.

THE COURT: Now, I will hear the District Attorney on the charge of murder in the first degree.

MR. McDONALD: The only way we can gather an intent of the mind of the defendant is the act of the defendant.

THE COURT: You don't need to argue the intent. In my opinion it is in a position to submit it to the jury on the question of intent to kill.

MR. McDONALD: The only question of premeditation in my mind is the fact that this defendant carried this pistol around with him, a fully loaded .32 calibre revolver. There was no reason for it. He was carrying this pistol and we can only gather from the fact that the defendant did carry this pistol that there was some intent and some premeditation. Something must have occurred. The only ones who can tell us about

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this is the defendant and Bromberg. Bromberg is dead.  
Now, the fact of this defendant carrying the pistol is sufficient intent to my mind that there was something had happened, although we are not able to show it; <sup>that</sup> there was something in the mind of this defendant that he and Bromberg were going to get into a mix-up at some time because there was no reason in the world why a gateman employed by the Interborough Rapid Transit Company, no rhyme nor reason for him carrying a loaded revolver.

The Court of Appeals in the cases of the People against Leighton and <sup>or Mayone</sup> ~~Arjone~~, I forget which, has said that the choice of a weapon or the number of wounds inflicted may be evidence from which a jury may infer premeditation and deliberation. In this case, isn't it a question of fact for the jury to say whether the intent was deliberate or not, and the fact that more than one wound was inflicted and a weapon such as a revolver selected?

MR. CUNNEEN: Well, the evidence shows that this revolver had been in the possession of the defendant for six months, I believe. He was the gateman in the subway. Whether a gateman in the subway is in such condition that he might on occasion need to have a revolver is a matter on which thought may differ. The fact that there wasn't, so far as premeditation was concerned, the least evidence to show any motive that there ever had been any previous trouble between these two men - not the least, not the slightest - that premedita-

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tion from his statement couldn't be assigned to it. He did say that he shoved this man. That is the testimony of Newkirk. There isn't the least thing to show that there was any reason to imagine there had been any hard feeling between these parties before this time.

THE COURT: I think I shall deny the motion for the present at least. You may renew it at the close of the whole case and I will then rule on that question again.

MR. CUNNEEN: I thank you. I take an exception.

THE COURT: You may have an exception to the denial on each ground.

(The further trial of the case was then adjourned to Tuesday, December 23, 1919, at 10:30 o'clock A.M.).

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PEOPLE vs. MULLIGAN.

New York, December 23, 1919.  
TRIAL RESUMED.

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MR. CUMMERS: If the Court please, Mr. Foreman and Gentlemen of the jury, in opening and presenting the case for the defendant, I am going to ask you to give the same attention that I notice you gave to the witnesses called by the people.

The defendant in this case is a man close to 60 years of age. I do not know his exact age. He has worked hard all his life. He has a family of seven children and I think one died.

Never before has he been convicted of any crime. He worked for eighteen years for a railroad company in Brooklyn continuously, from early morning until late at night, I think about 12 hours a day, between the time he spent going from his house to his work and coming home.

Never before, as I said, has any crime been charged against this man, nor was he convicted of any crime, a man with an excellent reputation, as men who worked with him will testify, and those who were his superiors will testify.

After that he worked for the Interborough for a period, I am not sure whether it was a year and a half, and he had some other work in between those times. I think those jobs were not very long because he was quite an old man.

On this occasion, he was a gateman down at the Rector Street station. Before that he had been a gateman at Chambers Street and he had been up at 116th Street. At 116th

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Street he had been punched a few times by people who were trying to go by without putting tickets in the box. He had been warned that they were going to make trouble for him. That was about six or eight months before this occasion, as I understand, and then he procured the pistol in this case.

On the morning that this happened he came to work about seven o'clock in the morning. At seven o'clock he was at his place of business here. He lives over in Brooklyn. When he came to the place in the morning, to this station, and he walked down the steps he met this man who has since died, Mr. Bromberg, a ticket agent. Bromberg was standing at the foot of the stairs waiting for Mulligan, and immediately went up the steps, I believe, that was the next time, and had been away for a long time, and while I cannot show just where he went, I understand he went to his breakfast at that time. He returned about half past seven ~~xxx~~ from his breakfast.

In the meantime, Mulligan was selling tickets, acting as ticket chopper. Then Mulligan went to his post at the gate box or ticket chopper's box. He was there 15 or 20 minutes, when he told the ticket agent he would like to go and get a shave, and the ticket agent motioned to him to go ahead.

He went and he was shaved in a little barber shop on Greenwich Street, or on Rector Street just below Greenwich street and there was somebody finishing getting a hair cut or something, and he was gone a little longer than he expected, probably 40 to 45 minutes.

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He came back and when he did he again met Bromberg,<sup>77</sup> and Bromberg told him he was gone quite awhile and made some remark or some statement about his having been gone a long time, and Bromberg again went away from the ticket office and went upstairs.

Where he went to that time I do not know. Mulligan thereupon continued to sell tickets and act as the gateman until Bromberg came back.

Now, this was in the morning between seven and half past, or rather nine or half past nine o'clock or so. This was down at Rector Street, in the lower end of the City here, and there practically is very little traffic on the up-town side of Rector Street at that time of the morning.

After Bromberg came back Mulligan was inside at the ticket window, and when Bromberg came in he again said something to him about the time he had been away and was rather cross, evidently, because Mulligan had been away, I don't know why. Bromberg went out a second time.

I can't say how long he was away, then he made some remarks to Mulligan, that he was running the whole office or running the station or something and said, "Get out of here", and he gave the old man a shove, and there was a safe in this place. I think we have a diagram here (indicating), here just inside of the office, this part here and the door was in this side (indicating). Here is the ticket booth that runs in front of the ticket window here. The safe is in

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that corner and above the safe is a cupboard which extends a little beyond the safe and runs up nearly to the top.

I think Mr. Newkirk has practically testified to this here. This board is just a little higher than the safe, about three and a half feet high or a little higher. Mulligan was about here, when Bromberg came in and when as I said he remonstrated with him or said something and gave him a quick push and pushed him around over against the safe, so that in that swinging around and pushing he gave the old man or the old man's hands hit against the door of the safe, which was open and out him. His knuckle, as the policeman said, was red at the time he came there, probably it was half an hour after the occurrence, at the time the policeman came.

Then Mulligan asked him what he meant by it and he was given another push and a punch.

Now, this old man, as I said, is about sixty, and this young man was as large as I am, about 200 pounds, and five feet eight inches or so in height, age 32, much younger than I am. He gave this old man such a blow in the face that he broke a tooth, and he knocked him up against the safe and into this little part here (indicating.)

Then the old man struck him once or twice as he did the old man. Then he caught the old man by the throat and he shoved him right back into that corner and was holding him that way and punching him.



Now, Mr. Mulligan is going to tell you this story, that there was some knife lying around. I think that was used for opening rolls of tickets. This man moved his hands over toward that and as he did so Mulligan threw his body against him and pushed his body away and he pulled out a gun and tried to prevent that hand from going over that way, as much as to frighten the man as anything else, and he fired the gun off, and hit this man in the left hand.

Mulligan was in the back here (indicating). This man put his left hand out and he tried to scare him by it. He had his hand on the pistol, and in doing so he fired a shot which went through the fleshy part, as the doctor said, of the hand.

I do not think Mulligan knew exactly what part of the hand it went into, but it went into his hand and this man did not stop at that, he continued smashing him and knocked his hand down, until he had forced the hand down below this board. (Indicating.)

As I told you, that board is about three and a half feet high, about up to here (indicating), and the old man's hand had gotten down in there. He was still choking the old man with his other hand, and when he did, when his hand was in that position there, when he felt that he was being used as badly as a man could be, being choked, this old man fired again.

Now, the bullet went in this direction (indicating) followed the position his hand was in. He had no selection of any vital part. There was not any intention, we will assure

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you to kill this man at all.

Now, the doctor testified yesterday, and I do not think we can contradict him, that the track of the bullet from the place it went in, it was five inches. One young man testified that it went in some distance like that, but five inches is what we are going to contend is all that was shown that the bullet traveled.

MR. McDONALD: I submit this is not a proper opening of a defendant, through counsel. The purpose of an opening is to show what a defendant is going to prove as his part of the case and this is argument upon the evidence produced by the People.

THE COURT: Well, he is simply adverting to that for the purpose of telling what his evidence is going to be, but confine yourself as nearly as possible to your own evidence.

MR. CUNEEN (Continuing): Now, that part of the People's case of the men telling just how long that bullet went in there, I told you we are not going to dispute, and we say that that is probably so.

Further than that, when that happened, when that second shot was fired this man stopped, he let go, and when he did, Mulligan did nothing further. There was still three bullets left in the revolver, as you have already heard, and whatever was left appeared there.

So that we will contend from that evidence that there was no intent to kill this man. The man walked out of the place,

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he went up to the street. Whether he came back down again I am not able to say. Anyway, Mulligan telephoned. Mulligan said then that he went out through the ticket box, that he was standing at the ticket box here when he saw Mr. Newkirk subsequently. There was quite a space of time before Newkirk came there.

