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I N D E X.

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COURT OF GENERAL SESSIONS OF THE PEACE
City and County of New York, Part V.

2890

THE PEOPLE OF THE STATE OF NEW YORK

Before

-against-

HON. JOSEPH F. MULQUEEN,
Judge,

JAMES MULCAHEY.

and a jury.

New York, January 9, 1918.

The defendant is indicted for murder in
the first degree.

Indictment filed July 9, 1917.

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

For the People: ASSISTANT DISTRICT ATTORNEY BROTHERS, ESQ

For Defendant: C. B. F. BARRA, ESQ. and
JOSEPH ROSALSKY, ESQ.

THE CLERK OF THE COURT: James Mulcahey, if you
desire to challenge an individual juror you must do so
when he appears on the stand and before he is sworn.
Do you waive the further giving of this notice?

MR. BARRA: We do, yes.

A jury of twelve men, after having first been examined
on the voir dire, is duly sworn.

THE COURT: Gentlemen of the jury, you may come
back at two o'clock.

Remember in the meanwhile that the law forbids you
to talk about the case in any way with anyone. You
must not discuss the fact that you have been impanelled

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nor talk about any developments of the case at any time with anyone. That includes not only the members of this jury, but all strangers. The time for you to discuss it and talk about it is at the end of the case; if the Court submits it to you, and after all the evidence is in and all the arguments have been made, why then it is your duty to retire and discuss it, and not before then. Meanwhile you must keep an open mind on the question of the guilt or innocence of the defendant. Now please bear that in mind and come back at two o'clock.

TRIAL CONTINUED.

2 P. M.

Mr Brothers opens to the jury as follows:

MR. BROTHERS: May it please the Court and Gentlemen of the jury, the defendant, James Mulcahey, was jointly indicted with a man named John Collins, on July 9, 1917, by the Grand Jury of this county. He is accused as well as the other man with killing Michael J. Sweeney, at 258 Hudson Street in this county on the 7th day of June, 1917, last summer. The premises 258 Hudson Street, I believe is an old fashioned dwelling house, the ground floor of which was occupied by some young men who constituted what they called the Pioneer Social Club. These club rooms were entered from the street by going up to a stoop, into a hallway and then

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a few feet from the hall door was an entrance into what formerly I presume was the parlor of a dwelling.

On the night of June 7th a number of these young men who lived in the neighborhood were gathered in the Club and were having a beer party. Some of them had gone out and purchased a keg of beer and they were enjoying themselves there and the defendant we are told was one of those present.

The deceased, Michael Sweeney, was a truck driver, twenty odd years of age. He was not a member of this Club but was passing by between ten and eleven o'clock that night with two others, one of whom was Peter Rogers, and the other was Frank Kennedy. When they arrived in front of the Club they stopped and were invited in by a man named Keating, who was in the Club, in and out on the stoop, and they started in. Sweeney, I believe, got into the Club, but according to the witnesses, did not much more than get into the Club when a shot was fired, followed by a couple more in the hallway and Sweeney came staggering out to the street and up a little ways into a saloon run by a man named Crowley. He fell down there on the floor and it was found that he had been shot three times in the back. He was taken to St. Vincent's Hospital where he died as the result of these wounds.

There is a small stoop in front of the street door of this building, and upon that stoop were sitting two young ladies, Miss Beatrice Gallagher, who lived with her mother in one of the apartments upstairs in the same building, and a friend of hers, Miss Catherine Flynn. They had been around that summer evening in the

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neighborhood and they had just gotten there a few minutes before the shooting and sat down upon a couple of chairs and were talking. They had been there perhaps ten or twelve minutes, and during that time that they were sitting on ^{they both} chairs and knowing this defendant Mulcahey saw him come to one of the windows of the club room that looked out into the street and he invited the girls to come in and dance. They declined the invitation and sat there a couple of minutes when they saw these three men, Sweeney, Kennedy and Rogers, come along, up the stoop, and in a couple of minutes the shooting occurred.

Now, we will be unable in this case, so far as the People's case is concerned, I believe from present indications, to give you any information about anything that transpired prior to the shooting as any reason why it took place. We hope, however, to be able to establish by the witnesses that it was this defendant, aided by the man named Collins, who actually fired the shots. Of course, while it is very helpful in finding out who commits the crime, to know the reason why it was committed, it is not at all necessary that we show any reason or motive in the case, because if you or I should see a man enter this room and fire a shot at one of us here and kill him, we would be satisfied as to who did it without knowing why he did it, although we would be very much interested in knowing why.

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The witness Peter Rogers, I think is a man around twenty years of age, who had known the defendant all his life and who has served a term in the Elmira Reformatory and I am glad that counsel for the defense in examining the jury brought to your attention the necessity of a juror giving a witness, even though previously convicted, a fair hearing, - employing, of course, the fact he has been convicted of a crime as a basis or guide as to whether he is telling the truth about this matter. Rogers did serve a term in Elmira. He will tell us where he and these other young men had been that day and how they came to be at the club on that occasion. He will tell us that as they stood in the doorway or just inside of the doorway of that building he saw Sweeney with the defendant Collins and defendant Mulcahey and saw these two men shooting at him. Mulcahey was arrested two hours later, I believe, and taken into custody.

We will call Dr. Otto Schultze, a physician of many years experience, who is attached to our office as medical examiner and he will tell you about these wounds and the cause of death. It is not necessary for me to make any extended statement about the case, except to say that the charge here is murder in the first degree, embracing of course the other grades of homicide, murder in the second degree, and manslaughter in the first and second degree. If the evidence of the People, as you listen to it, satisfies the jury that the defendant was one of the men who shot, if you are satisfied of

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that beyond a reasonable doubt, you will be obliged to determine what grade of crime was committed, and at this point I want to call your attention to the essentials of murder, so that as our evidence is produced you can see whether the testimony as it goes along is supplying any of those requirements of the law.

For instance, to be murder in the first degree there must be an intentional killing of the person, not an accident; not a shooting without any design to kill, but it must be an intentional killing, and it must be the result of some reflection, that it was planned, even though a moment before, before it can be murder in the first degree. And there must be, before it can be murder in the second degree, an intent to kill. If there is no intent to kill but the defendant did the shooting, but did it without intending to kill anyone, under circumstances where they were excited, - impulsive, - why, it would be manslaughter. I call your attention to this at this time so that you will have it in mind all through the case, that there were three shots fired at the back of this man, all taking effect, because upon that a jury would be justified in saying, - if you shoot a man in the vitals in the back three times, - that there is the necessary proof that the individual doing that shooting certainly intended to kill, because he took no chances, he did not shoot once, but he shot several times. I want you, in listening to the case, as you said you would, to be patient and listen carefully and try to

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remember the evidence. Do not miss anything but get it all. Give everybody a fair hearing, even though witnesses have been previously convicted, because many times crimes are committed in places where it would be impossible to get a witness who had a clean reputation. The enforcement of the criminal law/ largely depends in this jurisdiction as well as in others upon the testimony of witnesses that are not reputable, but it depends upon the individual, and you have got to listen to him carefully and search out his testimony to find out whether he is telling the truth at this time or whether he has invented. I think if you give it careful attention, as I am sure you will, you will have no difficulty in deciding the issue.

H E N R Y J. H A G G E R T Y, an officer of the Tenth Precinct, called on behalf of the People, having been duly sworn, testified:

MR. BROTHERS: I offer in evidence, if the Court please, upon consent of the defendant's counsel, a diagram showing the floor plan of the ground floor of the premises 258 Hudson Street, in this City and County, drawn to a scale of three-eighths of an inch equaling one foot measure, drawn June 12, 1917, by Mr. McGuire, a draftsman.

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Haggerty, you are a member of the police force of the City of New York? A I am.

Q How long have you been a member of it? A 24 years.

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Q On the 7th of June, 1917, you were serving in the Tenth Precinct, were you? A Yes sir.

Q As a patrolman? A As a patrolman.

Q And does that take in premises 258 Hudson Street?
A Yes sir.

Q And those premises are in the City and County of New York? A Yes sir.

Q Was your attention attracted at any time on that evening, on that day, to those premises? A Yes.

Q When you first learned that anything occurred there, where were you? A Watt Street.

Q 258 Hudson Street is in what part of the city? A Two doors from the corner of Dominick Street, south of Dominick Street.

Q And Hudson Street is where? A Hudson Street is --

Q In relation to Broadway? A It runs parallel with Broadway, beginning at Chambers Street and running north to Abingdon Square.

Q The numbers, of course, run from the south? A Yes, they begin at Chambers Street and run north.

Q How far from 258 Hudson Street would Watt Street be?
A That is two blocks south.

Q Did you hear any shots fired? A I did not.

Q To what place did you first go after learning that something had happened in that vicinity? A In the saloon on

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the corner.

Q Whose saloon? A A man named Crowley owned it at that time.

Q And that saloon is located where, with respect to 258? A Two doors north of it, on the corner.

Q On the same side of the street? A On the same side of the street, two doors north of the clubroom where the shooting took place.

Q And on the same side of Hudson Street? A On the same side of the street.

Q Whom did you see in the saloon? A Well, one man that called me to the saloon door was Clancy, a man named Clancy. He said, "In this way, Officer".

MR. BARRA: I object to that.

Q Never mind what was said; you were called in by a man named Clancy? A Yes.

Q When you got inside whom did you see; did you see any injured man? A I saw a man lying on the floor.

Q What was the matter with him? A No one could tell me until I examined him.

Q Having examined him what did you find? A I found that he was shot in the back.

Q Did you know the man by sight or by name? A I did not.

Q What did you do with him? A I sent for an ambulance right away.

Q To what hospital was he taken? A St. Vincent's.

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Q Did you find out that night who he was? A I did.

Q What was his name? A Michael Sweeney.

Q Did you learn where he lived? A Not that night.

Q Later on you did? A Yes.

Q Where did he live? A 87 Vandam Street.

Q Did you see his wife? A Not that night.

Q You saw her the next day? A Yes sir.

Q And she is here to-day? A She is here to-day.

Q Did you see Sweeney's body again after he had died?

A I did.

Q Where? A In the morgue.

Q On what date, do you remember; was it the 9th of June?

A The 9th of June.

Q And did you there identify his body to Dr. Otto H.

Schultze? A I did.

Q That was the same body, the body of the man you had seen in Crowley's saloon, shot in the back? A Yes.

Q And when you saw him in the morgue he was dead? A Yes.

Q Now, did you visit premises 258 Hudson Street there after going to Crowley's saloon? A After the body was taken away.

Q Did you see anybody in the clubrooms on the first floor when you got there? A No.

