

dicating) with a big lock on it, and he put them up in that room and he put the men out by twos in the hall, and told them to get out before the police came.

THE COURT: No. Leave that out, what he told them to do. Do not give any conversation.

BY MR NOTT:

Q Now, did you go out? A Yes, sir; I went out. He put me out.

Q And when you got out what happened? A When I went out, there was policemen out there, grabbing everybody that came out of there, and searching their pockets, their back pockets, for the one who shot O'Brien.

Q Well, did the officers stop anybody? A Yes, sir. He let three men go, and stopped the fourth man, and he said, "I think we'll hold him."

THE COURT: No. Never mind what he said. Strike that out.

BY MR NOTT:

Q Did you see how many persons he stopped, if any?

A Yes, sir.

Q How many? A Oh, about---

Q I don't mean those he let go again, but how many did he keep? A Oh, only one.

Q Only one? A Yes, sir.

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Q And he let the others go? A Yes, sir.

Q Did he stop you? A Stop me? No, sir.

Q Then where did you go? A Then I went down, and followed this man where they were searching him, and then came back again, over to the drug store, where this O'Brien was.

Q Did you see O'Brien there? A No, sir.

Q Did you go inside? A No, sir.

Q What became of the man that the police arrested? Did you see?

MR GOLDSMITH: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Was that the defendant?

MR NOTT: No, sir.

THE COURT: I do not think that is material.

BY MR NOTT:

Q Now, was the defendant in there, when you got back there the second time? A The defendant?

Q Yes, was Smith there then when you came back there the second time? A No, sir.

Q Did you see him? A No, sir.

Q Well, did you see what became of O'Brien? A O'Brien?

Q Yes. A Yes, sir.

Q What? A He was over in the drug store, and they brought him to the hospital.

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Q How did they get him there? A I didn't see what they were doing to him.

Q Well, did you see him taken out of the drug store?

A Yes, sir.

Q Well, what was he put into, if anything? A Into an ambulance.

Q And do you remember what hospital it was from? A No, sir, I don't.

Q Well, you saw him taken away in the ambulance? A Yes, sir.

Q Did you see him after that? A Yes, sir.

Q Where? A In the hospital.

Q What hospital? A I forget the name of the hospital.

Q And how long was it after that that you saw him in the hospital? A I think it was the day after.

Q Now, did you give your name to anybody? Did anybody take your name? A No, sir.

Q Well, how did you happen to be a witness in the case?

A Well, it was in 30th Street. I asked a policeman that was on the Broadway beat--I knowed him by sight--and I told him about it.

THE COURT: No. Leave out any conversation with that officer.

BY MR NOTT:

Q Now, you say when you spoke with the officers down

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there about it, they chased you out of the store? A Yes, sir.

MR GOLDSMITH: Now I object to that interpretation of the witness's testimony. He says he was ordered out of the place by the bartender.

MR NOTT: Oh, I am talking about the drug store. There isn't any bartender in the drug store.

BY MR NOTT:

Q Who was it put you out of the drug store? A I wasn't inside of the drug store. I was going in, when the policeman stopped me. I was going in to tell the policeman.

THE COURT: No. Never mind what you were going to do.

MR GOLDSMITH: I ask to have it stricken out.

THE COURT: Motion granted.

THE WITNESS: And he pushed me away.

BY THE COURT:

Q He wouldn't let you go into the drug store? A No, sir.

BY MR NOTT:

Q Now when did you see Smith after that? A When did I see Smith after that?

Q Yes. A In the Tombs.

Q How many days after? A It was two days after.

Q And under what circumstances did you see him? A I went in there to identify him.

Q Well, how many men were there? A In the line?

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Q Yes. A There was about fifteen men.

Q And where was this line of fifteen men? A Up on the second floor, I think, by the cells.

Q In the corridor? A Yes, sir.

Q Were they all lined up when you were brought in?

A Yes, sir.

Q And did you see Smith in the line? A Yes, sir.

Q And did you pick him out of that line? A Yes, sir.

Q Were these parties that were in this line, were they in uniform or in citizen's clothes, or how? A Citizen's clothes.

Q All in citizen's clothes? A Yes, sir.

Q How long had you seen Smith, on the night previous to this shooting when you say you saw him in there? A Oh, about ten minutes.

Q What was he doing then? A Only walking up and down; that is all.

Q Through the place? A Yes, sir.

Q Did you hear him give any orders to anybody? A Yes, I did.

Q Well, who did he give them to? A To a woman.

Q Who was in the place? A Yes, sir.

THE COURT:

Gentlemen of the Jury:

We will take a recess now until a quarter past two o'clock.

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Do not talk with each other about the case, nor form
or express any opinion in reference to it, until you have
heard all of the evidence.

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AFTER RECESS.

JAMES J. BRADY, being cross examined, testified as follows:

CROSS EXAMINATION BY MR GOLDSMITH:

Q You said this morning that you were working for the Postal Telegraph Company? A Yes, sir.