It appears that this man had gone up to the street, and Rector Street is two blocks from Wall Street, and that evidently someone spoke with him there, and went over two blocks to Wall Street and told the Policeman, and came back two blocks down to Rector Street, and this Policeman came in. Anyway, there was a considerable period of time. During all that time there was no pursuit of this man by Mulligan, no attempt to injure or harm him, and when the Policeman came there Mulligan was still at this ticket box.

When Mr. Newkirk came, we will show that Mr. Mulligan as he saw him come up this lower station platform, he called for him to come up and <sup>he</sup> went into the ticket office and took off his cap and put on a civilian hat and had come up to the door of the ticket office about the time Mr. Newkirk got up here at the entrance of the stairs. (Indicating.)

Then, as he came there, and without any request from Mr. Newkirk, he told him, he said, "Here, you better take this", and he got this gun.

At that time Bromberg had said he had been shot. I do not

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know that Mulligan heard that, but Mr. Newkirk has testified to that and <sup>he</sup> gave Mr. Newkirk the gun.

Then, when the Policeman came there -- or then Newkirk told him to go out of the ticket box and he went out of the ticket box.

We will contend that Mr. Newkirk is a little bit mistaken when he says that the two men were in there at the time and making some statement. Newkirk himself says he was busy at the telephone. When the Policeman came there Mulligan was out here at the ticket box (indicating), and Bromberg called to him and said to arrest him, and that the Policeman came over to him and told him he was under arrest, and then that he got this gun from Newkirk.

I am getting a little ahead of my story. When he said someone had shot him he asked Mulligan and Mulligan said it was in self defense. The gun was then given to the officer. There was no attempt made to evade anything or to get away from anything. He went along with the policeman, and the policeman two days later, as we will show, was in court and gave some testimony in court.

Now, that is the whole case, practically for the defendant, and on that case we are going to ask you gentlemen to give him a verdict of not guilty.

There are some men that have to go, your Honor, and I will call them first.

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FLORENCE MONGNO, called and duly sworn as a witness  
on behalf of the defendant, testifies as follows:

(Residence 117 Pine Street, Brooklyn.)

DIRECT EXAMINATION BY MR. CUNNEEN:

Q Mr. Mongno, how long have you lived at that address? A I  
am living on Pine Street for 15 years.

Q Do you know the defendant here, Mr. Mulligan? A Yes, sir.

Q Did he live over in that neighborhood? A At 113 Pine  
Street.

Q And your place of residence was where? A 117 Pine Street.

Q What is your occupation? A Barber.

Q How long have you known Mr. Mulligan? A A little over  
12 years.

Q During that time, or during the time he lived over there  
did you know him? A I did.

Q Did he live in your neighborhood there for 12 years? A Yes,  
sir.

Q Did he come into your barber shop? A Yes, sir.

Q Do you know his reputation for peace and quiet in that  
community? A I always did.

Q You must talk a little louder? A I say, yes, sir, he has  
always been a good man, all the time since I know him.

Q What is his reputation for peace and quiet in the  
community? A Well, everybody talks good about him, in the barber shop,  
all the people that comes in there knows him to be a good man. He  
was never drunk, never saw him drink, I always saw him with a uniform

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on going to work and coming home every evening.

CROSS EXAMINATION BY MR. McDONALD:

Q When did he move? A About three and a half years ago he moved away from there.

Q You know him only up to about three and a half years ago, do you? A What is that?

Q How long is it since he moved from 113 Pine Street? A A little over three years, about three and a half.

Q Have you seen him frequently since? A I saw him once in a while, yes.

Q But you know him most intimately from a period that ended about three and a half years ago? A I knew him before three and a half years ago. Ever since I am in Pine Street I know Mr. Mulligan.

Q I say, you know him pretty well up to about three and a half years ago, you saw him frequently? A No, I didn't see Mr. Mulligan for the last three and a half years, but previous to that I used to see him every day.

Q That is what I say, you saw him often up to about three and a half years ago? A Yes, sir.

Q And since that time you have not seen him so frequently? A No, sir.

Q How often would you see him? A Maybe once a month or every two months, something like that.

Q All right, thank you.

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J O H N J. S C A N L O N, called and duly sworn as a witness on behalf of defendant, testifies as follows:  
(Residence 301 Palmetto Street, Brooklyn.)

DIRECT EXAMINATION BY MR. CUNEEN:

Q Mr. Scanlon, what is your occupation? A I am starter for the B. R. T.

Q I do not hear you. A I am starter for the Brooklyn Rapid Transit Company.

Q Do you know the defendant here, Patrick Mulligan? A Yes, sir.

Q How long have you known him? A Well, I know him over twelve years.

Q During that time what was his occupation? A He worked on my line that I am in charge of for nine years as a conductor.

Q On the B. R. T? A As a conductor, yes, sir.

Q Where is your place of business with the B. R. T., at the end of the line? A At the end of the line, at Cooper and Central Avenue.

Q At the end of the line, do a number of men come there, do they have time between trips there? A Yes, sir.

Q During these years that you knew Mr. Mulligan, or during these years that he was there under you did you know him? A Yes, sir.

Q You would see him daily, would you? A Yes, sir, I would see him every trip he made.

Q During that time did you know his reputation for peace and

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quiet, in the observation of law and order? A It was very good, sir.

Q You did know it, did you? A Yes, sir.

Q What was his reputation for peace and quiet? A It was very good.

Q You knew the man he worked with, did you? A Yes, sir.

Q And those men that would lay over there at the end of their swing or whatever you call it have some hours off during the day? A Yes, sir.

Q Did you talk with those men <sup>there</sup> at that time? A Yes, sir.

Q Heard them talk together? A Yes, sir.

Q Have you ever heard them talk about Mr. Mulligan? A They spoke very well of him.

CROSS EXAMINATION BY MR. McDONALD:

Q Did you just know him as an employee? A Yes, sir.

Q That is all? A Yes, sir.

A L B E R T L. S C H O R R, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence 55 Pennsylvania Avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. CUNEEN:

Q Mr. Schorr, what is your occupation? A I am starter now for the Brooklyn Rapid Transit.

Q How long have you been in such an occupation? A About a year and a half as a starter and before that I was about ten years as an inspector.

Q Ten years an inspector? A Yes, sir.

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Q On the B. R. T.? A Yes, sir.

Q During the time that you were inspector did you know the defendant Patrick Mulligan? A Yes, sir.

Q About how long had you known him? A About nine years.

Q Was he on the same line on which you were also employed?

A Well, I had a position, what we call floating around, revenue inspector, go around on different lines, and I used to cover the line he worked on, which was Park Avenue.

Q Was it your duty to check up on him at times? A Yes, sir.

Q You say you have known him about nine years? A About that.

Q Do you know his reputation for peace and quiet in the observation of law and order? A I never had any trouble with him while he was working under me. As far as I know I never heard he was in trouble with anybody. He always was peaceable and quiet with me.

Q Did you ever hear him spoken about by men in the employ there or connected with you? A Every hear them boasting about him?

Q Speaking about his reputation for peace and quiet? A No, just the same as they talk about different men in conversation. You will get a fellow who will say, "Well, he is a hell of a good fellow", and things like that.

Q Further than that you never heard anything wrong about him? A No, sir.

Q As far as you know his reputation was good? A Yes, sir.

MR. McDONALD: No questions.

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MICHAEL GORMAN, called and duly sworn as a witness  
on behalf of defendant, testified as follows:

(Residence 108 Helen Avenue, South Ozon Park, Long Island.)

DIRECT EXAMINATION BY MR. CUNEEN:

Q Mr. Gorman, what is your occupation? A Motorman for the  
Brooklyn Rapid Transit.

Q How long have you been such? A Eighteen years and six  
months.

Q You know Mr. Mulligan the defendant? A Yes, sir.

Q How long have you known him? A About sixteen years.

Q During that time what was his business? A Conductor for the  
Brooklyn Rapid Transit.

Q And part of that time was he conductor in the same car you  
were motorman on? A Yes, sir.

Q About how long, do you know? A We worked about five years  
together.

Q You and other men would have an end of your trip at the  
same time, would you? A Yes, sir.

Q During the time that you have known Mr. Mulligan do you  
know his reputation for peace and quiet? A Good reputation.

Q You know his reputation, do you? A Yes.

Q What is his reputation for peace and quiet? A Good.

Q Have you heard men that were employed with you or others  
speak about him, what sort of man he was? A I always heard them speak  
good of him.

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## CROSS EXAMINATION BY MR. McDONALD:

Q Mr. Gorman, when did you last see Mr. Mulligan? A Well, I seen him, the last I seen him was about a year ago.

Q About a year ago? A Yes, the last I seen of him.

FLORENCE MAHONEY, called and duly sworn as a witness on behalf of defendant, testified as follows:

(Residence 402 Chauncey Street, Brooklyn.)

## DIRECT EXAMINATION BY MR. CUNNEEN:

Q Mr. Mahoney, do you know the defendant Patrick Mulligan?

