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COURT OF GENERAL SESSIONS OF THE PEACE,

COUNTY OF NEW YORK,

PART IV..

1639

-----X
The People of the State of New York, :

-against-

DAVID CANTOR.

Before Hon.

RUFUS B. COWING

and a Jury.
-----X

Indictment filed January 18th, 1901.

Indicted for MANSLAUGHTER IN THE FIRST DEGREE (Section 189
of the Penal Code).

New York, April 9th, &c., 1901.

A P P E A R A N C E S:

FOR THE PEOPLE:

ASSISTANT DISTRICT ATTORNEY JAMES J. WALSH;

FOR THE DEFENDANT:

LEVY & UNGER, Esqs.

-----0-----
George F. Flack,

Official Stenographer.

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A jury is duly empanelled and sworn, after each member thereof has been specially examined as to his qualifications on both sides.

PEOPLE'S COUNSEL'S OPENING ADDRESS.

MR. WALSH: May it please the Court, and gentlemen of the jury: It is my duty, gentlemen, to bring this defendant David Cantor to trial for the crime of manslaughter in the first degree. The Judge in his kindness has called attention to the fact that with unusual celerity, counsel for the defendant and the Assistant District Attorney, have chosen a fair jury. I hoped to do nothing else. I hoped to secure for the jury-box men who were in fact the peers of this defendant, men who believed like him, lived like him, and could understand things as he might understand them, because after all, the only question in this case will be, What was this defendant justified in doing?

I take it that my learned friend will not contend from the outset that a man may recklessly take the law in his own hands, no matter what the provocation may be. It must always come down to be determined by a jury how far a man may be justified in taking a human life.

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Human life in the City of New York must not be held cheap, and if a human life is taken and it is claimed it is taken in justification for some act of another's, that justification should be clear and unequivocal; should be so clear as to justify not only the conscience of the defendant in taking the life, but should also justify him in your eyes, and you will see from the evidence in this case, all the circumstances under which this act was committed

Gentlemen of the jury, we shall try to show you, and shall call witnesses very fully for that purpose, ~~the~~ the facts in the case -- not only such facts as favor the People, but every fact which transpired at that place Number 2630 Broadway on the night of January 5th, whether it favors the People or favors the defendant, because, as I understand the District Attorney's duties, they are quasi-judicial. We are not here to prosecute innocent men and to send men to prison who are not guilty of crime. We are here to lay facts before you as they are, and to urge you that if those facts prove a crime, you should say so by your verdict and allow the adjudication of the case to go then to his Honor, upon whom another function is imposed by the law.

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A young man named Teatom and another man named George O'Hara went into the defendant's place on the night of the 5th of January, about fifteen minutes to twelve o'clock. The defendant was engaged playing pool or billiards, at a pool table. He conducted at that place at that time a pool and billiard business.

The witness Teatom will say that he asked to play billiard or pool and that this defendant said, "No, it is too late; I have been ordered by the police to close my place at twelve o'clock and you cannot play pool or billiards."

There was what is known as an open game -- which I understand to be a game in which most any one can participate -- going on at one of the adjoining tables, and one of the young men engaged in playing in the open game turned around and said to Teatom, "It is all right; you can come into this game; this game is open."

Teatom then took down a billiard cue for the purpose of participating in the open game which the players were just then beginning, when the defendant remonstrated with him, Teatom, and told him that he must not play; that he would not allow him

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to play in his place, that it was getting late.

The young man Teatom persisted in playing, and this defendant rushed over at him and attempted to wrest the cue from Teatom. In doing so, he dragged Teatom along with the cue, he having hold of the cue with two hands, while Teatom was holding on with one hand. The defendant dragged Teatom to the front of the store, and being a much heavier man -- Teatom being only a young man, as you will see from his appearance on the stand -- he got him down and tried to take the cue from him. The boy held on, and this defendant actually put his foot on the face of Teatom and was about to stamp on Teatom's face, telling him that if he did not let go of the cue he would kick the face off him.

Teatom held on to the cue until one of the other young men engaged in a game at one of the tables, came along and took the cue away from Teatom.

Then this defendant again made an attack upon Teatom; and the deceased, George O'Hara, who had come in with Teatom, attempted to separate this man, (indicating the defendant) who is a much heavier man, from Teatom. He attacked Teatom and Teatom attacked him. There was a scuffle, a row, in which

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this defendant did receive some blows, but finally he took possession of this young man -- this man himself (indicating defendant) was able to take these two young men by the coat and drag them to the door. The young men were then at the door going out, the row having entirely subsided, when this defendant, who had never drawn a revolver during the scuffle and the real trouble with Teatom, pulled a revolver and shot George O'Hara, who had not been doing anything except trying to assist this man in maintaining order and preventing disorder in that place. The defendant pulled a revolver and shot that man in the intestines, and from that wound the man died the next day at the J. Hood Wright Hospital.

Now, gentlemen of the jury, I am going to contend before you, if the evidence justifies the contention -- and not unless the evidence does justify the contention -- I am going to contend before you that this defendant went too far. He should not have taken that human life -- the life of that boy only twenty-one years of age -- on such a state of circumstances as those. He might have been justified in calling the police. He might have been justified in using some other form

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of, say violence, if you please, up to the time that this man got to the doorway, but after that he was not justified in raising his little finger, and everything he did after that was a crime; everything he did after that contributed to his condemnation.

Gentlemen of the jury, do not misunderstand me; do not think that I claim that Mr. Teatom was free from blame in this whole matter. He probably should not have taken a cue down after being forbidden by the proprietor to do so. But O'Hara did not do a single thing, as we shall show you -- O'Hara the poor fellow whose life was taken because in some degree he participated in parting this man from his victim.

There is no doubt that this man was in hot blood, otherwise he would be here to-day, not answering the charge of manslaughter, but a charge of murder, because the law is that murder must be the result of deliberation and premeditation, where manslaughter is killing in anger with a dangerous weapon, with somewhat hotter blood or in hotter passion. But he is here to-day charged with manslaughter, because, perhaps, the grand jury

thought he was in hot blood at that time. Hot blood, however, will not justify the taking of a human life, unless the circumstances will show that not only was his own life in danger, or -- the alternative -- that he can satisfy you that there was reasonable ground at that time for him to believe that his life was in danger or that he was in imminent peril of very great bodily injury.

Now, gentlemen, these are the facts we shall attempt to show you by the witnesses we shall call here, and if, after hearing all the case, we show you these facts to your satisfaction, we shall expect you to render a verdict of manslaughter in the first degree against this defendant.

W I L L I A M T E A T O M, a witness called on behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n .

BY MR. WALSH:

Q Where do you live? A. 141 West 104th street.

Q And you are a driver when you work? A. I am working on the Rapid Transit at present.

Q Whereabouts? A. Twenty-ninth street and Fourth avenue.

Q On the Rapid Transit? A. Yes, sir.

Q On the 5th of January, 1901, did you visit the premises 2630

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Broadway, in the County of New York? A. Yes, sir.

Q That is the Boulevard, isn't it? A. Yes, sir -- well, it is Broadway now.

Q Broadway now; that is in the County of New York? A. Yes, sir.

Q Who went there with you? A. This young fellow George O'Hara.

Q Where had you been with George? A. I met George about twenty minutes after eleven in Ninety-eighth street, and he asked me to take a walk and play a game of pool. I said yes.

He brought me around to this man's place and it was the first time I was ever in the place; and we went up and sat down.

Q You mean by that, the defendant Cantor's place? A. Yes, sir.

Q He keeps the place at 2630 Broadway? A. Yes, sir; I don't know whether he keeps it now.

Q He did then? A. Yes, sir.

Q What business does he conduct there? A. Pool and billiards.

Q How many tables did he have? A. I don't know exactly.

Q How many did you observe? A. I guess there were five -- four or five.

Q And you went in there, did you? A. Yes, sir.

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Q And George O'Hara went in with you? A. Yes, sir.

Q What occurred when you went in? Just state what you said and what Cantor said? A. We went in and sat down and we passed a couple of remarks of shots that were made, and then I went over and asked the man if I could play a game of pool.

Q Who? A. I asked him.

BY THE COURT:

Q Asked the defendant? A. Yes, sir. He said no, and I went over and sat down; and I saw a few young men playing an open game, and I went over and asked them did they have any objection to me playing with them, and they said no.

BY MR. WALSH:

Q Tell us what an open game is? A. Anybody can play; they cannot object to anybody in the game; and I asked them and they said they had no objection to me playing, and I went over and took a cue from the rack. As I took a cue from the rack, this man bounced over.

BY THE COURT:

Q Which man? Say the defendant if you mean the defendant. A. The defendant bounced over and threw me down and started to drag me over the floor, and I don't remember anything from this until I reached the doorway, and I heard a shot.

BY MR. WALSH:

Q You took a cue for the purpose of going into the open game?

A. Yes, sir.

Q And when you took the cue, he came over? A. Yes, sir.

Q And what did he say? A. I don't remember him saying anything.

Q What did he do? A. He grabbed me by the back and threw me on the floor and started to drag me along the floor. I don't remember anything after he threw me down till I heard the shot.

Q Did he attempt to take the cue away from you? A. I could not say whether he attempted. Of course, from the blow I was hit on the floor, I don't remember anything, and I had a lump behind my ear the next morning which he must have hit me.

MR. LEVY: That may be stricken out, your Honor.

THE COURT: Yes; what he must have done. (To witness) Only tell what he did do. Do not draw any inferences.

BY MR. WALSH:

Q After you had taken the cue and he had attacked you, and you had fallen down, do you remember anything else; was the cue in your hand? A. No, sir -- I don't remember.

Q Did you lose control of the cue; did somebody take the cue away from you? A. Yes, sir, there was a young man that took the cue away from me.

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Q Who was the young man? A. They say it was Dunn.

THE COURT: Do not say if you do not know.

BY MR. WALSH:

Q You were unconscious from that time on? A. Yes, sir.

Q From that time till you went to the door? A. Till I heard the shot.

Q Had you been drinking that night? A. I had a few glasses of beer.

Q Had you seen O'Hara drink at all that night? A. Only when I met him was the first time; we had two glasses of beer.

Q Had two? A. Yes, I had two and he had two.

BY THE COURT:

Q Lager beer? A. Yes.

BY MR. WALSH:

Q And that was before you went into Mr. Cantor's place? A. Yes, sir.

Q Mr. Cantor does not sell liquor there? A. I don't know; I don't think so.

Q Has he got a bar there? A. No, sir.

Q Was that the first time you were in Mr. Cantor's place? A. Yes, sir.

Q Where did the shooting take place? A. I was at the door when the shot was fired.

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BY THE COURT:

Q What door? A. Leading down to the street.

Q The door leading out into the street? A. Leading into the street.

BY MR. WALSH:

Q Who was with you? A. Nobody was with me but myself.

Q Where was O'Hara? A. I did not remember anything till I heard the shot; I did not know where O'Hara was.

Q But you were at the door? A. Yes, sir.

Q Did you see the shot fired? A. No, sir, I did not.

Q Did you see O'Hara after the shot? A. Yes, sir. I opened his vest downstairs and pulled up his shirt, and saw where he was shot, and sent for a policeman.

Q Just describe to the jury about where he was shot? Stand up. A. (Complying) When he got downstairs, I opened up his vest and pulled up his shirt, and saw a hole right near here (indicating).

BY THE COURT:

Q Right near what you call the belly-button? A. Yes, sir.

BY MR. WALSH:

Q One hole? A. Yes, sir.

BY THE COURT:

Q Was any blood coming out of it? A. No, sir, not at the time.

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BY MR. WALSH:

Q Did you hear more than one shot fired? A. No, sir, I did not; only one.

Q Did you see the defendant have anything in his hand? A. No, sir, I did not.

C r o s s E x a m i n a t i o n .

BY MR. LEVY:

Q (Handing paper to witness) Now, Teatom, I show you a pencil sketch and want you to look at it carefully, and tell me whether or not that is a fair representation of that room as it was on the night of the 5th of January, 1901; look at it carefully and closely. A. Yes. This seems to be a fair sketch of it.

MR. LEVY: Mr. Walsh, it is an accurate sketch. I would like you to look at it carefully. It will assist the examination somewhat if we can get that in.

MR. WALSH: No objection.

(The said sketch is admitted in evidence and marked Defendant's Exhibit 1.)

BY MR. LEVY:

Q Now, this pool room was one flight of stairs up, wasn't it?

A. Yes.

Q And the three sides of the room used for billiard and pool

room purposes, were light, had windows in them? A. Yes, sir.

Q And on one side there was a door which led into a hallway?

A. Yes.

Q From which a flight of stairs descended to the street? A.

Yes, sir.

Q How high a flight of stairs was that; were there many

steps? A. Oh, yes, about forty steps in it.

Q Well, an ordinary flight of stairs, wasn't it? A. Yes.

Q Not unusually high, just ordinary stairs? A. It is higher

than any ordinary stairs.

Q Is there a store underneath? A. Yes, sir.

Q But it is the flight above the store? A. Yes, sir.

Q Now, indicate upon this diagram marked defendant's exhibit

1, the open pool table that you spoke of; take a pencil and

mark it with a cross? A. (Complying) Yes.

Q Indicate with another cross the spot where the cue-rack was

situated from which you took the cue? A. (The witness

does so.)

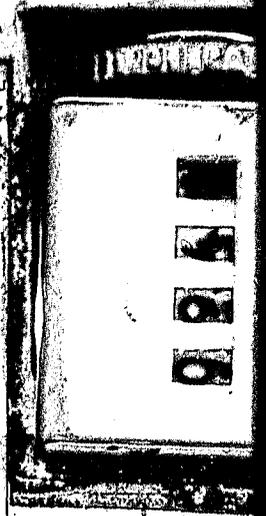
Q Indicate with another cross, if you please, the place where

you and O'Hara sat before you attempted to play? A. (In-

dicating on diagram) There were benches all along there.

Q Yes, and benches in the middle of the room, too? A. (Mark-

ing) Yes.



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MR. LEVY: (Showing diagram to jury) This is the table that he indicates as the open pool table; there was a row of benches in the middle of the room. He marks this cross here (indicating) as the cue-rack from which he took the cue, and he marks this spot (indicating) as the spot where he and the deceased sat while they were looking at the game.

THE NINTH JUROR: Where is the entrance.

MR. LEVY: Over here (indicating) This billiard room is situated one flight up above the store.

Q Mr. Teatom, before we proceed with the unfortunate affray, I want to ask you this: You spoke of an open game in which every one could play? A. Yes, sir.

Q Every one could play with the consent of the proprietor; isn't that what you mean? A. Well, you can go into a pool room and see young men playing there. You can play without the consent of the proprietor.

Q Do you mean to say ---- A. Oh, well, I don't know if you can, if he objects to it.

Q You don't know? A. No.

Q How old are you? A. I will be twenty-two the 19th of May.

Q At the time this matter happened, were you working? A. No, sir.

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Q How long before that had you been working? A. About three weeks.

Q Where had you been working before that? A. At Contractor Cody's Emergency Quarters.

Q Doing what? A. Laboring work.

Q Where? A. Working at the Warren street fire.

Q How long did you work at that fire? A. It was laboring work.

Q Digging in the ruins? A. Yes.

Q Three weeks? A. Yes.

Q Where else did you work? A. I did not do anything steady where I could get anything to do.

Q As a matter of fact, you did not have a steady job? A. Yes.

Q Where? A. Charles Hauptner, 1133 Broadway.

Q How long? A. Two or three months.

Q Doing what? A. Carrying out orders.

Q How long ago? A. It is about -- last summer that was.

Q What I want to get at is, during the year 1900, immediately preceding this unfortunate happening, how many weeks had you worked altogether? A. I cannot exactly say how many weeks I worked.

Q About? A. Well, I worked about twelve weeks.

Q Twelve weeks of the year? A. Yes.

- Q Who supported you during the remainder of the time? A. My people.
- Q Which people? A. Mother and father.
- Q What is your father's business? A. Works in the Rapid Transit.
- Q Laboring? A. No, sir; he is a watchman.
- Q You had not worked for some few weeks before this shooting?
- A. No, sir.
- Q You had money in your pocket, did you not, on that night?
- A. No, sir.
- Q Had no money at all? A. No, sir.
- Q Didn't O'Hara have any money? A. I don't know; he treated me.
- Q Did you treat him? A. No, sir.
- Q You had no money in your pocket, and yet you insisted upon taking a cue down and playing? A. Excuse me, I had about eighteen cents; I had it the next morning in the station house.
- Q You don't know how much O'Hara had? A. No.
- Q Where had you been before that? A. Up in the Manhattan in One hundred and twenty-eighth street.
- Q Doing what? A. I was up there with a friend.
- Q Doing what? A. I went up to see a couple of friends and we went over in a saloon and sat there for a while.

- Q Which saloon did you go to? A. I don't know the name.
- Q Who was with you? A. Billy Monroe.
- Q How many drinks did you take with him? A. Two drinks.
- Q Of what? A. Beer.
- Q Whom else did you meet on that night besides Billy Monroe?
A. O'Hara.
- Q How many drinks did you have with him? A. Two.
- Q At the same saloon? A. No, sir; Ninety-eighth street.
- Q What time did you eat your supper that night? A. Half
past six.
- Q And where did you go? A. One hundred and ninth street and
the Boulevard.
- Q Where to? A. William Dreyer's place.
- Q A saloon? A. Yes, sir.
- Q And what did you do in that saloon? A. There is where I
met this Monroe, and I had one drink with him, and we went
from there ----
- Q Had you spent any money that night at all? A. No, sir.
- Q Then you went up where? A. Up to the Manhattan.
- Q How long did you stay in Dreyer's place? A. Must have
been in there half an hour.
- Q And had one drink during the half hour? A. Yes.
- Q And from Dreyer's saloon you went where? A. Up to this
dancehall.

- Q Where is the dancehall situated? A. In Manhattan street.
- Q The number of the place? A. I don't know the number.
- Q The name of the man? A. Joseph Furst.
- Q Did you meet any women there? A. He was not open.
- Q Did you take any drink there? A. No.
- Q You did not stay there? A. No; just looked at the Furst place.
- Q From there where did you go? A. To the saloon in One hundred and twenty-eighth street.
- Q How long did you stay in that saloon? A. We were in there about two hours.
- Q What were you doing there for two hours in the One hundred and twenty-eighth street saloon? A. This gentleman introduced me to a couple of friends and we were talking there and I sat down and listened to the music. One man played a violin and one a flute.
- Q You stayed two hours? A. Yes.
- Q Did you drink there? A. Yes.
- Q What drinks? A. Beer.
- Q Did O'Hara go in? A. No.
- Q And Monroe paid for the drinks? A. Yes, sir.
- Q Do you know where he lives? A. No, sir; only met him twice.
- Q Do you know his business? A. He is a mover, I guess.

- Q He has no steady employment? A. Not as I know of. I don't know him long enough to know whether he has or not.
- Q And all those two hours you did not treat at all? A. No.
- Q And you sat in the saloon? A. Yes.
- Q And after two hours went by -- that would bring you close on to nine o'clock; is that right? A. Well, about.
- Q Where did you go from that saloon in One hundred and twenty-eighth street? A. I went down to Ninety-eighth street.
- Q With whom did you walk? A. I walked down to One hundred and ninth street with Monroe and left him there.
- Q Did you stop in any place from One hundred and twenty-eighth street to Ninety-eighth street? A. No, sir.
- Q That is a distance of about thirty blocks? A. Yes, sir.
- Q You did not stop anywhere? A. No, sir.
- Q And you walked all the way? A. We rode to One hundred and ninth street.
- Q Who paid the fare? A. Monroe paid the fare.
- Q And when you got down to Ninety-eighth street, where did you go? A. I went into Williams' saloon.
- Q Did you meet anybody that you knew, there? A. This George O'Hara.
- Q And then George treated? A. Yes, sir.
- Q How many drinks? A. Two.
- Q What did you drink? A. Beer.

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Q Did he treat Monroe? A. He was not with me there. He lived about at One hundred and ninth street.

Q How long did you stop in the saloon at Ninety-eighth street? A. I should judge about fifteen minutes or twenty minutes.

Q And took two drinks during that time? A. Yes, sir.

Q And then where did you go to? A. Went around to the defendant's place.

Q What time did you reach his place? A. Must have been about twenty-five minutes of twelve.

Q How did you spend the time between half past nine o'clock that evening and twenty minutes of twelve, when you got to the defendant's place of business; what were you doing? A. Wasn't doing anything except walking down to Ninety-eighth street.

Q You have explained your time up to half past nine.

MR. WALSH: Do not say that.

BY MR. LEVY:

Q You rode down to ---- A. One hundred and ninth street.

Q I want you to explain to this jury what you were doing between that time, half past nine, until this time? A. I walked down Amsterdam avenue -- a slow walk.

Q Down to Ninety-eighth street, Mr. Williams' place? A. Yes, sir.

Q Did it take you two hours to come from One hundred and twenty-



eight street to Ninety-eighth street?

MR. WALSH: He did not say he did.

A. I won't say how long it took me.

BY MR. LEVY:

Q How long did it take?

MR. WALSH: To go from where.

MR. LEVY: From One hundred and twenty-eighth street, where he said he was two hours, down to Ninety-eighth street.

Q How long did it take you to come from One hundred and twenty-eighth street to Ninety-eighth street? A. Well, I should judge about an hour altogether.

Q Didn't you say that you rode down? A. To One hundred and ninth street.

Q And then from One hundred and ninth street you walked down to Ninety-eighth street? A. Yes, sir.

Q How long did it take you to walk from One hundred and ninth street to Ninety-eighth street? A. I cannot say how long it took me. I walked very slow down the avenue.

Q Did it take you an hour to walk eleven blocks? A. No, sir.

Q I want you to account for your time between the time that you left that saloon at One hundred and ninth street, to which you rode, and the time you got to the defendant's



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place of business, which was twenty minutes to twelve o'clock? A. I cannot account for any time, only that I walked down. I walked from One hundred and ninth street down to Ninety-eighth street.

Q I don't want to be unfair; I want you to understand my question properly. It was half past six o'clock when you left your house? A. Yes.

Q And from your house you went to one saloon? A. Yes, sir.

Q You were there about half an hour, and that took to seven o'clock? A. Yes, sir.

Q Then you went where? A. To One hundred and twenty-fifth street -- to Manhattan street first.

Q And you were there about fifteen minutes? A. Well, about fifteen minutes.

Q That would be about 7.30? A. Yes, sir.

Q Then from there you went to One hundred and twenty-eighth street and stayed two hours? A. Yes, sir.

Q That would be half past nine? A. Yes.

Q And from there you rode down to One hundred and ninth street? A. Yes, sir.

Q That would be about a quarter to ten o'clock, and you only stayed a quarter of an hour? A. Yes, sir.

Q That would bring you to ten o'clock. Now, from ten o'clock to twenty minutes of twelve, what were you doing? A. It

took us some time to get a car at One hundred and twenty-fifth street.

Q It did not take you two hours to go eleven blocks?

MP. WALSH: He is not talking about it taking two hours to go eleven blocks.