Q When did you go to work for the Postal Telegraph Company? A On the Saturday before Christmas.

Q And what had you been doing before that? A Before that?

Q Yes. A Well, I had been home about a month.

Q Out of work? A Yes, sir.

Q And what did you do before that? A I worked in the Postal Telegraph.

Q Why did you leave? How many times were you employed and re-employed by the Postal Telegraph Company? A Twice.

Q Were you discharged or did you leave? A No; I left it.

Q Now, when did you leave the first time? A I think it was in May.

Q And then when did you go back? A I went back in October.

Q From May to October, what were you doing? A I was to the country.

Q Where? A Asbury Park.

Q What were you doing? A Well, I have been out there for

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my vacation.

Q Where were you stopping? A I was stopping at--now, in the hotel down there where I was working, the Lafayette Hotel.

Q What were you doing in the hotel? Bell boy? A Yes, sir; bell boy.

Q Did you work there all that summer? A Up until two months, and then I got robbed there.

Q Somebody robbed you? A Yes, sir.

Q And how much did they steal from you? A They stole \$12 from me.

Q And, because you were robbed you left the hotel?
A I had to leave.

Q Why. A Because I was brought down to Freehold prison, as a witness.

Q What? A I was a witness down there.

Q You were taken to the Freehold Prison? A Yes, sir.

Q And you were locked up, weren't you? A As a witness ; yes.

Q As a witness? A Yes.

Q And how long were you in the Freehold Prison? A Until October.

Q Two months, you were in prison? A Well, yes, two months.

Q Just as a witness, eh? A Yes, sir.

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Q And after you got out of the Freehold Prison, where did you go? A I came right home to New York.

Q And where was that? A 252 West 133rd Street.

Q And that was in October? A Yes, sir.

Q And then you went to the Postal Telegraph Company and asked for employment? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Is that right? A Yes, sir.

Q And how long then did you work? A I worked, I think it was, up until November--yes, about November.

Q You worked about a month, didn't you? A Yes, sir, about a month.

Q And you left then? A Yes, sir.

Q And then you didn't work again until a couple of days before Christmas? A I left until a couple of days before Christmas.

Q And what were you doing while you were out of work?
A I was home, with my father.

Q You didn't visit any of these places along the Bowery, did you? A Yes, sir.

Q Pell Street? A No, sir.

Q Doyers Street? A No, sir.

Q Chinatown? A No, sir.

Q But you had been on the Bowery? A Yes, sir.

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Q Now, where did you get that collar that you have got on?

A What?

Q You understand what I said? A I got it off my father, of course.

Q When did you get it? A Well, I couldn't exactly tell you.

Q Where did you get your collar? A I don't think it is right to ask me that. And I didn't get nothing off the House of Detention.

Q How do you know what I wanted to ask you?

A Well, it is enough to say that I did get it off there.

Q You didn't have a collar when you were arrested, did you?

A Yes.

Q Is that the collar?

A No, sir.

Q The necktie?

A Yes; no, sir. I didn't have no necktie.

Q Did you have a collar and necktie on, when you were taken to Essex Market?

A No, sir.

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Q And from there where were you taken? A From there I was taken down in the District Attorney's office.

Q And then where were you taken? A Up to the House of Detention.

Q And have you been there ever since? A Yes, sir.

Q And you knew that you will be paid 50 cents a day while you are there; don't you? A I certainly do.

Q Have you been promised anything else? A I have not.

Q Now you had been on the Bowery before this night; hadn't you? A Yes, sir.

Q How many times? A Twice, before that.

Q And when was the first time? A Well, the first time was Monday night.

Q Of that very week? A Of that very week.

Q Had you been in No. 9 Bowery? A No, sir; I never was there.

Q And you never made an attempt to go in No. 9 Bowery?
A No, sir.

Q Eh? A No, sir.

Q And what were you doing on the Bowery, on that Monday night? What did you go down there for? A To see the sights.

Q And when was the next time you went down there?

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A Tuesday night.

Q The following night, you went down there?

A Yes, sir.

Q All alone? A No, sir; with Joseph McGivern.

Q Did this trouble happen on a Tuesday night?

A No, sir.

Q Was McGivern with you, on Tuesday night?

A Yes, sir.

Q And had been with you, on the previous occasion?

A Yes, sir.

Q Now how many times, in all, had you been down with McGivern? A I have been down twice with McGivern.

Q On a Tuesday night? A Yes, sir; and on a Thursday night.

Q McGivern testified, this morning, that it was the first time that he had ever been down there.

MR. NOTT: I object to that. He testified to having seen the woman, the night before.

MR. GOLDSMITH: Oh, yes. I withdraw that question.

BY MR. GOLDSMITH:

Q Now you had been in 23 Bowery once before this?

A Yes, sir.

Q And you were put out, weren't you? A Yes, sir.