Q Nobody there? A No.

Q Were the lights burning when you got there? A No.

Q Are you familiar with those premises? A I am now.

Q Was that your post; did that come in your post, that

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building? A Yes.

Q You had passed by there many times, had you? A Yes sir.

MR. BROTHERS: I think that is all for the present,

Mr. Barra.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Do you know Peter Rogers, Officer? A I do, now.

Q Was Peter Rogers put in the House of Detention immediately after the shooting?

MR. BROTHERS: I don't think that is proper cross-examination. Rogers will be here.

MR. ROSALSKY: I am laying a foundation.

THE COURT: I will allow it.

A I believe he was. I did not put him there. I did not bring him there.

Q Was Peter Rogers in the custody or under the control of the District Attorney at the time he testified in the Coroner's Court?

MR. BROTHERS: That is objected to as calling for an opinion.

MR. ROSALSKY: If he knows.

THE COURT: How can he tell if he was in the custody of the District Attorney or under his control; that will assume something.

Q Well, do you know where Peter Rogers was at the time, on July 6, the date of the Coroner's inquest? A Not from my own knowledge.

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BY THE COURT:

Q Well, from hearsay, do you know? A Yes, I know where he was, from hearsay.

BY MR. ROSALSKY:

Q Well, where was he?

MR. BROTHERS: I object.

THE COURT: I will allow it.

A I believe he was in the House of Detention.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

BY THE COURT:

Q Are the saloon and the clubroom in the same building, Officer? A No sir, it is two doors away. There is one building between the clubroom building and the saloon.

Q The saloon is on the street floor and the club is upstairs? A They are different buildings. The saloon is a corner building, then there is a little private stoop house and next to it the clubroom, the next building to that, right upon the stoop, the stoop floor.

Q The club has the whole house? A No, just that floor.

Q The first floor? A Yes sir, the first floor at the stoop.

MRS. AUGUSTUS SWEENEY, of 553 Greenwich St.,
called as a witness in behalf of the People, having been
duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. BROTHERS:

Q Mrs. Sweeney, were you the wife of Michael Sweeney, who died soon after the 7th of June, 1917? A Yes sir.

Q Where were you living at that time? A 91 Vandam St.

Q How long had you been married? A About a month.

Q How old are you? A Seventeen.

Q Are you employed anywhere? A Yes sir.

Q Where? A 2 Duane Street, Frank McLane Brothers.

Q What work did your husband do? A He drove in the market, a driver.

Q Did he drive a truck? A Yes sir.

Q About how old was he? A About twenty-six. Twenty-five or twenty-six, I am not sure.

Q Do you remember the night that he was shot? A Yes sir.

Q Did you see him at any time that evening? A Yes sir.

Q About what time? A About nine o'clock.

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

Q At your home? A Yes sir.

Q Had he been home that day? A Well, he left the house about one o'clock, saying he was going down to Staten Island.

Q Then you next saw him about nine o'clock that night?
A Yes.

Q And when he came in how long did he remain before going out? A Well, about fifteen or twenty minutes.

Q Then you did not see him again? A No.

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Q Until you saw him in the hospital? A I did not see him in the hospital. I went up there and I did not see him until he was brought home to the house.

Q When he was brought home he was dead? A Yes sir.

Q And of course you attended his funeral? A Yes sir.

Q Did he have a brother named Thomas Sweeney? A Yes.

Q Did he live at 288 West Houston Street? A Yes sir.

MR. BROTHERS: That is all, you may inquire.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Mrs. Sweeney, did you see a revolver on the 7th of June in the possession of your husband? A No sir.

Q Did you have any talk with him about a revolver that evening? A No sir.

Q That he better leave his revolver home when he was going out? A No sir.

MR. ROSALSKY: That is all.

MR. BROTHERS: Your Honor, Dr. Schultze was detained uptown. He promised to be here at two o'clock. Of course this proof is a little out of order but we are doing the best we can.

THE COURT: Well, I will allow it.

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PETER ROGERS, of 331 West Houston Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

- Q How old are you? A Twenty years old.
- Q You live with whom? A My father and mother.
- Q Have you any brothers or sisters? A Yes sir.
- Q How many? A I got five brothers and two sisters.
- Q You are at present retained as a witness in this case, are you? A Yes.
- Q And have you been since what day? A Since June 12.
- Q Before that were you working anywhere? A Yes sir.
- Q For whom? A For my father.
- Q In what business? A Contractor.
- Q What work did you do? A I drove a truck for him.
- Q How long had you done that? A For the last six years.
- Q Do you know this defendant James Mulcahey? A Yes sir.
- Q How long have you known him? A For the last ten years.
- Q Where were you living on the 7th of June? A 331 West Houston Street.
- Q Did you know where Mulcahey lived? A He lived right across the way, - I think it is in, - I don't know the number.
- Q On the same street? A Yes sir, on the same street.

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Q Do you know him that length of time because he was a neighbor? A Well, yes, he lived around Varick Street with me. He was a neighbor of mine on Varick Street.

Q Peter, you at one time were convicted of attempted burglary, were you?

MR. BARRA: Objected to as incompetent. This is a matter for cross examination. We object on the ground he is attempting to contradict and impeach the credibility of his own witness.

THE COURT: I will allow it.

MR. BARRA: Your Honor will note our exception.

Q Is that right? A Yes.

Q The crime of attempted burglary, and you went to Elmira? A Yes sir.

BY THE COURT:

Q When was that? A I got convicted June 12th and I went away June 17th, 1915.

BY MR. BROTHERS:

Q Were you convicted of any other crime at any time or any offense, and locked up? A No sir.

BY THE COURT:

Q Before or after that? A After this crime?

Q I mean that is the only conviction you had had?

A Yes sir.

Q And how long did you stay in Elmira? A For 13 months and 20 days.

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Q And since you came out you were working? A Yes.

Q And before you went in you were working? A Yes.

Q Did you ever work for any one but your father?

A No sir.

Q You always worked for your father? A Yes sir.

BY MR. BROTHERS:

Q Did you know Michael J. Sweeney? A Yes sir.

Q How long had you known Sweeney? A I know him about a year.

Q What did he do for a living? A I could not tell you what he did for a living.

Q Where did you know him? A I knew him from around Charleton and Greenwich Streets, from the boys around there.

Q Do you remember the 7th of June last year? A Yes sir.

Q That was the night Sweeney was shot, was it? A Yes.

Q Were you with him that day? A Yes sir.

Q Did you at any time while you were with Sweeney go to 258 Hudson Street? A Is that the club rooms, sir?

Q Yes, the Pioneer Social Club. A Yes sir.

Q About what time of the day or night was it that you got there? A I could not exactly tell you the right time. It was about ten o'clock or half-past ten.

Q How long had you been with Sweeney that day? A I was with him since about twelve o'clock noon.

Q Who else was with you when you and Sweeney got to

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the Club? A Frank Kennedy.

Q Who is Frank Kennedy? A He is a fellow, a friend of mine and Sweeney's.

Q A young man? A He is about 25 or 26 in my judgment.

Q Where ~~do~~^{were} you and Sweeney and Kennedy going when you turned to this club? A We were going to look for bail for William Hogan.

Q Were you going up Hudson Street or down Hudson?

A When we left that saloon at Charleton and Greenwich we went down to a friend by the name of Harry Wiggins, trying to get him not to prosecute against Hogan. From there we were looking for some fellow, Sweeney was looking for some fellow up in the Huron Club, in Canal and Hudson Streets. He went upstairs and came down there.

Q To make it brief, you and your friend were looking for bail bonds for a man named Hogan? A Yes.

Q And you had been going around most of that day on that errand? A No, we were down Staten Island with the intention of trying to get my brother out. He got sentenced down Staten Island and when we came back from Staten Island we went to try to get Hogan out on bail.

Q When you came along Hudson Street between ten and eleven o'clock that night you passed by the club rooms of the Pioneer Social Club? A Yes.

Q Did you belong to that club? A No, sir, I did not.

Q Do you know whether Sweeney did? A I hardly

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think so.

Q How about Kennedy? A No, he did not belong.

Q Did you know any of the members of that Club?

A Yes, I knew some.

Q Do you know whether Mulcahey belonged to it? A Yes sir, he belonged to it.

Q When you came to this Club did you see anybody there?

A I seen Joseph Keating standing on the stoop.

Q Joseph Keating is also known as Mickish Keating?

A Yes.

Q Where was he? A He was standing on the stoop, and there were two girls sitting on the stoop.

Q Out in front of the Club? A Out in front of the Club, yes sir.

Q Were you intending to go into the Club? A Yes, I was intending to go into the Club.

Q Did you go in? A No sir.

Q What happened? Did you go to the stoop of the Club?

A Yes sir, Joe Keating was standing on the stoop and he said, "Hello".

MR. BARRA: We object to that.

THE COURT: Strike out what he said.

Q Keating said something to you? A Yes, he invited me into the Club rooms.

Q What did you then do? A I went down, I said,

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"I got two friends with me, invite them in, too." I went down to this here Michael Sweeney and Frank Kennedy. I said, "Come on in." They said, "All right." We goes up on the stoop.

Q Look at the plan, People's Exhibit 1 in evidence, is this the stoop our here in front (indicating)? A Yes.

Q Then there are some steps, five steps? A Yes.

Q You went up on the stoop and spoke to Keating?

A Yes.

Q And you left your two friends down there on the sidewalk (indicating on plan)? A Yes.

Q He asked you to come in and you went down and told them to come in? A Yes.

Q Then did the three of you go up the steps? A Yes.

Q What did you do? A As soon as we went on the steps Mulcahey came out and he said, "Come on in." The three of us went in. Mulcahey said, "Come on in." They walked into the Club rooms and I stood out on the stoop there.

Q Who went into the Club? A Sweeney.

Q And Mulcahey; the defendant, do you mean by that?

A Yes.

Q Did anyone else go along with him? A Joseph Keating.

Q What became of Kennedy? A I don't know where he went. I think he went inside. I could not exactly swear he went inside.

Q When they went into the Club can you show us how

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they got into the Club? A Yes, they walked up to the stoop here (indicating) and walked right into the Club, and they went inside (indicating).

Q This blue part represents the floor of the hall?

A Inside.

Q No, this is the hallway here. There is a hallway there (indicating). A Yes.

Q And some stairs going upstairs? A Yes.

Q This is a doorway here and this is a doorway and there is a doorway there (indicating)? A Yes.

Q They went into the hall? A Yes.

Q Did you see where they went? A They walked right in here (indicating) and went into the Club room.