MP. LEVY: I am talking about what he was doing between ten o'clock and twenty minutes to twelve.

A. All I can account for is the walk from One hundred and ninth street to Ninety-eighth street, where I met this young man in Williams' and stood there and had two drinks.

Q We will pass from that, then, and go over to Cantor's place; you were feeling pretty well? A. Well, yes.

Q You were pretty well under the influence of liquor? A. No.

Q Well, pretty well? A. I had a few drinks.

Q So that you felt satisfied with yourself? A. Yes, sir.

Q And how about O'Hara's doing? A. Well, he did not seem to be intoxicated.

Q Was he under the influence of liquor? A. He may have had a few drinks, but he was able to carry himself along.

Q He did not have enough to make him stagger, you mean? A. Yes.

Q But he was under the influence of liquor? A. I don't know whether he had any more.

Q Couldn't you tell from his appearance and the way he talked

to you -- could you not tell whether he was under the influence of liquor? A. He seemed to be feeling pretty good.

Q You say he was feeling pretty good. It is your duty, my boy, to explain that better, if you can. Was he partially intoxicated or not? A. Well, yes, I should say he was.

Q Partially intoxicated? A. Yes, sir.

Q Did he suggest going into Cantor's saloon? A. Yes, sir.

Q Did he say that he had had any trouble in there? A. No.

Q Did he speak about knowing the place? A. No, sir.

Q And you don't know whether he had or, not any money with him, do you? A. Well, he must have had money, when he treated me.

Q And when you got into the saloon, was it he that said he wanted to play? A. Well, he asked me to play a game; asked me to go around and play a game with him. When we got up there we sat down -- --

Q Before you go to that, let me ask what your usual time to get in home was? A. Eleven o'clock; maybe sometimes ten or nine o'clock.

Q Was it your usual habit at that time to go around to saloons? A. No, sir. I never go around to many saloons.

Q I am talking about what you did at that time? A. I never visited many saloons.

Q Some saloons? A. Some saloons.

- Q You usually hang out at some saloons? A. I used to go into a saloon at One hundred and ninth street.
- Q You used to make that saloon your headquarters? A. No, sir.
- Q That used to be your gathering place? A. No, sir.
- Q What was your gathering place? A. I never had any gathering place. I used to go around in One hundred and tenth, near the Boulevard there.
- Q Dancehalls? A. I have not been in dancehalls in three months.
- Q This happened about three months ago? A. Before that I had not been much in them.
- Q That section is known as Little Coney Island? A. Yes, sir.
- Q And around there there are quite a number of dancehalls and concert halls? A. Yes, sir.
- Q And it is a pretty lively section of the city, ^{over} there? A. Yes, sir.
- Q A great many loose women congregate around there? A. I don't know about that.
- Q Did you ever meet any there? A. Once in a while on Sunday afternoons I would go in and have a dance, and then might take a walk.
- Q With girls you have frequented those places? A. No.
- Q Did you never take any girls in there? A. No.

Q Did they ever take you in? A. No, sir.

Q One other question in point of that and I will pass from it. You had a place where you associated with your friends? A. On One hundred and ninth street I used to meet one fellow that I used to go with.

Q The boys used to gather at the corner? A. I never went with boys, only one boy.

Q What is his name? A. Richard Hiller.

Q Do you know where he lives? A. In One hundred and ninth street.

Q And the number? A. I don't know exactly the number.

Q What street? A. Between the Boulevard and Amsterdam avenue.

Q Does he work, by the way? A. Yes, sir; he is a painter.

Q And you usually went to that gathering place? A. There was not any other boys that gathered there.

Q Didn't they generally gather there? A. No. What boys?

Q The boys in the neighborhood. A. There is quite a few men that goes there.

Q We will call them men then. What is the name of the social club that meets there? A. I don't know any.

Q Or athletic club; they have so many names these days? A. I don't know any.

Q None that O'Hara or Hiller belonged to? A. No.



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- Q How long did you know O'Hara? A. About two months.
- Q How often did you meet him? A. Five times in the two months. All I did was to say "Hello" to him.
- Q Do you know any police officers in that vicinity? A. No, sir.
- Q Did any police officer talk to you while you were in O'Hara's company? A. No, sir.
- Q Or that night at all? A. No, sir.
- Q You have never been in the police station in One hundredth street? A. No, sir; I was never arrested before.
- Q I did not ask if you had ever been arrested. Have you ever been in the police station? A. No. -- well, that night.
- Q Before that night? A. No, sir.
- Q Never in the police station before that night? A. No, sir.
- Q In the Coroner's Court you were a witness, too? A. Yes, sir.
- Q Didn't you swear in the Coroner's Court that you drank three beers in One hundred and twenty-ninth street? A. I am positive I said two.
- Q Then you did drink in One hundred and twenty-ninth street? A. One hundred and twenty-eighth street.
- Q In One hundred and twenty-ninth? A. One hundred and twenty-eighth street.
- Q Then you went to Dreyer's saloon twice? A. Twice.
- Q And drank each time you went there? A. Yes.

- Q That was before the shooting? A. Yes, sir.
- Q Now, how many people were in Cantor's place when you got there? A. I could not say.
- Q About how many? A. About twenty or twenty-five.
- Q And did you speak to Mr. Cantor, the defendant? A. Yes, sir.
- Q What did you say to him? A. I asked him could I play a game of pool.
- Q What did he say? A. "No".
- Q Did he tell you why? A. No.
- Q Did he say anything about its being late and that he could not allow it to be done? A. Not as I heard of.
- Q Did you hear him say that to any other person? A. No, sir.
- Q Did you hear him say that he would have to close and could not permit you to play? A. No.
- Q Did O'Hara talk to him? A. I did not hear him.
- Q When you got into the place which you have marked with a cross here (showing defendant's exhibit Number 1) did you fall asleep? A. No, sir.
- Q Did you get drowsy? A. Not as I remember.
- Q Did you -- and brush up your memory -- did you get drowsy and feel the effect of the drink you had taken? A. No, sir.

- Q Did O'Hara? A. No.
- Q Did you talk to O'Hara? A. Yes, sir, we passed a few remarks.
- Q When he (indicating defendant) said you could not play, you said, "I am going to play", did you not? A. No, sir; I don't remember saying that.
- Q What did you say about your intention to play whether he wanted you to or not? A. I don't remember saying anything.
- Q You went up and got a cue and held it in your hand? A. As I took the cue, this man (indicating defendant) did not give me a chance to go near the table to play pool.
- Q Do you mean to say that without any reason that you could see or any words being exchanged between you, that this big man got hold of you and threw you down; do you mean to say that? A. Well, he done it.
- Q Did he or did he not? A. Yes, he done it.
- Q Without any provocation? A. Only me taking a cue out of the rack.
- Q That is the only reason that you know of ---- A. That I gave you.
- Q That justified him in throwing you down? A. Yes, sir.
- Q How did he throw you down? A. Grabbed me by the back and threw me down.

- Q Did you fall on your face? A. I fell frontwards.
- Q Where was that bump that you were telling us of? A. I had it behind the ear -- a lump.
- Q If you fell frontwards, how did you get a bump on the back of your head? A. I don't know where he hit me when he threw me down, but it was there the next morning.
- Q You were immediately unconscious? A. Yes, sir.
- Q How did you get out of the billiard room? A. I must have regained consciousness when I reached the door.
- Q Was there any swearing? A. Not as I know of.
- Q Were there any loud words? A. I did not hear any.
- Q Did you see him touch O'Hara? A. No, sir.
- Q Did you see O'Hara touch him? A. No.
- Q Did you see him touch any one? A. No.
- Q Why didn't you give up the cue when he wanted to take it from you? A. I don't know, as the man asked me -- he did not reason with me to tell me I couldn't play. All I remember was he threw me down. I don't remember whether I had the cue in my hand or not after he threw me.
- Q Did you see any billiard balls around there? A. Oh, I saw balls on the table.
- Q Did you take any balls in your hand? A. No, sir, I don't remember taking any balls in my hand.
- Q Do you remember going downstairs? A. Yes, sir.

Q How did you get down; walk down? A. I ran down.

Q Where did you run from? A. Right at the entrance of the door.

Q Did you get up from the ground? A. Yes, sir.

Q You remember getting up from the ground? A. Well, I don't exactly remember, but when I reached the door I was on my feet.

Q You say he threw you down; do you remember getting up and running down? A. Yes, sir, I remember running down.

Q Do you remember getting up from the floor? A. Yes, sir.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess till 2.30 P. M.

A F T E R R E C E S S .

W I L L I A M T E A T O M, resumes the stand.

C r o s s E x a m i n a t i o n (continued)

BY MR. LEVY:

Q Did you lose consciousness before the shot or did you lose consciousness after the shot? A. Before the shot.

Q How long after the shot did you regain consciousness? A. Well, I cannot exactly say.

Q Was it an hour and a half? A. Oh, no, sir.

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Q Half an hour? A. Well, I must have regained it in a short while after.

Q How long after; fifteen minutes after? A. Well, I should say five or ten minutes.

Q Ten minutes after you heard the shot you regained consciousness; is that what you mean to say? A. Yes, sir.

MR. WALSH: If he heard the shot, how could he have regained consciousness ten minutes after.

MR. LEVY: I don't know. That is for him to tell us.

MR. WALSH: This boy is not a very intelligent boy.

MR. LEVY: Isn't he?

MR. WALSH: Not very; you have got to make him understand.

BY MR. LEVY:

Q Do you understand my questions, Teatom? A. You asked me when I regained consciousness.

Q Do you understand my questions? A. Yes, sir -- if you make them a little plainer to me.

Q What is it that you did not understand that I asked you? A. I understand all so far.

Q This gentleman (indicating People's counsel) says you don't understand what I said. Now, did you understand what I asked you?

BY MR. WALSH: (interposing)

Q You might have understood what he said, but did you understand what he meant? A. (No answer.)

BY MR. LEVY:

Q Did you understand what I said to you? A. This last time?

Q Any time during my whole examination? A. Yes, sir.

Q Why, of course. Now, then, you say that you lost consciousness. If you don't understand me, say so; I don't want to trick or trap you. You lost consciousness, is that right?

A. Yes, sir.

Q And then you regained consciousness? A. When I was before the door ----

Q How long before the shot was it that you regained consciousness; how long before the shot was it that you were conscious? A. I had regained consciousness when I heard the shot.

Q That is what I understood. Now, go on; now, how long after you regained consciousness was it before you heard the shot?

A. I cannot exactly say.

Q An hour? A. If you please ----

Q I want you to understand me? A. Yes.

Q Now, you say that you lost consciousness and then you regained consciousness? A. Yes, sir.

Q That is, you came back to your senses? A. Yes, sir.

Q And then you heard a shot? A. Yes.

Q How long after you regained consciousness was it that you heard the shot? A. How long was it after I regained my consciousness?

Q Yes; ten minutes, fifteen minutes; an hour? A.? I should judge about ten minutes.

Q During those ten minutes you were conscious, were you not; you knew what was going on? A. I ran downstairs when I heard the shot.

Q You knew what was going on in those ten minutes before you heard the shot? A. Before I heard the shot?

Q Yes? A. No, sir, I did not.

Q Now, Willie, let us see if we cannot get this straight. You lost your senses? A. Yes, sir.

Q I have not used consciousness at all. And then you got your senses back again? A. That is, when I was over by the door.

Q And then when you got your senses back, you heard a shot? A. Yes.

Q How long after you got your senses back again was it that you heard the shot? Isn't that simple?

MR. WALSH: It is simple enough.

MR. LEVY: I don't know how to put it any more simply.

A. Well, when I reached the door, I regained consciousness.

at that time. Do you mean to ask me how long before I regained consciousness was it that I heard the shot?

Q No, because if you were unconscious you would not have heard the shot. I would not be unfair enough to ask that. Now, follow me. You lost your senses when you were thrown on the ground? A. Yes, sir.

Q And after you lost your senses, you regained your senses, they came back to you, you knew what was going on? A. I did not regain them when I was being dragged along.

Q You did not know whether you were being dragged along or not; you were unconscious? A. When he first threw me down, he started to drag me.

Q And you lost consciousness while he was dragging you? A. When he threw me down and started to drag me along the floor, that is when I lost consciousness.

Q And then after that your consciousness came back to you again? A. When I reached the door.

Q And how long after that was it that you heard the shot? A. After I regained my consciousness?

Q That is the question, my boy? A. Well, I should say about five minutes.

Q What were you doing in those five minutes? A. I was standing at the door all the time.

Q Waiting for whom? A. I was not waiting for anybody; I

was waiting to get out.

Q Did you hear any scuffle in those five minutes? A. No, sir.

Q Did you hear any noise in those five minutes? A. No, sir; only a shot.

Q Did you go back into the place again? A. I don't remember going back into the place.

Q Will you swear that you did not go back? A. I won't swear, because I don't remember.

Q You don't remember? A. I remember I went into the hall for my hat.

Q He threw your hat out after you? A. No, there was a young man that done brought it down to me; he met me in the hall and gave it to me.

Q Where was O'Hara all this time? A. He was outside.

Q Where? A. Lying on the sidewalk, on the stoop.

Q Then you were conscious when you saw O'Hara? A. When I was downstairs.

Q Was he down before or after you? A. He ran down after me.

Q You were conscious when you opened his pants? A. Yes, sir.

Q And you were conscious when you went for a policeman? A. Yes, sir.

Q Have you talked with any one during recess about this case?

Q With no one at all? A. No, sir.

Q Any of these boys here in this court room, witnesses in this case; do you know them? A. I know them from coming down here.

Q That is all? A. That is all.

Q Did you see any of them in that room that night? A. No, sir -- I don't remember.

Q Well, now, let us see: Is Arthur Dunn here? A. Yes, sir

Q Stand up, Dunn. (A young man rises.) Did you see him there, that handsome young man? A. That is the young fellow that gave me my hat.

Q Cunningham: (Another young man rises). Did you see that young man? A. I don't remember seeing him there.

Q Fitzgerald?

BY THE COURT: (interposing)

Q When you say you do not remember seeing them, you do not mean to say that they were not there? A. No, I won't say they were not there.

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BY MR. LEVY:

Q Frank Fitzgerald! (Another young man arises). A No, sir; I don't remember him.

Q You don't mean to say he was not there? A Well, I don't say he was not there.

Q Charles Finck! (Another young man arises)—that very handsome young fellow? A I don't remember seeing him.

Q Is Officer McHugh there?

A VOICE: Yes, sir.

Q (indicating officer) Did you see that officer that night?

A Yes, sir.

Q Where? A He is the officer that came around.

Q Where was he? A I saw him when he was brought around.

Q Is he the officer that you notified? A I didn't notify him. A young man notified him.

Q Is he here? A No, sir; he is not.

Q Do you know his name? A I do not know his name.

Q Now, after you went out and found yourself down stairs, did you return to the saloon? A I returned to the hall, where I got my hat.

Q You said a moment ago that a young man brought it to you.

A Yes, sir, in the hall.

Q Now, when you came back did you see the defendant Cantor?

A I don't remember seeing him.

- Q Will you swear that you did not? A Yes, sir; I will swear.
- Q Did you see his face? A I did after he was arrested.
- Q Then, you saw his face after he was arrested? A Yes, sir.
- Q What was the matter with his face? A Well, I saw he had a black eye.
- Q What else? A That is all I noticed.
- Q What? A The black eyes.
- Q Two black eyes? A Yes, sir.
- Q Did you see any blood? A I don't remember seeing any blood.
- Q Did you see any blood on his forehead? A No, sir.
- Q Did you see any blood coming out of his ears? A No.
- Q Any coming out of his mouth? A No.
- Q Will you swear it was not? A I won't swear it was not, but I didn't see it.
- Q Why did you notice the black eyes particularly? A When I saw him go down in the patrol wagon next morning.
- Q Did you know how he got those black eyes? A No, sir.
- Q You didn't hit him? A I don't remember hitting him.
- Q Will you swear you didn't hit him? A Well, I won't swear that I didn't hit him.
- Q Now, did you hit him? A I can't say that I did hit him.
- Q Will you swear that you did or did not? A I will swear

I didn't hit him.

Q You will swear that you did not? A Yes, sir; I will swear I did not.

Q Did you see anyone hit him? A No, sir; I didn't see anyone hit him.

Q Will you swear that no one hit him? A Yes, sir.

Q Who had the billiard balls in his hand? A I don't know.

Q During all the time that this scuffle was going on, did anyone make any outcry? A Not that I know of.

Q Did you hear a loud noise? A No, sir.

Q A cry for help? A No, sir.

Q Nor did you see a blow strick? A No, sir.

Q Were you in the same part of the station house with this defendant when the defendant was locked up? A I was in with the rest of the boys then.

Q Did you talk to this defendant while he was locked up?

A Not as I remember.

Q What? A I don't remember saying anything to him.

Q What is the reason you don't remember? Were you drunk?

A No-- well, I had a few glasses of beer; I won't swear that I wasn't drunk.

Q Is the reason that your memory is so defective-- A Well, my memory is bad.

Q Your memory is bad? A Kind of bad; always has been.

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Q And sometimes you forget things? A Yes, sir.

Q Don't you remember hitting this man? A No, sir; if I hit the man, I would remember it.

Q Do you know of O'Hara hitting the man? A I didn't see him hit him.

Q Do you remember anybody hitting him? A I didn't see anyone hit him.

Q What part of this story do you forget? A Well, I am telling you my story now.

Q Well, I shall not dwell on that. Just one or two more questions, and I will let you go. How old were you when you left school? A About 13 or 14, I think.

Q Say 14; you are 22 years old now? A Yes, sir.

Q That is a matter of eight years? A Yes, sir.

Q In the eight years, whom have you worked for steadily?

A Well, I haven't done very much work steadily.

R e - D i r e c t E x a m i n a t i o n :

B Y M R . W A L S H :

Q When did you next see George O'Hara after that night?

A The night of the shooting? n

Q Yes. A I didn't see him at all.

Q Never saw him again alive? A No, sir.

Q Did you have any arms on you that night?

M R . L E V Y : Wait a moment; I object to that.

MR. WALSH: Why?

MR. LEVY: Well, I withdraw my objection.

MR. WALSH: The defense is self defense. The claim is here that he struck him.

THE COURT: You mean firearms?

MR. WALSH: Yes, sir.

THE COURT: If he struck him, he struck him with his hand.

MR. WALSH: I want to show that this man--

THE COURT: I am inclined to think that if they do not prove that he had any firearms, that there is not any presumption of law that he did have any.

MR. WALSH: Very well.

R e - C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q You have a reputation up in that neighborhood of being pretty handy with your hands?

MR. WALSH: Objected to.

MR. LEVY: Perhaps the form of the question is not right.

Q You have been in some amateur prize fights? A No, sir; never was in a prize fight in my life.

Q Sure about that? A Yes.

Q Not up at the Polo Athletic Grounds? A No, sir.

Q Nor trained any boy? A Never.

Q In those amateur bouts? A Never.

=====

EDWARD CUNNINGHAM, a witness called in behalf of the People, being duly sworn, testified as follows:

Direct Examination:

BY MR. WALSH:

Q Where do you live? A I live now at 1214 First avenue.

Q Where did you live on the 5th of January, 1901? A At 864 Amsterdam avenue.

Q Near what street? A Near 102d-street.

Q And do you know where the defendant, David Cantor, kept a pool and billiard room? A Yes, sir.

Q He kept it where? A Between 99th and 100th streets.

Q Now, Mr. Cunningham, were you in that pool room that night?

A Yes, sir.

Q What time did you go in there? A About eight o'clock.

Q How long did you stay there? A I stayed there— well, until it was all over.

Q Until twelve? A Until twelve o'clock.

Q Did you see Teatom come in? A I didn't take notice until I heard Mr. Cantor refusing him playing a game; that is all.

Q Now, I want you to tell what you saw or heard from the time

that you did take notice. State to the jury what you took notice of, and all that occurred from the time that you first noticed Teatom or O'Hara. A The first notice I had of anything was Teatom asked Mr. Cantor if he could play a game, and Mr. Cantor refused him, saying he was going to close up. So I didn't take notice of anything else then until I saw Mr. Cantor take hold of him by the back of the neck, and Teatom either slipped— I couldn't swear that he knocked him down, but he was on the floor, and Mr. Cantor was dragging him along.

BY THE COURT:

Q Teatom was on the floor, and Cantor was dragging him on the floor? A Yes, sir, towards the door; and then at the door, Mr. Cantor tried to take the cue off him, I believe, and I can't say that he threatened, but he said something.

Q Who said something? A Mr. Cantor, to Teatom— I don't know what he said, though. So then the scuffle started—the fight started; and they fought over towards the middle of the floor, Cantor, O'Hara and Teatom; and then I thought it ended right there, when them two went toward the door.

Q Which two? A O'Hara and Teatom.

Q O'Hara and Teatom went towards the door? A They went towards the door after Teatom fought towards the middle of the room. They stopped there, about, and then I didn't

take notice to them. And I had my back to them when the shot was fired. I heard the shot, and I seen Mr. Cantor draw the pistol ~~back~~ away.

Q You saw Mr. Cantor draw the pistol away? A After the shot was fired, yes; and then Teatom and O'Hara ran down stairs. That is all I remember about it.

BY MR. WALSH:

Q Where was Teatom and O'Hara standing when the shot was fired? A Right by the door.

Q The door going out? A Yes.

Q Where was Mr. Cantor standing; how far away? A He was right embraced to O'Hara, it seemed to me.

BY MR. LEVY:

Q What? A He was right near to O'Hara.

BY MR. WALSH:

Q And you didn't see the shot fired? A No.

Q But you heard the shot? A Yes.

Q And you saw Cantor draw the pistol away? A I saw him.

Q What did he do with the pistol? A He drew it back, with his left hand. I don't remember what he did with it.

Q Then O'Hara and Teatom went outside? A Went down stairs.

Q Did you afterwards see O'Hara? A I seen him as he lay on the sidewalk.

Q He was lying on the sidewalk? A Yes, sir; on the stoop.

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Q Did you work for him at the time of the shooting? A Yes, sir.

Q How long had you worked for him? A Four months.

Q And what time ~~did~~ you get there? A Eight o'clock.

Q And how long did you stay there? A Close onto twelve.

Q How many people were in the place? A Twenty-five or thirty.

Q (continuing) -at the time of the shooting? A Mostly all playing.

Q O'Hara was a friend of yours? A Well, he was a friend.

Q A pretty good friend? A A pretty good friend; yes.

Q When you saw O'Hara attacked, you didn't go to his assistance? A No.

Q You didn't lift a finger to help him? A No.

Q Why not? A I don't know the reason why.

Q Were there any other friends of O'Hara there? A All the boys seemed to know him; I don't know whether they were friends.

Q Can you give us the names of those you saw in the place that you say were friends of his? A Arthur Dunn--

Q What did Dunn do upon that occasion? A I didn't see him do anything.

Q Come out with the truth of it!

MR. WALSH: Don't say that to the witness.

Ask questions.

MR. LEVY: I only want the truth.

MR. WALSH: I know you do; but ask questions
and get the truth.

BY MR. LEVY:

Q What did Dunn do? A Dunn was over by Teatom, and he
attempted to take the cue away.