Q By Mr. Smith? A No, sir.

Q He ordered you out? A No, sir.

Q Any words with him? A No, sir.

Q Weren't you unceremoniously ejected from the place?

A No, sir.

Q On Monday night? A On Monday night?

Q Yes, A No, sir.

Q How long were you in there, on Monday night?

A Well, for about two hours.

Q Where did you get the money from? A Well, I earned it.

Q How much did you earn? A Oh, I earned that day, about \$1.30.

Q Did you spend any of it to eat? A Yes, sir.

Q How much? A Oh, about 60 cents of it.

Q Do you usually use about 60 cents for your dinner?

A Oh, no, sir; not for my dinner; for my three meals a day.

Q And you are positive that you were not thrown out of there, on Monday night? A I am positive.

Q And on Tuesday night you went down with McGivern?

A Yes, sir.

Q And where did you meet McGivern, did you say?

A At 104th Street and Columbus Avenue.

Q You were not working that day; were you?

A Yes, sir.

Q Did you have any money? A No, sir, not that night.

Q Eh? A No, sir; not that night.

Q Well, McGivern swore here, this morning, that you were not working.

MR. NOTT: He didn't say anything of the kind. He said he was not working with him.

A He wasn't working with me. I work in a different office from what he did.

BY MR. GOLDSMITH:

Q Now, when you came down with McGivern, did you try to get into No. 9? A Yes, sir.

Q Oh, you did? A Yes, sir.

Q You did make an attempt to go into No. 9?

A Yes, sir. I said, "We'll go in," and he said, "No."

Q And you were not allowed to go in there, were you?

A No, sir.

Q You were barred out of the place? A Yes, sir.

Q Now, why did you say, a minute ago, that you were not in No. 9, and didn't make any attempt to get in there?

A Because I wasn't in No. 9.

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Q But I asked you if you made an attempt to get in there, and you said no. A Well, because I didn't know the number of the place. I didn't even know the number of 23 Boverly, until the officer told me that.

Q Who told you that? What officer? A Officer Smith. He took me down, next day, to show me the number of the place, and the number of the license, even.

Q The number of the license? A Yes, sir.

Q What is the number of the license? A 2,375.

Q And what did you want to get the number of the license for? A I couldn't tell you that.

Q Now, will you describe O'Brien for us, please?

A Yes, sir.

Q Go on. A Well, he is a man about -- let me see -- I should judge about 5 feet, 6 or 7 inches, and kind of smooth face, and kind of rough features. That's the only thing I could describe him.

Q The only way? A Yes, sir. And I ain't good at that.

Q Now McGivern was with you all this time, in this place? A Sir?

Q (Question repeated) A Yes, sir; and we went home; and then I went back again.

Q I know. I mean, he was with you? A Yes, sir.

Q And saw what you saw? A Yes, sir; he saw what I saw. But he didn't see what I saw, when I came back, the first time.

Q No. I am talking of the first time. A Yes, sir; he did then.

Q And he was right alongside of you, all the time?

A Yes, sir.

Q And he heard what you heard? A Yes, sir; he heard what I heard.

Q And saw what you saw? A Yes, sir; and saw what I saw.

Q When you were taken into the Tombs, for the purpose of identifying Mr. Smith -- A Yes, sir.

Q You were taken to the second tier of the Tombs Prison; weren't you? A Yes, sir; I think I was; yes, sir.

Q Yes? A But, at that time, I didn't look to see what tier I was at.

Q Well, it don't make any difference. A No, sir; as long as I was in the Tombs, I think its all right.

Q And there were twelve, or thirteen, or fourteen, or fifteen men standing in line? A Yes, sir, there was.

Q Did you notice how Mr. Smith was dressed, in the

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Tombs? A Yes, sir.

Q Tell the jury. A He had his coat off.

Q Yes? A And he was standing --

Q And his hat off? A And his hat off. And he was standing right up straight.

Q He had his collar and tie on, didn't he?

A I didn't notice that particular. I only looked for his face; that's all.

Q Only for his face? A Yes, sir.

Q Did the other men have collars and ties on?

A Well, I couldn't tell you.

Q Well, isn't it a fact that he was the only man that had a collar and tie on? A I didn't say that he had a collar and tie on.

Q You don't even know that; do you? A No, sir.

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

DIRECT EXAMINATION BY MR. NOTT:

Q Now, Mr. Donovan, I want you, please, to speak up, because these last two gentlemen have got to hear you, just as much as the first two. How old are you, sir?

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A 30 years old.

Q How old? A 30.

Q And what is your business? A Stenographer and typewriter.

Q On the night of the 29th of December, 1904, were you in the premises at 23 Bowery, or in the early morning?

A Early on Thursday morning -- I guess it was the 29th -- I can figure back. Christmas was Sunday, the 25th, Monday was the 26th, Tuesday the 27th. That would make Thursday, the 29th. I believe I was.