Q They went into the first door they came to in the hall, turned to the right? A Yes sir.

Q When you saw them pass through the door did you lose sight of them for the moment? A Yes.

Q Where did you stand then? A I stood right on the end here, (indicating) on top of the stoop.

Q These heavy black lines show the wall of the building. A Yes.

Q That is the brick work. Those are the walls. A Yes.

Q This is a doorway here and those are intended to be windows (indicating). A Yes.

Q Here is the stoop (indicating). A Yes.

Q Now just where did you stand? A Right here (indica-

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ting).

Q On the stoop? A Yes (witness putting a cross mark).

Q Will you put your initials, P.R., there? Now while you were standing there did you observe any other persons on the stoop? A When I went up on the stoop I seen the two girls.

Q Did you know them? A No sir, I didnt know them, not to talk to.

Q Have you seen them since? A No sir.

Q As they went into the Club you lost sight of them andy you continued to stand there on the stoop? A Yes.

Q While you were standing there did you see any other people on the stoop? A No sir.

Q What were you doing? A I was just standing there. When they went inside and I got excited.

Q How long had they been inside before you heard a shot fired? A About a minute, as soon as they went inside there.

Q When you heard the shot where did you look? A I looked right into the hall.

Q Then what was the first thing you saw? A I seen some fellow coming gimping, limping he went like, and some fellow came out and grabbed him and he went back again.

Q Did you know neither of those persons? A Yes.

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Q Who were they? A I seen that fellow up in the District Attorney's office about the 15th of June, if not later, by the name of William Egan.

Q William Egan, was he the one that pulled the man in or was he the limping one? A He was the limping one.

Q They went back into the Club? A Yes.

Q Then what else did you see? A I heard that shot. Then I seen that fellow come back, I seen this Mulcahey and Busto Collins walking out with Sweeney. They came out of the Club room and into the hall.

Q What did you see them do? A I seen Sweeney wanted to go out to the street, and they wanted to get him in the back, and Sweeney broke away from them to go out to the front. I seen Busto Collins fire a shots and I seen Mulcahey fire shots.

Q When they came out of the Club room door into the hall did the men have hold of each other? A Yes.

Q How did they hold him? A They had him under each arm, taking him.

Q Who had who? A Busto Collins and Mulcahey had Sweeney.

Q Was he between them? A Sweeney was between them.

Q Did you see them clearly? A Yes sir.

MR. ROSALSKY: I move to strike that out as calling for a conclusion, -

Motion denied and exception taken.

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Q In which direction did Sweeney start to walk when he came out of the doorway? A He wanted to go towards the Street.

Q As he started, he came towards you? A Yes.

Q What did you see the defendant and Collins do at that moment? A He had a gun and started firing shots at him. I did not see him pull the gun out. I just seen the gun firing the shots.

Q Who did you see have a gun? A Mulcahey and Collins.

Q Then you saw two guns? A Yes.

Q What was Sweeney doing when those two men fired at him? A Sweeney broke away and run to the street.

Q Toward where you were? A Yes.

BY THE COURT:

Q You mean his back was towards them? A Yes.

Q Then they fired at him? A Yes.

Q He was facing you? A Yes.

BY MR BROTHERS:

Q As they fired at him did they remain standing there or follow after him? A They remained standing there.

Q Whereabouts were they in the hall when they were shooting? A At the end of the door, coming out.

Q Can you indicate on the plan again, People's Exhibit 1 in evidence, where? A They were standing right here (indicating).

Q Just put two crosses representing Mulcahey and Collins.

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A (Witness indicating).

Q And Sweeney was passing towards this way (indicating)

A Yes.

Q How many shots do you recall hearing fired in the hall?

A I could not exactly tell how many. It was about ten or eleven, I should think.

Q There were a h whole lot of shots? A Yes.

Q You heard one to begin with? A Yes.

Q And that sounded as coming from what place? A
From inside the club room.

Q How many shots did you see fired in the hall? A I
seen Mulcahey fire two and this Busto Collins five or six;
I could not say how many.

Q What did you do while this shooting was going on?
A I was standing out on the stoop.

Q Were you looking in the hall? A Yes sir.

Q When you saw them shooting at Sweeney did you stay
there or leave? A I stood there until Sweeney went past
me.

Q What did Sweeney do outside? A He ran down toward
the corner there.

Q Did you see where he went? A He went into the
saloon there.

Q Which saloon? A On the corner, dominick and Hudson.

Q Do you know whose saloon it is? A I think it is
Crowly's saloon.

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Q Did you go with him? A No sir.

Q Where did you go? A I went down to a saloon on Charleton and Greenwich, Horgan and Cummings.

Q Did anybody follow Sweeney out of that hall? A I didn't see nobody follow him up.

Q Did you see where Mulcahey and Collins went after they shot? A No sir, I did not.

Q Did you see them again that night? A No sir, I did not.

Q Do you remember any other person that was in the hallway at the time of this shooting? A No sir, I do not.

Q When you got around to that saloon at Charleton and Greenwich Streets you stayed there for how long? A Well, about ten minutes.

Q Then where did you go? A I went home.

Q Did some policeman pick you up later on? A Five days afterwards.

Q Who was the policeman? A Officer Collins.

Q James Collins? A James Collins.

Q Had you ever been inside of this club? A No sir, I was not.

Q I do not mean that night, but had you been in there at any time? A No sir.

Q Did you see what became of the young ladies who were on the stoop? A No sir, I did not.

Q As you saw Sweeney going out of the hall and up the

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street to the saloon did you notice how he went along?

A He went staggering along.

Q Did he say anything as he came out of the hall? A
He said, "They got me."

Q Did you hear anything said by either Collins or Mul-
cahey at the time of the shooting? A No sir.

Q And before you heard that first shot did you hear any
sound from the Club room? A No sir.

Q Did I ask you whether you saw where Collins and Mul-
cahey went? A No sir.

Q Did you see where they went? A No sir, I did not.

Q When you went away from the club did you go in the
direction of Crowley's saloon or in the opposite direction?
A I went in the direction of Crowley's saloon, and to
Charleton and Greenwich Streets.

Q So that you passed by where Sweeney went in? A
Yes sir.

Q Did you notice or see where Joe Keating was at the
time of the shooting? A I did not see him after the
shooting. I seen him before the shooting.

Q At the very moment that these shots were being fired
in the hallway, did you notice Keating? A No sir.

Q Did you see him anywhere about? A No sir.

MR. BROTHERS: You may inquire.

CROSS EXAMINATION BY MR. ROSALSKY:

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Q Rogers, where were you born? A I was born in Ireland, I think.

Q How old were you when you came here? A I don't know, sir.

Q Did you go to school in New York? A Yes sir.

Q How old were you when you started to go to school? A I could not tell you that.

Q What school did you go to? A I went to several schools. I went to King Street school and St. Anthony school and I went to St. Veronica's school.

Q Any other school? A I was at the Catholic Protectory school.

Q When were you in the Catholic Protectory school? A 1909, - 1911, I don't remember just.

Q What was the cause of your going to the Catholic Protectory school? A My father put me there.

Q You knew Mulcahey at that time, did you not? A Yes sir, I did.

Q And were you ever a witness against Mulcahey when Mulcahey was charged with burglary in 1909? A I know I was arrested about nine or ten years ago.

Q Were you a witness against Mulcahey nine or ten years ago? A I was arrested with him.

Q Was Mulcahey arrested on the statement which you had made to a police officer? A I could not just remember. It was so long ago. It was ten years ago, almost.

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Q But do you remember at that time, about in April, 1909, do you remember telling a policeman something that Mulcahey had stolen something? A I don't remember, sir.

Q Do you remember that you were a witness before the Grand Jury against Mulcahey? A I know I was a witness. I know I came down in this building but I could not remember anything from that on.

Q And at that time when you were down here you were a witness against Mulcahey? A I was a witness on Mulcahey, yes.

Q Against Mulcahey? A Yes sir.

Q Do you remember what the Grand Jury did with that case? A I don't remember.

Q Don't you know that the Grand Jury - -

MR. BROTHERS: That is objected to.

MR. ROSALSKY: I want to show malice; he testified against him.

THE COURT: He said that he testified as a witness against him on that occasion.

Q Then you were sent to the Catholic Protectory?

A Not in that case.

Q Now what case were you sent to the Catholic protectory? A My father put me there for not going to school

Q Did you steal a bicycle? A Yes sir, a bicycle.

Q And you went to the Catholic Protectory because you stole a bicycle? A No sir, not on that case,

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I don't think so.

Q What became of the case where ^{you} stole the bicycle?

A I can't remember. It is ten years ago. I was not ten years old. I can't remember that long.

Q You did steal a bicycle at one time? A I think I did steal a bicycle.

Q Do you remember what was done with you for stealing the bicycle? A No sir, I don't remember.

Q Were you sent away? A I tell you I don't remember.

Q That is the best answer you can make? A Yes sir, that is the best answer I can make.

Q Now besides being in the Catholic Protectory were you at any other institution? A I was to Elmira Reformatory, the State Reformatory.

Q I mean before going to Elmira were you in the House of Refuge? A No sir, I was not.

Q Were you at Hart's Island? A I was not.

Q Did you ever ~~do~~ any other time of any kind? A No sir, I did not.

Q Did you? A Never.

Q How old were you when you left school? A When I came out of the Catholic Protectory I was about 14 years old, I suppose.

Q How long did they keep you in the Catholic Protectory? A About two years.

Q After leaving the Catholic Protectory did you work

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A I came out of the Catholic Protectory and I went to St. Veronica's school. I stayed in there a while and then went to work for my father.

Q While working for your father did you work steady?

A I think so.

Q How did you get mixed up in this burglary? A It happened to be I had a little misfortune that night and I was intoxicated and I wanted to go and do something that night. It was a saloon.

Q How old were you when you went to Elmira? A About 17 years old.

Q And you were intoxicated then? A Yes sir, I was.

Q Had you been drinking before you were 17? A Yes sir, I was.

Q And have you been drinking since? A I was, sir.

Q Now you have been in the House of Detention since when? A Since June 12, 1917.

Q Have you been out any night since you have been in the House of Detention? A Yes sir, I have been out a couple of times for a walk.

Q With whom have you been walking? A Officer Collins and officer Haggerty.

Q They are the officers in this case? A Yes sir, they are.

Q Were you out on an average of once a week? A No

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sir, on an average of once a month.

Q But you did go out? A I certainly did.

Q While you were with Officers Haggerty and Collins did you talk about this case? A I did not.

Q They never spoke anything about it? A They never spoke about the case.