Q What did he do to Cantor? A He did nothing to Cantor.

Q What part did he take in the fight? A He took no part in
the fight.

Q Did he hold the defendant, Cantor? A He didn't do any-
thing to Cantor.

Q Did he put his hands on Cantor? A He didn't put his
hands on Cantor, that I saw.

Q Do you swear that he did not? A Yes, sir.

Q Then, he did go over to where this scuffle was taking place?
A Yes.

Q Who took the cue from Teatom? A Dunn, I believe.

Q Why did he take the cue from Teatom? A I don't know.

Q Hadn't he been striking the man, Cantor, over the face with
that cue? A Teatom?

Q Yes. A I didn't see him.

Q Why, you saw everything that took place there? A I didn't
see him strike Cantor over the face.

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Q Will you swear that he did not? I will swear that he did not, so far as I saw.

Q What did he strike him with? A With his fist.

Q Anything else? A That's all.

Q Did he have anything in his hands? A No.

Q Did you see him grab any billiard balls? A He couldn't grab them, when he was on the floor.

Q (repeating) Did you see him grab any billiard balls?

A No.

Q Then, Teatom did hit this man (indicating defendant)?

A Yes, sir.

Q How many times? A I don't know.

Q More than once? A I don't know. Cantor was hitting back at him.

Q And what was O'Hara doing when ^{Teatom} ~~he~~ was hitting him?

A O'Hara was in the fight, too.

Q What was O'Hara doing? A Striking, too.

Q What did O'Hara have in his hands? A Nothing; they used their plain fists; that was all.

Q And didn't have any billiard balls? A No, sir; no billiard balls.

Q Where was O'Hara hitting him? A I suppose he hit him in the face. I don't know.

Q Well, you saw it? A Yes.

- Q He was hitting him in the face? A Yes, sir. X
- Q And was Teatom hitting him in the face, too? A Yes, sir.
- Q And what was Dunn doing all this time? A I didn't notice Dunn at that time. He had nothing to do with it at that time.
- Q Didn't you see Cantor drop to his knees? A While the scuffle was going on?
- Q Yes. A I saw him slip and fall, but they didn't knock him over.
- Q I didn't ask you that; did you see them over him? A No, sir. I didn't see them standing over him.
- Q When this man (indicating defendant) slipped and fell, what were Teatom and O'Hara doing? A They went toward the door then.
- Q Left him on the ground? A He wasn't on the ground. He got right up.
- Q Didn't he drop down? A Yes, sir, but he fell back on his hands.
- Q Didn't a lot of money fall out of his pockets? A Yes, sir; but he wasn't on his knees then.
- Q Didn't that money fall while the struggle was going on?
A Yes, sir.
- Q And while he was down? A He wasn't down any time; he got right up.

- Q Now, wait a moment. You say you saw the defendant, Cantor, slip? A Yes, sir.
- Q Did he slip on his face or back? A Backwards.
- Q With his head to the ground? A His head didn't strike the ground.
- Q Did his back strike the ground? A He held himself up with his hands.
- Q But while he was lying back on the ground, what were your friends, O'Hara and Teatom, doing? A They stood there for an instant.
- Q And what did Dunn do? A I didn't take notice.
- Q Didn't they strike him? A Strike Dunn?
- Q Strike Cantor while he was down? A No, sir.
- Q Didn't you see O'Hara take the heel of his boot and bring it down on Cantor's face? A No, sir. ~~X~~
- Q Did you see Cantor bleed? A Yes; I saw him bleed.
- Q Did you see them strike his nose with the heel of O'Hara's boot? A Only fists, I saw them use. ~~X~~
- Q What did you see O'Hara doing when the money was coming out of his pocket, and these men beating him? A He got right up. They weren't beating him when he was down.
- Q Where was he bleeding from? A His nose, I believe. ~~X~~
- Q And eyes? A His eyes were discolored.
- Q Weren't his eyes bloody? A I only saw blood on the front

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of his face, by the nose.

Q The ears? A No, sir; didn't see it.

Q And mouth? A Well, nose and mouth.

Q You saw blood coming from his nose and mouth? A Right down from the nose. I can't say whether it was from the nose or mouth.

Q Do you mean to say that you could see then, the minute of the hitting of these men, that his eyes were blackened?

A Yes, sir; his eyes were black.

Q Immediately? A Not immediately. I didn't notice it until he was coming over from the center of the floor towards them.

Q When a man strikes you on the eye, your eye doesn't get black immediately, does it? A I don't know. I never had a black eye.

Q Was there blood around his eyes? A No, sir; I didn't notice any blood around his eyes.

Q Didn't notice that? A No, sir.

Q When this man (indicating defendant) was lying up on his back, he struggled to get up, didn't he? A Yes, sir, and he got up.

Q How much of a struggle was it for him to get up? A He didn't have any struggle to get up, because the fellows were all around him there.

- Q There were 25 boys in that place at that time? A Yes, sir.
- Q Do you mean to say that none of the 25 came around these struggling men? A At that time, they did, and a few of them tried to pick up the money.
- Q Some of the other fellows tried to pick up the money that Cantor dropped? A Yes, sir. There were only a few pennies.
- Q How many? A Two or three, I think.
- Q Give me the names. A Caskell.
- Q Stand up, Caskell, and let me look at you. (A young man arises.) That very handsome-looking young man? A Yes, sir.
- Q What did he do with the money he picked up? A He gave it to Cantor.
- Q How could he, when Cantor was down? A He was only down a minute.
- Q But you said a minute ago that they were struggling all over the place. A I did not.
- Q Here is the diagram of the place. Where did the struggle commence? Point it out for the jury. Turn it around this way (indicating). Now, here (showing) is the open pool table. Tell where this struggle commenced. A Where is the door?

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Q The door is over here (indicating on diagram). A The trouble commenced about there (indicating), and they went around this table and over to the center of the place; and that (showing) is where Cantor dropped down.

Q Dropped down? A Well, fell down.

Q Threw himself down? A He wasn't knocked down. And then he got up, and they went towards the door. Then, O'Hara and Teatom and Cantor came across the floor, following me; and when he was coming across the floor was when I noticed his eyes and his nose; and he said, "Where are all my friends?"

Q We haven't had that yet. He said, "Where are all my friends?" A Yes, sir.

Q Why did he say that?

MR. WALSH: I object.

THE COURT: I think that is a conclusion, why he said it.

BY MR. LEVY:

Q Was there anything that went before that, which called from this defendant the exclamation, "Where are all my friends?"

MR. WALSH: How can he state?

MR. LEVY: If he saw or heard anything.

THE COURT: You are asking for conclusions.

Give facts. Let him state all that was done.

BY MR. LEVY:

Q Immediately after Cantor called out "Where are all my friends" what happened? A Before then, he was on the floor, and he got up.

Q And when he was on the floor, it was while he was lying down that he hollered, "Where are all my friends?"

A No, sir; while coming across the floor, he said that.

Q Wasn't there any struggle at the door? A That is where I had my back turned.

Q Will you swear there was no struggle at the door? A No, sir; I will not.

Q You will not swear that there was no struggle at the door?

A No, sir— I didn't see it.

Q Will you swear that he was not beaten at the door? A No, sir; he was not.

Q Will you swear that he was not? A I will not.

Q Will you swear that he was not struck with billiard balls?

A Yes, sir.

Q You said your back was turned— you say your back was turned? A Yes, sir.

Q Now, then, after Teatom got out, did he come back again?

A No, sir; not up stairs, he didn't.

Q Where was his hat? A His hat was laying on the floor, and I was in there when Dunn came up. Dunn ran down stairs

after them.

Q Was there anyone in that gang of yours in there---

MR. WALSH: Objected to.

MR. LEVY: I withdraw that.

Q Was there any one of the crowd in there that had bloody noses or blackened eyes? A No, sir; I didn't take notice to them.

Q In your own party, who was there? A I and a friend.

Q What was his name? A Lon Fees.

Q Is he in court? A No.

Q Do you know where he is to be found? A 702 Columbus avenue.

Q He saw this, I suppose? A Yes, sir.

Q What does he work at? A Real estate.

Q Didn't you swear in the Coroner's Court that this defendant, Cantor, got the worst of that fight? A Yes, sir; I said he seemed to be getting the worst of it.

Q What do you mean by getting the worst of the fight? What does that mean? A Well, his eyes looked it.

Q You started to give me the names of those you knew were there; you said Arthur Dunn. A All those in the pool room?

Q Yes. You have got the names of the witnesses.

Q Your friends. A Oh, my friends?

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Q Acquaintances and friends. A Jim Kavanagh.

Q Is he here? A Yes.

Q (indicating a young man who has arisen) That young man was there? A Yes, sir.

Q Who else? A Joe Quinn.

Q Is Mr. Quinn here? (Another young man arises). That young man was there? A Yes; and Finck was there.

Q Is Finck here? (Another young man arises). He was there? A Yes.

Q Go on. A And there was Wogan; he is not here, though.

Q Do you know where he lives? A I don't know the number of the house.

Q Do you know his business? A No, sir.

Q Give me the other names. A I don't remember now.

Q Was McGowan there? A Yes, sir; I think he was.

Q (indicating a young man who has arisen) That young man? A Yes, sir.

Q Was Hager there; that young man (indicating another young man who has arisen)? A I didn't see him; I didn't take notice.

Q Eddie Smith? A He was not there; I don't think.

Q Stand up, Eddie. (A boy arises) A He went home early in the evening.

Q Was Campbell there; that young man (indicating)? A Yes.

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sir; I think he was.

Q Now, I want to ask you: all these young men frequented that place, didn't they? A I don't know.

Q How frequently had you been there? A That was about the second week I was ever in the place.

Q Now, were you in that place two weeks before this unfortunate occurrence, at the time of another disturbance? A No, sir; I was not. That was a week before that.

Q Were you there then? A No, sir; I was not.

Q You know they had that performance, though? A I heard about it. That is all I know about it.

Q Were you there on the night of Saturday, December 29th, when a man of the name of George Tyser, and another of the name of Fisher, and a third party called "Big Dutch Ed" came in?

THE COURT: What are you going to do?

MR. LEVY: I am going to prove that this deceased was an intimate friend and acquaintance of these parties that I have mentioned, and that he had joined in a disturbance before the happening of this event.

THE COURT: What decision can you refer me to as authorizing that?

MR. LEVY: I can't refer you to any special

decision, but it goes to the general character of the deceased.

THE COURT: No. I exclude that. If you announced that your defense was going to be self defense, you could show the character of the deceased for violence.

MR. LEVY: I can only show it by environment and association.

THE COURT: Yes. I am not going to allow you to show that another row took place there. You may show the character of the deceased for violence, if the defense is going to be self defense. Otherwise, it would not be admissible.

MR. LEVY: I can only show it by acquaintance-ship and companionship and association with other persons who were engaged in altercations.

THE COURT: I do not think that would show it.

MR. LEVY: Participated in, then—

THE COURT: I won't allow you to show the specific act. If you announce now that the defense is self defense—

MR. LEVY: Unquestionably.

THE COURT: That is your defense?

MR. LEVY: Undoubtedly.

THE COURT: Then, I shall allow you to show the reputation and character of this deceased for violence; that he was vindictive, harsh, cruel-- all of that, you may show-- his real character in that respect.

MR. LEVY: I am in this position, your Honor-- I do not think there is any prejudice in my stating this in the presence of the jury: I can show acquaintanceship of the deceased and membership of the deceased with a gang of young hoodlums who had gone into that place to wreck the place.

MR. WALSH: You can't show anything of the kind, and you are stating that just to prejudice the jury. Prove that if you can; go on and prove it.

MR. LEVY: I am talking to the Court.

MR. WALSH: I am talking to you.

THE COURT: He does not want you to state to the Court what you can prove, but to go on and prove it.

MR. LEVY: I can't prove it by this witness.

MR. WALSH: Then, why ask these questions?

MR. LEVY: I only asked if he was present.

THE COURT: You had better adhere to the rules

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of evidence in criminal trials.

MR. LEVY: Of course, I have got to put it together in piecemeal, then, in this way.

Q Now, do you know the man Tyser? A Yes, sir.

Q You have seen him in that place? A Yes, sir.

Q When did you see him in that place? A Two weeks before that occurred?

Q Do you know a man named Bischoff, or Fisher? A Yes.

Q Did you see him in that place? A No.

Q And do you know a third party, called Big Dutch Ed?

A No, sir.

Q Were you there the night of the 29th of December immediately preceding this shooting? A No, sir. I told you I was not.

Q Was Tyser a friend of O'Harra's? A I don't know.

Q Do you know whether they were acquainted with each other?

A I don't know.

Q Right after the shooting, where did you go? A Went to the station house.

Q Were you locked up as a witness? A Yes.

Q And kept there that night? A Yes.

Q When you were in the station house, did you have an opportunity to observe this defendant? A Yes, sir.

Q Did you see his condition? A Yes.

Q What was his condition? A Just his eyes; that is all I noticed there.

Q Was his face bloody there? A I couldn't tell whether it was bloody there. The cell was very dark. We were outside.

Q He was locked in the cell, and you were outside, in the corridor, as I understand it? A Yes, sir, in the corridor.

Q Now, I want you to explain this, and I will let you go: you said you saw him pull his left hand back. Did he have his pistol in his left hand? A Yes, sir.

Q He pulled it back from where? A After he shot, he seemed to be on one knee.

Q That is what I wanted to know. What was the position of this defendant when he pulled his hand back? A He was on one knee when he pulled his hand back.

Q He was on one knee, down? A Yes, sir.

Q His nose bleeding? A That is all; he was down, just on one knee.

Q And had the pistol in his left hand? A Yes.

Q When you saw it, was he pulling his hand back? A Yes.

Q And then you saw him get up? A Yes.

Q And money was scattered all over the floor?

THE COURT: He said there were only two or three cents.

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A Only two or three cents there.

BY MR. LEVY:

Q Well, whatever it was, there was some money dropped out of his pocket? A Yes, sir.

Q When he pulled his hand back, and was on one knee, will you not describe what the relative positions of the three men were? Where was Teatom standing; where was Dunn standing, and where was O'Hara? A I can't say where each one was standing. O'Hara seemed to be down when he shot him.

Q But he immediately got up and opened the door and went down stairs, and Teatom followed him down.

BY THE COURT (interposing):

Q How far was O'Hara from the defendant when the defendant shot? A They wasn't a foot apart.

Q What was O'Hara doing? Was his face toward the door, going out? A No. His face was toward Cantor.

Q Standing up? A Standing up at the time.

Q What was he doing? A After the shot was fired--

Q Just before the shot was fired? A I didn't see him before the shot was fired, right there.

BY MR. LEVY:

Q You saw him immediately after the shot was fired? A Yes.

Q And then he was facing the defendant? A Yes, sir.

Q Was Teatom unconscious on the floor? A I didn't notice.

Q Was he on the floor, or standing up? A He was standing up then.

R e - D i r e c t E x a m i n a t i o n :

BY MR. WALSH:

Q You say the trouble began at a table near the door?

A Yes. I guess (indicating on diagram, Defendant's exhibit 1) this was the table.

Q That (indicating) is the hall door? A Yes; and that (indicating) was the open game table.

Q It began there? A Yes, sir.

Q Number one, we will call that. A Yes, sir.

Q Now, it continued along where? A Cantor was playing at that table.

Q Cantor was playing at No. two? A Yes, sir. That is where I was playing, at that table.

Q And you were playing at No. three? A Yes, sir.

Q Now, the trouble began along here (indicating); did it?

A Yes, in front of that table (indicating), I think.

Q And they got over as far as this table (indicating)?

A When he dragged Teatom along, he went over toward the door.

Q When who dragged Teatom along? A Cantor.

Q Then they got up, did they? A Yes, sir.

Q And where did they go then? A Then they seemed to fight around there (indicating).

Q Around the hall door? A Yes, sir. It was over towards this way, towards the middle of the floor.

Q Now, is that where he slipped (indicating defendant)?

A Yes, sir, about there.

Q He slipped here at, say, No. four? A Yes, sir.

Q Now, after he slipped, where did Teatom and O'Hara go?

A They went around this way towards the door (indicating).

Q Did Cantor get up and follow them? A Cantor did.

Q He got up and followed them around to the door? A Yes, sir.

Q And it was at that door, after following them, that the shooting took place? A Yes.

R e - C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q When they got to the door, did Teatom still have the cue in his hand? A No, sir.

Q Where did they take the cue away? A Dunn took it away from him.

Q At the door, he took it away from him? A Yes, sir.

Q So Teatom and O'Hara got to the door, and Teatom still had the cue? A No, sir; he didn't.

Q Where did Dunn take the cue away? A After the fight

Q Did you see either of them with a cue in his hand?

A Yes, sir; Teatom had a cue in his hand.

Q Were you playing at any game? A No, sir.

Q You were just sitting there? A No; standing up.

Q What were you doing; watching the games? A Yes, sir.

Q Which game? A Watching Mr. Cantor.

Q Who was he playing with? A A boy named Patrick McGowan.

Q When Teatom got that cue, did he attempt to play at any of the tables? A He went to play at the open game table.

Q He took the cue down to play at the open game table?

A Yes, sir.

Q After he got the cue, just state to the jury what you saw.

A After he got the cue, Mr. Cantor came rushing over and tried to take it away from him. I don't know whether he slipped or not.

BY THE COURT:

Q Who? A Teatom. Cantor was dragging him to the door, and O'Hara rushed over, and Cantor tried to push him by the door, and they got as far as the cigar case, and Mr. Cantor raised his foot over Teatom's face, and told him if he wouldn't let go of the cue, he would stamp on him.

Q Cantor was standing up then? A Yes, sir. I went over and got hold of the cue, and then the three of us had it, and I got the cue, and Teatom let go of it-- at last he let

go, and I placed it in the corner, by the cigar case; and then Cantor and he had some words, and a scuffle followed, and they got back by the door again, and Cantor pulled out and shot him.

BY MR. WALSH:

Q Whot whom? A O'Harra.

BY THE COURT:

Q You saw him shoot him? A Yes.

BY MR. WALSH:

Q Where did Cantor get the pistol? A In his left hand, he had the pistol.

Q Did he shoot with his left hand? A Yes.

Q And he pointed the pistol at O'Hara and shot him? A Yes; about two feet or a foor and a half away, he pulled out the pistol like that (illustrating), and fired.

C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q Your name is Arthur Dunn? A Yes, sir.

Q And how old are you, Arthur? A Nineteen.

Q And what do you work at? A Brick layer.

Q How long is it since you worked? A About three months.

Q You have not worked in three months? A No, sir.

Q What was the last job you had? A With the James D. Johnson Company.

Q How long did you work for Johnson? A I served my time with him— a year and a half.

Q Did you work steadily with him for a year and a half?

A Yes, sir.

Q Did you have any boney in your pocket that night? A I had five cents, I think.

Q What were you doing in that pool room? A I went up to see a friend.

Q What was his name? A Lynch.

Q Was he there that night? A I looked around, and don't remember seeing him.

Q What time did you get there? A I didn't notice.

Q You got there at seven or twelve o'clock. A Nearer to twelve o'clock.

Q Had you been drinking that evening? A No, sir; I don't drink.

Q What club do you belong to? A No club.

Q How near the Boulevard do you live? A Two blocks away.

Q Do you know any of the boys in that place when you go up there? A Yes, sir; most all of them.

Q You knew O'Hara? A Yes.

Q Knew him well? A Knew him, but wasn't a friend of his.

Q You mean, you were not intimate with him? A No.

Q You knew Teatom? A I know Teatom not quite a week.

- Q You knew these two young men well enough to take their part?
A No, sir.
- Q Did you strike any blows? A No. X
- Q Did you lift your hands? A No. X
- Q But you interfered? A I took the cue; that is all. X
- Q You said, in answer to the District Attorney, something about your getting hold of the cue, and then that the three of you had it. A We did.
- Q Had what? A Had the cue.
- Q You didn't take part in the fight? A No.
- Q Teatom didn't struggle to hold on to the cue? A He might have. Cantor was going to strike him.
- Q Which end of the cue did Teatom have? A They had it both in the middle.
- Q Didn't you hear Cantor say he was struck with the cue?
A He didn't say that, but he tried to pull it away. X
He said that if he didn't let go, he would stamp his face.
- Q Who got the billiard balls? A Teatom did, but they was X
knocked out of his hand.
- Q What did he do with the billiard balls? A They were X
knocked out of his hand before he could use them.
- Q What did he pick them up for? A I suppose, to fire them, if he could.
- Q At whom? A At Mr. Cantor.

Q How many did he pick up? A Two.

Q What became of them? A They were knocked out of his hand. X

Q By whom? A Couldn't say. X

Q Did anybody else interfere? A No, sir.

Q When you say they were knocked out of his hand, where were you? A They were at the head of the table, and I at the foot.

Q This table (indicating) is close to the door? A Yes, sir.

Q How much distance was there between the door and the table?

A About three or four feet.

Q And, while standing there, and the billiard balls were knocked out of his hand, they kept struggling, and kept on fighting? A Yes, sir.

Q And blows were exchanged? A Yes, sir.

Q And pretty swift blows? A Well, they were not very swift.

Q I don't mean in a pugilistic sense, but I mean that they followed each other quickly. A Yes, sir.

Q And they struck at each other? A Yes, sir.

Q And both O'Hara and Teatom kept striking at Cantor?

A (No answer.)

BY THE COURT:

Q Did Teatom and O'Hara strike Cantor? A Yes, sir.

BY MR. LEVY:

Q How many times? A I couldn't say.

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BY THE COURT:

Q What with? A With their fists. X

BY MR. LEVY:

Q Did Teatom make an effort to strike Cantor with the billiard balls in his hand? A I don't remember.

Q Where were the billiard balls at the time that Teatom got hold of them? A On the table.

Q Was that after he dropped the cue? A Yes, sir.

Q And they kept on with the fight? A Yes, sir.

Q And they kept edging away to the door? A Moving away from it.

Q Then they got back to the door? A Yes, sir.

Q Did you see Cantor go down? A I saw him stumble, and he dropped some money, and I stooped to pick it up.

Q One of the other boys also picked up some, didn't he?

A I don't know.

Q How much money did he drop? A I got three cents.

Q What did the other boy get? A I don't know.

Q When he stumbled, did he go on his back? A I don't know.

Q On his face? A I don't know.

Q You say he stumbled? A Yes; I saw him stumble.

Q Which way did he stumble? A Forward.

Q Toward his face? A Yes, sir.

Q And did he go down on one knee? A I don't know.

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- Q Didn't you see? A I stooped to pick up the money then.
- Q You didn't care a continental for him? A It was no affair of mine.
- Q (continuing) Whether he was beaten or not? A It was no affair of mine.
- Q Were his eyes blackened and bleeding? A Didn't notice.
- Q Was he bleeding at the time he struck him? A I didn't notice.
- Q You don't want this jury to understand that you were not interested in the fight after taking the cue away? A I looked on; that is about all I did.
- Q Did you notice whether or not someone kicked Cantor? A I didn't see nobody kick him while I was watching.
- Q Would you swear that they didn't? A I will swear that they didn't while I was watching.
- Q How long did your watching go on? A I watched until I stooped to pick up the money.
- Q The only thing that interested you, when you saw the money fall, was the money? A Yes, sir.
- Q Of course, you wanted to get it to give it back to Cantor?
A I gave him his three cents.
- Q When was it that you saw this pistol pulled; when Cantor was down? A No; after he came back to the door again.
- Q When he was on his knee? A He was crouched over when I

saw him.