Q What time was it that you first went to those premises, that night, I mean? A That night, about half past seven o'clock.

Q In the evening? A In the evening, yes, sir.

Q Had you ever been in there before? A Yes, sir.

Q Had you ever seen the defendant Smith there?

A Yes, sir.

Q How many times had you seen him there before?

A Well, I had been in there about six nights previous to that, every night, or probably seven nights, and I had seen the defendant there, in the evening.

Q So you knew him by sight? A Yes, sir.

Q Well, when you went in there, about half past seven,

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this night, did you see him then? When was the first time, that night, you saw him? A I think, the first time, that night, that I saw him, to place it right, was later in the evening, when a wardman from Eldridge Street station came in there. I believe that was the first I had seen of him, that night; probably a little before.

Q And about what time was that, as near as you can fix it? A I should judge, between eleven and half past eleven.

Q That night? A That evening; yes, sir.

Q And did you know the wardman's name?

A I found out. I think it is Lehmeyer.

Q And did you see him talking to Smith?

A Yes, sir.

Q And how long were they in conversation together?

A I only seen them in conversation for two or three seconds, and they went outside, went out of my view.

Q Had you seen any fight or disturbance in that place, up to that time? A I had.

Q What time did that occur? A That occurred just right after Smith and Lehmeyer had a talk. They went outside, and the fight occurred probably five minutes after that.

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Q Well, how long was it after that that you saw Smith again?

A I saw Smith after that, ~~that~~ after that fight, about ten minutes. I sat down and talked with him.

Q Do you know whether or not Smith is one of the proprietors of this place?

MR. GOLDSMITH: Objected to, as calling for the conclusion of the witness.

MR. NOTT: Question withdrawn.

BY MR. NOTT:

Q What did you see Smith doing, during the nights that you were there?

MR. GOLDSMITH: Objected to, as immaterial, irrelevant and incompetent.

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THE COURT: Is that on the night in question?

MR NOTT: Yes, sir, on previous nights that he was there. I want to show Smith's relation to the premises.

THE COURT: Does it make any difference?

MR NOTT: It may, on the question of motive.

THE COURT: Oh, no; I do not think so.

BY MR NOTT:

Q Now, what was the fight that you saw immediately after you saw Smith and Lehmeyer talking?

MR GOLDSMITH: Objected to, unless connected with the defendant.

THE COURT: Does it refer to this shooting?

MR NOTT: No, sir.

THE COURT: Then how is it material?

MR NOTT: Why, as showing the character of the place.

THE COURT: No; I do not think that is material.

MR GOLDSMITH: And I object to that statement, if your Honor please, of the District Attorney.

THE COURT: No, I do not think it would be material.

BY MR NOTT:

Q Now you say you saw Smith about ten minutes after this disturbance? A I did.

Q And was that still in the premises? A Yes, sir.

Q Did you see a man named O'Brien there? A I did.

Q When did you first see him there? A First I had

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seen of O'Brien was previous to the disturbance talked about.

Q And was he there during the disturbance? A He was.

Q And did you see him there afterwards? A I did.

Q Now, after this disturbance, did he stay there?

MR GOLDSMITH: Objected to. There is no evidence here that there was any disturbance.

THE COURT: Oh, yes. There is evidence that there was a shooting there.

MR GOLDSMITH: But he is not talking about that, if your Honor please. The District Attorney makes no reference to that.

MR NOTT: No; I haven't come to that yet. I want to locate O'Brien during the evening.

MR GOLDSMITH: Well, locate him, and don't insinuate.

THE COURT: I will let you locate O'Brien, of course.

MR NOTT: And I ask him if O'Brien remained after the disturbance that he speak of, or left, if the witness knows.

BY THE COURT:

Q Can you answer the question? A Yes, sir.

Q Then answer it? A O'Brien left after the disturbance.

BY MR NOTT:

Q And when did he return? A About fifteen or twenty minutes or half an hour, probably.

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Q Now, where were you sitting then? A I was sitting at one of the tables.

Q In which part of the premises? A In the rear part of the premises.

Q That is, up those steps (indicating)? A Yes, sir.

Q And about what part of the room? A About ten feet from the piano.

Q The piano is in the rear? A In the rear of the building.

Q Just take, will you please, and mark with the letter "P" where the piano is on that plan? Look at the plan, and be sure that you get your bearings right? A Yes, sir.

MR NOTT: He marks the rear corner.

BY MR NOTT:

Q And you say you were sitting about ten feet away from the piano? A About ten feet; in front of the piano.

Q In front of the piano? A Yes, sir.

Q Down this way (illustrating)? A Yes, sir.

Q Now, after you sat there, was your attention attracted to any other disturbance, early in the morning? A It was.

Q About what time was that, as near as you can place the time? A I think about 11:45 or 11:30, or probably a little later.

Q Well, you said the first disturbance took place about then. I am speaking now about the second one? A The second dis-

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turbance took place about twenty minutes or half an hour after the first disturbance.