Q When did you for the first time say anything against Mulcahey in connection with this shooting? A When I got called to the District Attorney's office.

Q When? A On June 12, 1917.

Q You did not appear before the coroner, did you?
A I did not.

Q Do you know whether Sweeney had a pistol with him the day he was killed? A No sir.

Q Where did you meet Sweeney that day? A I met him at Charleton and Greenwich, in Horgan & Cumming's saloon.

Q You were not working that day? A No sir, I was not.

Q You say you have been working for six years for your father. Do you on and off? A You can take a day off once in a week.

Q Did you take a day off frequently? A Once in a while. I never would have taken that day off, only I wanted to see what we could do to get my brother out down on Staten Island.

Q What was your brother charged with? A He was charged with petit larceny first and they changed it to disor-

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derly conduct after that, attempted petit larceny.

Q Did you say "he" or "we"? A He.

Q Was Sweeney working on that day? A No sir, he was not.

Q Were you drinking with Sweeney on that day? A Yes sir, I was.

Q How many drinks did you have? A I could not tell you.

Q What time of the day did you meet Sweeney? A About twelve o'clock, noon.

Q You met him in the saloon? A I did, sir.

Q How long did you remain in the saloon? A For about twenty minutes.

Q How many drinks did you have in that saloon? A I could not tell you.

Q Did you have more than one? A I had about one or two; I can't just remember.

Q What did you drink? A Beer.

Q Do you know whether you had more than two? A I could not remember.

Q From that saloon where did you go? A I went down to the house and put on a collar and tie and got dressed to go with them in an automobile to Staten Island.

Q Who got into the automobile? A Sweeney.

Q Where did you go with the automobile? A We went to Staten Island.

Q Did you stop at any saloon on the way down? A Yes

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sir, we stopped at one down at the ferry.

Q Did you have any drinks? A We had about two drinks there.

Q What did you drink? A Beer.

Q What time of the day was that? A About one o'clock.

Q That was about two o'clock. A One o'clock.

Q Did you stop on the way to Staten Island after leaving the saloon near the ferry? A Yes, we stopped in another saloon down there.

Q At what time? A When we got over the ferry it must have been, - it takes half an hour to get over the ferry, - about a quarter to two when we stopped in another saloon.

Q Did you have any drinks there? A Yes, I had about two drinks there.

Q How many were in that party? A There were six of us and a chauffeur.

Q That was about two o'clock when you got on the other side? A A quarter to two.

Q After getting on the other side of the ferry and after leaving the saloon on the other side where did you next go and make a stop? A We stopped in a saloon down there in Staten Island, on the Richmond road somewhere.

Q Was that another saloon on Staten Island? A We stopped in one saloon on our way down to Staten Island, in Staten Island.

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Q Was that the one you referred to when you had two drinks on the other side of the ferry? A Yes sir.

Q Did you stop in any other saloon? A No sir, until we were on our way down to Staten Island; then we went to the hospital where my brother was.

Q Before going to the place where your brother was, did you stop in any other saloon? A No sir, that is the only one we stopped in.

Q Altogether you stopped in one saloon on Staten Island? A Yes.

Q What time did you arrive at the place where your brother was? A Near two o'clock, I could not exactly tell the right time. I can't remember the right time. I did not have no watch.

Q Before starting on your way back to New York did you stop in any other saloon? A Yes, we stopped in a saloon down at Staten Island.

Q This second saloon in Staten Island? A Yes.

Q About what hour of the day was that, was it on your way back? A Yes, on our way back.

Q How many drinks did you have in that saloon? A I can't quite remember.

Q Did you have any drinks? A I can't remember.

Q Do you mean you can't remember the number of drinks you had or you can't remember whether you had any at all?

A I think I had about two or three in that saloon.

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Q About what time of the day was that? A That was at night time.

Q About what time? A About eight o'clock.

Q Did you stop at any other saloons before you reached the ferry on your way back? A No sir.

Q You say two or three; might it have been more than two or three? A No sir, two or three. When I say two or three it is two or three.

Q When you say two or three you mean two or three?

A Yes.

Q You don't mean four or five or six? A I would not say it if I did.

Q Why did you say at first you could not remember how many you had? A I could not remember, two or three; I can't exactly tell. Maybe three, maybe two.

Q Now when you reached the New York side of the ferry did you stop at any saloon? A After going up to the girl's house, I stopped in one saloon after that.

Q When you reached the New York side of the ferry on your way back did you stop at any saloon? A Yes, one up in 13 and Hudson.

Q You mean number 13 Hudson? A 13th and Hudson.

Q How many drinks did you have there? A I had about one drink in there.

Q What do you mean by about? A One drink.

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Q What did you drink? A Beer. I always drink beer.

Q Was Sweeney with you? A Yes sir, he was.

Q Then from the saloon and 13th Street and Hudson Street where did you go? A Went down to Charleton and Greenwich to Horgan & Cumming's.

Q Is that a saloon? A Yes sir.

Q What street is that on? A Charleton and Greenwich.

Q Whose saloon is that? A Horgan & Cumming's

Q Sweeney was with you? A Yes.

Q How many drinks did you have there? A I had one drink there.

Q How long did you remain there? A About fifteen minutes or twenty minutes, I can't remember.

Q And you had only one drink during the time you were there? A Yes.

Q From this saloon where did you go? A Went to look for bail for William Hogan.

Q Did you stop at any saloon while looking for bail for William Hogan? A No sir.

Q Were you in the automobile during all this time?
A No sir. After leaving 13th and Hudson we paid the chauffeur off at Charleton and Greenwich and let him go.

Q Who paid the chauffeur? A Sweeney and James McGinn.

Q They had gone to see about your brother? A After coming from Staten Island. We were down there with the in-

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tention of looking after the brother.

Q Was Sweeney interested in your brother? A Yes sir.

Q You went to some girl, you say? A Yes.

Q Who was the girl? A Gertrude Thompson.

Q Did you have any drinks at Gerturde Thompson's?

A No sir, I did not.

Q What did you do after leaving Gertrude Thompson?

A I did not leave her. I went there to meet her and she was not in.

Q Where did she live? A 12 ^B Barrow Street.

Q And Sweeney was with you all this time? A Yes.

Q Where did you go from there? A To 13th and Hudson Street.

Q A saloon? A Yes sir.

Q Did you have any drinks in that saloon? A I had one drink in that saloon.

Q And that is the second time you were there? A No, that is the first time. As soon as I came from Staten Island I went to see my girl and she was not in and I went from Barrow Street to 13th and Hudson.

Q Are you keeping company? A Yes sir, I am.

Q After leaving 13th Street and Hudson you went where?
A To Charleton and Greenwich.

Q The saloon you mentioned before? A Horgan & Cumming's.

Q Sweeney was with you all the time? A To Horgan's

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& Cumming's.

Q Was Peter Hendrick with you? — A Who is Peter Hendrick?

Q Oh, Peter Kennedy. A Frank Kennedy?

Q Was he with you all this time? A Yes.

Q He was drinking too? A Yes.

Q After leaving Horgan & Cumming's saloon where did you go? A I went to look for bail for William Hogan.

Q Did you stop at any saloon while you were looking for bail? A No sir, I did not.

Q What next did you do? A I went to look for bail and we stopped around at Renwick Street, looking for Mrs. Wiggins. From Charleton and Greenwich we went down Greenwich to some house at Van Dam and Greenwich looking for Harry Wiggins. We went up and he was not there. Some lady by the door said he might be around his mother-in-law's house. We went there and some lady by the name of Mrs. Brown, his mother-in-law, — we asked where was Harry Wiggins she said she don't know, he just left his wife. While talking there Mrs. Wiggins comes around, Harry Wiggins' wife.

Q Well, did you stop at any saloons while going around to these different places? A No sir.

Q After you left Wiggins' place where did you go?

A To the Huron Club, Canal and Hudson Street.

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Q Is there any saloon there? A There is a saloon there, but we did not stop.

Q Did you have any drinks at the Huron Club? A No sir.

Q Sure about that? A Yes sir. I was not inside the Huron Club.

Q Where did you go after leaving the Huron Club? A I went up Hudson Street to this Pioneer Club.

Q You had no drinks until you reached the Pioneer Club? A I did not have no drinks when I reached the Pioneer Club.

Q But you had them already? A Yes, but I did not get none in the Pioneer Club.

Q You carried all you had pretty well without showing it. It did not affect you? A It did not affect me.

Q How many beers can you drink a day? A Well, about twenty beers, I guess.

Q Without any effect? A Without any effect.

Q You have done that more than once? A I often drink that much.

Q About how many beers it is necessary for you to drink before it takes any effect? Were you ever intoxicated? A Well, I was intoxicated.

Q How many beers must you drink before you get feeling that way? A I didn't ever count them.

Q In other words, your capacity is very good for drink-

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ing beer? A I don't understand.

Q What don't you understand about that? A I ain't got such a very good education. Explain them words, please.

Q Do you know what capacity means? A No.

Q About how many drinks can you stand? A I can take an average of a bout fifteen or twenty and it wont take much of an effect on me.

Q You came along Hudson Street, is that right, with Kennedy and Sweeney? A Yes sir.

Q What direction were you walking, north? A When we came around Hudson Street we were walking uptown.

Q North? A Yes sir.

Q Were you walking three abreast? A Yes sir.

Q Who was in the middle? A I think I was in the middle.

Q And when you got in front of the Pioneer Club who was on the stoop? A There were these two girls sitting on the stoop and this Mickish Keating.

Q Who stopped you? A Mickish Keating said, "Hello Pete." I said, "Hello". So he invited me up.

Q When he said Hello and invited you up, did you go upstairs? A I went up on the stoop.

Q How many steps are there about, do you remember?

Q Well, about five or six.

Q Where did you leave Sweeney and Kennedy? A Down on the street there, when I went up on the stoop.

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Q Right at the foot of the stoop? A No, they were a little way from the stoop.

Q Then what did you do? A I said, Hello to Mickish Keating and he said Hello. He said, "Come on in, there is plenty of beer in here." I said, "I got two friends with me." He said, "All right, take them in." I went down and told them and they said all right, and they came up the stoop.

Q So the three of you were then on the stoop? A Yes.

Q Where did you remain? A On the stoop.

Q Was there anything going on at the Pioneer Club that night? A I don't know. There must have been a dance or something there. I was not inside.

Q Did you hear a lot of noise, a rumbling noise there?
A No sir.

Q Were there many people in the club room? A I don't know, I was not inside.

Q Did you hear a piano playing? A I did not hear no piano playing.

Q Did you hear any piano play while you were on the stoop? A No.