Q Then you saw him pull the pistol? A Yes, sir.

Q Teatom was standing up? A Teatom and O'Hara were standing close to him.

Q Above him? A Yes. I saw him crouch down like that (illustrating) when he pulled the pistol.

Q And they were over him? A Yes, sir.

Q By the door? A Yes, sir.

Q Was O'Hara standing by the door at the time he was shot?

A Yes, sir. It looked like to me as if he wanted to get out, because he walked to the door, and the defendant followed him.

BY THE COURT:

Q You saw the defendant follow him to the door? A Yes, sir.

Q And then he shot him? A Yes.

BY MR. LEVY:

Q Didn't he have the billiard balls at the door; didn't Teatom have billiard balls in his hand? A He had the billiard balls when he was at the door, but that was the first part of the fight, and he (indicating defendant) shot the last part of the fight.

Q And did he go back to get the balls? A No. That was the starting of the affair.

Q How long did it continue? A I couldn't say. I didn't

look at the clock.

Q Five minutes? A I think it was longer than that.

Q Did you hear a cry for help? A No, sir.

Q Do you remember hearing the defendant say, "Where are all my friends?" A I don't remember his saying that.

Q You have never been in any trouble? A No, sir.

Q Did you see this defendant aim at anyone, or at anything?

A He shoved the pistol toward O'Hara's stomach. That is all I saw.

Q You were a witness in the Coroner's Court? A Yes, sir.

Q Did you testify there? A Yes.

Q Did you testify in the Coroner's Court that the defendant did not take any aim in particular? A Yes.

Q You swore to that? A Yes, sir.

Q Is that true? A Yes.

Q Then, he didn't take any aim? A No.

R e - D i r e c t E x a m i n a t i o n :

BY MR. WALSH:

Q Just describe to this jury what he did with the pistol.

THE COURT: Take this (handing gavel to witness), and show the jury what he did with the pistol.

A He just pulled it out. He was so close he didn't need any aim. He pulled it out and fired like that (11-

lustrating).

BY THE COURT:

Q Into O'Hara's stomach? A Yes, sir.

BY THE FOURTH JUROR:

Q Did either O'Hara or anybody have anything in their hands at the time Cantor shot? A No, sir.

BY MR. WALSH:

Q Was there a billiard ball thrown by anybody there that night? A No, sir.

R e - C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q I wanted to ask you what was the condition of the defendant's face. A All I noticed was a little blood coming out of his nostrils, and this right eye was blackened, I think.

Q That was all you saw? A That was all I seen.

Q Were his clothes torn? A No clothes torn that I noticed.

BY THE COURT:

Q After Cantor fired at O'Hara, did O'Hara fall or run out?

A He ran out; then Mr. Cantor went to shoot Teatom after that.

Q Did he shoot him? A No; he went to shoot him.

MR. LEVY: Well, he didn't, evidently.

MR. WALSH: No; he didn't shoot him.

Q On the 5th of January, 1901? A Yes, sir.

BY MR. WALSH:

Q Just state if you made an examination at that time. A I made an examination at that time.

Q What did you find his condition to be? A A condition of extreme shock.

Q Did you examine the body to find out— A I did examine the body.

Q Did you find anything? A I found a bullet wound.

Q Whereabouts? A Just at the lower border of the ribs.

BY THE COURT:

Q Just below the last rib? A No, sir; just above the last rib.

Q On the right side? A Yes, sir.

BY MR. WALSH:

Q Did you treat his wound? A I couldn't treat his wound, any more than half an inch.

Q Can you state in what direction the bullet went? A It apparently went backward, inward and to the left.

Q Towards the intestines? A Towards the intestines.

Q Were you present at the autopsy, doctor? A I don't remember whether I was or not— I was; I do remember.

Q This boy, George O'Hara, how long did he stay at the hospital? A He was operated upon the following afternoon,

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and died either that night or the next morning; I don't remember distinctly.

BY THE COURT:

Q He came there on the 5th? A Yes, sir.

BY MR. LEVY:

Q And died on the 7th? A He died the latter part of the 6th or the morning of the 7th.

BY THE COURT:

Q And died on the 7th? A Yes.

BY MR. WALSH:

Q And he died from what? A From peritonitis.

Q From the gun shot wound? A From the gun shot wound.

Q And you say you were present at the autopsy? A Yes, sir.

Q Were you able to determine, from your examination at the autopsy, where the bullet went? A Yes.

Q Where did it go? A It went through the liver, and perforated the intestines in two places.

Q That was a fatal wound, was it? A It was a fatal wound.

BY THE COURT:

Q You say you saw the dead boy? A Yes, sir.

THE COURT: Is there any question but that this was the O'Hara who was shot?

MR. LEVY: No question at all.

THE COURT: It is admitted that this was the

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fct

O'Hara referred to in the indictment as having
been shot.

(No cross-examination.)

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F R E D E R I C K A N D R E S , a witness called in behalf
of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. WALSH:

Q Where do you live? A 833 Amsterdam avenue.

Q What is your business? A Painter and decorator.

Q Were you in this pool room on the night of the 5th of Jan-
uary? A No, sir.

Q Did you see Cantor (indicating defendant) that night?

A I never saw the gentleman before I saw him here to-
day.

BY THE COURT:

Q You did not see him in this occurrence? A No, sir.

C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q Where is your place? A 833 Amsterdam avenue.

Q How near the place of business of this defendant? A I
should judge, about two blocks.

Q Did you know the deceased O'Hara? A Yes, sir.

Q And his friend, Teatom, did you know him? A I didn't

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know him; no, sir.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure.

Adjourned to Wednesday, April 10th, 1901,
at 10:30 A.M.

Wednesday, April 10, 1901, 10:30 A.M.

Trial resumed.

W I L L I A M M c H U G H , a witness called in behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. WALSH:

Q You are attached to what precinct? A Thirtieth preeinct.

Q Where is the station house in that precinct? A 134 West 100th-street.

Q How far from the Boulevard? A About two city blocks.

Q The Boulevard is now called Broadway? A Yes, sir.

Q What was your post on the night of January 5th? A One hundredth street, from Central Park West to Riverside Avenue.

Q That is how many blocks? A Five or six blocks— five blocks.

Q Was your attention attracted to 2630 Broadway any time that night? A About five minutes to twelve.

Q And did you go there? A I did, sir.

Q What did you find when you got there? A I found a young man lying on the stoop, the iron or frame work there, in front of 2630 Broadway, and another young man standing over him. I asked him what the matter was—

MR. WALSH: Objected to.

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BY THE COURT:

Q That is a conversation had in the absence of the defendant?

A Yes.

THE COURT: It would not be evidence.

BY MR. WALSH:

Q Well, you found a young man lying there? A Yes, sir.

Q Did you know who he was? A I did not, at the time.

Q Did you afterwards ascertain? There is no objection to that, is there?

MR. LEVY: Oh, no, sir.

A Yes, sir.

BY MR. WALSH:

Q George O'Hara? A George O'Hara.

Q What was his position then? A He was lying on his back.

Q Was the other boy, Teatom, there? A He was standing at his head.

Q Something was said at that time, wasn't there? A Yes, sir.

Q Don't state what was said, but state what you did, after something was said at that time. A I went up stairs.

Q Whom did you see up stairs? A The defendant.

Q Davis Cantor? A Davis Cantor.

Q What did you say to him, and what did he say to you? A I asked what the trouble was, and he said, "Oh, just a little fuss." I said, "Come with me." He said, "Wait until I

get the names of these witnesses."

I let him finish what he was writing at the pool table, and I says, "Come on; there isn't any time to lose here;" and he says, "Wait." I says, "No." So I accordingly escorted him down stairs to the presence of George O'Hara, and asked George O'Hara—

MR. LEVY: Wait a minute. I object to this, as incompetent.

MR. WALSH: Why?

THE COURT: Why?

MR. LEVY: If it is anything to be introduced in the ~~nature of~~ nature of an ante mortem statement—

MR. WALSH: It is not. It is a statement made in the presence of the defendant.

MR. LEVY: Well, it is very close to the border line.

THE COURT: I will allow it.

BY THE COURT:

Q You brought the prisoner down in front of O'Hara? A Yes, sir.

MR. LEVY: Your Honor will allow me an exception.

THE COURT: Yes.

Q What then? A I asked O'Hara if he knew him. O'Hara

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replied, "That is the man." I said, "What did he do to you?" He says, "He shot me." I says, "Where?" He says, "Here" (indicating).

Q Pointing to his-- A To his stomach, or belly.

Q What did the defendant say to that? A The defendant said nothing whatever.

THE COURT: That is not an ante mortem statement.

MR. WALSH: No; it is not intended as such.

THE COURT: It is simply for identification purposes, only.

THE WITNESS: I then rapped for assistance, and Officer Murphy came. We sent for an ambulance, and I escorted the defendant, David Cantor, to the 30th precinct station house.

BY MR. WALSH:

Q On the way to the station house, did you have any conversation with Cantor? A Yes, sir.

Q What did you say to him, and what did he say to you?

A I asked him what the trouble was about, and why he shot him. He says, "I didn't mean to shoot him."

BY THE COURT:

Q He says, "I didn't mean to shoot him"? A Yes; he says, "I meant to attract the attention of the police."

BY MR. WALSH:

Q What did you say to that? A I says it was a poor way of doing it.

Q What did he say to that? A He says, "Well, there was a fight, and I don't know why I done it, but I done it;" and that was all.

C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q Now, do you know, officer, the character of the young men who frequent that neighborhood? A I never knew him.

Q I am not talking of O'Hara. I am talking of the young men who frequented the neighborhood in which 2630 Broadway is situated at that time. A I know the character of some of them.

Q General reputation is all his Honor will permit you to testify to, of the young men of that vicinity at that time.

MR. WALSH: That is objected to.

THE COURT: No; I will let you show the reputation of the deceased for peace and quietness.

MR. LEVY: Now, your Honor, we are just at the right time to see whether I can prove what I intend to prove. It is some times difficult to show the character of a deceased.

THE COURT: The hardship connected with the

proof does not make it less necessary to have legal proof.

MR. LEVY: I know that; but sometimes it is necessary to prove the character of a deceased by means of the character of his associates.

THE COURT: Give me an authority where you can show the character of the associates, and I will listen to it attentively. I know of no authority that goes so far as you state.

MR. LEVY: Let me state what I mean.

THE COURT: Have you an authority?

MR. LEVY: Yes, sir; I will give you an authority.

THE COURT: You need not argue it, but give me an authority showing that you may show the character of a deceased by the character of his associates.

MR. LEVY: I hope your Honor will bear with me for a moment.

THE COURT: I am pretty well established in my views. I will not let you prove the character of his friends. I will let you show, you having announced that your defense is self defense-- I will let you show reputation and character of the de-

ceased for violence, and to show that he was a ferocious man.

MR. LEVY: I can go to this extent without an authority: Suppose it was duly established that a set of young men of very vicious reputations came to this place with the announced intention of wrecking the place; and suppose this visit was associated with these men who had asserted their intention to wreck the place; and suppose the altercation that takes place is that of the young men he met, and that the shooting—

THE COURT: You are getting in what might be considered lots of evidence before this jury. You had better ask your questions, and I will rule on them.

MR. LEVY: If your Honor won't allow me to put them in—

THE COURT: I will allow you to show what I have indicated.

BY MR. LEVY:

Q How long have you patrolled that post in which 2630 Broadway is situated? A I never patrolled that post, only on one or two occasions.

Q During the month of January, had you been on that post?

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A No, sir.

Q How near to that post was your post? A About 75 or 100 feet.

Q Are you familiar with the neighborhood in which 2630 Broadway is situated? A Yes.

Q Are you familiar with the people who stay about that place?
A Yes, sir.

Q Familiar with the young men in that neighborhood? A Yes, sir.

Q Familiar with the young men who frequent the corners in that neighborhood? A Yes, sir.

Q And particularly the young men who frequent or hang around these premises? A 2630 Broadway?

Q Yes-- are you familiar with them? A Some of them.

Q And their names? A Some of them.

Q Did you know a young man by the name of Fitzgerald? A Yes.

Q Did you know a young man by the name of Watkins? A No; I didn't know him.

Q Did you know a young man by the name of Finck? A Yes.

Q Wogan? A Yes.

Q Kavanagh? A Yes, sir.

Q McCarthy? A No, sir.

Q Arthur Dunn? A Yes.

Q A young man by the name of Arthur Kaskell? A Yes, sir.

Q Did they frequent that vicinity and that house— those premises?

THE COURT: You have gone as far as I will let you on that line. I will give you an exception, and that will save your rights.

BY MR. LEVY:

Q Did you know the young man, O'Hara, the deceased? A No, sir.

Q Then, you have no knowledge as to whether or not he ever frequented that place with the young men I have mentioned?

A Only what I heard.

Q And that you cannot testify. A No, sir.

Q Now, when you got to the place at which you found the young man lying, and went up stairs, did you observe this room when you came into it? A Yes, sir.

Q Was it in disorder, apparently? A No, sir.

Q Tables were there, of course? A Yes.

Q Any cues or billiard balls lying about? A No, sir; none that I could notice.

Q How many young men did you discover in the premises at the time? A To the best of my knowledge, there were standing about Mr. Cantor, at the table as you entered the door of the billiard room, probably seven, or eight, or nine persons.

Q About the door? A Standing around Mr. Cantor, while he

was taking the name and address of one Kaskell.

Q Where was he standing at the time? A At the corner of the pool table as you entered the door.

Q The very first table out of the door? A Yes, sir.

Q Did you observe the defendant? A Yes, sir.

Q What did you observe about the defendant's appearance?

A That he was somewhat excited.

Q Describe that as accurately as you can. A That he had some blood on his ~~face~~ nose.

Q Yes. A And his eyes were somewhat discolored.

Q Was there any mark on his forehead? A None that I noticed.

Q You said he was somewhat excited. What do you mean by that? A Well, he was nervous.

Q Trembling? A Yes, sir.

Q You say trembling: were his hands in a tremor? A When he was writing, his hand shook, as though he were nervous.

Q And was he pale? A Well, he had about the same color as he has now.

Q He has a ~~short~~ sort of blabby complexion; but was he pale? A Not any more than he is at present, so far as I noticed.

Q How about his mouth; was there any blood about his mouth that you could see? A Only the blood that came from his

nose, on his lip, that I could notice.

Q When you speak about discoloration at the eye, you don't mean black, do you? A Yes. One eye was black, and the other was a greenish yellow, as though—well, I won't say now.

BY MR. WALSH:

Q As though what; an old wound, was it? A It looked that way to me.

BY MR. LEVY:

Q Had you seen this defendant before that night? A No, not to my knowledge.

Q How about the other eye; that wasn't greenish? A It was black.

Q Black? A Or a bluish black.

Q Was it inflamed very much? A Not much at the time. It was slightly puffed under this lower lid (indicating).

Q Cut? A (No answer.)

BY THE COURT:

Q Puffed? A Puffed.

BY MR. LEVY:

Q Did you see it gradually puff any more, as the night wore on? A I wasn't in his company more than fifteen minutes.

Q You took him to the station house? A Yes.

Q You saw him the morning following? A Yes, sir.

- Q Did you arraign him in the Plice Court? A Yes.
- Q What was his condition when you arraigned him in the Pölice Court? A His mouth was swollen, and there was a mark on his nose, where the skin had been broken.
- Q Tell me about his eyes; were they möre swollen than the night before? A Yes; one of them was.
- Q Closed up, wasn't it? A No, sir; it wasn't closed.
- Q Pretty near it, wasn't it? A That would be determined by the one that had it.
- Q Let it be determined by your testimony; you are under oath.
- A Yes, sir.
- Q Well. A It was not closed.
- Q Well, pretty near closed? A Well, I don't know what you call pretty near.
- Q Now, then, you did not know O'Hara at that time? A No, sir.
- Q Have you since learned to know and become acquainted with his family? A Have I become acquainted with them?
- Q Yes. A Yes, sir.
- Q Which members have you met since? A A His father and mother, and his brother and his aunt.
- Q And on what occasions— how have you met them? Have you been to their house? A I met them at the Coroner's Court.
- Q And since the Coroner's inquest? A Yes; I met them here.

- Q Haven't you met them elsewhere? A Yes— met his sister.
- Q What is her name? A I couldn't tell you her first name.
- Q Where did you meet her? A At the station house of the 30th precinct.
- Q When? A About— to the best of my knowledge, about four weeks ago.
- Q Was that since the inquest? A Yes, sir.
- Q And did you converse with any member of his family, a brother, father, mother or sister, concerning this case?
- A Yes,
- Q You talked about the facts with them, did you? A No, sir.
- Q You talked of the case? A Yes.
- Q You talked of the case without talking of the facts? A
- A Yes, sir.
- Q And the substance of all your conversations with these people has been the unfortunate killing of that boy? A No, sir.
- Q Was there any other subject? A Yes, sir.
- Q You say you met this lady at which station house? A 30th precinct station house, in West 100th-street, the precinct where I am attached.
- Q You never visited their house? A Yes, sir.
- Q That is what I want to get at. When did you visit the house of this family? A On the morning of the 28 of

April.

Q This year? A Yes, sir.

Q This month? A Yes, sir.

Q What was the occasion of your visiting the house? A With a subpoena which I had received, and a notification from the District Attorney's office that I need not appear; that the case was adjourned until the 8th instant.

Q What did you go to that house for, is what I want to get at.

A Because his sister, in speaking to me, wanted to know when the case was coming up.

Q And then, in the goodness of your heart, and in order to accommodate this young lady, you went to the house?

THE COURT: Let him state it. You are giving the reason. I think perhaps he might give a different reason. You see, if I let you give the reason, you might give one which would be unfair toward him.

MR. LEVY: I will do as your Honor suggests; but it is not unfair to say he has a good heart.

THE WITNESS: That's right.

THE COURT: He might want to state his own reasons.

THE WITNESS: My reason for going to the house was, the young lady had asked me to let her know

when the case was coming up.

THE COURT: You see, that is quite a different reason.

BY MR. LEVY:

Q You were rather interested in that? A Not at all, sir.

Q How many times had you met her? A Altogether?

Q Yes. A Three times; once in the Coroner's Court—

THE COURT: He does not want to know that.

MR. LEVY: No; I didn't ask you.

Q Now, you are sure that this defendant said, when you asked him the first time what had happened, he said, "Only just a little fuss;" you are sure he said that? A The defendant?

Q Yes. A David Cantor; yes, sir.

Q Did you testify to that in the Coroner's Court? A Yes, sir; it must have been about the same.

Q What did you testify to in the Coroner's Court? A I can't recall the words, but the substance is the same.

Q Didn't he say to you, "I was attacked by some of these fellows, and defended myself"? A No, sir.

Q You made an affidavit in this case, did you not? A I did, sir.

Q Will you direct your attention to what is stated in that affidavit?

THE COURT: To what the witness said?

MR. LEVY: To what the witness swore to before the Coroner.

THE COURT: Yes.

MR. LEVY: This affidavit was sworn to on the 8th of January, 1901.

MR. WALSH: Now, let us see. I don't think Mr. Levy ought to say that any affidavit was sworn to, without proving it.

THE COURT: No. There is no evidence here.

MR. LEVY: That was simply in answer to the question that was asked me.

MR. WALSH: I understand why you said that.

BY MR. LEVY:

Q Now, did you swear before the Coroner, whether you swore to it on the 8th or any other time— did you swear before the Coroner that "two men, one of them the deceased, George O'Hara, and another one, William Teaton, came into Cantor's place to play pool, and Cantor said they could not play, and they asked to be allowed to finish the game, and when Cantor took hold of them to eject them, a struggle ensued"?

A I think I did.

Q (continuing) "When the deceased fell to the floor"?

A I didn't know the deceased fell to the floor.

MR. WALSH: I object.

MR. LEVY: What is the objection?

THE COURT: I do not see any objection, if he swore to it.

MR. WALSH: Let him put the question founded upon the affidavit-- "I learned from an investigation"--

MR. LEVY: May I be permitted to examine this witness?

THE COURT: Mr. Levy, you want to be fair?

MR. LEVY: No one has accused me of being unfair.

THE COURT: I know; but--

THE WITNESS: That is my affidavit, on information and belief.

BY MR. LEVY:

Q Investigation and belief? A On investigation and what I understood-- was informed.

Q And you went up stairs to ascertain whether or ~~not~~ he had tried to eject them, and that in the effort to eject them he was compelled to defend himself?

THE COURT: Anything which he swore was told him-- you will ask that.

MR. LEVY: That is exactly the purpose of my

question.

Q Now, did he tell you that he defended himself? A Not then, sir.

Q Did he at any time? A Yes, sir.

Q Where was it that he told you that he defended himself?

THE COURT: How long after that night?

A Probably ten minutes after I left the billiard room, either at the station house or on the way to the station house, and next day, in the Seventh District Police Court.

BY MR. LEVY:

Q Now, if you will be good enough to tell us what he said about defending himself?

THE COURT: And where it was.

Q (continuing) -- following the Court's admonition to be fair about it. A He said these two young men came into his place to play pool.

BY THE COURT:

Q When was it? A On the night of January 5th.

Q Before you had taken him out of his place? A Before I had taken him out of his place. This was before the shooting.

BY MR. WALSH:

Q No; when did you have the conversation, the Court wants to know. A Oh, in the court.

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BY MR. LEVY:

Q First, let us get the conversation on the way to the station house. You say that he told you that they---

MR. WALSH: He said that he was not sure.

THE COURT: Do not get mixed up.

A My first conversation was with the defendant in his pool room when I asked him what the trouble was and he said, "I had a little fuss," or "a little trouble".

BY MR. LEVY:

Q What I want to get at is this: Did he use the words then "a fight," or did he describe it? A He didn't describe it to me.

Q Then there was a fight, he said? A Yes, sir.

BY THE COURT:

Q This was conversation had when you went up stairs to arrest him? A No, sir. He told me that on the way to the station house.

THE COURT: You had better have each conversation separately. First, the conversation up stairs; then after that the conversation on the way to the station house. Make them separate conversations or else you will get them all confused.

BY MR. LEVY:

Q Just tie yourself down to the conversation that occurred

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at the time you went up stairs, leaving the young man on the sidewalk down stairs. What did you say to him and what did he reply? A I asked him if he was the defendant David Cantor and he said yes. I asked what the trouble was here. He said just a little fuss, a little trouble.

I said, "I want you to come over to the station house. He said, "Wait till I get the names of those witnesses."

I let him finish the name that he was writing down and then I says---"Well," I says, "come on". He says, "Will you not wait? There are some other witnesses that I want to get."

I says, "There is no time to be lost; come with me".

I accordingly escorted him down stairs to the presence of George O'Hara, the deceased.