Q Well, that is as near as you can recollect it? A That is as near as I can recollect the time.

Q Now, tell this jury in your own language what you saw and heard?

MR GOLDSMITH: Have you fixed now, the time?

THE COURT: I think, Mr Nott, I will confine you-- unless this defendant himself was engaged in that disturbance before that--in that case, I will let you show-- but I will not let you show all the disturbances there.

MR NOTT: But this is the disturbance in question.

THE COURT: That is different. The District Attorney says he refers to the shooting occurrence.

MR GOLDSMITH: I understand.

THE WITNESS: I can't locate it in any different way than that, at the time.

BY MR NOTT:

Q State what you saw and heard at that time? A I saw O'Brien and the defendant standing in the rear of the partition, or behind the partition, and I heard O'Brien say to the defendant---

Q Now what partition was that? A The partition right above the three steps.

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Q That is, the partition at the head of those three steps (indicating)? A Yes, sir.

Q Does that partition run all the way across the room?

A No, sir.

Q There is a way to pass it, on either side? A Yes, sir; it is a screen, a wooden screen.

Q Now, at which side of the screen were O'Brien and the defendant standing? Towards the toilet or the wall? A O'Brien was standing on this side of the partition (indicating), and the defendant was on the other side.

Q Now, could you hear what they said? A I heard O'Brien call the defendant a stool pigeon, and I heard the defendant say that he wouldn't stand that from any one. Further than that, I couldn't swear to what the conversation was, but I distinctly remember those words.

Q Was there any woman there? A There was.

Q Where was she? A She was sitting at a table, about five feet across from where I was.

Q Well, were there any other women there? A There were.

Q Well, after these remarks were passed about stool pigeon, did you hear anything then? A I heard no conversation, that is, that I can remember. There were some words passed there, but I don't know what they were.

Q Then what happened? A Smith went around one side of

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the screen, and the defendant went around the other side of the screen.

Q Smith did what? A Smith went around on one side of the partition, and the defendant on the other.

Q The defendant? Well, Smith is the defendant? A Or O'Brien, I mean.

Q Well, then, what happened? A And I got up, and walked down to the end of that partition there (indicating)--there were some words--and I seen the defendant with a gun in his hand, or a revolver, and he ordered O'Brien out, and O'Brien didn't go out, and the defendant shot at him.

Q Where was O'Brien at the time? A O'Brien was standing a few feet away from the side entrance, that is, the door.

Q The door to the side hall? A Yes, sir. And the defendant was across on the other side of the room, down below the steps.

Q That is, the small room steps? A Yes, sir, the small room.

BY THE COURT:

Q You say O'Brien refused to go out? A I don't know whether he refused to go out, but he didn't go out.

Q He didn't go out? A No, sir.

BY MR NOTT:

Q Then you say the defendant shot at him? A Yes, sir.

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Q And what happened then? A And, after the defendant shot O'Brien, he said, "I would go to the chair for you", and he ordered O'Brien out again, and O'Brien went out; and the defendant went behind the bar, went out--I don't know whether he went behind the bar or not.

Q What were you doing? A I was standing, tussling with a girl there.

Q What was she doing there? A She wanted to get out to see the shooting, and I was holding her back.

Q Well, after the shooting, what did you do? A After the shooting, this girl punched at my eye, and I thought the best thing to do was for me to get out of there, and, on the other side of the room there is another entrance, leading upstairs.

Q To the hallway of the hotel? A Yes, sir. And I went out there and sent in for my overcoat. As I was in that entrance there, Smith and another party were in there.

Q Who was the other party? A I don't know the other party's name.

BY THE COURT:

Q By Smith you mean the defendant? A Yes, sir.

BY MR NOTT:

Q Do you know what he is called in there, that other party?

A Trilby, I think he is called.

Q Well, what was Smith and Trilby doing? A Trilby had a

gun in his hand, and the cartridges from the revolver--in snapping it up, they fell out on the floor.

Q Well, who was taking the cartridges out? A They fell out in snapping up the gun.

Q But who snapped the gun? A Trilby

Q And what did Smith and Trilby do? A They went out of that entrance there.

Q Out of which other entrance? A The other entrance that leads into the hotel.

Q And what did you do? A I went down the Bowery, and I went about--I guess down to Mott Street, I think, if I place it right; and, as I was going down there I seen a roundsman running up the street, and I followed him up, and it led me into No. 6 Bowery, the drug store there.

I went into No. 6 Bowery and I seen O'Brien sitting on the chair, and several policemen around him, and I went over and talked to him, and he told me he was shot.

THE COURT: What he said, leave out.

A (Continued) And handed me a pocketbook, and I went out of there then.

BY MR NOTT:

Q And where did you go to then? A I went back to the saloon, 29 Bowery.

Q 29? A Yes, sir.

BY THE COURT:

Q 29 or-- A 29--23.