A Yes, sir.

Q How long have you known him? A Fourteen years.

Q Did you ever live in the neighborhood where he did? A Yes, sir.

Q Where was that? A I lived at 415 Ridgewood Avenue, around the corner from where he did.

Q And he lived at that time where? A On Pine Street near Fulton, I don't recall the number.

Q What is your occupation? A Policeman.

Q During that time did you know Mr. Mulligan? A Yes, sir.

Q Do you know some of his neighbors and friends? A Yes, sir.

Q People who were acquainted with him? A Yes, sir.

Q Do you know what his reputation in the community was for peace and quiet? A Very good.

## CROSS EXAMINATION BY MR. McDONALD:

Q What Precinct are you assigned to? A 102.

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Q Well, that does not mean anything to me. Where is the Precinct Station House? A Stagg Street and Bushwick Avenue.

Q How far is that from where Mulligan lives? A I should judge about four and a half miles.

Q It is not likely that you would meet Mulligan when you were patrolling your post? A No, sir.

Q When was it Mulligan moved from Pine Street? A I think about three or four years ago.

Q Have you seen him since? A A few times.

Q Does that mean two, or what? A Well, I should think about twice.

Q Twice in four years? A Yes, sir.

Q When was the last time you saw him? A About a year and a half ago.

Q All right, Officer, thank you.

ERNEST A. WEIDLICH, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence Loral Park, Long Island.)

DIRECT EXAMINATION BY MR. CUNNEEN:

Q Mr. Weidlich, what is your occupation? A Sheet metal worker.

Q Do you know the defendant Mr. Mulligan? A I do.

Q How long have you known him? A 13 years.

Q Where did he live when you first knew him? A 111 Pine Street.

Q Where do you live? A At the same address, 111 Pine Street.

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Q In the same building? A Yes, sir.

Q Do you know Mulligan's reputation for peace and quiet in the community where he lived? A Yes, sir, very quiet little man, very peaceful man.

Q You knew his reputation, did you? A Yes, sir.

Q What was his reputation for peace and quiet? A Well, he was a man who would go out to work in the morning and would go home at night and do little chores around the house, and I never saw him going out nights or bad habits or anything like that.

Q Have you seen Mr. Mulligan recently? A Approximately, about a year and a half ago.

Q That is all.

MR. McDONALD: That is all.

PATRICK MULLIGAN, the defendant, called and duly sworn as a witness on his own behalf, testified as follows:

(748 Madison Street, Brooklyn.)

DIRECT EXAMINATION BY MR. CUNNEEN:

Q Mr. Mulligan, in October of this year what was your occupation? A Gateman for the Interborough.

Q Where were you located? A Rector and Greenwich Street.

Q How old are you, Mr. Mulligan? A I am about 58.

Q Are you married? A Yes, sir.

Q How many children? A Six.

Q How many? A Six.

Q Six living? A Yes, sir.

Q How old are they? A Well, the oldest is about 24.

Q Is the oldest a young man? A Yes, sir.

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Q And how old is the next, the next is a daughter, is she?

A Yes.

Q How old is she?

MR. McDONALD: How is this material?

THE COURT: I do not see how it is material but he may state the age of the youngest.

Q What is the age of the youngest child? A The youngest is about fourteen, I think, I am not sure.

Q And they run from 14 up to 24? A Yes, sir.

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Q You were employed by the B. R. T. at one time, were you?

A Yes sir.

Q For how long? A About 14 or 15 years.

Q Where did you live during that time? A Well, the majority of the time I lived at 111 Pine Street. I lived there for about 12 years. The other part of the time we lived at different places.

Q And you live now at what place? A At 748 Madison Street, Brooklyn.

Q Since the time of your arrest, to the present time, you have been in custody, have you? A Yes sir.

Q Do you recall the morning of this trouble with Nathan Bromberg? A Yes sir.

Q What time did you leave home that morning? A About six o'clock.

Q The night before where had you been? A Home.

Q From your home where did you go? A In the morning?

Q Yes. A I went direct to the station, to the Elevated Station to come to work.

Q Sometimes I do not think the gentlemen of the jury can hear you.

BY MR. McDONALD:

Q The jurors cannot hear you.

BY MR. CUNNEEN:

Q Just talk slowly and take your time. A All right, sir.

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Q You left your home and went to work and what route did you take? A Well, sometimes I went to the Elevated Station at Read and Lexington Avenue. That is about two blocks from the house.

Q Well, you would go by the Brooklyn Elevated Road to the Bridge here, would you? A Yes.

Q Then from the Bridge, go down to Rector Street and Greenwich, is that right? A Yes sir.

Q Now Rector Street and Greenwich, is that two blocks west of Wall Street and Broadway? A Yes sir.

Q When you got to the station that morning did you enter the station from the street? A Yes sir.

Q As you would get out of the steps into the station? A Yes sir.

Q When did you first meet Nathan Bromberg that morning? A He was at the foot of the stairs waiting for me when I went down.

Q What did he do then? A He come upstairs.

Q What did you do? A Well, I changed my hat and remained in the booth until he come back.

Q By the booth you mean the ticket office, do you? A Yes sir.

Q Well, had that been customary for sometime before, that that would be done, just as it was done that morning? A Yes sir.

Q That is when you came in he would go out? A Yes.

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Q And you would wait for him to come back in the ticket booth? A Yes sir.

Q Now, how long was he gone? A He was gone thirty or thirty-five minutes.

Q When he came back what did you do then? A I went to my own position.

Q Now, your position was where? A It was at the cancelling box.

Q This ticket box or cancelling box? A Yes.

Q That is marked here, "14 feet 7 inches" from the ticket office, is that about right? A That's about right, yes sir.

Q Was a chair back of the box? A Yes sir.

Q After you were there sometime did you leave the station?  
A I was there about ten minutes.

Q You mean at the ticket box? A Or about fifteen, yes sir.

Q About ten or fifteen minutes? A Yes sir.

Q Then what occurred at that time? A Then I thought I needed a shave and I asked him if I could go out. He motioned to me that I could.

Q What did you do? A I went directly out and went to the barber shop.

Q Did you change your cap or keep your cap on? A No sir, I did not. I kept my cap on.

Q In going to the barbers you went out of this same stairway to the street that you had come in? A Yes.

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Q What barber did you go to? A He was about 200 feet beyond -- across the street.

Q On what street? A On Rector Street, about 100 feet from the corner of Rector and Greenwich Street, the southwest, or the northwest corner.

Q on Rector Street west of Greenwich? A Yes sir.

Q On which side of Rector, the south or north side? A The north side.

Q Now, when you got to the barber shop how long did you remain there? A Well, there was a man in the chair when I went in, he was getting his hair cut, and I had to wait until he got through. I didn't notice the time that I was delayed there, but of course I was delayed a little longer than I would expect to be.

Q Then after you were shaved where did you go? A I went to urinate at the other side and then come right over.

Q You came right over to the place here on the ticket box (indicating)? A To my place, yes sir.

Q Have you, or did you have any trouble then with your liver or kidneys? A Well, occasionally.

Q When you got back to the Rector Street uptown station, or where your place of business was, did you go into that station again by the stairway from the street? A Yes sir.

Q When did you next see Mr. Bromberg? A He was at the foot of the stairs when I come down again.

Q Did you have any talk with him then? A He remarked

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that I was too long.

Q Well? A And I excused myself and made a remark how the delay occurred.

Q I did not hear you. A I told him how the delay occurred, that I was delayed far longer than I expected to be.

Q Then where did he go and where did you go? A He went out on the street and I went into the booth.

Q And by the booth you mean the ticket office? A Yes sir.

Q Did you remain in there? A Yes sir.

Q Did you sell tickets in there? A In the meantime, yes sir.

Q Sometime later did he return? A About half a hour or thirty-five minutes or so.

Q He came back to the ticket office? A He come back.

Q Did you know where he had been? A No sir.

Q When he came back into the ticket office where were you? A I was at the window selling tickets, or in a position to sell them if anybody needed them.

Q Tell us what he said to you and what you said to him and what occurred after he came in that time? A He says to me, when I was coming down the stairs, that I was too long, and he took his watch out of his pocket and looked at it and made a remark that I was too long. Well, I said, "maybe I am too long." So when he came back then he said "you are running this God damned place", and I was standing alongside, and

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he come in and he hit me <sup>there</sup> with his elbow like that (illustrating). And he shoved me around like this (illustrating) to the safe. The door of the safe was open and he almost paralyzed my hand with the rap that I gave my hand on the safe.

BY THE COURT:

Q Now, sit down. He said that as soon as he came in? A Yes sir.

Q That you were running this place? A "Running this God damned place", he said. I said to him then "what do you mean?" And I tried to get past him. The place was narrow and in the back of me was a big chair, a high chair.

BY MR. CUNNEEN:

Q Now, in that office, Mr. Mulligan, where is the safe? A Directly in the northwest corner.

Q In this corner (indicating)? A The northwest corner of the booth, yes sir.

Q That is the corner diagonally from the door, this corner (indicating)? A Well, it is west of the door.