Q Now you had better finish that one conversation. Tell us the conversation that you had with reference to self-defense on the way to the station house.

A On the way to the station house---

MR. WALSH: I move to strike out of that question, or rather I object to it on the ground that it contains the word "self-defense". This officer has not said that.

THE COURT: It will be determined whether it

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was self-defense when the officer says what was stated.

BY MR. LEVY:

Q The conversation that was had with this man on the way to the station house is what I want? A Yes; I asked him how it occurred and what the trouble was.

Well, he says---you know he says that I had a fight here last night, he says; and he says---"I thought he says ~~they~~ might be some of the same fellows that came around; and he says I didn't mean to shoot O'Hara." He didn't mention O'Hara but he was the one that was shot. He says I didn't mean to shoot him but I meant to attract the attention of the police. "Well," I says, "you shot him?" He says, "Yes".

BY THE COURT:

Q He admitted that he shot him? A He admitted that he shot him, and we then met the Reserves going out, the outgoing platoon going out at midnight and I brought him to the station house. They had just got to the station house then and I had nothing else to say to him then other than---

BY MR. LEVY:

Q Did you make a report at the station house then of what you had done and of what had been stated to you by this defendant? A No, sir.

Q Who was the sergeant behind the desk? A I think Sergeant Coombs or another sergeant---I don't know which one was at the desk.

Q Do you know his writing? A Sergeant Coombs?

Q Yes? A Yes.

Q Did you make a report to him? A A verbal report.

Q Was the pedigree taken of the defendant? A Yes, sir.

Q Who took that? A The sergeant behind the desk.

Q And this defendant made answer to the questions?

A Yes, sir.

Q And did you then in your report to the sergeant in the presence of this defendant, after the pedigree had been taken or was being taken, state that this defendant had stated that he did the shooting in self-defense?

A No, sir.

Q (Handing book to witness) I show you this book and ask you whether you recognize it? A (After examining) I don't think that that is Sergeant Coombs' writing.

Q Well, whose writing is it? I don't care whose writing it is. A (No answer.)

BY MR. WALSH:

Q Do you know the handwriting? A No, sir.

BY MR. LEVY:

Q What is the book? Never mind the writing.

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A (No answer.)

BY THE COURT:

Q What does it purport to be? A I know it is the blotter of the 30th precinct station house.

BY MR. LEVY:

Q The official blotter of the 30th precinct station house?

A Yes.

Q The official blotter of the happenings and occurrences of that ---

MR. WALSH: Objected to.

MR. LEVY: Let me finish.

THE COURT: I think you have gone far enough.

BY MR. LEVY:

Q Is that the record of the pedigree and report made at the time of the arraignment of the defendant in the station house?

MR. WALSH: I object inasmuch as this officer did not keep that record.

THE COURT: No; you had better bring the man here that kept the record.

BY MR. LEVY:

Q Whose writing is that? A I couldn't tell that. You can find that out at the station house.

MR. LEVY: (To another officer in court)

Roundsman, whose writing is that?

The person addressed: I don't know; it is signed on the bottom.

BY MR. LEVY:

Q It is signed on the bottom. You have been a policeman long enough to know that. A You didn't ask me that.

Q Whose name is signed? A Here (indicating) is the recapitulation.

THE COURT: I think it would be well to have the person who kept the blotter here.

MR. LEVY: I wanted to save the trouble, if I could.

A Sergeant John Gallagher.

Q Is he still up in that precinct? A Yes.

MR. LEVY: I will ask to have that marked for identification.

(Marked "Defendant's Exhibit 2 for Identification.")

Q Now, officer, in order that there may be no misunderstanding about this, you swear that you did not report to your sergeant behind the desk, when you arraigned this prisoner on that night and when his pedigree was taken or about to be taken or in the course of being taken--that you did not state that this defendant had said that he simply shot in self-defense? A That is not the question that you

asked me before.

THE COURT: He asks it now.

BY MR. LEVY:

Q I ask it now, then? A Yes; the prisoner admitted that he done it in self-defense, in the right.

Q Why did it take half an hour for you to admit that?

A You didn't ask me that.

Q I asked the question, whether this person did not state that he shot in self-defense. A You asked if I didn't state that.

THE COURT: You asked whether he stated that he shot in self-defense.

MR. LEVY: Then I will put that question:

Q Did you state to the sergeant then upon that occasion that this defendant had stated to you that he shot in self-defense? A Did I state to the sergeant?

Q (To the stenographer) Read the question. (Question repeated.) A Yes; that the defendant had stated to me that he shot in self-defense.

Q Where did you get the pistol? A From officer Murphy.

Q Then there was another officer that went into the place with you? A No, sir; officer Murphy went into the place after me.

Q And where did you get the pistol? A From officer Murphy.

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Q Where and when? A In One Hundredth Street near Amsterdam Avenue.

Q When? A At five minutes after twelve.

Q I forgot to ask you whether you are a married man?

A Yes, sir.

Q On that same night did you get that pistol? A Not on the same night; it was within five minutes of the morning of the next day.

Q Is that pistol here? A Yes, sir.

Q Will you produce it, please? A (Producing pistol) Yes, sir.

Q When you received it, was it loaded? A There was four cartridges and one shell in it.

BY THE COURT:

Q The one that had been exploded? A Yes, sir.

BY MR. LEVY:

Q What calibre is that pistol? A 32.

MR. LEVY: (To the stenographer) For the present would you kindly mark it for identification?

MR. WALSH: I offer it in evidence.

MR. LEVY: You haven't proven this was the pistol.

BY MR. WALSH:

Q Did you show this to the defendant? A Yes, sir.

Q Did you ask him if it was his? A Yes, sir.

Q Did he admit it was his? A Yes.

Mr. Walsh: Well, I offer it in evidence.

BY THE COURT:

Q Did he say that was the one that he did the shooting with?

A Yes, sir.

BY MR. LEVY:

Q When was it that you exhibited this to him?

A The next morning in court.

MR. LEVY: Well, if it has got to go in evidence---

THE WITNESS: Yes, he admitted it that night in the station house.

Q Then you did talk to him again in the station house that night? A Yes, sir.

Q You didn't tell us about that before, did you? A Well---

Q Did you not say in answer to one of my questions that after taking him to the station house you didn't see him again until the next morning? A Yes, sir.

Q Did you go back to see him? A He hadn't left the front office of the station house up to this time.

Q When did you get this pistol? A I went back after bringing my prisoner to the station house and when I went back he told me that he left it on the desk and officer Murphy

had gone up and got the pistol and was on the way to the station house with it; and I asked him if that was the revolver, and he said yes.

MR. LEVY: It may go in evidence.

THE WITNESS: And here are the cartridges.

The envelope containing the said cartridges is marked "People's Exhibit A" and the revolver in question is marked "People's Exhibit B".

BY MR. LEVY:

Q Did you go down in the cell and see this defendant during the night? A No, sir.

Q Who was the doorman in charge that night, do you know?

A I don't know.

Q Could you tell by reference to the blotter? A Yes, sir.

Q Tell me the name of the doorman to whom you turned this prisoner over, after refreshing your recollection.

A (Indicating blotter) It is not here; the doorman on duty.

MR. LEVY: That is all; we won't waste time over that.

THE COURT: (To People's Counsel) Give Mr. Levy all the assistance you can in the matter of getting any police witnesses he wants.

MR. WALSH: Certainly I will.

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MR. LEVY: Then I would like you to subpoena for me the doorman in charge that night.

MR. WALSH: I will.

MR. LEVY: And the sergeant as well.

THE WITNESS: John Gallagher.

THE COURT: Let the People subpoena sergeant John Gallagher and the doorman.

PEOPLE REST.

MR. LEVY: I desire to place upon record, if Your Honor please, a motion that Your Honor advise the jury to acquit because of the failure of proof upon part of the People to establish a case.

THE COURT: Call my attention to what you think deficient. It is admitted that O'Hara is dead?

MR. LEVY: Yes; I ~~did~~ do not make any point of that.

THE COURT: And that he died from a pistol shot wound fired by the defendant?

MR. LEVY: Yes, sir.

THE COURT: I want to be fair, and if there is anything that has been overlooked I would like to have you direct my attention to any specific fact.

MR. LEVY: I use the expression formally so as

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to reserve whatever rights the defendant may have upon the record.

THE COURT: So far as I have observed, the People have put in evidence upon every point necessary. If there has been any fact essential to be proven, concerning which they have neglected to put in evidence, if my attention is drawn to it, I will call their attention to it.

MR. LEVY: Independent of the motion, if Your Honor would direct the District Attorney to call the witnesses mentioned upon the back of the indictment and who were eye-witnesses to this affair and who should in all fairness to the defendant be called, I would be glad to have you do so.

THE COURT: No; you have a right to call such witnesses as you think he should have called; and you have a right to make command upon all witnesses that he might have called and did not call, if they are accessible, as eye-witnesses.

MR. LEVY: But I heard the District Attorney say in his opening to Your Honor and to the jury, that his position was quasi-judicial. If he means that, let him call all the witnesses.

THE COURT: You have a right to call all the

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witnesses to the occurrence and I shall accord you that right to the fullest extent.

MR. LEVY: I shall have to do it.

THE COURT: Yes; you have the right to do it.

MR. LEVY: These witnesses were before the Grand Jury and before the Coroner's Court and the District Attorney has knowledge of them; they are in court and he has knowledge of them.

THE COURT: If there are any in court---we want to get all the light we can; the court and this jury want to know the truth in this matter and I assure you that there shall not be one scintilla of evidence shut out in this case that can throw any light upon it. If the witnesses are in court, let them be called so that the light shall shine upon this case with the bright daylight. We want to get at the truth.

MR. LEVY: I shall get at the truth.

THE COURT: That is our endeavor. We want to know what the truth in this case is; and when we have get at the truth, we will settle it in pretty quick order. Now do you not propose to open your case?

MR. LEVY: No; I do not intend to open the

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case.

THE COURT: I understand, Mr. Levy, that, brushing away everything that is immaterial, we have to get down to one thing. This defendant shot the deceased, killing him. Now was he justified in doing it before the law?

MR. LEVY: Was he justified in shooting the deceased on appearances?

THE COURT: You do not claim that it was a case of excusable homicide, do you?

MR. LEVY: I claim that it was an accident, but that the testimony was that the shot was fired, as stated by the officer, for the purpose of attracting first the attention of the police; and that it was done in self-defense.

THE COURT: Then you are going to claim that it was an accident and also self-defense.

MR. LEVY: That in inflicting the injury he did upon the deceased, the defendant acted upon the appearances of intended violence.

THE COURT: That is, self-defense?

MR. LEVY: That is self-defense; that if the bullet struck O'Hara, it was done in self-defense; and that if death resulted, it resulted from acci-

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dental injury inflicted by the defendant.

THE COURT: Then I understand when we go to the jury we are to charge them upon excusable homicide and justifiable homicide, if you are going to take the ground that it was both justifiable and excusable?

MR. LEVY: Yes.

THE COURT: Then I shall submit it to the jury upon both propositions.

MR. LEVY: Yes, sir. Now I would like Your Honor to look at that case in 18 Wendell; and I would like you to disregard the reporter's head note, which is quite inaccurate. Your Honor will notice quite a difference between the head-note and the syllabus of the case as stated by the reporter.

*Dr. J. M.
fol.*

2nd take; Smith, fol. Clayton. 1

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E D W A R D B. C A M P B E L L, called as a witness in behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. LEVY:

Q What business are you in? A I am a clerk in the shoe business.

Q Whereabouts? A 146 Duane Street.

Q What is the name of the concern? A Nathaniel Fisher & Company.

Q How long have you been with them? A Since the latter part of October.

Q And before that? A Worked at Valentine & Company's, varnishers.

Q And where are they situated? A 57 Broadway.

Q Where do you reside? A 230 West Ninety-fifth Street.

Q How old are you? A Twenty years.

Q You know the defendant at the bar? A I do---an acquaintance.

Q How long have you been acquainted with him? A Since he has been in the place I have been in the habit of going there once a week.

Q You mean the place No. 630 Broadway? A Yes, sir.

Q The billiard saloon? A Yes.

Q For how many months were you in the habit of visiting the place, about? A How many months?

Q Yes; this thing happened in January; how many months before that? A I have been going in there when it was under a different management.

Q You have been going in there for some time, is that what you mean? A Some time. On an average of once a week.

Q Were you in that place on Saturday night?

A Preceding the 5th of January?

Q Yes; just before, on this day I mean.

A Well, I don't remember about it.

Q Were you there on the night of the happening, of this occurrence?

THE COURT: April 9th was that?

MR. LEVY: No; January 5th, the night of the shooting

I am talking of.

A Yes.

Q Were you there? A Yes.

BY THE COURT:

Q January 5th, 1901? A Yes.

BY MR. LEVY:

Q Were you playing billiards or pool? A No.

Q What were you doing? A I was on my way home, about a quarter to twelve, and I thought I would drop in there to see

a brother of mine.

Q Is your brother here in court? A No, sir.

Q And did you see your brother there? A No, sir.

Q He was not there? A No, sir.

Q About how many young men were there when you got there?

A I should say about twenty.

Q What were they engaged in doing if anything? A Well, most of them were playing pool.

Q Did you see the beginning of the trouble between the defendant and the deceased and his companions? A Yes, sir.

Q In your own way, without any suggesting or leading by me at all, you tell his Honor and the jury---tell us what you saw and heard, and give us the circumstances as much in detail as you can. A I came in about a quarter to twelve, and I sat down. About ten minutes to twelve these two boys came in together.

Q By two boys you mean whom? A I guess it is O'Hara and Teatom.

Q The deceased and Teatom? A Yes, sir.

Q You saw Teatom on the stand yesterday, did you not?

A I did, yes, sir.

Q Go on. A They acted to me as if they had been drinking a little.

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MR. WALSH: One moment.

MR. LEVY: Wait a moment, please.

MR. WALSH: I ask the witness not to testify from appearances. State what they did.

BY THE COURT:

Q It appeared that they had been drinking some?

A Yes, sir.

THE COURT: I think I will allow that.

BY MR. LEVY:

Q Try to keep your voice elevated, Mr. Campbell. A I guess

BY THE COURT:

Q Do not guess at all, because we do not want any guessing at all. A I did not know the names of the parties at the time.

Q Do not guess. A One of the parties---

Q Which one? A I mean Teatom---went to the defendant and asked if he could play a game of pool. He told him no; that he had orders from the police to close the place at twelve o'clock. He walked away. Teatom walked away from him and walked over to the corner and started to pick up a cue, and Cantor stopped playing and came over, and I didn't exactly notice how they came together, but I saw Cantor take hold of this O'Hara, the deceased, with one hand, and

knees. He got up quickly and walked over to a corner, the three of them were in the corner of the room near the door when the shot was fired.

Q The three of them were together at the time of the shooting?

A In the corner of the room.

Q We have not got to that part of it yet. They got over to the middle of the room? A Yes, sir.

Q We have got to the middle of the room? A Yes, sir.

Q You saw the defendant slip to the floor? A Yes, sir.

And he got up quickly and walked to the corner of the room.

Q And they got after him? A Yes, sir.

Q Ran after him?

MR. WALSH: Don't lead him.

MR. LEVY: I don't mean to.

A I didn't notice whether they ran after him, but when I looked again the three of them were in the corner of the room.

Q Had he gone away from the place that he went to after he slipped on the floor and got up? A Had he what?

Q Had he gone away from the place and returned, or did he remain at the place where they went to? A When he slipped to his knees they walked over to the corner of the room.

Q What became of Teatom and O'Hara? A I suppose they went

right after him.

BY THE COURT:

Q Do not suppose. A (No answer.)

BY MR. WALSH:

Q "Suppose." You don't know, do you? A Well, they went right after him, and the three of them were in the corner of the room together.

BY MR. LEVY:

Q Now, what happened in the corner of the room? A I saw Cantor draw a gun, and I walked over to the other side of the room, and while I was walking the shot was fired.

Q What was the position of Cantor at the time of the drawing of the gun? A He was standing in the corner, with his back to the wall.

Q And what were they doing? A I didn't see. It was done so quickly.

Q How close were they to him, Teatom and O'Hara?

A I should say about three feet.

Q Was his back to the wall? A His back was to the wall.

Q Are you sure about that? A Pretty sure.

Q Could he have retreated any further?

MR. WALSH: Objected to.

THE COURT: That is a conclusion.

BY MR. LEVY:

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Q Was there any place that he could have gone, that you could see, from that corner?

MR. WALSH: Objected to.

THE COURT: You are asking him for a conclusion.

MR. LEVY: I don't intend to ask for a conclusion. I withdraw the question in that shape and put it in this shape---I must use the diagram, with your Honor's permission.

Q (Indicating on the diagram) This is an exceedingly fair representation of that room. Here (indicating) is the door---I am referring to Defendant's Exhibit 1. Here is the door leading into the hallway, and the stairs are here (indicating), and here are the windows and the tables. Now indicate with a pencil, if you please, where the row commenced. Look it over carefully so that you get your bearings right. A Where is the entrance?

Q Here (indicating) is the entrance. There (indicating) is the door, marked "Door." Don't you see? Here are the benches in the middle of the room; see? A When the defendant dragged them to the door, dragged the deceased O'Hara and Teatom----

BY MR. WALSH:

Q That was the first thing that happened, was it?

MR. LEVY: Won't you let me examine this witness?

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BY MR. LEVY:

Q Where did he let them go first? A He let them go right at the door.

Q Make a cross there. A I suppose this (indicating) is the door.

Q We will mark that with your permission "A." "A" is the place where he let them go, at the door, is that right?

A Yes.

Q Now then, what happened? A Cantor was standing about here (indicating), the defendant.

Q Did he walk away from the door---Cantor? A Cantor walked away from the door.

Q Where to? A He was standing about here (indicating.)

Q Where did he walk to? A He walked over to here (indicating.)

Q We will mark that "B," the place that he walked to get from the door, leaving the two standing at the door, "B/"
(To the Jury: I will hand you this in a moment, gentlemen.)

A And while he was standing there this Teaton was trying to get at him.

Q Don't tell us what he was trying to do. What did he do?

A Somebody was holding him back.

Q Somebody was holding him back? A This Teaton.

BY MR. WALSH:

Q Wasn't it O'Hara, the deceased? A No.

THE COURT (to People's counsel:) Let Mr. Levy have
the witness.

BY MR. LEVY:

Q Would you recognize the young man if you saw him again?

A No, sir.

Q It was somebody? A Yes, sir.

Q Then what happened? A Before I knew it the two of them
were fighting into him.

Q Where? A At this place (indicating), where it started,
where Cantor was standing at first.

Q Did they stand in one place? A They were fighting, and
fought around to here (indicating.)

Q Draw a line showing the way they were fighting. A They
went around this way (indicating.) It was about here.

Q Make a cross. A (Complying) And Cantor slipped to his
knees.

Q We will mark that place where he slipped to his knees as
"C." Then what happened? A Cantor gets up from his
knees, and goes back to this corner (indicating.)

Q Make a cross there. A (The witness complies.)

Q We will mark the place that he gets up from and goes over
to the corner, "D." A Yes, sir.

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Q Now then go on. A I don't know exactly whether the deceased O'Hara and Teatom followed him right up or not, but when I looked they were----

Q They were together? A The three of them were together, Cantor here (indicating,) and the other two here (indicating), about here.

Q At the cross marked "D"? A Yes, sir.

Q Now then before we go on, tell the jury, if you please, the positions as near as you can of the parties; how the defendant stood and how Teatom stood and how O'Hara stood at the letter "D". A I couldn't tell how Teatom and O'Hara stood because I didn't know who it was, but the three of them were in there together.

MR. LEVY: With your Honor's permission I would like at this time to hand this to the jury. Gentlemen, if you will allow me (showing diagram); and follow me and see that I tell it correctly. This letter "A" is the spot to which the defendant dragged the two of them and then left them; and when he left them he went over here to the letter "B". They followed him, according to his testimony, to "B," and the fight commenced, and the struggle continued on that line to "C." He then sank to his knees, the defendant, according to this witness'

testimony, and then got up and walked over to this corner marked "D."

The two persons Teatom and O'Hara followed him and there (indicating) is where what took place at the letter "D."

Q Tell us again. A Cantor was with his back to the wall, the defendant. The two men were in front of him.

Q Now, what was being done just immediately prior to the drawing of the pistol? A Why, they were fighting prior to that.

Q I am talking about just at that moment when the pistol was drawn. A (No answer.)

BY THE COURT:

Q When the pistol was drawn, did you see that? A It was drawn so quick that I didn't have a chance to do anything.

BY MR. LEVY:

Q Did you see blows struck by O'Hara in that corner?

A Not while they were standing; no, I didn't.

Q Did you see blows struck by Teatom in that corner?

A I did not.

Q Did you see blows struck by the defendant in that corner?

A I did not.

Q How long was the whole struggle in taking place?

A Counting from the time the deceased O'Hara and

Teatom came in?

Q Yes. A I should say not more than fifteen minutes, twelve or fifteen minutes I should say.

Q You don't mean that the fight took place altogether in twelve or fifteen minutes? A Counting from the time they came in.

Q I mean from the time the first blow was struck. A That didn't take more than five minutes.

Q Now, did you see anyone take any billiard balls?

A I did not.

Q Did you see anyone take any cue other than Teatom at the beginning of the transaction? A I did not.

Q Did you see the man Dunn who testified yesterday---is Mr. Dunn in court? (A young man arises.) That young man, do you remember seeing him going up and take hold of a cue?

A I don't remember seeing anybody take a cue.

Q Did you hear any outcry? A None at all.

Q Did you hear the defendant say "Where are my friends?"?

A Yes, sir.

Q When did that take place? A After this O'Hara and Teatom ran downstairs---after the shooting.

Q After the shooting? A Yes.

Q Not before the shooting? A No, sir.

Q What did you observe as to the appearance of the defendant;

did you notice how his face was? A I did.

Q At that time? A I did.

Q Describe it. A His eye was discolored, and his nose looked to be bleeding a bit.

Q Did you go right out of the place after this thing happened?

A The defendant asked me for my name as a witness.

Q And you gave him your name and address?

A I gave him my name and address.

Q Did you say Teatom come back after he had ran out?

A He did.

Q What did he do or say when he came back after they ran out? A He invited the defendant downstairs.

BY MR. WALSH:

Q This was after the shooting, was it? A After the shooting.

BY MR. LEVY:

Q Is that all he said, to go downstairs? A Well, I guess he wanted to give him----

BY THE COURT:

Q No, do not guess. We cannot try criminal cases on guesses. A (No answer.)

BY MR. LEVY:

Q What did he say? A He told him as much as that he would punch the head off him.

BY MR. WALSH:

Q That was after the shooting, was it? A After the shooting.

MR. WALSH: I don't blame him.

C r o s s E x a m i n a t i o n :

BY MR. WALSH:

Q Your name was taken that night as a witness?

A It was, sir.

Q On behalf of the defendant? A It was, sir.

Q The defendant took it? A He did.

Q And asked you if you would testify in his favor?

A No, sir.

Q What did he say? A He just asked me for my name as a witness.