Q Did you hear any piano play at the time of the shooting? A I did not hear no piano playing at all.

Q When you reached the stoop, the top of the stoop, after you had invited Kennedy and Sweeney to go in, what became of Keating? A When I walked up on the stoop Keating stood there, and Mulcahey walked out and the three of

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them walked in together.

Q Who walked in together? A K Sweeney, Mulcahey and Keating.

Q Walked into the Club room? A Yes sir.

Q What became of Keating? A I don't know where he went.

Q You remained standing on the stoop? A Yes sir.

Q Talking to the girls? A No sir.

Q What were you doing on the stoop? A Standing there.

Q Looking in what direction? A Looking towards the Club room, looking in the hall.

Q Was there a light in the hall? A Yes sir. The light of the Club came through the hall door.

Q Was there any light lit in the hallway? A I did not look to see if there was a light. I know it was light enough to see in the hall.

Q Did you see any light lit in the hallway? A I did not see no light. There was a light there, but I don't know where it was coming from. I didn't take notice to look on the ceiling to see if it was there, or was the effect of the light coming from the club room.

Q You say the light was coming from the doorway?
A I don't know where it was coming from. It might have been in the hall or in the Club room.

Q Can't you tell whether a room is lighted with a light or whether there was a reflection of a light? A It might

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have been a reflection but I could not see. I did not take notice.

Q How well was the hallway lit? A It was lit pretty bright.

Q But you don't know whether it was lit with gas light or not? A No sir.

Q You don't know whether the light out there was the light which came from the hallway? A I could not tell you which it was. It looked as if it was in the hall there.

Q What do you mean? A It looked as if the light was in the hall. I did not look up and take notice whether it was in the hall, but it was a bright light there.

Q About how far from where you were standing was the door? A The Club room door?

Q Yes. A I could not tell you exactly how far. It must have been eight or ten feet.

Q You were invited to go in, and have a drink? A Yes.

Q You did not go in however? A No.

Q You remained on the stoop? A Yes.

Q And Keating and Sweeney and Mulcahey went in? A Yes.

Q You know Egan, don't you? A I did not know him until I seen him in the District Attorney's office.

Q Do you know James Regan? A I never heard the name.

Q Did you ever have a fight with Regan, or stab a fellow named Regan? A I don't know no Regan.

Q In the month of April, 1917, at 23rd Street and

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Eighth Avenue, did you have a fight there? A No sir, I did not.

Q Did you stab any fellow named Regan? A No sir, I never stabbed nobody.

Q You remained standing outside, you say, and Keating and Sweeney and Mulcahey went inside? A Went inside.

Q How long after Sweeney went inside did you hear a shot? A About a minute.

Q What do you mean by a minute? A As soon as he went inside, he went in there, - it was not a minute until I heard a shot. Then I seen some fellow come out, *g*imping out.

Q You heard a shot? A Yes.

Q At the time you heard a shot were you looking into the hallway? A Yes sir.

Q And you saw someone coming out, *g*imping? A Yes sir.

Q And he went by you? A No, he did not go by. He came out to the hall and some fellow came out and he went *h*ack again.

Q Weren't you frightened when you heard the shot? A I was not exactly frightened.

Q You were still standing looking into the hall after you heard a shot? A Yes.

Q Did you run into the Club room to see what was going on? A No. I am telling I was not in the Club room.

Q Now, how soon after Egan limped out did you see Sweeney come out? A About a minute after that; when they

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took this Egan back to the Club room, they tried to take this Sweeney out, as soon as he went in to the Club room.

Q Did you see Sweeney coming out into the hall?

A I seen him come out of the club room hall door.

Q Was it light enough for you to distinguish the face?

A I could see the face, yes sir.

Q You don't know whether the light was good or not?

A I did not take notice. There was a bright light. I could not swear it was in the hall or from the reflection of the Club room.

Q You saw Sweeney leave the Club room? A Yes sir.

Q Was he alone? A When he came out of the door after Mulcahey left him go, when he broke away, he was alone.

Q Who was holding him? A Mulcahey and Busto Collins.

Q Holding him in the doorway? A Coming out of the Club room they held him.

Q For how long a time did they hold him? A How do I know?

Q You were there. A They came right out of the Club room.

Q They pulled him in? A Yes, this Keating and Mulcahey brought him in to the Club room and Busto Collins and Mulcahey brought him out of the Club room.

Q How far from the door, leaving the Club room, did you see them go before they separated? A Just coming right out of the doorway to the hall.

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Q On what side was Mulcahey? A On the left hand side.

Q What side was Collins? A On the right hand side.

Q Did Sweeney tussle to get away? A Yes sir.

Q How did they hold him? A Under each arm.

Q At the time they had hold of him under each arm did you run to his assistance? A No sir, I did not.

Q Did you see him break away? A I seen him try to get away from them. Then they tried to walk him into the back like. I seen him try to break away and he walked out then.

Q Did you see anything in the hand of Collins while he had Sweeney by the arm? A I did not see nothing. till Sweeney broke away from him, then I seen the gun.

Q When you saw Sweeney break away, did you see the gun first or did you hear the flash or report first? A I did not see a gun until Sweeney broke away, until he was running out.

Q When Sweeney broke away you saw a gun in whose hand? A Busto Collins; then I seen it in Mulcahey's.

Q How soon after you saw Sweeney break away from Busto Collins did you hear the report? A When he broke away and wanted to go out, he was not a foot away, only a little ways away, then I seen the gun; then I heard a report.

Q You heard a report? A Yes.

Q Were all those shots fired before Sweeney got out of the hallway? A Yes sir.

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Q Then you say you heard one shot? A Before.

Q And you heard five or six shots; Busto Collins fired five or six shots? A Yes.

Q And you were looking into the hallway while the shots were going off? A Yes.

Q Did you see who was firing them? A I seen these two firing.

Q And you looked in the hallway while these shots were coming around you? A I told you I seen two of them firing shots.

Q You were looking into the hallway? A Yes.

Q And Sweeney was running towards you? A Sweeney was coming out toward me.

Q And they were fired at Sweeney? A Yes.

Q You kept looking into the hallway while the shots were going off? A Yes, there was light a little partition there and I could stand there and they could not come out near me. There is a little partition on the scene there.

Q You were looking into the hallway while the shots were going off? A Yes.

Q And you saw the shots being fired? A Yes sir, There is where I was standing, here (witness indicating).

Q Was this a stone wall? (indicating on plan People's Exhibit 1 in evidence)? A Yes.

Q Were you looking through the wall? A No, can't.

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you look out through here (indicating in entrance doorway).

Q This is the hallway, is that right (indicating)?

A Yes.

Q When you saw Sweeney break away from Busto Collins and Mulcahey, you were standing on the side here (indicating)

A Right there (indicating).

Q You were not looking into the hallway? A I am telling you I was looking into the hallway.

Q Did you have your head beyond the post , beyond the entrance? A Looking in. Explain this a little different. I can't understand you.

Q When you were looking into the hallway were you standing in front, looking in? A No, I was standing right alongside there (indicating).

Q For instance, were you standing about where you were sitting? A I am standing there, and I am looking in.

Q This place is the hallway here. This is the hallway leading into the Club room. Where were you standing? A By that little partition here (indicating). Standing right there looking in.

Q You were looking in; in other words you had your body on the side and you were looking in? A I am telling you I was standing right where that partition is, looking in. I could see everything.

Q When you say looking in, was your head inside the hallway? A No it was not inside of the hallway. I

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was just looking in like that (witness indicating).

Q Could you see straight down or could you see only at an angle? A I could see straight.

Q How far out were you from this entrance? A From this little partition, - I was right next to it.

Q Did you have any part of your body sticking out beyond this little partition? A I was standing like that, halfway, looking in that (indicating).

Q You were looking in? A Yes.

Q And you were looking in while the shots weree coming at Sweeney? A Yes sir.

Q And that is what you want this jury to understand, there were six or eight shots fired, and while these shots were being fired you were looking in and you saw who was firing the shots? A I seen who was firing them shots, yes.

Q You saw Mulcahey firing these shots? A Two shots.

Q And you saw Busto Collins fire six shots? A Five or six.

Q How many shots did Busto Collins fire before you saw Mulcahey fire the shots? A I could not tell you?

Q About how many? A About two, - two or three.

Q You heard Busto Collins fire two or three shots?

A Busto Collins fired first and I seen Mulcahey firing.

Q Did Mulcahey have his pistol out before Busto Collins fired any shots? A I did not see it until Busto

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Collins fired two or three shots, then I seen Mulcahey's pistol.

Q Now you are not certain about that?

THE COURT: He said it plain enough, Mr. Rosalsky. It does not make any difference who fired the first shot. If they both fired at him, if the jury believe that, and believe that he died as a result of one of the shots fired under those circumstances, it is a crime.

Q Were any shots fired out into the street? A I did not see any shots fired out in the street.

Q You remained standing on the stoop while all these shots were fired? A Yes sir.

Q You did not run away? A Until Sweeney run out.

Q After Sweeney went out, what became of you? A I walked down to the saloon, Charleton and Greenwich streets.

Q Where Sweeney was? A Not where Sweeney was.

Q Where who was? A I just walked down to the saloon at Charleton and Greenwich and Sweeney walked into the saloon at Dominick and Hudson.

Q You didn't go to your friend's assistance, did you?

A Sweeney's assistance?

Q Yes. A No, I did not.

Q Isn't it a fact that after you heard the first shot fired that you ran away? A No sir, I did not.

MR. ROSALSKY: That is all.

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RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Did you have any supper that night? A No sir, I did not.

Q Do you remember when you were in Charleton and Greenwich Streets saloon that Sweeney left you for a few minutes? A He went out, I don't know where he went. I think he went out by the door.

Q When you came to the Club at 258 Hudson Street did any of these men call Sweeney by name? A No sir. This Keating was on the stoop, as I told you before, and he invited me in.

Q Did he ask you whether that was Sweeney, or did anybody mention Sweeney's name at any time? A No.

Q The shooting in the hall did it come quickly or was there some pause. Did it take up lots of time? A Egan came out of the hall to go back into the Club room, after hearing the shots, I seen this Mulcahey and Busto Collins --

Q I want to know whether Mulcahey and Collins, when they fired the shots, whether they fired them quickly? A Yes sir.

Q One right after the other? A Yes sir.

MR. BROTHERS: That is all.

RE CROSS EXAMINATION BY MR. ROSALSKY:

Q Did you have any lunch that day? A I told you I did not have no supper.

Q Did you have anything to eat around twelve o'clock?