Q Well, on this diagram it is the northwest corner? A Yes sir, that is right.

Q And was there a board there, a money board? A There is a board in front of the window, what you call a money board, yes sir. It is like a desk.

MR. CUNNEEN: I offer this diagram in evidence.

It is correct, your Honor.

MR. McDONALD: Counsel for the defendant said he

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made that himself and he is a civil engineer and I have no objection.

Q Now, Mr. Mulligan, in this booth, does that show about the location of the safe, this Defendant's Exhibit A? A Yes sir, that is correct.

(It is marked Defendant's Exhibit A in evidence.)

Q At the time of this occurrence was the safe door open or closed? A Yes sir.

Q Well, was it open or closed? A It was open.

Q And over the safe in the corner was there a cupboard?

A Yes sir.

Q And that cupboard reaches up pretty nearly to the ceiling, or a foot from the ceiling? A Yes.

Q At about the centre of this little booth on the back there is a little heater, is there? A Yes.

Q This little black space is about where the heater is?

A Yes.

Q And the money board ran over that way to the corner (indicating)? A Yes.

Q Now, this chair, where is that? A Directly behind the window, right behind here (indicating).

Q It was right in front of the heater? A Yes, sir, right in front of the heater.

Q At this time that you were in there at the ticket window, when Bromberg came in, at this last occurrence, were you standing or sitting? A I was standing.

Q And the chair was then back by the heater? A Yes sir.

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Q And Bromberg, was he between you and the door? A Yes sir.

Q Well now, you have told us that he pushed you and that you went over towards the safe. Now, tell us what occurred from that on? A Well, after it occurred I tried to get out, and he pushed me back again into the corner, there on that side there or between the safe and the board (indicating).

Q Into this part here between the safe and the board (indicating)? A Yes, he caught me by the neck. I gave him a push to get out. I asked him what he meant by talking the way he did and hitting me, and turning around and cutting my hand on the safe door. I started to try to get past him and he pushed me back again and caught me here by the neck (illustrating).

Q Then what did he do and what did you do? A He had a knife always opened on the desk door, right in a dark corner, in front of the safe, he always kept it there open. He tried to get it over my shoulder and I had to use my pistol to hit his hand, and in the meantime it went off and went through his hand.

Q Had he struck you? A Yes sir.

Q Where? A He hit me here in the jaw (indicating).

Q What result was there in that striking? A He knocked a tooth out of my head.

Q Have you got the tooth with you? A Yes sir.

Q Did the tooth come clear out at that time? A No sir, it did not.

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Q Is that the tooth (indicating)? A Yes sir.

MR. CUNNEEN: I offer it in evidence.

(Marked Defendant's Exhibit B in evidence.)

BY THE COURT:

Q When did this come out? A I had it taken out by a doctor.

Q Now, when, I asked you? A Well, the second day after my being in the Tombs.

Q Well, how long? A Well, I am in there since the 30th of October.

Q Well, when was the tooth taken out? A The second or third day after my being in there. I am not sure exactly what day it was, but around that.

BY MR. CUNNEEN:

Q How was it in your mouth? A It was hanging in my ~~mouth~~ <sup>mouth</sup> ~~mought~~.

Q The gums or at least the sides were holding it? A Yes.

Q What doctor pulled it out? A The Tombs doctor or dentist.

Q You testified that you had pulled the gun and you had shot this man in the hand. What occurred after that? A He didn't leave go of me yet. He held on to me yet.

Q Where did he hold on to you? A Right by the throat.

Q Then what occurred after that? A Well, he hit me. I had to use the gun again.

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BY THE COURT:

Q What did he hit you with? A With his hand.

Q Which hand? A The right hand.

Q Is that the one he had you by the throat with? A Yes sir.

Q Then he let go of your throat? A Well, he let go after me firing the shot.

Q After you fired the shot then he let go of your throat?  
A Yes sir.

Q That is after you fired the first one? A Yes, He threw himself up against me and held me there.

BY MR. CUNNEEN:

Q Then after that what did you do? A He threw his body up against me and held me in the corner.

Q When he was holding you in the corner what was he doing?  
A He was punching me.

Q Did he have hold of you by either hand at that time? A No sir, he did not at that time.

Q Then what did he do if anything to your arm, or your hand, and what did you do? Tell us all that occurred? A I tried to get past him and he wouldn't let me. I had to use -- I had to fire again. I tried to fire on the ground and he threw his side against me and it went in his body, I understand, so the consequences were and then he went out.

Q Where was he and where were you at the time you fired the second time? A He was up against the board there (indicat-

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ing).

Q Where were you? A Right in the corner between the safe and the board.

Q Where was your hand then that had the pistol in it? A It was down underneath.

Q Under the board? A Yes sir.

Q And at the time you fired the shot what was he then doing? A He was crushing me into the corner.

Q Then after you fired what did he do then? A He went out.

Q And as soon as he let go of you did you fire any more? A No sir.

Q Where did he go? A He went out, in the outside of the booth and then he went upstairs.

Q Then where did you go? A Well, I remained there for a moment or so, then I went out to the box to see if there was any people out there, to chop the tickets down, and I looked down on the stairway and I see Mr. Newkirk coming down the stairs and I waved to him to come.

Q How long after the shooting was it that you saw Mr. Newkirk? A Well, it was immediately after. It might be two minutes or so. Well, it might be five minutes.

Q What did you do when you saw Mr. Newkirk? A I waved to him to come up. When he came up I gave him charge of the place.

Q What did you do when you say you waved to him? A I

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walked in the booth, and I changed my hat. I was going to go up to the office to report the situation to the office, to the superintendent. Then he told me to remain on the box.

Q When did he tell you that? A After he coming in from in the booth, I explained to him the matter, the situation.

Q When he came in the door what did you do then? A I explained the situation to him.

BY THE COURT:

Q What did you say to him? A He told me to go out on the box.

Q What did you say to him? A I told him what occurred.

Q Well, tell us what, we do not know what you said to him. A I told him that he had backed me in the corner, in the booth, because I went out and stayed a little longer in the barbers than I expected to, and I had to shoot him to get relieved, to fire a shot, and I tried to avoid shooting him, but with his position where he was up against the board, I could not avoid it. My hand was down under.

Q Did you tell that to Mr. Newkirk? A Yes sir.

Q Did you hear him testify here that you refused to say anything? A That was after the policeman coming.

Q You say now that you told him all that? A Yes sir.

Q If he says that you refused to say anything he is not telling the truth? A Well, I refused to make any statement when Bronberg come back.

THE COURT: Proceed, now.

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BY MR. CUNNEEN:

Q At that time, Mr. Mulligan, where was the gun - what did you say to Mr. Newkirk about the gun, or what did you do about it? A It was up on the shelf. I always kept it there on the shelf when I was alone. I was under bond. Every employee is under bond, and the money is in your charge and the tickets. Every bunch of tickets is worth \$25 and there is a couple of hundred dollars worth of tickets always in the booth, and money besides that.

Q Now, when Mr. Newkirk came in did you give him the gun? A Yes sir.

Q Where did you get it? A Sir?

Q Where did you get it at that time? A It was up on the shelf.

Q How long had you owned that gun? A I have it pretty near a year.

Q When did you get it? A It will be a <sup>year</sup> / ago next month.

Q At that time where were you located? A I was --  
What do you mean?

Q Where was your job? A Where was I working?

Q Yes. A I was working at 116th Street.

Q What was your job up there? A The same as down here, gate man.

Q When you were up there before you got the gun had anything occurred that induced you to get the gun? A Well, yes, several matters occurred. It is very hard sometimes to collect

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tickets, and I was often insulted and told that I would be  
chucked in front of the train sometime or another, if I wouldn't  
be more liberal in letting people go to and fro without  
putting in their tickets there. So I made up my mind that  
if I was attacked or tried to be abused I would be in posi-  
tion to protect myself.

Q Before you got the gun did you make any application for  
a permit? A Yes sir.

Q Where? A I asked the captain over in Woodhaven to  
give me a permit.

Q And he did not give you a permit, did he? A No sir.

Q And subsequently you got the gun? A Yes sir.

MR. McDONALD: Now, do not lead him.

THE WITNESS: (Continuing) No, I beg pardon. I  
had the gun at the time.

Q What is that? A I had the gun when I asked him for  
the permit.

Q You had the gun when you asked the captain? A Yes sir.

Q Now, after you went out at the ticket box there, after  
Mr. Newkirk came I understood you to say he told you to go to  
the ticket box, is that so? A Yes sir.

Q Did you go to the ticket box? A Yes sir.

Q Did you remain at the ticket box? A Yes.

Q Were you at the ticket box when the policeman came? A  
Yes sir.

Q Now, during that time, from the time that Mr. Newkirk

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came in the office until you went out to the ticket box, were you and Bromberg in the office together until the policeman came? A No, Bromberg was upstairs.

Q I did not hear you. A Bromberg was upstairs and he remained up stairs until the policeman come, I believe.

Q Well, didn't he come down before the policeman came?

A Well, he probably might. I am not sure.