Q Now, did he subpoena you before the Coroner? A He did not.

Q Did he subpoena you at any court except this one? A No, sir.

Q Did you ever testify in any court excepting this one?

A No, sir.

Q Did you see any weapon used against this defendant excepting these boys' fists? A No, sir.

Q How did this defendant's size compare with the sizes of Teatom and O'Hara?

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MR. LEVY: I think that is objectionable. I don't think this is competent.

MR. WALSH: Why not? It is a question of self defense. Why are not the sizes of the several men competent?

THE COURT: Why not, Mr. Levy?

MR. LEVY: It may be offered in comparison with the deceased's size because he is not here, and there has been no testimony as to whether he was a big or a little man.

THE COURT (To People's counsel:) You might limit ^{it} to the size of O'Hara.

BY THE COURT:

Q What was the difference in the sizes of the defendant and O'Hara? A Of course the defendant is a much larger man.

THE COURT: "Of course"? We did not know that.

BY MR. WALSH:

Q The defendant was a much larger man than O'Hara?

A A much larger man.

Q These two young men O'Hara and Teatom used no weapons except their fists? A That is all.

Q And when the shot was fired O'Hara and Teatom went downstairs? A Yes, sir.

Q Then they were very close to the door? A Very close.

- Q How close? A Right at the corner of the room.
- Q Is that at the door? A Very near the door in that corner.
- Q You are unable to say whether the defendant went over to that corner first or whether O'Hara and Teatom went over there first? A I couldn't exactly tell you that.
- Q Now, is the door right at the corner? A Well, no.
- Q How far is it from the corner? A I should say six feet from the corner.
- Q And where was O'Hara standing when the shot was fired, near the door or corner? A Cantor was with his back to the wall, and O'Hara the deceased and Teatom were in front of him, with their backs nearer to the door.
- Q And when O'Hara was shot they went out? A They went out.
- Q Did you see the defendant Cantor draw his pistol?
- A I saw him draw his pistol.
- Q From what pocket did he draw it? A I couldn't tell you.
- Q What hand did he hold it in?
- A I couldn't tell you that; I don't know.
- Q Where did he aim when he fired? A I didn't wait to see him aim. I saw him put his hand to his pocket and I walked to the other side of the room.
- Q You were not very particular about seeing what went on in that corner at all, were you? A No, sir.

Q Mr. Campbell, after the shooting, and after this defendant was apprised that some man was shot, did he say anything?

A Nothing but just asked for the names of witnesses---asked the people around for their names as witnesses.

Q When he asked for their names as witnesses did he say anything about its being an accident or self defense or anything of that kind? A Not to me.

FRANK W. FITZGERALD, called as a witness in behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. LEVY:

Q Now, Frank, you live where? A 100 West One Hundred and Third Street.

Q And what is your business? A A painter by trade---painter's helper.

Q You were a witness, were you not, before the Coroner?

A Yes.

Q In this case? A Yes.

Q And you were also a witness called by the District Attorney before the Grand Jury, were you not? A Yes.

Q And you gave your testimony before the Grand Jury, did you not? A Yes, sir.

Q And you were subpoenaed here by the District Attorney, were you not? A (No answer.)

Q Did you get a subpoena from the District Attorney to attend court here yesterday? A Yes, sir.

Q As well as one from the defendant? A Yes, sir.

Q Did you tell your story of what you knew of this case to the District Attorney? A Yes, sir.

Q This gentleman here (indicating People's counsel)?

A No, sir.

Q To Mr.-----

BY THE COURT:

Q (Interposing) Mr. Pierce, I guess, wasn't it?

A Yes, sir.

THE COURT: Mr. Pierce has resigned and he is not here.

MR. LEVY: And his mantle has fallen on worthy shoulders.

MR. WALSH: And sits well without a crease.

BY MR. LEVY:

Q You were in this billiard room on the night when this trouble occurred, upon the night of the fifth of January?

A Yes, sir.

Q What were you doing there? A I was standing around there playing.

Q You knew most of the boys in that place, did you not?

A Yes.

Q You knew O'Hara too, did you not? A Yes.

Q How long did you know O'Hara? A I should judge about four years.

Q What did he work at, Frank? A I don't know as he ever worked in my estimation, I don't remember of his working at anything.

Q And how old a young man was he? A I should judge he was about twenty-one years old.

Q How frequently did you see him in this billiard room?

A I don't believe I had ever seen him in there before.

Q Did you see Teatom in there before? A No, sir.

Q Did you see that young man by the name of Dunn in there before? A Yes, sir.

Q Well, on the night that the trouble took place----

THE COURT: That would be the fifth of January.

Q (Continuing:) On the fifth of January, 1901---what time was it that you saw, if you did see, Teatom and O'Hara come into the place? A Well, it was about a quarter to twelve.

Q Now then---I don't want to lead you, but in your own way you tell his Honor and the jury what you saw and what you heard, everything now. A Well, about a quarter of 12

these two young men came into the pool room, Mr. O'Hara and Mr. Teatom. Mr. Cantor was playing pool at one of the tables, and this Teatom went over and asked Cantor if he could play a game of pool.

Mr. Cantor says no, that the orders were to close at twelve o'clock.

Q That was Saturday night, by the way, wasn't it?

A Yes, sir.

Q Go on. A He says, the defendant, "The orders are to close at twelve o'clock," and he told him he couldn't play.

So Teatom walked away then, and there was a couple of gentlemen playing at an open game table, and they said he could play in that game.

Q Who said that? A I don't know who, but somebody said it; and Teatom went over and picked up a cue. And Mr. Cantor went over and told him to put it down.

He didn't put it down, and Mr. Cantor took him by the back of the neck and went to pull him to the door. As he did he kind of pulled him over.

BY MR. WALSH:

Q Who pulled him over? A Mr. Cantor pulled Teatom over backwards. As he was pulling him toward the door this O'Hara came over, ~~he~~ the deceased, and Mr. Cantor caught him by the back of the neck and was dragging him to the door.

BY THE COURT:

Q Dragging both to the door? A Yes.

BY MR. LEVY:

Q If during this time any words were exchanged I want you to give the words. A As far as I can recollect now, I don't think there was anything said.

Q Yes? A Well, they got him to the door, and I believe they got up talking fight, and they got to fighting around the room.

This O'Hara grabbed Cantor's arms and pushed him around to the side of the table and held him there, and this Teatom aimed a blow at Cantor and hit him in the face. Then they got into a general fight. The three of them got mixed up in it.

I remember seeing Mr. Cantor strike at one of the two of them---I don't know which one of them it was---with his open hand, and they were punching him all over the place.

Q Punching whom all over the place? A Mr. Cantor; and as they got into the center of the room Mr. Cantor slipped and fell on his hands and knees, and they went toward the door, and he got up on his feet. He dropped some money; I remember they were picking some of it up and gave it to him.

When he (indicating the defendant) got up his face was all over blood, I could see, and one of his eyes was

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blackened, and when he got over to the door----

BY THE COURT:

Q Who? A Mr. Cantor---the two gentlemen went over to the door first and they stood there. They got as far as the wall and they stopped.

Q But they were going toward the door? A They were going toward the door, and they stopped about one foot this side of the door, and they stood there as though they were not going out; I don't know whether they were or not. And Mr. Cantor went over to put them out.

Q To where they were? A Yes, to where they were. As he went over there there was a kind of little row, and this Teatom grabbed some balls and he had grabbed two or three, and I swept the rest of them off the table, and I turned around to put them on another table, and I heard a shot, and that is all I know.

BY MR. LEVY:

Q When you turned around and heard the shot where was the defendant? A The three of them were crouched together at the door.

Q Was the defendant standing up? A He was in a crouching position and not standing up straight.

Q Wont you illustrate? A About like that (illustrating,) trying to push them out. It seems as if they didn't want

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to get out; that they were not going out.

Q You were here yesterday were you not? A Yes.

Q One witness testified that at the door he was down on one knee, is that true? A I don't believe he was. I know he was in a crouching position. I don't know whether he was on his knee or not, I couldn't say.

Q What did O'Hara do with the balls that he took from the table? A He didn't take the balls from the table.

Q Who did? A Teatom.

Q What did he do with them? A I don't know. I turned around then to put the other balls down.

Q Did the defendant tell them to go out before there was any trouble? A Yes, I heard him tell Teatom to go out.

Q Did they make any movement to go out? A No, sir; that was the starting of it.

Q Did you hear any outcry? A No, sir; none to speak of while it was going on.

Q What did you hear? A When it was over I heard Cantor say, "Where are my friends?"

Q No one went to his assistance? A No, sir.

Q Did you see Dunn do anything? A No, sir; I don't recollect that I did.

Q Dunn testified---did you hear him testify that he went over and got the cue? A Yes, sir.

Q How about that cue; did they refuse to give it up or what did they do?

BY MR. WALSH:

Q (Interposing) Who had the cue? A Teatom had the cue.

BY MR. LEVY:

Q What about the cue? Did they struggle for the possession of it? A Teatom had it between his legs and both hands, had hold of it; but he took it away from him I don't know. I have not testified to that before I don't think.

Cross Examination: A Yes.

BY MR. WALSH:

Q You were in the employ of Cantor that night? A I took the young man's place that worked there, that night. I didn't get paid anything for it.

Q Did you ever work for him since? A No.

Q Have you ever visited him since that time? A Yes, I have.

Q At his house? A Yes, sir.

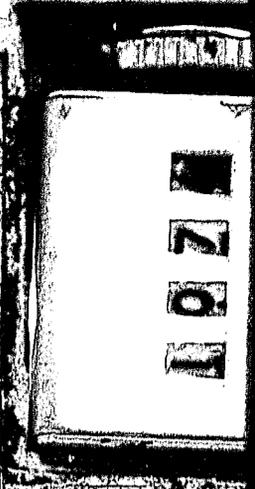
Q Ate there? A Yes. I have eaten there.

Q Slept there? A Yes.

Q And this was while you were coming down to the District Attorney's office? A No, sir; he was in the Tombs then.

Q Have you ever received any money from Mr. Cantor? A No.

Q Or his family? A His wife; I borrowed some money from her.



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Feb. 27, 1934.
M.I.

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C. H. L. S. A. L. T. O. H. D., being duly sworn as a witness
on behalf of the Defense, testified as follows:

Direct Examination.

BY MR. LEVY:

- Q Where do you reside? A. 211 East 51st Street, City.
- Q What is your occupation? A. Wholesale Jeweler.
- Q What is the name of your concern? A. Charles Altshul.
- Q And where is your place of business? A. 41 Maiden Lane.
- Q Do you know the defendant at the bar? A. Yes, sir.
- Q How long have you known him? A. Over two years.
- Q Do you know who are acquainted with him? A. Yes.
- Q And do you know what his character is?

THE COURT: "Reputation", I think, is the better word.

BY MR. LEVY:

- Q Do you know what his reputation in the community is for peaceableness and quietness? A. Yes, sir.
- Q What is it? A. He is a quiet man.
- Q Is he a married man; do you know? A. Yes, sir.
- Q And you say he is a quiet man? A. Yes, sir. I have always found him a quiet man, every time I have met him and seen him. Everybody that knows him will say so.
- Q Have you done any business with him? A. No, sir.

(No cross-examination.)

THE COURT: Call the next witness.

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WALTER W. WALSH, called as a witness on behalf of the
Defense, being duly sworn, testified as follows:

Direct Examination.

BY MR. LEVY:

- Q Where do you live? A. 852 Bushwick Avenue, Brooklyn.
- Q What is your business? A. Picture frames and pictures.
- Q Where is your place of business? A. It was until
the first of this month at 1613 Broadway,
Brooklyn? A. Brooklyn; but I have just given it up, the
last of the month.
- Q Do you know the defendant? A. I do, sir.
- Q How many years do you know him? A. About ten years.
- Q He worked for you? A. Yes.
- Q For how many years? A. About five years.
- Q You know, then, of course, other people who are acquainted
with him? A. Yes.
- Q And you know what his reputation is in the community for
peaceableness and quietness? A. Yes, sir.
- Q What is it? A. It is very favorable, as far as I know
it.
- Q Is he a quiet man? A. Yes, sir, to my knowledge.

MR. LEVY: That is all I want you to testify to, your
knowledge.

MR. WALSH: You are asking for reputation, and then
you want him to testify to knowledge.

BY MR. LEVY:

- Q He is quiet and peaceable? A. Yes, sir.

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Q And not quarrelsome? A. No sir.
(No cross-examination.)

EDWARD M. HAGER, called as a witness on behalf of the Defense, being duly sworn, testified as follows:

Direct Examination.

BY MR. LEVY:

Q Where do you live? A. 2 West 106th Street.

Q And are you working? A. Yes, sir.

Q Where are you employed? A. General Memorial Hospital.

Q In what capacity? A. Elevator runner.

Q Where is the hospital? A. 106th Street and Eighth Avenue.

Q Were you in the billiard room of Mr. Cantor's on the 5th of January, 1901? A. I was.

Q Were you there during the altercation between two men named O'Hara and the defendant? A. I was.

Q Without my leading you, you tell your story about what happened as you saw it, and what you heard -- everything?

A. Well, about a quarter to 12, Teatom and O'Hara came in. They seemed to be intoxicated -- to me.

Q Yes. A. And they went over to Mr. Cantor. He was playing pool at the time, and they asked if they could play. He said no; he had orders to close up at 12 o'clock; and they used vile language.

Q What was the language? A. I don't exactly remember now what it was.

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Q Vile, you said? A. Yes, sir.

Q Go on. A. So they said they would play; and they went over and sat down, about a couple of minutes, and then got up and went over to the other side of the room.

BY THE COURT:

Q Who did? A. This O'Hara and Teatom; and I seen them taking up a cue.

Q You saw both of them take up a cue?

A I couldn't say whether they both did.

Q You said you saw each of them take up a cue?

A No, I didn't say each.

Q Well, was it one or both? A. One.

Q Don't link both names unless you know? A. He picked up a cue, and Mr. Cantor told him to go out.

BY MR. LEVY:

Q What did he say? A. He wouldn't do it.

Q Did he make any reply?

A. Mr. Cantor put his hand on his shoulder, I believe, and he told him to keep his hands to himself.

Q Go on. A. And he wouldn't go out; so Mr. Cantor grabbed him by the coat collar, and, as he started to push him along, he fell down.

BY THE COURT:

Q Who fell? A. This Teatom; so he had Teatom by the collar, and O'Hara by the collar, and got them over towards the door, and, as I thought, ~~both~~ they were both going out.

CASE 7725B

Q Leave out your thoughts. A. (No answer.)

BY MR. LEVY:

Q What you saw and what you heard; they were going out then? A. They were going out, yes.

BY THE COURT:

Q Teatom and O'Hara? A. Teatom and O'Hara--- when they turned on the defendant.

BY MR. LEVY:

Q What did they do when they turned on the defendant?

A Started to strike him.

Q Tell us all about it? A. (No answer.)

BY MR. WALSH:

Q Who? A. I don't know which one. There was the two of them in that. So Teatom grabbed the cue balls, and somebody took them away from him, to the best of my knowledge.

BY THE COURT:

Q To the best of your knowledge --- What do you mean by that? Did you see somebody take them away? A. Yes.

Q Then you need not state, "To the best of my knowledge." State what you saw? A. (No answer.)

BY MR. LEVY:

Q Go on. A. Wait a minute.

Q Take your time. A. So, when they got the cue balls away from them, they started to pound Mr. Cantor.

BY THE COURT:

Q Who did?

A. Teatom and O'Hara. They got out into the middle of the floor and were striking one another. So Mr. Cantor fell downwards, and money came out of his pocket; and he got up. He was on his knees, rather, and he went over towards the door, and, I believe ---

Q Not what you believe; tell what you saw? A. They started to strike him again.

BY MR. LEVY:

Q Did they follow him over to the door?

A They went over, and he went over, and they started to fight again, and he pulled his revolver.

Q You saw him pull the pistol? A. I saw him pull the pistol.

MR. LEVY (to The People's counsel, indicating Defendant's Exhibit No. 1): Come over and get onto my curves.

MR. WALSH: I will examine him after Mr. Levy gets through, Your Honor. There is no use in wasting time.

BY MR. LEVY:

Q (indicating a diagram): This is the pool room, on one side, and there is the pool room on the other?

A Yes, sir. I wanted to see where the fight started.

Q You make a cross at the spot where you say the pistol was pulled. A. Yes; right about there (indicating).

MR. LEVY: The witness makes a cross, and we

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will mark that with the letter ---

MR. WALSH: "L" -- "Levy."

MR. LEVY: Well!

Q Now, that was a distance of how much from the door?

A Well, about two feet.

Q Then describe to the jury, if you will kindly, the position occupied by each of the three at the time when the pistol was drawn? A. Well, I don't remember the

position.

Q Were they standing, or lying down? A. Standing up.

Q You heard the last witness' testimony; I mean the last witness, the boy, Fitzgerald. He says that Cantor stood with his back to the wall.

MR. WALSH: No; I object to that, Your Honor.

BY MR. LEVY:

Q Did you hear him say that; was his back to the wall?

A. Yes.

Q His back was to the wall when the pistol was drawn?

A. Yes.

Q What wall was his back to? A. Towards the door here (indicating), about a foot to the left side of the door, this way (indicating).

Q You have marked the spot, which has been marked with the letter "L", as being the spot occupied by Cantor when the pistol was drawn. Now, there is no wall there, is there?

A No; that is right.

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Q Then, where was it? Think a moment, and try to get it more accurate. Perhaps this other diagram will assist you. What I am asking you to point out is the spot where they stood when the pistol was drawn.

THE COURT: Drawn and fired, I suppose?

MR. LEVY:

Q Drawn and fired, yes. A. Yes, it was right about here (indicating).

Q What was the position of Cantor? A. Cantor had his back towards the wall.

Q Was it up against the wall? A. No.

MR. LEVY: We will mark that with the letter "W", for "Walsh." (To the Stenographer): Now, mark this in evidence, please.

The said second diagram is admitted in evidence, and marked "People's Exhibit C."

Q Did you observe what the condition of the defendant was?

A Yes; his face seemed to be pretty bad.

Q That wont do; tell us what you saw.

A His face was all full of blood, and he had black eyes, and his nose was out.

Qv Yes. A. That is all I remember.

C r o s s - E x a m i n a t i o n .

BY MR. WALSH:

Q Did you see this man struck with anything but the human

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fist? A. No.

Q And by the boy, O'Hara? A. And Teatom.

Q And Teatom? A. Yes, sir.

Q Did you see any one of them throw a billiard ball?

A. No.

THE COURT: There has not been a particle of evidence that there was one thrown. You need not anticipate.

NATHAN KASKEL, being called as a witness on behalf of the Defense, was duly sworn, and testified as follows:

D i r e c t E x a m i n a t i o n .

BY MR. LEVY:

Q Now, as preliminary, Nathan, you were a witness before the Coroner? A. Yes, sir.

Q And you were a witness before the Grand Jury? A. No, sir.

Q You were not? A. No, sir.

Q Have you been in the District Attorney's office?

A Yes.

Q Did you ever tell your story there? A. Yes.

Q Did they subpoena you here? A. Not to-day.

Q Did they yesterday? A. No, sir.

Q When did they subpoena you here last?

A At the time before the grand jury, and the case didn't come up.

- Q They did subpoena you and you were not called, before the grand jury? A. No, sir.
- Q Did you tel l any one im the District Attorney's office what you knew of this case? A. Yes, sir.
- Q Whom did you tell? A. Assistant District Attorney Pierce.
- Q Did you sign a stateme t in the office of the District Atorney? A. No, sir.
- Q Where do you live? A. 750 Columbus Avenue.
- Q And what is your business? A. Fish and oyster man.
- Q Domyou work? A. Yes.
- Q Where? A. John Rowland's.
- Q Where is that place? A. 763 and 765 Columbus Avenue.
- Q Were you playing pool in that room on the night of the 5th of January, 1901? A. Yes, sir.
- Q With whom? A. John Collins.
- Q A friend of yours? A. Yes, sir.
- Q Is he here? A. No, sir.
- Q About how many young men were in that place at that time? A. At that time, around 25; something like that.
- Q Do you, know O'Hara? A. Yes, sir.
- Q How long had you known him? A. Around 5 years, or 6 years.
- Q What did he work at? A. I never knew what he worked at.
- Q Was he about your build? A. Well, he was about the same, yes.

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BY THE COURT:

Q Lager, or smaller?

A I don't think he was as larhe as I am.

BY MR. LEVY:

Q Was he as broad as you? A. Well, he was as broad as me, yes.

Q And were you a fr iend of his? A. Oh, yes, sir, I was a friend of his.

Q And a good many boys in that place were acquaintances of yours and his? A. Yes, sir.

Q You knew where he lived, did you not?

A I didn't know where he lived until after ---

Q After the shooting? A. After the shooting.

Q Now, we want to get the truth of what happened there that night? A. Yes, sir.

Q And I am not going to suggest anything to you, and I want you to tell your story to His Honor, and the Judge, and these gentlemen of the jury. Start from the time when Teatom and O'Hara came into the place, up to the end of the thing, and give us all the details you can.

A. I was playing pool with John Collins, at the first table as you open the door, when Teatom and this gentleman O'Hara came in, and O'Hara shook hands with me. It was the first time I had seen him in seven or eight months. He asked me about a friend of mine, by the name of James Curry, and I told him that he was on the road, with the

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Rentz-Santley Burlesque Company. From there he walked over to Mr. Cantor, who was playing, with Patrick McGovern, at one of the tables, over near the other end of the room, and I heard Teaton ask Mr. Cantor if he could play pool, and Mr. Cantor says no; that it was too late; he says, "I got orders for the place to close up at 12 o'clock, and it is pretty near five minutes to 12 now. So he says, "Boys"---

Q Who says? A. Cantor says, "Boys, this is the last game."

Q Whom did he say that to? A. He said it to Collins and myself.

Q Go on.

A So Teatom walks over to the corner of the room where the desk comes, and there were cues there with no tips, and he takes one of them cues, with no tip on, right over to the open-game table, and he wanted to play.

Mr. Cantor says, "No, I don't want you to play", or something that way; I can't exactly remember what the words were; and with that, Mr. Cantor told him to put down the cue; and I couldn't hear the words that were said by Mr. Teatom after that.

And Mr. Cantor caught hold of his coat or around his collar somewheres, and told him to put down the cue, and he says no --- I can't say if he said no, or whatever he said.

With that, he goes to push him out, and with that O'Hara goes over.

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Q Goes over to whom?

A To Mr. Cantor, and Mr. Cantor grabbed him, and with that he was pushing the two of them towards the door, when this Teaton fell or slipped -- I couldn't say whether he got down, and Mr. Cantor kind of dragged him for about three or four feet, may be five feet, and pretty near to the door; and when they got up --- (the witness hesitates).

Q Go on.

A. Let me see, now. It was right at the table where I was playing.

Q Who came to the table? A. The three of them were standing right at the table where I was playing.

Q Yes.

A. (Continuing.) When Teatom makes a pass at Mr. Cantor.

Q What do you mean by making a pass?