BY MR NOTT:

Q You mean the same place where you were before? A Yes, sir.

Q Smith's place? A Yes, sir; Smith & Buchanan.

Q And what was the state of affairs when you got back there? A The doors were closed, and the place was in darkness, except the barroom. I believe there was a light in the barroom.

Q Did you go inside? A And I went inside.

Q And who was inside there? A There was the bartender and one girl, and a couple of other fellows.

Q Were there any officers there then? A I believe two officers came in as I came in the door.

Q Well, what did they do? A They just looked around the place and went out.

Q And then where did you go? A From there I went to Eldridge Street station house--no, I first went to Hudson Street Hospital.

Q Well-- A I had heard that O'Brien was brought to the Hudson Street Hospital.

Q And was he there? A He wasn't there.

Q And then you went to Eldridge Street? A I went to

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Gouverneur Hospital and he was there, but I couldn't see him.

Q And then where did you go? A I went to Eldridge Street station.

Q And who did you see there? A I seen Detective Schmidt, I think his name was.

Q And did you have any conversation with him? A I did.

Q Did you see anybody else there? A He referred me to Detective Lohmeyer.

Q Well, did you see Lohmeyer? A I seen Lohmeyer, yes, sir.

Q Was he the same detective you had seen in Smith's place? A Yes, sir.

Q Did you have any conversation with him? A I did not. Only started to talk to him, and he told me to get out.

Q Well, when he told you to get out, had you said anything to him about this case? A Not to him. But I had to his partner, and his partner had told him.

MR GOLDSMITH: Objected to as a conclusion of the witness.

BY MR NOTT:

Q Well, did you hear his partner tell him? A I did. I heard his partner tell him, talk to him.

Q And then, when you started to talk to him he told you to get out? A Yes, sir.

Q Now, in what occupation were you engaged, at that time?

A At that time I had no regular occupation.

Q What were you doing? A I was engaged in hunting for a man, for a private party.

Q Well, was it in consequence of that occupation that you had been in this place? A No, I couldn't say it was; although I had went to several places there looking for him.

Q Well, along in that neighborhood? A Along in that neighborhood. I had been in all the places there.

Q Had you ever had any trouble with Smith? A No, sir.

Q Did you ever know O'Brien before this? A No, sir.

BY MR GOLDSMITH:

Q What are you; a private detective? A No, sir.

Q Who was the man you were hunting for? A Why, you wouldn't know him, if I told you who he was.

Q I wouldn't? A No, sir.

Q Well, I don't know who you were hunting for. I want to find out?

A Well, I don't think that is material to the case.

Q Well, just tell us who you were hunting for?

MR NOTT: Well, I don't see that that is material. I object.

THE COURT: I do not see that it is material.

BY MR GOLDSMITH:

Q Who was the party who employed you to hunt him up?

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MR NOTT: Objected to as immaterial.

THE COURT: I will not compel him to answer those two questions. What is the use of dragging people's names into this case, who have nothing to do with the case?

BY MR GOLDSMITH:

Q Were you doing a piece of detective work? A I was not; not what you would call detective work.

Q Then what was the purpose of looking for this man, if you were not doing a piece of detective work? A A party wanted to locate the man.

Q For what? A I don't see that that is material, for what purpose the party wanted to locate him.

Q Now, aint that a connected story on your part? A No; no connected story at all.

Q What is your correct name? A Cornelius J. Donovan.

Q What name were you under in State's Prison? A Cornelius J. Donovan.

Q For how long? A For two years.

Q What for? A Forgery.

Q When? (No answer)

Q When? A From 1901--no, from 1902 to 1904.

Q Where? A In Allegheny, Pennsylvania.

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Q And when did you get out? A On December 7th.

Q And is that the only time you ever were in prison, that you ever served a term? A In Allegheny?

Q No. I am talking about States Prison, Sing Sing.

A I don't see that that is material.

THE COURT: Yes, that is material.

THE WITNESS: Well, I was in States Prison.

BY MR. GOLDSMITH:

Q For how long? A Two years.

Q What for? A Forgery.

Q When was that? A 1896 or 1898; I don't remember the year.

Q That is, two? A Yes, sir.

Q Any others? A No, sir.

Q You don't think these are material to this case; do you? A I do not.

Q Weren't you in Elmira? A No, sir.

Q You escaped that?

MR. NOTT: Now, I object to that question, if your Honor please.

BY MR. GOLDSMITH:

Q You escaped being sent to Elmira; didn't you?

A No, sir.

MR. NOTT: I object to that. We have all escaped

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that. I never was there.

MR. GOLDSMITH: Well, you are fortunate.

BY MR. GOLDSMITH:

Q You knew Smith; don't you? A I do.

Q Did you ever talk to Smith about this case?

A No, sir.

Q Have you communicated with Smith about this case?

A No, sir.

Q Did you ever communicate with anybody else?

A I did.

Q Look at this paper, and see if it is in your handwriting (indicating)? A It is.