Q Now, after the policeman came did he talk with you? A The policeman?

Q Yes. A Well, when he arrested me he took me into the booth and he asked me a couple of questions.

Q What did he ask you and what did you tell him? A He asked me if I done the shooting. I said "Yes, I had to do it to defend myself."

Q Did he ask you how long you had had the gun? A Yes, subsequently, afterwards.

Q Did you tell him about six months? A Well, I presume I did, yes.

Q Then where were you taken from there? A Why, he took me in the ambulance along with Bromberg.

Q Where did he take you? A We rode to the Broad Street Hospital.

Q Then after that where were you taken? A Why, he took me over to the Old Slip Station.

Q And from the Old Slip Station where were you taken? A Took up to the Magistrate's Court.

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Q After being in the Magistrate's Court where were you taken from there? A He took me up to Police Headquarters.

Q And after that where were you taken? A He took me to the Tombs.

Q Do you recall being before Chief Magistrate McAdoo?

A Yes sir.

Q You were taken there too, were you? A Yes sir.

Q At that time was the policeman, Mr. Cunningham there?

A Yes sir.

Q Did he make a statement there at that time? A I believe he did.

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Q Now, up to the time that you were before Magistrate McAdoo, did you have any counsel with you at any time? A No, sir.

Q And do you know whether that was on the 3rd of November or not, do you know the date? A I can't recall the date, no, sir.

MR. CUNNEEN: Well, the date of the stenographer's transcript, is that conceded?

MR. McDONALD: Now, I suggested before that the entire transcript go in evidence as you only read certain statements of the officer. You see, you could have avoided that difficulty.

MR. CUNNEEN: I only wanted it as to the date. Well, November 3rd is the date, as being before the Magistrate.

Q Now, Mr. Mulligan, before this occurrence here that you have testified to in which Mr. Bromberg was shot, had you ever had any fight or quarrel of any kind with Mr. Bromberg? A No, sir.

Q Have you ever been convicted of a crime in your life? A No, sir.

Q That is all, Mr. Mulligan.

CROSS-EXAMINATION BY MR. McDONALD:

Q From whom did you buy the gun? A Well, I don't know them parties' names.

Q Where was it you bought it? A I bought it in Jersey City.

Q You were then living in New York? A Living in New York.

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haven.

Q Did you know you could not buy one in New York without a permit? A Sir?

Q Why did you go over to Jersey City to buy the gun? A Well, I went over there, I was over to see a party, a relation of mine, a distant relation of mine, and I was passing by this place and I thought I would get it. I didn't go over specially for it.

Q You saw the gun there and you thought you would get it? A Yes, sir.

Q Where did you buy the cartridges? A In the same place.

BY THE COURT:

Q What is the name of your relative? A The name is Murtha.

Q Where does he live? A He lives at the corner of 8th street and Grove, I think it is.

Q Where is the place you bought the gun? A It is very near Newark avenue.

Q How far is that from Murtha's? A I really couldn't say the distance, Judge.

Q Did you go by the place in going to Murtha's? A Yes, sir, I went over on the subway.

Q To Murtha's? A No, I went over - yes, I was going over that way, to Grove street station.

Q Did you have to go by this place where you got the gun to go to Murtha's? A I had to go in that neighborhood.

Q Well, did you have to go by the place? A I presume I

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did, yes.

Q Don't you know? A No, sir. I didn't exactly - I didn't go direct. I was wandering around.

Q Well, didn't you go over there to get the gun? A No, sir, not exactly. I went over to see this friend of mine.

Q You know you cannot buy a gun in New York now, unless you have a permit? A No, sir.

BY MR. McDONALD:

Q Had you ever tried to get a gun in New York? A No, sir.

Q You just happened to see this gun in the window? A Yes, sir.

Q Hadn't you ever seen any guns or pistols in the windows in New York? A Yes.

Q It did not cause you, when you saw them at that time in New York, to go in and buy one, did it? A Why, no. I was not in the position that I needed it.

Q How long have you been a gateman for the Interborough?

A I am in the neighborhood of about two years, I guess.

Q Two years? A Going on two years, yes, sir.

Q Was it after the trouble up in 116th street and Lenox avenue that you decided to buy a gun? A Yes.

Q So that you had a definite purpose, had you, in buying the gun over in Jersey? A I had a definite purpose for to protect myself, in case of necessity, yes, sir.

Q And that was after some trouble up in 116th street and Lenox avenue? A Yes, sir.

Q Somebody had threatened you? A Yes, sir.

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Q Who was it? A I don't know who they were.

Q Was it because of something you had done? A No, because I was --

Q Well, was it because -- A (Interrupting) Because I done my duty in having the tickets deposited in the box.

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Q Was it because they said that you had done something?

A Well, I don't quite understand you. I compelled people when they came in, nine or ten of them in a bunch, they would throw in four or five or maybe eight tickets sometimes and I would insist on them all going in. Then these people would reprimand me or would slur me, and threaten me. Twice I was told I would be thrown in front of a train. The train was right behind me, about three or four feet behind me.

Q Do you remember about this time last year that you had some trouble up there with Greenberg, Louis Greenberg? A New Year's morning or the night before New Year's?

Q You had a fight with Greenberg. His skull was fractured?

A I had no fight.

Q Well, did anybody have a fight with Greenberg that morning?

A Well, I don't know who you mean?

Q The man whose skull was fractured? A I don't know whose skull was fractured.

Q Well, you were arrested that morning, weren't you? A I was taken to the station house, yes, sir.

MR. CUNNEEN: Now, your Honor, I think that is objectionable.

THE COURT: Yes, I sustain the objection as to his being arrested.

MR. CUNNEEN: It always does some harm if you raise an objection. There was not any claim made against this man whatever. I think I had better let it all come out, however.

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THE COURT: Well, I will sustain the objection if you make it.

MR. CUNNEEN: I will let it go in, your Honor, as long as I have gone into it. The District Attorney knows he should not ask those questions about an arrest.

MR. McDONALD: There is only one question objectionable that I asked.

Q Now, do you remember anything about Louis Greenberg? A I beg pardon?

Q Do you remember anything about that assault that was committed on Louis Greenberg? A No, sir, there was no assault committed on him.

Q No? A No, sir.

Q Did you do anything to him? A I did.

Q What did you do? A How?

Q What did you do? A What did he do to me?

Q Well, all right, what did he do to you? A He hit me.

Q Then what did you do? A I hit him.

Q With what? A With my hand.

Q Did you knock him to the ground? A Yes, sir.

Q This was a young man too, wasn't it? A Sir?

Q It was a young man? A A man about my own age.

Q Was he about as heavy as you are? A About that, yes, sir.

Q You say that you only hit him once? A That's all.

Q And knocked him to the ground? A Yes, sir.

Q Was it after that that you decided to buy the pistol?

A Yes, sir.

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Q That was after New Year's morning? A This occurred the day before New Year's.

Q And you bought the pistol how soon after that? A Well, about a week or two after.

Q A week or two after? A About that time, yes, sir.

Q Did you have that in mind at the time you bought the pistol? A Well, not exactly, but I seen I was in a position that I would have to protect myself, and I even told the officer on the beat up there about the remark that was made to me.

Q Then did you load the pistol as soon as you bought it? A Yes, sir, I carried it in my pocket since then, right in my breast pocket.

Q Well, didn't you, when you relieved the cashier or ticket seller, didn't you take it out of your pocket? A Yes, sir, I had it in my other pocket.

Q Didn't you leave it on the shelf? A Occasionally, yes, sir.

Q Only occasionally? A That's all.

Q Most generally you carried it in your coat pocket? A Well, not exactly. I never took any notice, but just as the matter occurred to me to do it, I would take it out, if it was in there bothering me, I would take it and put it up on the shelf.

Q You say you carried it every day? A Yes, sir.

Q Did you carry it when you were sitting at the ticket chopper's or the cancellation box? A Yes, sir.

Q Even down here in Rector and Greenwich street you carried

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it? You did not have any trouble downthere, did you? Why not leave it home? A Well, didn't want to leave it home.

Q Why not? You were not afraid of any trouble down at Rector and Greenwich street, were you? A Well, my children was home and they don't know how to use it or anything like that. It might make trouble for them.

Q What is that? A My children was not competent to have a thing like that around. I considered that they were not used to such matters, they were not fit to handle it.

Q Well, why keep the gun at all? A It was my intention to dispose of it as soon as possible.

Q Why didn't you dispose of it? A Sir? Whe. I would get through at night it would be seven o'clock, and the place of business was closed.

Q What place of business? A Well, every place of business closes at six o'clock.

Q Well, didn't you have <sup>it</sup> in your pocket that time you went out to get the shave? A Well, I couldn't get it disposed of in New York. I would have to leave town, I presume, to get rid of it.

Q Why? A Well, I don't know, I never tried it anyhow. I would have to leave town to dispose of it.

Q You did not know that, did you, that you could not sell it in New York? A Well, I don't know. I never tried to anyhow.

Q Did you carry it out with you that morning when you went to the barber shop? A Yes, sir.