A A blow at Mr. Cantor's face, but I couldn't say whether he hit him or not; and Mr. Cantor comes over to the other end of the room with Mr. Teatom and Mr. O'Hara still following him up and punching him.

Q Was Cantor running away?

A He was not running, but walking over to the other end of the room; and, with that, he was hit, at the table, at the last table in the building, he was hit in the face by Teatom; and with that he goes running away from him again, when he slips; and when he slips he falls on his one knee and hands.

Q He starts to run away again; in which direction did he start to run? A. Towards the door.

Q Cantor did? A. Yes, sir, when he stumbled.

Q Go on. A. And then he slipped, and when he slipped, money came out of his pocket, and I started to pick the money up. I picked up two cents; and with that, the three of them were at the door; and the three of them were so close together that they separated again, and Teatom --- I wasn't sure if it was Teatom --- picked up the two balls off the table where I was playing; -- or may be it was before that; I know he picked up the balls.

Q What did he do with them?

A He held them in his hands. I didn't see what he done with them, whether he put them down or where he put them.

So, Fitzgerald, some other young men and I, put some of the balls in the pocket, and put the rest on the other tables.

Q What were they doing in the meantime; punching each other?

MR. WALSH: Don't suggest.

THE COURT: He says he didn't take notice.

THE WITNESS: I didn't take notice what they were doing then, when I was picking up the money. I happened to see the pistol pointing toward the floor, and it was fired.

BY MR. LEVY:

Q Which way was the pistol pointed? A. Down.

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BY THE COURT:

Q Down toward the floor?

A Down toward the floor. After the shot was fired, four or five boys went over to look in the floor to see if the bullet went in the floor.

Q Did they find it? A. No, sir. And, after he was shot, he opens the door and runs downstairs, and Mr. Teatom followed him; and when he got downstairs, Arthur Dunn came up and said he was shot.

BY MR. LEVY:

Q Did Mr. Teatom come back? A. Yes, sir.

Q What did he say or do?

A He came back and says something to Cantor about fighting. I couldn't exactly catch what it was.

Q I forgot to ask you, what was Cantor's condition of face and body, so far as you could see?

A His nose was kind of split here (indicating), and his two eyes were pretty bad, and blood was all over his face -- well, all around here (indicating), running down from his nose and the side of his face.

C r o s s - E x a m i n a t i o n .

BY MR. WALSH:

Q Were you examined before the Coroner, did you say?

A. Yes, sir.

Q Were you examined before District Attorney Pierce?

A Yes, sir.

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Q Did you ever say before, in any of your testimony, before the Coroner or before Mr. Pierce, that the pistol was pointed toward the floor? A. No, sir, I don't think I did.

R e - D i r e c t E x a m i n a t i o n .

BY MR. LEVY:

Q Why did you not? A. I will tell you why. At the Coroner's office I wasn't asked the questions that I am asked now. In the District Attorney's office I wasn't asked the same questions.

Q Were you asked which way the pistol was pointed?

A No, sir, I don't think I was.

Q At the Coroner's office did you testify --- (to The People's counsel), You will find that at the 10th page.

MR. WALSH: I know where it is to be found.

Q (Continuing): "Just as he" --- meaning Teatom -- "got ~~down~~ done punching, Mr. O'Hara began to punch"?

A Yes, sir.

MR. LEVY: So they took turns at it. I think you may examine.

R e - E x o s s - E x a m i n a t i o n .

BY MR. WALSH:

Q Did you not say in your examination, "I saw the flash coming from the pistol"? A. Yes, sir.

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Q Why didn't you say then that you saw it pointed down to the floor? A. I saw the flash, as it was pointed toward the floor.

Q Why didn't you say then that the pistol was pointed toward the floor? A. I didn't think of it.

Q Have you seen Mr. Cantor since the trouble? A. Yes, sir.

Q Often? A. No, sir.

Q How often? A. Yesterday was the first time --- no.

Q Did you go away with him yesterday? A. Yes, sir. He met me in front of the store.

BY MR. LEVY:

Q In front of where? A. In front of the store where I work; and he brought me down here.

BY MR. WALSH:

Q Brought you down?

A He didn't bring me down. I was already subpoenaed.

Q Subpoenaed by The People? A. Yes, sir.

Q And he was afraid you wouldn't come down, and he brought you down?

A. He said, "Are you going down to court?" I says, "I am after having a little trouble with my boss." And I went in and told ~~hm~~ him, and came down with him.

Q You came down with Cantor? A. Yes.

Q You were already subpoenaed by The People? A. No, sir.

BY MR. LEVY:

Q By whom? A. I don't know who subpoenaed me. It was

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on the bill, in the store, when I got up Monday morning.

Q Is this it? A. Yes. It has got a little hole in the corner.

MR. LEVY: There (indicating) is the hole.

BY MR. WALSH:

Q You came down here with Mr. Cantor, the defendant?

A Yes.

Q Did you go away with Mr. Cantor? A. No, sir.

Q Did you see Mr. Levy?

A No, sir. I only asked him about money matters, to come down here. I couldn't get my car fare always to come down here.

Q Did you get your car fare from him? A. No, sir.

Q Did you see Mr. Simpson? A. Who?

Q Mr. Simpson, Mr. Levy's assistant?

A Yes, he handed ~~me~~ ^{me another} subpoena for to-day.

Q Did you talk to him about this matter? A. No, sir.

Q Did you talk to Mr. Cantor on the way down? A. No, sir.

Q Didn't say a word about the case?

A The only thing I asked him was how he thought he would make out, and he said he didn't know.

Q Is that all? A. Yes, sir. I was standing outside, on the elevator.

Q Was that all you had to say to Mr. Cantor?

A That is all I remember.

Q Did you ever visit his house? A. This morning, for the

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Q Where do you reside? A. 2 05 Second Avenue.

Q In this city? A Yes, sir.

Q What is your business? A. Manufacturer of billiard tables.

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

Q How long have you known him? A. Three years.

Q Do you know people who are acquainted with him?

A Yes, sir.

Q Do you know what his reputation is in this community for peaceableness and quietness? A. The very best.

Dross- Examination.

BY MR. WALSH:

Q Where did you meet him?

A I met him here in New York, and he done business with me, off and on. I know him --- have visited him in his place of business.

Q Where did he carry on business? A. He carried on business in some other places, too; Bergen Beach, for instance.

Q Where else? A. I don't know where else, but I knew him before, both him and his brother.

Q How often did you see him?

A Eight or ten or twelve times a year.

Q And do you know what his associations are at night?

A That I don't know.

J O H N S Y L V A, called as a witness on behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n.

BY MR. LEVY:

Q Mr. Sylva, where do you live?

A 325 Fourth Street, Brooklyn.

Q Are you connected with the New Haven Clock Company?

A Yes, sir.

Q Where is your place of business?

A 46 Maiden Lane.

Q Do you know the defendant?

A I met him about five years ago.

Q You have known him, then, five years? A. Yes, sir.

Q Did you meet him frequently? A. Yes.

Q And have you had frequent opportunity of observing him in his conduct? A. Yes.

Q Do you know what his reputation is in this community for peaceableness and quietness?

A I always met him as a very quiet man.

Q Not quarrelsome at all, or cross?

A Never heard him say a cross word.

(No cross-examination.)

J A C O B J. V A N D E R B U G L E, called as a witness on behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n.

Q BY MR. LEVY: Where do you live? A. 101 West 117th

Q Are you connected with the firm of Greenebaum Brothers?

A Yes, sir.

Q Shirt-waists? A. Yes, sir.

Q Wherrabouts? A. The New York office is at 14 Lafayette Place.

Q And the main office is in Philadelphia? A. Yes, sir.

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

Q How long? A. Three or four years.

Q Have you been frequently with him? A. Yes.

Q And you have had an opportunity of observing his conduct and behavior? A. Yes, sir.

Q Do you know a great many people who know him?

A yes, sir.

Q Do you know his reputation for peaceableness and quietness? A. Very good.

Q Is he quarrelsome at all? A. Never saw him so.

(No cross-examination.)

P A T R I C K C. K E L L E T T, called as a witness on behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n.

BY MR. LEVY:

Q Where do you live? A. I live in Brooklyn, sir.

Q Where? A. Diggs Avenue and South Fifth Street.

Q What is your business? A. Manufacturer.

- Q Of what? A. Sterling novelties, pens and pencils.
- Q Where is your place of business? A. North Fourth Street, 176.
- Q Williamsburg? A. Yes, sir.
- Q Do you know the defendant? A. Yes, sir.
- Q How long have you known him? A. About nine years.
- Q Did he ever work for you? A. For six years.
- Q And you have had opportunity for observing his conduct and character? A. Very much.
- Q Do you know his reputation in this community for peaceableness and quietness? A. Yes, sir.
- Q What is it? A. I always knew him to be a peaceable man.
- Q Is he quarrelsome at all? A. Not to my knowledge.
- Q Always peaceable and quiet? A. Yes.

(No cross-examination.)

H E N R Y M c G O W A N, called as a witness on behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n.

BY MR. LEVY:

- Q What is your name? A. McGowan.
- Q First name? A. Henry.
- Q Are you the boy known as "Paddy" McGowan? A. Yes, sir.

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Q Why do they call you "Paddy", if your name is Henry?

A You have got me now.

Q Were you a witness at the Coroner's Court?

A Yes.

Q Did you testify there? A. No, sir.

Q Were you subpoenaed to go there? A. No, sir.

Q You were not called? A. No, sir.

Q You were subpoenaed before the Grand Jury? A. No, sir.

Q And now you come here by subpoena from the defendant?

A Yes.

Q Did the District Attorney ever listen to your story?

A No, sir.

Q You were never requested to go up there? A. No, sir.

Q Who listened to your story; who heard it? A. No one.

Q Did Judge Lynn; did you tell him your story, the former lawyer of this defendant? A. No, sir.

Q Were you there on the night of the shooting? A. Yes.

Q The fifth of January, 1901? A. Yes, sir.

Q That was a Saturday night, wasn't it? A. Yes, sir.

Q Now then, you tell us, if you please, what you saw and heard?

A It was about 10 minutes to 12, and Mr. Cantor and I were playing pool at the time these young men came in, and they stopped at the first table and had some words with two young fellows playing at that table.

Then they came over to Mr. Cantor, and wanted to know if they could play a game of pool.

BY THE COURT:

Q Did both speak at the same time? A. No.

BY MR. LEVY:

Q Which one?

A Teatom; he wanted to know if he could play ~~unk~~ a game of pool. Mr. Cantor said no, it was getting too late; and with that they sat down, alongside where we were playing, and Teatom asked him again, and he said no.

From there they went over to the open-game table and started to take a cue from the rack.

BY THE COURT:

Q Who? A. Teatom.

Q That is not "they", is it? A. (No answer.)

BY MR. LEVY:

Q Mention names.

A. Teatom took a cue from the rack, and Cantor went over and grabbed him by the collar of the coat, and dragged him towards the door; when he got near the door, Teatom slipped, and Mr. Cantor dragged him about three feet.

So a young man interfered, by the name of Mr. Dunn.

Q What did Dunn do?

A Mr. Cantor had hold of Teatom, and Dunn tried to separate them.

Q Where was O'Hara then?

A Standing alongside of Mr. Cantor. So they had a few words there.

BY THE COURT:

Q Who? A. Teatom, O'Hara and Cantor, had a few words, and I didn't hear what they said, and then I saw the three of them walking over to the table where you go into the door, and I saw Teatom put down his hands and pick up billiard balls, and I think it was Dunn -- I am not sure, thought-- took the billiard balls out of his hands.

With that, Teatom made a strike at Cantor, and O'Hara jumped and helped him, and they landed him about fifteen feet up the room; and Cantor was walking back, and with that I saw Mr. Cantor fall on his front knees, and I went out the front door, and as I got out of the door I heard a shot.

Q Why did you go out the door?

A I didn't want to get into trouble.

Q You had not done anything?

A No, but there would have been some fun if they started to throw them billiard balls around.

C r o s s - E x a m i n a t i o n .

BY MR. WALSH:

Q Did any one throw a billiard ball? A. No, sir.

THE COURT: He has not said they did. He said they were taken away.

BY MR. WALSH:

Q Taken away by Dunn? A. Yes, sir.

R e - D i r e c t E x a m i n a t i o n .

BY MR. LEVY:

Q Did you know anything about billiard balls having been thrown in that place?

THE COURT: Excluded. You mean on that occasion?

MR. LEVY: No, not on that night.

THE COURT: No. I will let you show that billiard balls were thrown that night, but not on some other night.

MR. LEVY: Very good, sir. Your Honor will kindly allow me an exception, in order to preserve my record?

Could Your Honor see your way clear to take a recess now?

THE COURT: Yes, I will do that.

MR. LEVY: I intend to call the defendant, and would like to get the sergeant here, whom has been sent for, and would like to present his evidence in a logical way.

THE COURT: I will take recess now if you would like to have it so.

The Court admonishes the jury, in accordance with

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Section 415 of the Code of Criminal Procedure.
Recess until 2:15 P.M.

AFTER RECESS.

T H O M A S H A L L, called as a witness on behalf of the
Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n .

BY MR. LEVY:

Q Where do you live?

A 106 West 103rd Street.

Q What is your occupation? A. Doorman in the 30th Precinct.

Q Were you such doorman in the 30th Precinct Police Sta-
tion on the night of January 5th, 1901? A. I was.

Q Do you remember that the defendant at the bar was brought
into the station house? A. I do.

Q Did you have control and custody of him at that time?

A I did.

Q From what time until what time?

A From the time that he was arrested until --- well, it
must have been half-past seven.

Q That is from about midnight on January 5th till half-past
seven January 6th? A. Yes.

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Q Did you observe the physical condition of the defendant?

A I had a talk with him at the prison gate, and saw that he had some cuts and bruises on his head.

Q Can you describe his appearance?

A Well, he was pretty well frightened. I asked him how he came to do the shooting, and he told me that it was near closing time, and that he had ordered those young men out, and one of them says, "Come on, give me a cue"; I don't care about what his orders are." I think he said he didn't care about his orders, or something, and he went and got a cue. So he remonstrated with him.

THE COURT: I think you are getting in illegal evidence. The defendant can tell that. You are getting his declarations in evidence; I don't know on what theory.

MR. LEVY: I didn't ask for that, but, inasmuch as the witness stated it, I saw no harm in it.

Q I wanted to ask you, Mr. Hall, simply as to his physical condition and appearance.

THE COURT: Not conversation.

A They had hit him two or three times in the face, and he was cut about the eye.

Q I want you to describe his appearance. If you look at me you could tell whether I have got glasses and hair on my head. Put yourself back to that night, and tell what the defendant looked like.

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A. He looked as if he had been in a scrimmage.

Q That is so general. Did he have a cut on his head?

A Yes, sir.

Q Where? A. Over his eye.

Q Was it a deep cut? A. No, it didn't seem to be.

Q Was there a lot of blood? A. No.

Q Where else did he have a cut?

A He didn't have any that I observed.

Q Did he have blood on his face and any other place?

A No.

Q Was his nose bleeding? A. Yes, his nose was bleeding.

Q Was he bleeding from the mouth? A. I didn't notice. I was busy, and didn't have time to look him over much.

Q His eyes? A. Were black.

Q Puffed up? A. Yes, puffed up pretty well.

Q And do you know whether, during the night that you had charge of him, whether or not he had a hemorrhage?

A I knew nothing of it.

Q Who was the sergeant at the desk that night?

A I think it was Sergeant Gallagher.

(No cross-examination.)

J O H N G A L L A G H E R, called as a witness for the Defense, being duly sworn, testified as follows:

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D i r e c t E x a m i n a t i o n .

BY MR. LEVY:

Q You were a sergeant attached to the 30th Precinct on the night of the 5th of January, 1901? A. Yes.

Q And were at the desk on that night? A. Yes, sir.

Q This blotter which I show you, and which has been marked for identification, "Defendant's Exhibit B", is it the official blotter of that stationhouse? A. I think so.

Q Look at it, Sergeant? A. '(The witness complies.)

Q And the writing contained therein is your writing?

A Yes, sir, that is my writing.

Q And that entry which has been marked for identification, was that made as a result of any information received in the presence of the defendant? A. Yes, sir.

Q Received in the presence of the defendant from whom?

A From Officer McHugh.

Q And made in front of the desk? A. Yes.

Q At the time when the prisoner was arraigned?

A Yes, sir.

Q And when you took his pedigree? A. Yes.

Q And that is what you wrote down then? A. Yes, sir.

MR. LEVY: I offer it in evidence.

THE COURT: Do you object to it?

MR. WALSH: Let me see what it is. (After inspecting:) No objection.

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Received in evidence, and marked, "Defendant's Exhibit No.2.")

MR. LEVY: With your kind permission, Friend Walsh, I will read it to the jury:

"12:15 A.M., David Cantor, 37, nationality, Russia. Nationality of parents, Russia. Calling, Billiards; Married or Single, Married; Read and Write, yes; Residence, 138 West 99th Street."

Then, in red ink, which has been stricken out, "Felony assault."

Underneath that, written in red ink, is the word, "Homicide."

"People of the State of New York"-- in red ink; and alongside of that, in red ink, "\$5000, answer. Coroner Zucca."

BY MR. WALSH:

Q You didn't make that entry that night? A. No.

MR. LEVY: It was probably made at the time of the arraignment of the defendant.

"Name of complainant, George O'Hara, Residence, 643 Amsterdam Avenue. Officer McHugh, Disposition, \$5000, answer, Coroner Zucca."

Then there is an entry, "Held without bail: Magistrate Pool."

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Under the head of "Remarks", it gives the place here.

"Prisoner is proprietor of billiard parlor at 2630 Broadway, and at or about 11:55/ P.M., while ordering complainant and some others from his place of business, in order to close for the night, complainant refused to leave, and an altercation arose, and prisoner admitted that, in self-defense, he shot the complainant in the abdomen, with his 5-shooter, No.32 caliber revolver, which was taken from his desk at the time, one chamber being empty. Revolver brought here by Officer William McHugh.

O'Hara identified Cantor and was removed to J.Hood-wright Hospital immediately.

Died in hospital, 11 A.M., 7th instant."

Then there is a remark here, in red ink, "Witnesses all committed to House of Detention."

BY MR. LEVY:

Q Now, Sergeant, just one or two other questions, and you can go back to your duties. Do you call to mind the appearance of this defendant when he was arraigned before you at the desk? A. Yes, sir.

Q Wont you be good enough to tell His Honor, the Judge, and these gentlemen of the jury what you observed of his appearance?

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A. He looked to me excited. He had a slight mark on his face, I think, near the eye. He looked pale, but would answer the usual questions outside of that. He said he had to defend himself.

Q Do you agree with the other witnesses that his eyes were discolored?

MR. WALSH: I object to whether he agrees with the other witnesses.

BY MR. LEVY:

Q Never mind agreeing with the other witnesses. Were his eyes discolored?

A I don't remember that.

Q Was the blood coming from his nose?

A I don't know about the nose. He had a mark near his eye, on the face.

Q Where? A. Near the cheek bone.

Q The doorman says over his eye?

A It might be over the eye.

Q The fact is, you have a sort of hazy recollection of it? Isn't that it? A. I remember the mark near his eye. He put his hand up/to it.

Q Was it bleeding? A. It was discolored. I don't remember it bleeding.

Q Did he have a mark on his body?

A I don't remember that.

Q You don't remember whether blood came from his mouth?

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A. No.

Q You didn't know the deceased, did you? A. No, sir.

Q Or his family? A. No, sir, I didn't know either one.

Q Were you in charge of the desk on the night of December 29th, the Saturday night preceding? A. I don't remember.

Q Wont you be good enough to look at the blotter and tell me?

A Yes, sir; I could tell better then. (After looking:)
No, sir.

Q Who was in charge that night? A. Sergeant James H. Kelly.

Q Is he here? A. No, sir. He was transferred to the 7th Precinct. It is his writing; I identify it.

Q Where is the 7th Precinct?

A The 7th Precinct is in Madison Street.

Q Is Officer merz connected with your platoon there?

A Yes.

(No cross-Examination.)

Clay. follows.

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D A V I D C A N T O R , the defendant, ^{and duly sworn} called ^A as a witness
in his own behalf, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. LEVY:

Q Now, David, you can be a better advocate for yourself than
I can in this case, and I want you to speak up loud and
distinctly, so that all these gentlemen can hear what you
say. How old are you? A 38.

Q And, are you married? A Yes, sir.

Q And how long have you resided in the United States?

A 19 years.

Q How long have you been married? A 14 .

Q 14 years? A Yes, sir.

Q Have you any family? A Yes, sir.

Q And how many children have you? A Three.

Q What are their ages, please? A 13--

Q Boys or girls? Tell us as you go along. A Girl 13,
boy 11, and another girl 6.

Q At the time of your arrest, where did you live? A 138
West 99th-street.

Q Do you still live there? A Yes, sir.

Q You were the proprietor of the billiard parlor situated at
2630 Broadway? A Yes, sir.

Q How long had you been owner of that parlor, up to the fifth

day of January? A Since September 15th.

Q How many tables did you have in that room? A Six.

Q All pool tables? A Yes, sir.

Q The diagram which is in evidence (indicating Defendant's exhibit one), is that a fair representation of the situation of those tables? A Yes, sir.

Q You sold no liquor in that place? A No, sir.

Q You had a cigar stand in it? A Yes.

Q And sold cigars and cigarettes? A Yes, sir.

Q Before the night of the 5th of January, had you had any difficulty— now, don't answer, if this question is objected to, until his Honor says you may— had you had any difficulty with any persons in that place; or had any breach of the peace been committed in your premises?

MR. WALSH: Objected to.

THE COURT: I will exclude that and allow you an exception.

BY MR. LEVY:

Q Outside of that general question, here is the point I want to ask you specifically: On the night preceding Saturday, the 5th of January, 1901, was there a disturbance in your premises, 2630 Broadway, in this city; which resulted in the apprehension and arrest of several persons for breach of the peace there, and in which the deceased George O'Hara

was included; and were these persons taken from your place by the police and subsequently arraigned before a Magistrate upon the charge of creating a disturbance in your premises?

MR. WALSH: I have no objection to that, your Honor. (To the witness) If George O'Hara was there, say so. I have no objection.

MR. LEVY: Don't get excited about it.

THE COURT: The District Attorney having consented that you may ask the question, I will allow it to be asked.

A I couldn't positively swear that George O'Hara was there at that time.

THE COURT: Then, I exclude the question.

MR. LEVY: Your Honor will give me an exception.

THE COURT: Yes. The witness states that he cannot positively swear that the deceased, George O'Hara, was there at that time.

MR. LEVY: I ask your Honor to believe that I do not ask these questions to waste time. It is simply my idea— I may be wrong.

THE COURT: I understand that.

THE WITNESS: I can swear, though, that I—

THE COURT: No; only swear when you have been

asked questions.

BY MR. LEVY:

Q Did you know the deceased, George O'Hara, before the night of the 5th of January? A Yes.

Q Did you ever see him in your place before that night?

A Yes, sir.

Q When? A About two or three weeks previous to the last occurrence.