MR. GOLDSMITH: I offer it in evidence.

MR. NOTT: May I see it, if your Honor please?

MR. GOLDSMITH: Certainly. Here it is.

(It is admitted in evidence without objection, and marked Defendant's Exhibit 1).

BY MR. GOLDSMITH:

Q Who did you communicate with? A A party by the name of Ryan.

Q Who is Ryan? A He is a party that I met down in one of the Bowery resorts.

Q And when did you meet him? A About two weeks before

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Christmas, or three weeks before Christmas, or four weeks before Christmas; between December 7th and 15th.

Q About the time that you were liberated from the Allegheny State Prison? A Yes, sir.

Q And where did you meet him? A I met him in the Chatham Club.

Q Where is that? A I don't know the number of the place.

Q What street is it on? A (No answer)

Q You know what street it is on? A I can't place whether it is Deyer or Pell; I can't place the difference between them.

Q Well, it was on either one of them? A Yes, sir; on either one or the other.

Q And he is a friend of yours? A No.

Q He is not? A No, he is not.

Q What is Ryan's first name? A Michael.

Q Where did you address him to? A To a party by the name of Mullins, in Mott Street.

Q Yes. When did he give you that address?

A I don't know when he give me the address. I met him in there, in Mullins's place, too.

Q And you thought a letter there would reach him?

A I thought a letter would reach him. I wasn't quite sure.

Q You say he wasn't a friend of yours? A No, sir; no friend; merely an acquaintance of mine.

Q And that's the reason you addressed him as "Dear Mike"?

A Yes, sir; as "Dear Mike".

MR. GOLDSMITH: I will read this letter to the jury.

(Mr. Goldsmith reads the exhibit to the jury).

BY MR. GOLDSMITH:

Q You sent this letter? A I sent that letter; yes.

Q What did you want to see the defendant for?

A I wanted to see the defendant, because I was getting tired of being up there.

Q Where? A Nanuet.

Q Where is that? A In the Village of Nanuet, at the house of the party I was sent up with, Mr. Hammond.

Q What party? A Mr. Hammond.

Q And were you at his house? A Yes, sir.

Q Living there? A Living there.

Q And the only day you could see this man would be on a Thursday; is that right? A On a Monday.

Q That was the day when you were not watched?

A Yes, sir.

Q You mean Mr. Hammond, the Chief of the Process Servers

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upstairs? A I do.

Q And anybody else up there with you, besides Mr. Hammond? A Yes, sir.

Q Who? A Mr. Roberts.

Q Another County Detective? A Yes, sir.

Q Anybody else? A No, sir.

Q Now, did they have a whole house? A Except the family.

Q Whose family? A Mr. Hammond's family.

Q Mr. Hammond's family? A Yes, sir.

Q How long were you up in Nanuet? A About five weeks.

Q And where did you get the paper and envelope and stamp from? A I had the paper in my grip, I believe I had it in my grip, or I may have got it in the house.

Q And you mailed it on the 7th of February, as the stamp shows? A About that time.

Q And what did you want to see Smith for?

A I was -- I was tired of being up there, and I wanted to see Smith, and arrange not to appear against him, if I could. I didn't want to appear against Smith.

Q What arrangements did you want to make with Smith?

A The arrangements was that I wouldn't appear against him.

Q For a consideration? A No, sir.

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Q What did you mean by this, "That may seem unmanly"?

A I thought it was unmanly on my part to go and not let Smith know that I was a witness against him.

Q But you were up there for five weeks, before you came to have that frame of mind? A Yes, sir.

Q And it was on your affidavit that Smith was arrested? A It was on my affidavit that he was arrested.

Q And didn't you say that you were a reporter, at the time? A Not in the affidavit; no, sir.

Q Did you make the statement to any one that you were a reporter? A Yes, sir.

Q To whom? A To several policemen.

Q Were you a reporter? A More or less, yes.

Q What paper did you report for? A At that time, I wasn't doing any reporting. I had reported for The Evening World and The World.

Q Had you done any reporting work for the two years previous to that? A No, not in New York.

Q Or any other place? A I had.

Q Where? A I done a little reporting work in Allegheny.

Q In the prison? A No, sir; outside of the prison. I was in the prison two years -- at least, I wasn't there two

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years.

Q But you told us you were there two years. A Twenty months I was there.

Q You were there twenty months? A Yes, sir.

Q And for whom did you work? A I believe I reported a speech, down there.

Q I don't want what you may have done. I want the absolute fact. A I can't say for sure, but I reported a speech for one of the newspapers there.

Q What speech did you report? A There was some speech making, at a dinner.

Q What dinner? A I can't exactly recall now, it is so far away.

Q Why, it must have been in November? A Two years ago.

Q Yes? A Let me see. I'll place the date for you. It was in April.

Q What year? A I believe, of 1902.

Q And when were you sent to prison? A In June.