Q Did you take your coat off? A Yes, sir.

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Q Was it in your inside vest? A Yes, sir.

Q Where was it when you went to get the shave that morning?

A In my vest pocket, inside.

Q Inside? A Yes, sir.

Q And did you keep it there? A Sir?

Q Did you keep it there all that morning? A I always kept it there, only when I was in the booth. I always had it in my pocket when I was in the booth alone.

Q Always in your coat pocket? A Yes, sir, or on the shelf.

Q You would take it out of your vest and put it either in your coat pocket or on the shelf? A Yes, sir.

Q When was it you loaded the revolver? A It was always loaded.

Q Well, didn't you buy the cartridges? A Yes, sir.

Q Did you load it yourself? A I loaded it the day after I brought it home.

Q When was it you moved or changed from 116th street and Lenox avenue? A I didn't get that question?

Q When was it you were changed from 116th street and Lenox avenue station to another station of the Interborough? A Well, let me see. I can't recall the date.

Q Was it about January of this year, wasn't it, a short time after the trouble up there? A Well, I was home sick for a couple of weeks and when I reported for work again they told me to go down to Chambers street. I used to consume too much of my time going up there.

Q So that was almost ten months since you were moved from Lenox

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avenue and 116th street, is that right? A I couldn't tell you. You will have to get the dates from the company. I can't recall any dates.

Q Well, I don't want you to give the exact date, I mean approximately, about? A No, it was not ten months.

Q How long? A It might be six months.

Q So that they kept you up there in the Lenox avenue subway station after the time that Greenberg hit you? A Yes, sir.

Q And they kept you up there how long after that time? A It might be three months.

Q Then you went home sick, or were you sick during that time? A I got off sick, yes, sir.

Q Well, was it during that time? A Was it during which?

Q How long had you been working with Bromberg? A About three months, I guess, or probably more.

Q At Rector and Greenwich street? A Yes, sir.

Q He had seen that pistol, had he? A No, sir.

Q Did 't he know you had one? A No, sir.

Q Well, when you relieved him or when he came in to relieve you in the booth, when you had it on the shelf wouldn't he see it then? A Why, no. I wouldn't let anybody know I had that. Why should I?

Q Why not? A I wouldn't let anybody know I had that.

Q Why not? A Well, because it was my own affair.

Q It was your own affair? A It was my own property and it was my own concern. It was not his.

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Q That is true, all right, but didn't you think it worth while to say anything to Bromberg about having a pistol? A No, sir.

Q Did you think it right to ask him if he didn't have a pistol to protect himself? A No.

Q He did not have one, did he? A I don't know. He might have.

Q Well, you never saw him with one, did you? A No, he didn't show it to me. I say he wouldn't show it to me if he had.

Q No? A I don't think so.

Q You did not show yours to him? A No, sir.

Q He never came in the booth after you had been relieving him when you had it on the shelf? A No. I always made it a point to have it there in my pocket when he come in.

Q Well, why? A Well, to go out. He relieved me and I relieved him.

Q But why should you make it a point to do that? A So as to get it and go to dinner.

Q Well, it was not so as to prevent him -- A (Interrupting) The same as a man would put his coat on and be prepared to leave the place.

Q It was not so as to prevent him knowing that you had a pistol? A Not exactly, no.

Q But nevertheless you never wanted to tell him you had one? A Well, I wouldn't say I didn't want to but I had no occasion to tell him.

Q You say you got over to the station about seven o'clock that

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morning? A Yes, sir.

Q And Bromberg was there? A Yes, sir.

Q Was that your hour for reporting? A Yes, sir.

Q Seven o'clock? A Yes, sir.

Q Well, you didn't have any trouble with Bromberg that morning, at the time that you got there, did you? A No, sir.

Q When you got to work at seven o'clock did Bromberg leave immediately? A Yes, sir.

Q As soon as you arrived there? A Yes, sir.

Q And you took care of the booth? A Yes, sir.

Q Had you the pistol then in the vest pocket, the inside vest?

A When he left I put it in my outside pocket.

Q The outside coat pocket? A Yes, sir.

Q He remained out about half an hour? A About half an hour, yes, sir.

Q When was it you put your uniform cap on? A When I took charge of the box after him coming back from breakfast.

Q That was about half past seven? A About half past seven or quarter to eight.

Q Then you put your uniform cap on? A Yes, sir.

Q What did you do then, after you put your uniform cap on?

A I went out and took my position on the box.

Q And Bromberg was in the booth then? A Yes, sir.

Q Nothing had occurred up to this time between you and Bromberg, nothing had happened, no quarrel, no words? A No.

Q Is that right? A That's right.

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Q When did you start to go out again? A I remained at the box about ten or fifteen minutes.

Q That would be about eight o'clock? A Well, it might be in the neighborhood of eight, yes. I felt like having a shave and I asked if I couldn't go out and he motioned that I could go out.

Q You said Bromberg was in the booth and you said, "May I go out and get a shave?" A Yes.

Q "I feel I need a shave?" A Yes.

Q And Bromberg said "Yes?" A Yes.

Q Then what did you do? A I went to the barber shop.

BY THE COURT:

Q What time was it when you left? A It might be eight o'clock.

Q What time was it when you got back? A It might be forty-five, or thirty-five, around that time.

Q Well, was not the shooting at about 9:30? A He went out after me coming back.

Q How long was he gone? A He might be forty-five minutes.

BY MR. McDONALD:

Q When you came back where was Bromberg? A He was at the foot of the stairs.

Q Had you changed your civilian hat to your uniform hat when you went to the barber shop? A No, sir.

Q When Bromberg saw you after you came back from the barber shop, he was then in the booth, was he? A No, he was at the foot of the stairs.

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Q At the foot of the stairs waiting for you? A Well, he was there. I don't know whether he was waiting for me, but he was there anyhow.

Q Looking up towards the street? A Yes.

Q When he saw you did he say anything? A He took his watch out and looked at it and he made some remark in an undertone, that I couldn't really catch, but I understood him to say I was too long, and I looked at the clock and I made a remark back again to him that I was too long.

Q You were a little long? A I said I was delayed a little longer than I expected to be.

Q Then what did he say? A He went upstairs.

Q Did he say, "Go into the box there?" A No, that was an understood matter, that I would take charge when he would go out.

Q When he said you were too long, did he walk right upstairs then? A Yes, sir.

Q And that was about what time, that he went up there? A Well, it was about, after me coming back I didn't look at the clock exactly. I don't know what time it was.

Q Well, about? A I was away about forty-five minutes.

Q Well, that would bring you back about a quarter of eight or eight o'clock, rather, is that right? A I won't say, because I didn't take any notice.

Q Well, do you remember what time it was that he came back the second time, Bromberg, I mean? A I didn't know the time, but he was away about that length of time, about forty-five minutes.

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Q You don't remember what time it was he came back? A I didn't look at the clock, no, but from my own judgment, to compute the time, that's about what I concluded it was, about thirty-five or forty-five minutes.

Q Well, do you remember about what time, I mean with regard to the hour? A No, I don't. The <sup>clock</sup> spot was on the other end of the station and I would be obliged to go down as far as from here to the partition down there (Indicating), for to see it.

Q When he came back he went to the booth? A He went into the booth; yes, sir.

Q Then you came out? A No, sir.

Q What did he say when he came into the booth? A He said, "You are running this God damn place."

Q Well, is that the first thing he said? A Yes, and at the same time he hit me.

Q He hit you on the elbow? A He hit me on the shoulder here, on part of the arm (Indicating).

Q On the fleshy part of the arm? A Partly on the body and partly on the arm.

BY THE COURT:

Q Were you sitting then at the window? A No, sir, I was standing up.

Q What did he say, and what did he do that with? A He said, "You are running this God damn place."

Q I know, but why did he say it? A I don't know. I

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suppose he was angry because I was out a little too long.

Q Well, but he had been away half an hour or so? A Yes.

Q And you were back doing his work? A Yes, sir.

Q As you ought to have been? A Yes, sir.

Q Well, what made him angry? A Well, I couldn't tell you.

Q What did he hit you for? A I couldn't tell you.

Q Did he ever hit you before? A No, sir.

Q What did he hit you for that ~~sterning~~ warning? A That I couldn't tell you.

BY MR. McDONALD;

Q Then he swung you around? A He swung me around and I hit my hand against the safe. The door was open (Indicating).

Q Just the same as you hit your hand on the chair now?

A I knocked that knuckle there, my second knuckle.

Q Did you say anything to him then? A I asked him what he meant, I tried to get past him and get out the door.

Q You asked him what he meant? A Yes.

Q Is that all you said to him? A That's all.

Q And what did he say? A He said, he repeated what he said before.

Q What? A That I was running the darned place.

Q Now, after he said that what did you say? A Why, I couldn't say nothing because he grabbed me then.

Q Bromberg grabbed you? A Yes, sir.

Q Grabbed you how? A And pushed me into the corner.

Q What? A He grabbed me then by the neck and coat

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and shoved me into the corner.

Q He grabbed you by the throat? A Yes, sir.