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A Yes, I had my dinner down at my house.

Q All the drinks you are talking about having was after you had your dinner at twelve o'clock? A Yes sir.

BY MR. BROTHERS:

Q Were you drunk or sober that night? A I told you before it would take about twenty beers to get me drunk.

MR. ROSALSKY: Objected to as calling for a conclusion.

THE COURT: He may tell the jury. I will allow it.

Exception taken.

Q Were you drunk or sober at the time of the shooting?
A. I was sober.

Q Were you drunk that day at all? A No sir, I was not drunk.

Q These several drinks you had were had from twelve o'clock to ten o'clock at night? A Yes.

Q And you were riding and walking around all day? A Yes.

Q It was a summer day and warm day? A Yes.

MR. BROTHERS: That is all.

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O T T O H. S C H U L T Z E, the medical assistant to the
District Attorney's office, called as a witness in
- behalf of the People, having first been duly sworn,
tesitified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a physician and surgeon, are you? A Yes sir.

Q And you have been for how many years? A Since June,
1889.

Q You have occupied the position of Coroner's physician
for a number of years? A In the County of New York in 1886
and 1887 and in the Borough of Manhattan from --

MR. BARRA: We will concede the doctor's qualifications.

Q Doctor, during that time you performed hundreds and
thousands of autopsies to ascertain why people died and tes-
tified about it in court? A Yes sir.

Q You are now Medical Assistant to the District Attorney's
office of New York County? A Yes sir.

Q Did you perform a post mortem examination on the body
of one Michael J. Sweeney on the 9th of June, 1917? A I did,
on the 8th of June, 1917.

Q That was at the City morgue, was it? A Yes sir.

Q Who identified the body to you? A The body was iden-
tified for me by Officer Henry J. Haggerty and also by the
brother of the deceased, Thomas J. Sweeney, or Thomas S.
Sweeney.

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Q Do you know where he lived? A 288 Hudson Street.

Q Is it West Houston Street. Have you got your report with you? A (Looking at report) Yes sir, 288 West Houston Street. I confused it with 258 Hudson Street. The address of the brother of the deceased, Thomas J. Sweeney, in my memorandum is 288 West Houston Street.

Q (Mr. Brothers directs Officer Haggerty to stand up in the courtroom.) Is this Officer Haggerty. Is that the man that identified the body? A Yes.

Q This was the body of a male? A Yes.

Q Will you tell us what you saw upon examining him?

A He was 5 feet 8 inches in height and probably weighing 200 pounds, very stout, with muscles well developed. There were three bullet wounds of entrance in his back. One of them was 1/2 inch to the left of his third lumbar spine, that is in the small of his back. Another was placed half an inch to the right of the ninth dorsal spine. The third bullet wound of entrance was on the left side of the back under the tenth rib. The track of the bullet that passed from the back, entering half an inch to the left of the third lumbar spine passed forward through three wounds of the small intestine, and the bullet was removed from the belly wall, three inches to the right of the navel, and one inch above the level of the navel. That was a leaden bullet, 32 calibre.

The bullet that entered on the right side, half an inch to the right of the ninth dorsal spine in the back passed through the

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right ninth rib, through the lung and liver, and was removed from the front of the chest wall in the space between the sixth and seventh ribs, at the junction of the side and front of the chest on the right side.

The track of the bullet that entered in the left side of the back below the left tenth rib ranged forward into the wall of the belly, did not penetrate the cavity of the belly, nor did it come out through the skin. That bullet was not found. The first and second bullets that I have mentioned I have here (witness producing two leaden bullets).

Q What calibre are those bullets? A These are 32-calibre. The actual measurement by the micrometer is .303 to .309 for one and .303 to .311 of an inch for the other; so they are practically .32 of an inch in diameter.

Q By micrometer do you mean the diameter of the bullet?
A Yes, in hundredths of inches.

The right side of the chest was filled with blood, fluid and clotted, over two quarts in amount. The cavity of the belly was filled with fluid and clotted blood from the one small intestine.

The cause of death was a bullet wound of the right lung and liver, a bullet wound of the small intestine and there was also a third bullet wound that passed into the chest wall and belly wall, entering from behind on the left side.

Q His general condition was good, was it? A Yes sir.

MR. BROTHERS: We offer these two bullets in evidence

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as one exhibit.

MR. BARRA: We object on the ground it has no probative force, and is incompetent, irrelevant and immaterial.

THE COURT: If that is the only objection you make, I will allow them in.

MR. BARRA: Your Honor will note my exception.

THE COURT: If you object as to the identification of the bullets I will allow further proof.

MR. BARRA: We do not object on that ground.

THE COURT: Do you concede these are the bullets that were found in the body of the deceased?

MR. BARRA: Yes, no dispute about that.

THE COURT: Then I will allow them in evidence.

Of course, in allowing them in evidence I do not pass upon the weight to be given them. That is a question of fact for the jury to determine, for them to take in connection with all the other evidence in the case. They are simply admitted as an item of evidence for their consideration.

MR. BROTHERS: I ask to have this coat marked People's Exhibit 3 for Identification.

The coat is marked People's Exhibit 3 for Identification.

Q Now, Doctor, will you examine this coat, People's Exhibit 3 for Identification, and tell us whether upon the back of it you find any bullet holes? A Yes sir, there are three.

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Q The three bullet holes that you find upon that exhibit, do they correspond generally to the position of the bullet wounds you described upon Sweeney's body? A They do.

Q Look at one of those holes that is surrounded by discoloration; can you tell us what that discoloration is from, from your experience? A That is a burn.

Q Caused by what? A Caused by the flash from the muzzle of the revolver.

MR. BARRA: This line of examination is objected to as incompetent, irrelevant and immaterial and no proper foundation laid.

THE COURT: Do you mean as to his qualification?

MR. BARRA: Yes.

THE COURT: There has been no testimony about this exhibit, this coat being the coat of the deceased. If you desire to offer proof on that point I will allow you to recall the officer, or you may stipulate, if you wish, that that was the coat worn by the deceased.

MR. BARRA: There is no objection as to that. I am objecting because the District Attorney has not shown Dr. Schultze is qualified to express an opinion upon the matter concerning which he was interrogated.

MR. BROTHERS: I will ask some questions on that.

Q Have you had any experience with firearms? A Yes.

Q Have you in your years of experience made any tests with pistols to see what effect the discharge of them near

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fabrics would have? A Yes sir.

BY THE COURT:

Q About how many times have you made such experiments?

A Many times; I could not tell exactly.

Q Hundreds of times? A Well, a great deal.

Q We want some definite idea? A In the Patterson case such experiments were made.

MR. BARRA: I object to the witness mentioning any names of any case.

THE COURT: I will sustain the objection as to that. I merely wished to know the extent of his experience and knowledge.

Q Was it more than a hundred times, Doctor? A No.

Q Many times? A Yes.

Q But you would not like to say it was a hundred times?

A Oh no, not that. A hundred is a great number.

BY MR. BROTHERS:

Q Now, in these experiments were pistols loaded with cartridges and bullets discharged at paper and at cloth at various distances from them? A Yes.

Q And then it was observed what if any discoloration appeared upon the cloth or paper, and measurements were made to see how far the muzzle of the gun was from the fabric?

A Yes.

Q Then you observed the marks upon the paper? A Yes.

MR. BARRA: That is objected to as incompetent, ir-

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relevant and immaterial.

THE COURT: I will allow it.

MR. BARRA: Your Honor will note an exception.

Q You did that? A I did.

THE COURT: I do not know what force it has.

Whether it has any force or weight I cannot say and I do not presume to say.

Q Examining the exhibit, People's Exhibit 3 for identification, have you any opinion as to the distance that the pistol was held from the coat when it was discharged and made the hole in it; that is, the one surrounded by the discoloration?

MR. BARRA: Objected to.

THE COURT: I will let him answer yes or no.

A Yes.

Q What is your opinion, with reasonable certainty, as to that distance?

MR. BARRA: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid.

THE COURT: I overrule the objection.

MR. BARRA: We note an exception.

Q Assuming it to be a 32-calibre pistol?

MR. BARRA: I object to that, unless it is placed in the form of a hypothetical question; I object to it as calling for the opinion of the witness.

THE COURT: I will allow it.

MR. BARRA: Your Honor notes an exception.

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A The burn surrounding the hole of the cloth resembles those obtained by experiment with a 32-calibre pistol, with the muzzle held at a distance of about one inch from the fabric.

Q And that opinion is based upon what? A Upon the burn and its extent. The burn is nearly three inches in diameter.

Q Does the size of the burn, that is, its diameter, indicate the distance? A Yes, distance. That is, if the muzzle is taken further and further away from that cloth, the burn around the hole will be smaller, and eventually, after six inches, there would be little or no burn at all.

Q At these other holes the pistol was held at a greater distance? A Yes, there is no flash from the muzzle that struck the cloth. This one (indicating) was at about the lower part of the thorax, and this one (indicating) corresponded to the small of the back, and this one (indicating) to the junction of the back and the thigh.

MR. BROTHERS: That is all.

MR. BARRA: We concede that coat was worn by Sweeney.

MR. BROTHERS: I offer it in evidence.

MR. BARRA: I object to it as incompetent, irrelevant and immaterial and having no probative force.

THE COURT: But there is no objection to its identity?

MR. BARRA: No objection to that.

THE COURT: It is merely admitted for such consideration as the jury may deem proper to give it.

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MR. BARRA: Your Honor will note an exception.

The coat is marked in evidence as People's Exhibit 3.

CROSS-EXAMINATION BY MR. BARRA:

Q Doctor, do I understand you to say that the bullets you found in the body of the deceased were what are commonly known as 32-calibre bullets? A Yes sir.

Q And that the marks you observed on the coat which has been marked in evidence as People's Exhibit 3, that whoever fired the shots --

THE COURT: There is only one burn there?

THE WITNESS: There is only one burn there.

Q Well, that particular shot, whoever fired that shot, must have held the revolver at least within one inch of the body of the deceased? A Yes sir.

Q And the others at least six inches away? A I said that that burn resembled an experiment made with a 32-calibre.

BY THE COURT:

Q Well, that is your opinion? A Yes.

BY MR. BARRA:

Q That is your opinion? A Yes.

Q And the other holes that you see in that coat, there are no powder marks at or near them? A No.

Q They do not show any? A No.

Q So it is your opinion that whoever fired the shots held the revolver at least about six inches or more away?

A More than six inches. It must have been more than that,

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more than six inches.

MR. BARRA: That is all.

BY MR. BROTHERS:

Q It might have been twenty feet away? A It might have been.