BY MR. WALSH:

Q Three weeks previous? A Three weeks previous; yes, sir.

BY MR. LEVY:

Q Did you eject him from your premises at any time prior to the 5th day of January? A Yes, sir.

Q When? That is three weeks previous to this last occurrence?

MR. WALSH: I object..

THE COURT: I do not see what relevancy it has here.

MR. WALSH: I withdraw the objection.

BY THE COURT:

Q Then, you may state why you ejected him three weeks previous to this shooting. A George O'Hara and about four more people played a game of pool. After they had played a game, I went up to the table to set the balls up again,

and I asked them to settle, and they refused, and I told them they can't play in the place any more, and to get out of the place. At that, they refused, and I had to use force to get them out.

BY MR. LEVY:

Q And you did use force to put them out? A Yes, sir.

BY THE COURT:

Q And the others with them? A Yes, sir; the whole four of them .

BY MR. LEVY:

Q At that time, was anything said or done by the deceased in regard to that? A The following day--

Q Well, tell us about that. Did you see the deceased?

A I didn't see the deceased, but I saw two of the others that were with him the night I put them out.

Q And where did you see them? A On Amsterdam avenue.

Q And what did they say?

Objected to. Question excluded.

Exception.

Q Did they threaten to return to your place?

Objected to. Excluded.

Exception.

Q When O'Hara came in to your premises on the night of the 5th of January-- do not answer until the Judge says you

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may-- did you know the man who was with him, Teatom?

A I did not.

Q Could you distinguish him as being one of the other ones-- one of those who had been ejected from your premises the three weeks before? A I could not.

Q Could you tell whether he was one of the other three or four who had been put out by you before? A I don't remember.

Q You told us just now that three weeks before you put out this O'Hara, with three or four others? A Yes, sir.

Q Now, did you recognize Teatom, who was with O'Hara on the night of the 5th of January, as being one of the same persons who had been in your premises these three weeks before, and whom you had put out; did you recognize him as one of the same persons? A I couldn't recognize him; there were so many in the room at that time.

Q You remember whom you put out? A I remember one was a stranger.

Q Do you remember that Teatom was one of those three or four that you put out, or not? A I don't know.

Q Do you understand my question; Teatom came in with O'Hara?

A Yes, sir.

Q Was Teatom one of those there that you put out the three weeks before, or not; do you understand me? A Yes, I

understand you; but I don't remember whether Teatom was one of them or not.

Q Now, Mr. Cantor, you had had considerable difficulty, had you not, in those premises, in your place? A Yes, sir.

MR. WALSH: That is objected to.

Q (continuing) -- in the suppression of disorder?

MR. WALSH: Objected to.

THE COURT: If it is objected to, I will exclude it.

MR. LEVY: Is it objected to?

MR. WALSH: Yes.

THE COURT: I exclude it.

MR. WALSH (continuing): Unless you show it was O'Hara. If you do, I have no objection.

MR. LEVY: I am following the rule in the Rector case.

THE COURT: Whether he had difficulty with people before the fifth of January in his place, I will exclude.

MR. LEVY: Exception.

Q Did you have occasion before the fifth of January to report to the police of the precinct in which your premises are situated a disturbance which had been committed in your premises, or which had been threatened to be committed in

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your premises, before the 5th of January, 1901?

MR. WALSH: Objected to.

THE COURT: Unless you show that O'Hara was there, I will exclude it.

MR. LEVY: I want to put it in. If it is not connected, your Honor may strike it out.

THE COURT: No; I will not let you do it in that way.

MR. LEVY: Your Honor rules the question out?

THE COURT: Unless you connect the deceased, O'Hara, with it.

MR. LEVY: Would your Honor rule upon that question?

THE COURT: Unless the deceased is connected with the persons referred to by your question, I will exclude it.

MR. LEVY: I take an exception.

Q The premises occupied by you were frequented, were they not, by young men resident in that neighborhood? A Yes, sir.

Q And about that neighborhood? A Yes, sir.

Q Before the fifth day of January, had you reported to Captain Schmittberger, of that precinct, that disorder had been committed by any person or persons whom you had seen in the

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company of the deceased?

Objected to. Excluded. Exception.

MR. WALSH: I have no objection, if he can trace it to the deceased; none in the world.

MR. LEVY: One other question with that:

Q Among the persons who were arrested in your premises on the 29th of December, 1900?

MR. WALSH: There is no evidence before this Court that anybody was arrested on the 29th of December, 1900, at that place.

THE COURT: I cannot pass upon the question until I hear it.

BY MR. LEVY:

Q Did you see the following persons, whose names I will mention, in the company of the deceased, O'Hara, or in the company of William Teatom, at any time prior to the 5th of January, 1901, to wit: William Katzenberg, Schuyler C. Bischoff, or George Martin?

Objected to. Excluded. Exception.

Q Did these three persons whose names I have mentioned, in the presence, and joining in concert with the deceased, commit any breach of the peace in your premises on the day they were arrested?

THE COURT: When?

MR. LEVY: At any time prior to the 5th of January, 1901, particularly on the night of December 29th, 1900.

THE COURT: And previous to the alleged occurrence mentioned in this indictment?

MR. LEVY: Yes.

MR. WALSH: The counsel pretended to read the name of George O'Hara from this book. It is not in it. I want him to show it, if it is. (To defendant's counsel) You pretended to read his name there.

MR. LEVY: Do you try cases in that way in Chatham street?

MR. WALSH: We try cases that way in this Court.

Question excluded. Exception.

BY MR. LEVY:

Q Now, Mr. Cantor, on the night of Saturday, the 5th of January, 1901, when the O'Haras and the McGowans, and the Walshes, and the Fitzgeralds were in your place, your place was pretty well crowded?

THE COURT: I do not think there is any evidence which warrants your question.

MR. LEVY: The witnesses have given their

names.

THE COURT: But not the O'Haras and Walshes. Your question implied that there were several of each.

MR. LEVY: Perhaps I should have used the singular number. There are some of them very singular.

Q On that night, your place was pretty well crowded? That is the point I want to get at. Was it crowded? A Yes, sir.

Q And what time was it, do you recollect, that the deceased came in, with his friend, Teatom? A About eight minutes of twelve.

Q Now, in your own way, I want you to tell his Honor, the Judge, and the jury what occurred; what was said, what answer was made; and don't you be nervous, and don't be frightened, but tell your story in your own way, without any leading by me, from the beginning to the end.

A On January 5th, about eight minutes of twelve, I have notified everyone in the room that was playing pool that that is the last game, as I must close up at twelve o'clock on the minute, as I have been notified by Captain Schmittberger to close the place up.

I was playing pool with McGowan on one of the tables.

when the door was opened, and O'Hara and Teatom came into the room. They walked up to me, and Teatom says, "We want to play a game of pool." They were under the influence of liquor, I noticed the moment they came up to me.

I says, "Boys, I can't let you play pool here any more tonight," as three of my tables were covered up, and the rest of the tables were occupied, too. They were playing the last game.

Teatom says, "We will play pool." He goes over to one of the racks, and takes a cue down, next the table where I was playing, and O'Hara took a cue.

I walked up to them and told them to put those cues back. They didn't put them back, and I got hold of the cues, and they let go, and I put them up in the rack.

I turned around to keep on playing my game with McGowan. They walked up to the second rack, and took a cue down, and I walked up to them and said, "Boys, I don't want any disturbance in here. It is close to twelve, and I must close up;" and I got the cues away and put them up, and I went back to my table. And they walked over to the open game table, between my desk and one of the windows. There was a lot of cues standing there with no tips on, and Teatom got hold of a cue, and O'Hara got hold of a cue.

I walked back towards my desk, and they started to

holler and use all kinds of language. And I said, "Boys, you must get out of here. I had trouble here before with this gang, and I want you to get out of this place;" and I got hold of the cue to take it away.

O'Hara dropped his cue, but Teatom held on his, and I took them with one hand. Teatom was on the left side. He held on, and I got hold of Teatom with one hand and O'Hara with the other, and I pushed them toward the door from my desk, and when I got within a few feet of the door, Teatom, holding on to this cue, tripped on that cue, and fell down, and I dragged them up towards this door here (indicating), when this man, Dunn, in court here, ran over to me, and says, "Let them go, and they will go out."

I let them go. As soon as I did, Teatom jumped up. There was a pool table on the right side as you go out the door. There was two men playing on that table. So he grabbed a ball in each of his hands, before I had a chance to turn around, and delivered a blow on the bridge of my nose with this ball in his hand, which filled my eyes up, so that I could not see anyone in the room at all.

As soon as he did, O'Hara jumped in, and they were fighting. They struck at my face. They kept on until they got me up to the center of the room, where the posts were.

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As I went around the post, a blow was struck me in the pit of the stomach, which brought me down to the knees; and I straightened up, and I ran around from the post to the back of the table, trying to get around to the door.

They ran around the other way, and cornered me in the corner of the room, and were delivering blows on me as fast as they could.

When they got me into this corner, Teatom says to O'Hara, "Give it to that Jew son of a bitch. We may as well get through with him now." And I drew this revolver, without any intention of hitting Teatom, O'Hara, or anyone in the room, and I fired it toward the floor. I knew the policeman was changing off at that point, 100th-street and Boulevard, at that time. And after I fired the shot, O'Hara ran out, and Teatom followed him. I didn't know that anybody was hurt, and neither did anybody in the room. There must have been about twenty people in the room. They said he didn't get hurt, and they were looking for the bullet in the floor, when a young man rushed up and said, "O'Hara is shot."

As he did, Teatom came in, and said, "You Shebney son of a bitch, you come down stairs, and I will kick the God damned head off you." I didn't make no answer, and he ran out again, and in the meantime I took a book and pencil,

and was writing the names of witnesses, when Officer McHugh came in and said, "Cantor, I want you. You go down stairs." I said, "Give me a chance to take the names of the witnesses, and then I will go down with you."

Q (By Mr. Levy) Never mind that. This man placed you under arrest? A Yes, sir.

Q Now, then, did you intend to hurt or shoot anyone? A No, sir.

Q Did you aim at any person? A No, sir.

Q Why did you draw a pistol? A Because I was afraid that my life was in danger, between them, with all those balls laying around, and cues. I was struck with one ball before.

Q Was your face bleeding at that time? A My eyes was all puffed up. There was a lump on the forehead as big, almost, as a billiard ball. I was bleeding from the mouth, and my two cheek bones was all swollen out here (indicating).

Q Did you draw the pistol with the intention of shooting anyone? A No, sir.

Q For what purpose, then? A With the intention of drawing the attention of the police, to come up and help me out, as no one was in the room to give me any helping hand at all.

Q You say that that corner is the changing post for the police

about twelve o'clock at night? A Yes, sir.

Q That is the time that those attached to the Police Force change? A Yes, sir.

Q When you did shoot down to the ground, were you standing on your feet, or how were you, if you remember? A I was in a clinch. O'Hara was clinched in with me. Teatom was on the back and side of me.

Q What were they doing? A Punching me; and O'Hara was close in to me, with his arms around my hands, like that (illustrating), and I got one hand free, and I pulled the revolver out.

I was going to shoot, at first, towards the window, but all the players that was in that room were standing on that side, and when I shot the revolver I let it drop, like that (indicating), and shot like that (indicating), and then I threw the revolver away.

Q You made no attempt to shoot the second time? A No, sir; none whatever.

Q Did you attempt to fire in any way to prevent the attack on you? A Yes, sir— by all means.

Q One or two of the witnesses have testified to your running, or walking fast, away from over there to the corner of the room. A Yes, sir.

Q Did they follow after you? A Yes, sir.

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Q After they got you there, where were you? A Up against the wall. There was a door and radiator there in the corner.

(Henry
fols.)

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Cross Examination.

BY MR. WALSH:

Q Mr. Cantor, is that your pistol, (showing People's Exhibit B)? A. Yes, sir.

Q Was it loaded on that night? A. Yes, sir.

Q Well, how many bullets? A. Five bullets.

Q When did you load it? A. It was loaded from the time I bought it.

Q When did you buy it? A. I think three or four weeks previous to that.

Q Did you carry it ever since you bought it? A. No, sir.

Q When did you begin to carry it? A. It was laying on the desk all the time.

Q When did you begin to carry it? A. That Saturday I put it in my pocket.

Q That Saturday afternoon or night, which? A. Saturday afternoon before I went to the police station.

Q And you put it in your pocket on Saturday? A. Yes, sir.

Q The 5th of January? A. The 5th of January, yes, sir.

Q This occurred at twelve o'clock at night or ten minutes to twelve? A. Eight minutes to twelve.

Q You sell no liquors? A. No.

Q You sell cigars? A. Yes.

Q What price do you charge for a game of pool? A. Two and

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an half cents a cue.

Q So that a boy that had five cents could play with a partner?

A. Yes, sir.

Q One of the boys testified that he had five cents. And a boy who had eighteen cents could afford to play one or two games at least? A. Certainly; he could afford to play one or two games.

Q What is an open game? A. An open game is open to as many as want to play in a game.

Q That is, you invite customers in there to participate ----

A. There is a sign over the table, "Open Game".

Q That means that nobody can object to anybody going into that game? A. Oh, yes.

Q What means "Open Game"? A. Open game means that he is satisfactory to the players; they can take him into the game.

Q Doesn't a man that goes into an open game come in with the understanding that anybody can come in? A. He has got to ask the players.

Q Did you hear anybody ask O'Hara to play in that open game?

A. No, sir, I did not.

Q Are you positive of that? A. Positive.

Q You described Teatom as taking up one of the billiard balls and struck you with the billiard ball? A. Yes, sir.

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Q At that time, what wound did he inflict? A. On the bridge above of the nose, right here (indicating); there is a mark over the bridge of the nose left. It left kind of little lumps under there all the way round on the top bridge of the nose and under the eye.

Q Teatom struck you there? A. Yes.

Q That inflicted that wound? A. Yes.

Q Did he strike you again? A. Yes, sir.

Q Where? A. Blow upon blow.

Q I am talking about Teatom. A. In the face, sides, and stomach; any place they could hit me.

Q I am talking about Teatom? A. Yes, sir, both of them together.

Q Which blow discolored your eye? A. I don't know which one discolored my eye.

Q The one on your nose? A. The first blow that struck me I filled, I filled up with blood, I know.

Q Didn't you have a discolored eye before that night? A. No, never before in my life.

Q Wasn't it discolored before that? A. No, no.

Q Before that night? A. No, sir.

Q Where were they when Teatom took the cue down -- Teatom took the cue down, didn't he? A. There was no blow struck when Teatom took the cue down.

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- Q Teatom and O'Hara both took cues down? A. Yes, sir.
- Q And you told them to put them up? A. Yes, sir.
- Q And O'Hara put his up? A. I took it away from him.
- Q You never took it away from him, did you? A. Yes, sir.
- Q When? A. In the second rack he took a cue; he walked down to the open table and took a cue down.
- Q After you had taken it away from him? A. Yes, sir.
- Q What did you do with O'Hara's cue then? A. Took it away again.
- Q O'Hara gave it to you, didn't he? A. No; I took it away and put it up in the rack.
- Q Did he take it the third time? A. Yes, sir.
- Q Who? A. Both of them.
- Q What did you do then? A. I took it away from him. O'Hara gave his up.
- Q Did he ever after that get a cue -- after the third time? A. No, sir.
- Q Now, Teatom took a cue? A. Yes, sir.
- Q And you took it away from him? A. He would not give it up.
- Q He was the one who resisted? A. Both of them resisted.
- Q I understand you succeeded in getting O'Hara's cue the third time and put it up? A. Yes, sir.
- Q And he never took it away? A. No.

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Q But you had to have a wrangle with Teatom to get his away from him? A. Yes.

Q You dragged him along the floor? A. Push ed him; not dragged; pushed both of them.

Q Teatom fell down? A. Teatom fell down within a few feet of the door.

Q Still having hold of the cue? A. Yes, sir, still having hold of the cue.

Q You had hold of the cue? A. No, sir; I had hold of him by the coat.

Q Did you have hold of the cue at all? A. Yes, before I took hold of his coat.

Q And did you intend to put him out with the cue? A. The best way I could.

Q You intended to put him out with the cue? A. He would not give it up until Dunn jumped over and says, "Let go"; and then he dropped the cue.

Q What was the purpose of your dragging him along, to take the cue away or put him out? A. To put him out.

Q To put him out with the cue? A. Yes, sir.

Q Didn't you have hold of the cue? A. No.

Q With both hands, trying to take it away? A. I tried to take it away, but he would not give it up.

Q He was down? A. He was down on his knees and he held on.



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the end with one hand and the center part of the cue with the other hand.

Q Was he down? A. Yes.

Q And you were dragging the cue from him? A. Yes, sir.

Q And this little man, Dunn ----

MR. LEVY: Objected to.

BY MR. WALSH:

Q Did this little man Dunn come over?

MR. LEVY: I object to this.

MR. WALSH: (To defendant's counsel) Do you consider Dunn an big man?

THE COURT: You might leave the word "little" out; the jury saw him.

BY MR. WALSH:

Q Did this man Dunn come over? A. Yes.

Q And he said to Teatom, "Give up the cue"? A. No; he said to me, "Let go of them and they will go out."

Q Did Dunn get the cue? A. I don't know.

Q It was got away from him? A. I don't recollect. It did not last one minute before I was struck near the eye with the billiard ball.

Q I am talking about this cue. Some one got that cue away from Teatom? A. I don't know.

Q Do you mean to say that he had possession of that cue all

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during that fight? A. No; he had no cue in his hand after he got the balls in his hand.

Q Then he got rid of the cue before he got the balls? A. Yes.

Q To whom did he give that cue? A. I don't know.

Q Who took it? A. I don't know. Maybe Dunn took it; I don't know.

Q This man then went over to the table? A. Teatom did -- jumped from the door -- jumped up from the floor.

Q He took the billiard ball in his hand? A. One in each hand.

Q And with the billiard ball in his hand he struck you a blow in the forehead? A. Yes, sir.

Q With his fist? A. Yes.

Q With his fist? A. I don't know which way it was, but I got the blow on top of the nose.

Q He did not strike you with the ball; it was with his fist? A. The outside hand struck me.

Q You say he had the ball in his hand and he struck you with the outside of his fist? A. Yes.

Q After striking you with his fist -- it was Teatom that was striking you with his fist? A. Yes, sir.

Q (Continuing) What happened; did you strike him? A. No, sir.



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Q You did not strike him? A. I never struck a blow during the whole fight.

Q He kept on striking? A. Yes, sir, both of them.

Q And O'Hara? A. Both of them; just as fast as I went away they were after me.

Q Did O'Hara have any ball in his hand? A. I could not swear.

Q Couldn't you swear to that? A. I don't know.

Q Don't you know that he did not have a ball? A. It was coming so fast that I did not know what was coming on.

Q You did not know whether O'Hara had a ball? A. No.

Q Then why did you particularize Teatom as having a ball in his hand? A. Because I saw Teatom having a ball.

Q And you did not see O'Hara have a ball? A. No.

Q And O'Hara was the one shot? A. Yes, he was the one shot, but I did not shoot him intentionally.

Q You heard your counsel examining the jurors? A. Yes.

Q And you heard him say that your defense would be self defense? A. Yes.

Q Did you hear him say anything about accidental shooting at that time?

MR. LEVY: That is objected to as immaterial, irrelevant and incompetent, as pettifogging.

THE COURT: What his counsel says, he is not bound by.

BY THE COURT:

Q You say now it was an accident? A. Both to defend myself and an accident.

Q It was an accident and you did it in self defense, both?

A. Yes.

MR. WALSH: I will leave him there.

R e d i r e c t E x a m i n a t i o n .

BY MR. LEVY:

Q After this rigid cross examination, I will ask you another question. You shot to attract the attention of the police?

A. Yes, sir.

Q And by that you mean ---- A. That I fired the shot to the floor to draw the attention of the police to come up and stop the fight.

Q And the shooting of this young man was the result of no intention on your part to kill him? A. None whatever; not the slightest intention of shooting anybody.

BY THE COURT:

Q Do I understand that this was purely accidental? A. Yes, sir.

Q You did not wilfully shoot him? A. No, sir.

Q Did not aim at him? A. No, sir.

BY MR. LEVY:

Q You had no quarrels or rows or disturbances in your life?

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A. No, sir; I never had a quarrel with anybody.

J O H N M E R Z, a witness called on behalf of the Defense, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n .

BY MR. LEVY:

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

Q Attached to the One hundredth street police station? A. 30th Precinct, yes, sir.

Q And you were such police officer in the month of December, 1900? A. Yes, sir.

Q And were connected with that same precinct? A. Yes, sir.

Q Now, these questions that I ask you, be good enough not to answer until his Honor, Judge Cowing, says you may or may not. This is in point with what I have already asked your Honor.

THE COURT: Ask your questions and I will pass upon them.

BY MR. LEVY:

Q On the 29th day of December, 1900, were you called to the premises 2630 Broadway?

Objected to.

THE COURT: I will exclude that question.

MR. LEVY: Exception. Your Honor, it is to come within that ruling, in the Rector case. It is not

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done at all to affect the jury.

THE COURT: I understand. You ask your questions and I will pass upon them.

BY MR. LEVY:

Q Were you in those premises 2630 Broadway on that date?

THE COURT: On the 29th of December, 1900?

MR. LEVY: Yes.

THE COURT: Excluded.

MR. LEVY: I want to add to it.

Q (Continuing) For the purpose of quelling a disturbance in those premises?

Question excluded; exception.

Q Did you know a young man by the name of George O'Hara, now deceased?

THE COURT: You may answer that.

A. No, sir.

BY MR. LEVY:

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

Q Did you, in those premises on that day ----

THE COURT: December 29th, 1900?

Q (Continuing) December 29th, 1900, apprehend, arrest, and take to the police station from those premises persons who were engaged in some disorderly conduct there?

Question excluded; exception.

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Q And were there, among the persons so taken, brought there, arrested or ejected from those premises on the 29th of December, 1900, the young man George O'Hara, now deceased?

THE COURT: He says he did not know him.

MR. LEVY: The question is whether he knows if he was one of those ejected from the premises.

THE COURT: I understood him to say that he did not know the man.

A. I did not know him, no, sir.

BY MR. LEVY:

Q This question, and please do not answer it until his Honor rules -- and this is the last one in point with that, your Honor: Is it not a fact that on the 29th of December, 1900, you, at the request of the defendant here, in his premises Number 2630 Broadway, this city, arrested William Katzenberg, Schuyler C. Bischof, and George Martins, for therein, in your premises, creating a disturbance by throwing billiard balls and breaking windows and otherwise disturbing the peace on that day?

Question excluded; exception.

(N o C r o s s E x a m i n a t i o n .)

The defendant rests.

Testimony closed.

MR. LEVY: Upon the whole case, your Honor, I renew my

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motion made at the close of the People's case and upon the grounds therein stated.

THE COURT: I will deny the motion.

MR. LEVY: Your Honor will kindly give me an exception?

THE COURT: Yes.

The Court admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Thursday, April 11th, 1901, at 10.30 A. M.

C A S E C L O S E D .

The jury found the defendant guilty of manslaughter in the first degree.

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