Q And he grabbed you by the coat? A Yes, sir.

Q With his two hands?, A Yes, sir.

Q And he put you into the corner? A Into the corner, yes, sir.

Q Where was the chair that usually was placed in front of the open space of the ticket office? A It was right behind the window.

Q Well, you were sitting between that and the back of the booth, or at least standing between that and the back of the booth? A I was standing in front of the board.

Q Then you had at the back of you the chair? A It was partly one side and partly up against the floor of the electric heater that goes from the ground about that high (Indicating), and the chair was partly over against that.

Q You say he pushed you with his two hands up against the sides, did he? A Against what?

Q The back of the booth? A No, between the board and the safe.

Q Oh, between the board and the safe? A And the safe, yes, sir.

Q And he hit you then? A Yes, sir, he punched me then in the jaw.

Q Punched you in the jaw? A Yes, sir.

Q And what did you do? A Why, I tried to shove him away.

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Q Well, what did you do? A I punched him.

Q You gave him a punch? A At the same time throwing myself against him to get out, between the board and him, and he pushed me back again.

Q He pushed you back again? A Yes.

Q Then did you give him another punch? A No, I put my hand in my pocket then. He raised his hand to hit me again and I hit him with the gun, I hit his hand with the gun.

Q When was it you took the gun out of your pocket? A When he gave me the second punch and pushed me back again in the corner, I seen I had no way to get away from him.

Q That was just after he had punched you the second time, was it, just after he had punched you the second time? A Yes, sir.

BY THE COURT:

Q Where did he punch you on these two occasions? A He hit me one in the jaw and broke a tooth.

Q Where was the other? A He hit me in the neck the other time.

Q Hard punches? A Yes, sir.

BY MR. McDONALD:

Q He had a closed fist then, did he? A At that time, yes, sir.

Q Well, the times that he did punch you, it was with closed hands? A Yes, sir.

Q You say that you pulled the gun out then after he struck you the second time? A Yes. He had a knife on the desk. He

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tried to get the knife over my shoulder.

Q Now, tell us about what he did with the knife? A He did not reach it because I threw my shoulder against him and my person, and I hit his hand.

Q You were able to shove him away from where this knife was standing? A Well, I was able to keep him from reaching it. That's about all, by raising my shoulder and my person.

Q And at the same time you were able to draw the gun out of your pocket, is that right? A Yes, I had it there (Indicating).

Q And at the same time to keep him from getting the knife on this safe? A He had to reach for the knife, he had to go over my shoulder.

Q I say, you were able to prevent him getting hold of the knife? A By raising myself that way (Indicating), he reached over.

Q He did not push you out of the way, did he? A No, he was in position that he couldn't push me any further. I was up against the wall.

BY THE COURT:

Q There was this knife? A It was on the board.

Q On the money-board? A Yes, sir, on the end.

Q What kind of knife was it? A Well, it was a knife, one of the blades was about two inches long and the other about an inch and a half.

Q Was it a pocket knife, penknife or jack knife, or what?

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A What you call a jack knife.

Q Were the blades open? A Yes, sir.

Q How many? A One open.

Q How long had it been there? A He always kept it there.

Q Was it there after this occurrence? A I don't know.

Q Did you show the knife to Mr. Newkirk or the officer and tell them this man tried to get it? A No, I did not, not that I recall. I might have.

Q Did you see it there after? A Yes, sir, it was always there in my time.

Q Well, did you see it afterwards? A No, sir, I didn't. When he went out I went out after, to see the time, to see if there was any help coming.

BY MR. McDONALD:

Q Now, what was he doing when you fired the shot, the first shot that you fired and struck him in the hand, did it? A Yes, sir.

Q What hand? A The left hand.

Q Did you see where it struck? A No, I did not.

Q Well, where was his hand when you fired? A He was reaching over my shoulder.

Q Reaching over your shoulder? A Yes, trying to.

Q Well, he was close alongside you, wasn't he? A Certainly, he was up against me, his person was up against me.

Q You do not mean to say that his left hand was reaching

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over your shoulder to get the knife when you fired at him? A No, I hit his hand with the gun and the gun went off.

Q What do you mean, you hit it? A I hit at him, at his hand, do you understand?

Q No, I don't get it, Mr. Mulligan. You had hold of the pistol like this (Illustrating)? A Yes.

Q And you hit him with it like that and it went off (Illustrating)? A I made a hit at him to keep his hand from going over my shoulder or to keep him from hitting me, and to defend myself. I didn't want to shoot him.

Q When you had it like that did you have your finger on the trigger? A I suppose I had or it wouldn't go off.

Q Well, did you? A I couldn't swear whether I did or not.

Q When you fired the first shot you were just striking at him, is that it? A Yes, sir.

Q You were striking at the hand that was attempting to go over your shoulder? A To go over me or hit me or go over my shoulder, yes, sir.

BY THE COURT:

Q Was his hand clinched? A I couldn't say, I couldn't say.

BY MR. McDONALD:

Q When you fired that first time did you see that the shot hit him on the hand? A No, I didn't see.

Q What did he do then? A (No answer).

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BY THE COURT:

Q Just a minute. Then as I understand it, this revolver went off when you hit his hand, with the muzzle of it? A I made a stroke at him. I don't know whether I hit his hand or not.

Q How close was it to his hand?, A He was using his hand on me.

Q How close was his hand to the revolver? A It must be right up against it, or very near it.

Q Was his hand all blackened by the smoke and powder? A I couldn't say.

Q Didn't you see whether his hand was all black or not?  
A No, sir, I was too excited and too much broke up.

BY MR. McDONALD:

Q When you fired the first shot, what did Bromberg do?

A Well, I just told you that he kept on keeping me in the corner.

Q Well, what did he do? A I tried to get underneath.

Q Well, he had stopped trying to get the knife? A Yes, sir.

Q So that at the time you fired the second shot Bromberg was not trying to get any knife behind you? A Well, he kept up against me, then I had to fire again, and I fired underneath.

Q You fired where? A More down (Indicating). I tried to fire underneath to let him know I would do it again, so he let go of me then and went out the door.

Q, Did he make an attempt to grab your right hand? A Yes,

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sure.

Q Did he before you fired the second shot? A He had hold of me already.

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

Q By the way, did you wear a collar and tie that day? A Yes, sir.

Q Did he grab you by the tie? A He grabbed me by the neck,

Q By the neck? A The neck.

Q When you fired the second time did he have hold of your hands? A He had hold of me by the neck here (Indicating).

Q With both of his hands? A No, not with both of them.

Q With one of his hands? A Yes, sir.

Q Which hand did he have hold of you with? A I could not say exactly.

Q What was the other hand doing? A Well, the other hand was doing nothing because I wounded it.

Q Oh, he had hold of you with this hand (Indicating), the right hand, around the neck? A Yes.

Q And the other hand he was doing nothing with because it had been wounded? A Well, he didn't make any effort to hit me with it any more.

Q Now, how were you forced down below the board? A It was not wounded enough to prevent him from using it.

Q You just now told us that it was wounded, so he did not use it? A Well, I mean he did not close his hand and hit me with it.

Q Well, how did he force your hand down against the board?

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A He threw his body up against me and pushed me in between that small space.

Q How did he force your hand down below the board that you claim he did? A When I used the gun first I put the gun back again in my pocket.

Q What? A I put it in my pocket. I thought he would desist when I fired the first shot.

Q You put it back in your pocket? A Yes, sir. Then he turned around and put his back to the board and stuck up against me and I had to fire again.

Q You had to take it out of your pocket again and fire it again at him? A Yes, sir.

BY THE COURT:

Q What was he doing to you when you fired? A He was punching me.

Q I thought you just said he had hold of your neck? A Well, he was doing both.

Q Well, he had only one hand to do it with? Which was he doing? A He had his person up against me and he hit me twice with his right hand.

Q Where? A In the neck and in the face.

Q I asked you what was he doing to you at the time you shot him? A He had his person up against me and at the same time he was hitting me.

Q He had his person up against yours? A Yes, that was supposed to be about eighteen inches wide.

Q Then what was he doing? A He hit me in the face.

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Q And that made four or five blows in the face? A Well, he gave me at least three or four.

Q Well, then, he was not choking you at the time you shot him? He was hitting you, is that it? A Yes, sir.

BY MR. McDONALD:

Q And after you took your gun out of your pocket the second time, how soon after that was it you shot him? A Well, I didn't know I shot him. I fired it when I took it out.

Q He did not grab hold of your hand, did he? A No, sir.

Q At the time you fired the second shot what was he doing with his hands, anything? A Why, he had hold of me.

Q He had hold of you with his right hand on your throat?

A Yes, sir, I was trying to get past him and he wouldn't let me go past him.

BY THE COURT:

Q Is that when you shot him? A Yes, sir.

Q Well, you just told me a minute ago he did not have hold of you but he was punching you. Now, which was it? A Well, he was doing both.

Q Well, he could not do both with one hand? Now, which was he doing? A Well, I got the matter disconnected some way. I lost track of your question.