BY MR. BARRA:

Q Doctor, I understood you to say that you were an expert on firearms as well? A Yes sir.

Q You have an instrument with which you measure the calibres of different bullets? A Yes sir.

Q What is the name of that instrument? A A micrometer.

Q Will a bullet from a 22-calibre cartridge fit a 32-calibre pistol; could it be discharged? A You mean could a bullet of 22-calibre be discharged through a 32-calibre revolver, - yes, provided the shell fitted the barrel.

Q But does a 22-calibre cartridge fit into a 32-calibre pistol? A No, it would be quite loose.

Q And could a 32-calibre bullet be discharged from a 22-calibre pistol? A No sir, it would be too large.

Q And it would not fit the chamber? A That is it, and moreover it could not pass a 22-calibre chamber and remain a 32-calibre bullet.

Q It would be lengthened and distorted? A In the first place it could not be used for such a pistol. In the second place, assuming that it could, the bullet as we find it could never have passed, - for instance, these two bullets,

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through a 22-calibre gun.

Q The original shape or size of these bullets were 32-calibre? A Yes. The micrometer measurements are given as .303 to .309 and the other one .307 to .311, so that they never could have passed through a 22 cylinder.

MR. BARRA: That is all.

M I S S B E A T R I C E G A L L A G H E R, of 258 Hudson Street, called as a witness in behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Miss Gallagher, where do you live? A 258 Hudson St.

Q With whom do you live at that address? A My mother and father.

Q Your age is what? A Twenty years.

Q Where are you employed? A The Automobile Insurance Company.

Q Where is that? A 82 Beaver Street.

Q What kind of work do you do? A Secretarial.

Q For whom? A Mr. Gilfoyle.

Q Is he the general manager? A Yes.

Q Do you know the defendant here, James Mulcahey?

A Yes.

Q How long have you lived at 258 Hudson Street? A Four years.

Q What kind of a building is that? A A private house.

Q How many floors are there? A Three, including the

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first floor.

Q Which floor do you occupy? A The top, third floor.

Q What is there on the ground floor? A A clubhouse.

BY THE COURT:

Q What is the name of the club? A The Greenwich Pioneer.

BY MR. BROTHERS:

Q The Pioneer Social Club? A Social and political.

Q Do you remember the night of June 7th last summer?

A I do.

Q What time did you leave your home that evening?

A Seven o'clock.

Q Where did you go? A When I left the house at first I went to a shoe store with my young sister.

Q Well, you were gone away from the house for a couple of hours, were you? A Yes.

Q When you returned to your home were you alone? A No.

Q Who was with you? A You mean the last time I returned?

Q Yes? A Miss Catherine Flynn.

Q About what time was it when you got to your home?

A About twenty minutes of eleven.

Q When you came to the house with Miss Flynn what did you do? A We stood at the foot of the steps for a few moments, and then one of the fellows from the club brought us out chairs and we sat on the chairs.

Q What was his name? A Eddie Anglin.

Q Where were the chairs placed? A On the top of the

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stoop, the front of the stoop, facing the street.

Q Which side of the stoop was it that you sat? A On the right side.

Q As you were facing the building? A As you faced the street.

Q Where did Miss Flynn sit? A To the left.

BY THE COURT:

Q You mean to the right of the doorway? A We sat right in front of the door.

Q That is the entrance to the hall? A Yes.

BY MR. BROTHERS:

Q While you were sitting there did you see any persons passing in and out? A Yes.

Q Did you see anybody go in carrying a keg of beer?
A Yes.

Q Who was that? A McCaffrey, or Caffrey, and Maloune and Al Jennings.

Q You were there when the shooting took place, were you?
A Yes.

Q How long had you been there up to the time of the shooting? A Altogether about ten or twelve minutes; about fifteen.

Q While you were sitting on the chairs did you see this defendant James Mulcahey? A Yes.

Q Where was he? A I just saw him coming to the window and he spoke to one of the fellows that was talking to us. He

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asked the men that we were talking to to invite us in for a dance. I saw him no more after that.

Q What window would that be? A The window nearest us.

Q Do you see it on this plan, People's Exhibit 1?

A This one here (indicating).

Q Mark it with a cross? A (Witness marking with a cross.)

BY THE COURT:

Q You mean he put his head out of the window? A Yes.

Q You had a good view of him? A Yes.

Q How long have you known him? A Just since they have been in the club, since they have occupied it, about six months.

Q You knew him before that night? A Yes, I had seen him before that night.

BY MR. BROTHERS:

Q You had seen him more than once? A Yes, going in and out of the club; I saw several of the fellows.

BY THE COURT:

Q You have not any doubt in your mind that you saw him that night put his head out of the window and ask the young man to tell you and the other girl to come in to dance? A Yes.

Q And that was about what time? A About five minutes to eleven, right before the shooting.

BY MR. BROTHERS:

Q Did you go in as requested? A No, we ignored the question entirely.

Q After Mulcahey spoke from the window did you see some

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other persons come up the steps and go into the club? A Those fellows had gone in. Three fellows had passed and went into the club.

Q Did you know any of those three men? A No.

Q Have you seen any of them since then? A No, I have not.

Q What was the next thing that happened there? A Why, one of those three fellows came along, - we were talking to Joe Keating and one of them said, "Joe, can I see you a moment?" He said yes. So this fellow went up into the hall with him and they spoke for a few moments and the fellow went down again to the two he had left on the sidewalk and they had a few words, and they finally went up into the club, the three of them together. The other two went back with him to the club. Then Joe Keating walked back with them to the door of the club and then returned to the stoop to us.

Q And as you sat there on these chairs which way were you facing? A The street.

Q While sitting there facing the street did you hear any noise? A Well, the noise seems to be coming out of the club, in a sort of shuffling in the hall. Somebody called him back; Mickish Keating walked back towards them and as he did the shots were fired and we run.

Q How many shots did you hear? A Four.

Q Where did they sound from? A In the hall.

Q How long after you saw Mulcahey inviting you two to

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dance from the window was it you heard the first shot?

A About five minutes.

Q And when you heard these shots did you look into the hall to see what was going on? A I heard four shots.

Q Did you look into the hall? A I looked around as I run, but all I saw was a group of fellows and Joe Kesting's back.

Q Did you distinguish any other person in the hall besides Kesting? A No, I did not.

Q As you sat there did you get up first and then look into the hall or did you look before you got up? A I heard the four shots and looked around and as I did I heard a fellow moan and I ran. I was so excited I did not stop to look.

Q You did not take a good look then, did you? A No, I did not.

Q As you ran from the place did you see what Miss Flynn did? A No, I did not. I run and Miss Flynn stopped.

Q What direction did you run? A Straight up Hudson until I came to a restaurant there. I met this Eddie Anglin that had given us the chairs. He asked me what had happened. I told him I did not know.

Q Did you see Miss Flynn again that evening? A Yes, I crossed the street and she was behind me. She said she happened to look back.

MR. BROTHERS: You may inquire.

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CROSS-EXAMINATION BY MR. ROSALSKY:

Q At the time you run out, about twenty minutes to eleven, was there a light in the hallway? A No.

Q The light was turned out? A Yes.

Q And the hall was dark? A Yes.

Q At the time Eddie Anglin brought the chairs out to you and Miss Flynn, there was no light in the hallway? A No.

Q Who was talking to you at the time Mulcahey invited you to dance? A Joe Keating.

Q Do you remember the man that talked to Joe Keating about that time? A Petie Rogers.

Q You know Petie Rogers? A I don't know him, but from the description I was given of him I presume it was Petie Rogers.

Q Did you know those men? A No, I did not.

Q Did you know Sweeney? A No, I did not.

Q Did Petie Rogers and his two companions go into the club? A Yes.

Q They went by you? A Yes.

Q They went into the hallway? A Yes.

Q Did they go into the clubroom? A Yes.

Q You saw that yourself? A Yes.

Q At the time the shots were fired you were sitting facing the street? A Yes.

Q And you turned? A Yes.

Q Did I understand you to say that you were sitting on

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the stoop, on chairs? A Yes.

Q Will you indicate with a cross mark where the two chairs were; make a zero where your chair was, disregarding the marks that are there now? A I was sitting there (witness indicating).

Q Where this "X" is? A Yes.

Q Then put your initials there? A Yes (indicating by initials).

MR. BARRA: For the purposes of the record, there is a mark made by the witness Peter Rogers. There is no dispute about that, Mr. Brothers?

MR. BROTHERS: No.

Q You say you were sitting where the crossmark is?

A Yes, and Miss Flynn was sitting here.

Q On the other side? A Yes (indicating).

Q Make another "X" mark and put your friend, Miss Flynn's initials there? A (Witness indicating).

Q During the time you were sitting on the stoop was there anyone standing behind your chair? A Yes.

Q Who? A Mickish Keating. He was standing behind a chair. He was standing on top of the stoop.

Q Point out where Keating was standing? A Right there in the doorway (indicating).

Q In the doorway? A Yes.

Q At any time while you were on the stoop was Peter Rogers standing behind your chair? A Yes. When Mickish call-

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ed him up and said he wanted to speak to him a moment he walked in and they were standing in the hall, not behind my chair, but in the hall.

BY THE COURT:

Q Well, that was behind your back, in back of you?

A Yes, in back of me.

BY MR. ROSALSKY:

Q Did Petie Rogers remain standing in back of your chair?

A No, he walked down to the fellows and spoke to them and then the three of them walked up together.

Q From the time that Petie Rogers walked into the hallway, into the clubroom, until you heard the shots, was Petie Rogers standing behind your chair on the stoop? A No.

Q The moment you heard the shots ~~you~~ and you turned, was Petie Rogers on the stoop? A He was not on the stoop, no.

Q Are you sure about that? A Positively.

Q You are positive about that? A The only people on the stoop were Miss Flynn and myself at the time the shots were fired.

Q And the shots came in succession? A Yes.

Q Rapidly? A Yes.

Q In rapid succession? A Yes.

Q How many shots did you hear? A Four.

Q From the time the first shot was fired until the fourth shot was fired will you indicate by counting how fast they went?

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A One, two, three, four.

Q The moment you heard the first shot what did you do?

A They went together. When the last shot was fired I turned around, I heard someone moan and I run off the stoop.

Q Did you see who came out of the hallway? A No, I did not.

MR. ROSALSKY: That is all.

BY MR. BROTHERS:

Q He said the light was not burning in the hall, is that right?

BY MR. ROSALSKY:

Q Pardon me: At the time you heard the shots, where was Keating? A He had just walked back away from us. His back was facing us.

BY THE COURT:

Q You mean he walked into the hallway? A Yes, into the building.

BY MR. ROSALSKY:

Q You say the light was turned out in the hallway?

A Yes sir.

Q Could you distinguish a person's face in that hallway? A No.

Q Was it possible to distinguish a person's face in that hallway? A I guess it was, but I turned so quickly I could not see.

Q Was there any light in that hall? A The door of the

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club was open.

Q Did that throw out light? A Yes, quite a little.
It threw the light right out on them.

Q With the door closed would it throw out any light?
A No.

THE COURT: That is immaterial; she said the door
was open.

BY THE COURT:

Q There was a light coming from the room into the hall?
A Yes.

MR. BARRA: Exception, if your Honor please.

BY MR. ROSALSKY:

Q Did that light light up the hallway or just a portion?
A Just a portion of it.

BY MR. BROTHERS:

Q There was plenty of light right in front of the door-
way coming into the hall from the club?

MR. BARRA: I object to the form: As incompetent,
irrelevant and immaterial.

Objection overruled and exception taken.

A If you were in the hall and anybody was going to
speak to you you could readily define who they were.

Q The lights in the club were burning at the time of
the shooting? A Yes.

Q There was lots of light in the club? A Plenty.

Q When you heard the shots you were excited, somewhat

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frightened? A Yes.

Q As you jumped up, you took a hurried look through the hall? A Yes.

Q Did you take pains to see who was on the stoop? A No, there was nobody on the stoop then but Miss Flynn and myself.

Q How do you know that? A I know it.

Q Who was in the hall? A The only one I saw was Mickish Kesting. He was the first one when I turned around and saw his back.

Q How many men did you see in the hall? A A group.

Q How many were in the group? A I don't know.

Q Where was the group? A Right at the door of the club.

Q The light was shining on them? A Yes.

Q Could you tell who they were? A No.

Q Did you know any of them? A No.

BY THE COURT:

Q You did not look carefully, is that the reason? A No, I did not.

MR. BARRA: I object to that question.

Q Is that the reason why you could not tell, because you did not look carefully?

MR. BARRA: I object to your characterizing it that way.

THE COURT: The jury will understand the Court is not expressing any opinion, but is simply desirous of bringing out the fact.

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MR. BARRA: Exception to your Honor's remarks.

THE COURT: It is for the jury to determine what weight they will give to her answers.

BY MR. BROTHERS:

Q As you left the stoop did you see what Miss Flynn did?

A No, because I did not turn around as I left the stoop.

Q As you ran off the stoop you did not see what Miss Flynn did? A No.

Q Where were you when you first noticed her again, after the shooting? A Across the street.

Q So that you were not paying any attention to her at all? A Nobody.

Q You still say that you and she were the only two on the stoop? A Well, as we went off the stoop I knew she was with me, but there was nobody on the stoop but ourselves.

Q Did you look around to see? A I was in position to look; as I looked around I could take in the whole stoop.

Q Did you see Peter Rogers in the hall? A No, I told you I could not define who was in the hall.

Q You had been going up and down those steps in that hall for a number of years? A Yes.

Q Did they ever have a light in the hall? A Yes.

Q What kind of a light is it? A Electric light.

Q What kind of light did they have in the club? A Electric light.

Q Did you ever go into the clubroom? A When they first

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came there I went into the club, yes.

Q You were not in it anywhere the time of the shooting?

A No.

Q Did the light from the club shine out onto the street?

A From the windows; you could see that there were lights in the club.

Q Was the light strong enough so that it lit up the sidewalk? A No.

Q Is there any street light near there? A No, on the corner.

Q That is about 50 feet away? A Yes.

Q When these men passed you into the hall did you watch to see where they went? A No, I did not.

Q Simply assumed that they went into the club because they went in that direction? A Yes.

Q Did you look into that hall at any time while you were sitting on the stoop before the shooting? A No.

Q The first look you took into the hall or in the direction of the hall was after you heard the shots? A Yes.

BY MR. ROSALSKY:

Q How much time elapsed from the time you saw Petie Rogers and his friends pass by you and go into the hallway until you heard the shots? A About five minutes.

Q Did you ever talk to me about this case? A No.

Q Did you ever see me before? A No.

Q Or talk to Mr. Barra about this case? A No.

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Q You did speak to someone in connection with the District Attorney's office; you have been to the District Attorney's office before to-day? A Yes.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

C A T H E R I N E F L Y N N, of 109 Carlton Street, called as a witness on behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Miss Flynn, how old are you? A Twenty-one.

Q Are you employed somewhere? A Yes sir.

Q Where? A William L. Sherry, Feature Film Company.

Q Where is their place of business? A 729 Seventh Ave.

Q That is near where? A 49th Street.

Q What kind of work do you do? A Secretarial work.

Q You are not an actress? A No sir.

Q Do you know Miss Beatrice Gallagher, who was the last witness? A Yes sir.

Q Were you with her on the night of June 7, 1916?

A Yes.

Q Did you go with her between ten and eleven o'clock to her home, 258 Hudson Street? A I went as far as the stoop.

Q When you came to the stoop will you please tell us what you did and what you saw and what you heard? A When we got to the stoop they were taking in a keg of beer.

Q Did you know the men who were carrying the keg of beer

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in? A One of the fellows was McCaffrey and he had two other fellows with him.

Q Did you sit down on a chair on the stoop? A Yes sir.

Q Do you remember which side of the door you sat? A On the left hand side.

Q As you face the street? A Yes sir.

Q While you were sitting there what happened? A Three fellows came along and one of them said to Mickish, "Mickish, can I see you", so he went up on the stoop and spoke to Mickish and came down in a few minutes and brought the other two fellows into the club.

Q Do you know this defendant Thomas Mulcahey? A Yes sir

Q Did you see him there? A While we were sitting on the stoop he came to the window and he said to Mickish, "Why don't you ask the girls in for a dance?"

Q Did you see him yourself? A We turned around, yes sir.

Q He was in the window? A Yes.

Q Is that the window of the club? A Yes.

Q Did you go in there? A No.

Q Was the time you saw the defendant in the window before or after these three fellows came along? A Before.

Q After the three men came did you see what happened?
A We were sitting there.

Q One of them spoke to Keating, you said? A Yes. Then he went down and brought the other two fellows in.

Q Did you watch to see where they went? A They passed me

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right in, but I did not turn around.

Q Didn't you watch them in the hall? A No sir.

Q What is the next thing you noticed? A We were sitting there, and some one from the window yelled, "Come here," then Mickish turned around and the next thing I heard, the shots fired.

Q Where were the shots? A The came from the Club.

Q How many shots did you hear? A Four.

Q Did you look to see what was going on? A First I jumped up from the stoop, I turned around but I did not see who was in the hall.

Q Did you see anybody in the hall? A There were a group of fellows in the hall.

Q Did you know any of them? A No sir, I could not recognize any of them.

Q Did you stand and look into the hall or just take a glance in? A I took a glance in as I jumped up from the stoop.

Q Where did you go? A I run up to the next corner.

Q Who did you see there? A When I got to the next corner I was with Anglin, the fellow who gave us the chairs. He was standing up by the restaurant.

Q Did you know any of these three men that came along? A No sir.

Q None of their faces were familiar? A I did not take much notice of them.

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Q Did you take much notice of anything there up to the time of the shooting? A No sir.

Q How long do you think you were sitting there altogether?
A Between ten and fifteen minutes.

MR. BROTHERS: That is all.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Miss Flynn, will you talk up loudly please. You say you sat on the left hand side of the stoop? A Yes sir, the side that the Club is on.

Q Nearest to the window? A Yes.

Q And Miss Gallagher sat on the right hand side?
A Yes sir.

Q Were you sitting facing Miss Gallagher? A Our chairs were tilted.

Q Facing to Miss Gallagher? A Yes sir.

Q Do you remember the man who talked to Keating? A Yes.

Q And his two friends going into the place, passed you by going into the hallway? A Yes.

Q From the time that they passed you and went into the hallway until you heard the first shot, how much time elapsed about? A I don't know, I don't think it was five minutes.

Q Approximately five minutes? A I don't think it even was five minutes.

Q Did the man who spoke to Mickish or Keating:-
Keating and Mickish are one and the same persons? A Yes.

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Q The man that spoke to Keating did he remain standing behind the chair of Miss Gallagher on the stoop? A When the fellows went in he went into the Club with them.

Q Was there any man standing behind Miss Gallagher's chair? A When?

Q From the time that the three men went by you into the Club room until you heard the shots? A He went in with them and then came out again.

Q Who? A Mickish.

Q Outside of Mickish? A No sir, I didn't see any others.

Q Mickish was standing in the hallway? A Yes, right behind us.

Q By Mickish you mean Keating? A Yes.

Q You are positive about that, are you? A Yes, I didn't see anyone else.

Q Now were the four shots fired in rapid succession? A Yes.

Q Will you count in numbers how rapidly the shots were fired? A One, two three, four.

Q Miss Flynn, did you ever see me before? A No sir.

Q Or Mr. Barra? A No.

Q Did you talk to us about the case? A No.

Q You spoke to the District Attorney's representative. You were to the District Attorney's office before? A Yes.

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Q And you told them all you knew? A Yes sir.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

THE COURT: Gentlemen of the jury, the Court will take a recess now until tomorrow morning ~~at~~ half-past ten. Meanwhile you will remember the instruction I gave you today. You must not discuss this case with any one, nor among yourselves. You must not talk about it until the case is submitted to you at the end of it; that is the time to decide it and not before that. You must keep an open mind and listen to all the evidence, and do not make up your minds on the question of the guilt of the innocence of the defendant until the end of the case after you retire to discuss your verdict.

The Court adjourns until 10:30 o'clock, January 10th, 1918.

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PEOPLE vs. MULCAHEY.

TRIAL CONTINUED. January 10, 1918.

JOHN J. O'CONNELL, an officer of the Second Branch Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the Police Force of the City of New York? A I am.

Q Attached to the detective bureau? A I am.

Q Do you belong to the force how long? A Going on now 13 years.

Q On the night of June 7, 1917, did you go to the premises 258 Hudson Street? A I did.

Q What time did you arrive there? A About 11:15 P.M.

Q You went to the premises, did you? A I did.

Q You went into the club room? A Yes.

Q And searched around, did you? A Yes.

Q Did you go into the yard in the rear of the premises, A I did.

Q Do you recognize this plan of the premises, People's Exhibit 1 in evidence? A I do.

Q Where is the entrance that leads into the yard? A Right here.

Q Back of the stairs? A Yes.

Q When you went out that way did you have to descend

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