BY MR. McDONALD:

Q Well, when you say you fired the second shot did he have hold of your throat or was he punching you with the one hand?

A He was up against me, with his back to the board.

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Q With his back to the board? A Yes, sir, his left hand he was not using. It was down this way (Illustrating), and he was punching me that way, and keeping me back between times.

Q He would punch you and then he would grab you by the throat? A Yes, sir, yes, sir, and he kept me from leaving the corner.

Q Now, the second time that you shot him, you fired right at him, did you? A No, sir, I fired down partly underneath.

Q Well, how did you hold the revolver when you fired the ~~next~~ <sup>neck</sup> one, how did you point it, straight out? A No, I pointed it down at the ground partly.

Q Pointed it down to the ground? A Partly, yes. I thought I would hit him in the hand again or something else.

Q You intended to hit him in the hand the second time you fired? A To protect myself, that's all I wanted. I didn't want to kill the man.

Q When you fired the second time, what happened then? Did he go out? A He quit me then.

Q Then what did you do? A I done nothing. I put the gun back in my pocket again, or up on the shelf, I mean.

BY THE COURT:

Q How close to him was the muzzle of the revolver when you fired the second shot, was it up against his clothes? A No, sir, it was -- Well, he was up against me (Illustrating), in front of me, and I was trying to get out this way.

Q Well, he was pressing up against you, touching you? A Yes, sir, I didn't want to shoot him. I could shoot him dead if I

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wanted to.

Q How near to him was the gun? A It was up against him

Q The gun was up against him? A Yes, sir.

Q Did it burn his clothes? A No, sir, it did not.

Q Well, how did the bullet go across him if you were holding the gun down? A Well, it was not so far down that it did not go into him.

Q Now, just stand up and show how you were holding it?

A (Witness rises and illustrates), the board --

Q Never mind the board. Just take the position you were in and turn around so that the jury can see you. Now, hold your hand just as you held it when you shot? A Yes, sir, the board was here and he was here (illustrating), and I had the gun here.

Q Take the revolver now--

THE COURT : (Addressing Mr. McDonald). Break it.

Q Hold it just as you were holding it when you shot?

A If one of these gentlemen would come up here, he was in this position (illustrating with the Court Officer.)

Q Now, get right up close to him. Pushing him away, were you? A He was punching me in here (illustrating.) I <sup>had</sup> have to use it like this.

Q Well, show us how you did it? A I had it like that (illustrating.)

Q Well, the doctor said the wound crossed him. Now didn't you take the gun that way and put it up against him (indicating)?

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A No, sir. He must have thrown his body so that it carried that way. I never had any intention of doing it, but through his movements he went in front of the gun. I didn't do it to shoot him to kill him.

BY MR. McDONALD:

Q When you put the gun -- why did you place the shelf?

A Well, it was my habit to put it there or put it in my pocket, either one.

Q But you had had it in your pocket? A He went out and there was no necessity for me to have it around me any more.

Q Well, there was not any necessity for you to have it around before the shooting? A Well, I could do either one. It was optional.

Q You were not afraid then that the Police would know that you had a gun, were you? A Well, the occurrence was a matter -- it happened, and I was as bad then as I could be, wasn't I? I didn't want to avoid the Police. If I did I could be away. It was fifteen minutes after the thing happened when the Policeman came.

Q Fifteen minutes? A Yes, sir, all of that.

Q When Mr. Newkirk came? A No, but when the Policeman came.

Q I am talking now about Newkirk, when Newkirk came you were in the booth? A Yes, sir.

Q And you had seen Newkirk coming from the lower platform?

A Yes, sir.

Q You say that you beckoned to him? A I did, yes, sir, I

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called him up.

Q When you saw Newkirk, why did you go back to the booth, after being at the cancellation box? A It was my intention to go up to the superintendent's office and report the matter, and I had to change my or get my coat and my hat.

Q Didn't you think that Newkirk was your chief? A Yes, sir.

Q Well, why wait to report to the superintendent in person, when your chief was coming right upstairs? A Well, the superintendent was a more appropriate man to see in regard to this thing.

Q Did you think of that after you had shot Bromberg? A Yes, sir.

Q That the superintendent was the most appropriate man to see?

A He is on all occasions, if a matter is serious.

BY THE COURT:

Q Now, Mr. Newkirk says when he came there, the first he knew of the shooting was when Bromberg called downstairs and said, "Look out, he has got a gun." Why did you not tell Mr. Newkirk all about it, if you had been attacked? A Mr. Newkirk came upstairs. I was in the door waiting for him. I called him up, but I went down to the box to throw down some tickets or to see the time. I went down and I saw him downstairs and I waived to him to come up and when he came up I had my hat, and my intention was to go up to the superintendent's office, and Bromberg was upstairs, so I guess somebody called down to him. Whether it was Bromberg or who it was I don't know.

BY MR. McDONALD:

Q Why didn't you tell Newkirk that he was trying to get

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this knife that was lying, as you say, there? A I probably did t.  
him, I don't know. I was more or less agitated and I couldn't think  
of everything. I don't know whether I told him or not. I might  
have.

Q But you did think of telling him about self-defense? A Well,  
I didn't tell him nothing of the kind.

Q Didn't you tell him it was self-defense? A No, sir. I told  
him he attacked me. That's what I told Newkirk, that he attacked me.

Q And that you shot him to protect yourself? A Yes, sir.

Q Well now, is that what you mean when you say self-  
defense? A Yes, sir. When the Policeman asked me then I told him  
what I done.

Q Well, did Newkirk ask you? A I don't know whether he did  
or not. I presume he did.

Q Why did you go back to the box, to the cancellation box  
after you shot this man? A I walked down to the box to see what  
the time was and see if anybody was coming that could relieve me.

Q Well, hadn't you ever telephoned before to the Division  
Chief Office? A Well, but I didn't want to wait there until a party  
had come. There is another man on the other side and I intended  
to call him over, and if I could get somebody to connect with him,  
because the business on the other side did not call for him to be  
there so often, or he could afford to let him leave there for a  
while. There was no business there except on rare occasions.

Q I think that is all. A I didn't want to leave the place  
unprotected.

Q That is all, I guess.

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## REDIRECT EXAMINATION BY MR. CUNNEEN:

Q Mr. Mulligan, you were asked about some trouble with a man up in 116th Street? A Yes, sir.

Q After that was there any charge made against you, did any man ever appear against you? A No, sir.

Q And the matter was discharged, was it? A Yes, sir.

Q There did not anybody come and appear against you at all, did there? A No, sir.

Q Now, when you came there that morning -- this going out of Bromberg, that was the same matter that had happened on many occasions, that he usually went out? A The first time?

Q Yes. A Well, he went out every morning, but not the second time. He seldom went out the second time.

Q This first time of going out was a usual matter every morning? A Yes, sir.

Q When you came back, I do not think we got the time particularly correct. When he out that first time in the morning it was about what time? A When I went out?

Q When he went out the first time? A He went out at seven o'clock, when I come.

Q You left your home about six? A Yes, sir.

Q How long was your job there, until what time of day? A 12 hours. I worked from 7 to 7.

Q And you got home about eight at night? A About eight.

Q He went out and he was gone until about what time? A About

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7:35 or around that time he come back.

Q Well, that would make it along about half past seven? A Yes.

Q You say you went to the box then for ten or fifteen minutes?

A After he came back, yes, sir.

Q And that would be about 7:45? A Yes, sir.

Q Then you went out to get a shave, did you? A Yes.

Q How long were you gone? A About 45, maybe.

Q That would make it about 8:30? A About that.

Q Then he went out again, did he? A Yes, sir.

Q How long was he gone that time? A Well, he was out at least half an hour, probably forty-five minutes.

Q So that would run it along half an hour or thirty-five minutes, would you say? A Yes, anything like that, about that time.

Q That would run along for about 9:05? You mean to be exact in these computations and times you are giving? A What is that?

Q Do you mean that those are the approximate periods you are giving? A No, they are not exact, because I didn't take any note of the time, but I am judging it from the time.

Q When Mr. Neekirk came there you gave him the pistol, didn't you? A Yes, sir.

Q Did he ask you for it? A No, not that I can recollect.

Q You just gave it to him? A Yes, sir.

Q And you told him you had had to use it? A Yes, sir.

Q When the Policemen came there or anyone came there, you did not tell any of them that you had used the pistol, did you?

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A No, sir.

Q Mr. Mulligan, had you any intention whatever of killing Mr. Bromberg? A Not in the least.

Q You never had any trouble with him before? A No, sir. All I wanted was him to get away from me, to separate from me, that's all. He was up against me and had hold of me and all I wanted was to get away from him.

Q How much do you weigh, Mr. Mulligan? A Well, I don't know. About 150 pounds or 155.

MR. CUNNEEN: That is all. I thought I had another character witness, your Honor, but the defendant rests.

THE COURT: Do the People rest?

MR. McDONALD: Yes, sir, the People rest.

THE COURT: We will take a recess now and you can sum up after recess.

Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you and do not discuss the case or allow anybody to speak of it in your presence.

We will take a recess now.

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