Q And you had been in Allegheny for two months or three months previous to that? A Not steady; off and on. I was in Allegheny and out of Allegheny.

Q And, when you were not in Allegheny, where were you?

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A In Chicago and in Buffalo.

Q What did you do in Chicago? A I worked as a court reporter.

Q For what court, or for whom? A The firm of Walton, James & Ford.

Q And were you employed by the week, or how?

A By the week, and by the piece.

Q Were you employed by a law firm? A No, sir; by a firm of court reporters. There are no official reports in Chicago.

Q There are none? A No, sir.

Q And how long were you in Chicago? A About eight months, I think, off and on, altogether.

Q And that was right after you came out of State Prison? A Oh, no. I was in New York for a year and a half, probably, after I came out of State Prison.

Q Now tell us the name of the man that delivered the speech in Allegheny that you reported? A I can't remember the name, but I remember it was on the occasion of a dinner.

Q And who did you report that speech for? A I believe I reported that for the Pittsburg Times.

Q In Allegheny? A Yes, sir. In Pittsburg, just across the river.

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Q And you don't know the name of the dinner?

A No, sir.

Q Or the name of the man whose speech you reported?

A No, sir.

Q And you don't know anybody on the Pittsburgh Times, do you? A Not by name. I get my pay from the cashier's office. I've done work on newspapers here, and don't know the people's names.

Q Now, the cashier's office of the Pittsburgh Times is in Pittsburgh? A Yes, sir.

Q And you were in Allegheny? A Yes, sir; but it is right across the river, like Brooklyn and New York.

Q How much did you get for this work? A I think I got \$7 or \$8.

Q And how much space did it take up? A About three quarters of a column. I was employed to report the speech part of it, the shorthand work, and I charged \$10 a night for the speech reporting, the same as I have done in New York, for The New York World.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Were you detained as a witness, after this shooting?

A I was.

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Q And, instead of being sent to the House of Detention, you were taken out of town? A I was.

Q And kept up there, at this place? A Yes, sir.

Q You say that you got sick of being there?

A Yes, sir.

Q That is a small place, isn't it? A Yes, sir; a small country place. There is no one there.

Q Well, why didn't you want to appear against the defendant? A Well, I'll tell you why I didn't want to appear against him. I was afraid I would get myself in trouble.

Q Did you know anything about O'Brien? A I knew that O'Brien had appeared as a witness against a policeman.

LOUIS G. KREUTZER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q You are a member of the Municipal Police Force?

A Yes, sir.

Q What Precinct are you attached to? A Twelfth, Eldridge Street.

Q And to what precinct were you attached, during the month of december? A Twelfth.

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Q And were you there in the month of May last?

A Yes, sir.

Q And ever since? A Yes, sir.

Q And are the premises 23 Bowery in the 12th Precinct?

A Yes, sir.

Q The dividing line between the 12th and 6th Precincts comes in the middle of the Bowery? A In the centre of the Bowery; yes, sir.

Q What was your post on December 29th?

A I believe I had two posts there.

Q Now what was your post? Don't you know that?

A My post was No. 1.

Q What did that cover? A From Division to Canal Street, on the Bowery.

Q On the Bowery? A Yes, sir; and I take in half of the block of each side street.

Q And how long had you been on that post?

A About a year.

Q Do you know this defendant? A I have seen him.

Q You know him by sight? A Yes, sir.

Q And do you know where his premises are? A At 23 Bowery.

Q Do you know where he was, before he came to those

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premises?

MR. GOLDSMITH: Objected to, as immaterial, irrelevant and incompetent, and not having any bearing on the subject matter embraced in this indictment.

THE COURT: I do not see that it is very material where he was.

MR. NOTT: It may become material. I want to show that he was employed in another place very close to there.

THE COURT: Well, this case has narrowed down to a very small compass. The question is, did he shoot this man? If he did not, no crime has been committed. A great deal that you have outlined in your case, in your opening, I do not see the bearing of.

MR. NOTT: I am aware, of course, your Honor, where there is direct evidence of a shooting, that motive is not essential; but it may be material and important, just the same.

THE COURT: Well, we will see, later on. Let us get what we call the act itself in evidence; and then, on cross examination, they may undertake to find out what motive there was for shooting the man.

BY MR. NOTT:

Q Do you know who the proprietors are, at 23 Bowery?

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A Smith & Buchanan, I believe.

MR. GOLDSMITH: I move that be stricken out, as irresponsible.

THE COURT: Well, I do not think it harms one way or the other. I will allow it to stay in, though I do not see its bearing on the case.

MR. GOLDSMITH: I take an exception to your Honor's ruling.

BY MR. NOTT:

Q You have been on that post you say for about a year? A Yes, sir.

Q At various times of the day and night? A Day and night, yes, sir.

Q And are the premises 23 Bowery a saloon? A Yes, sir; a hotel, I believe.

Q It is commonly known as a Raines Law Hotel?

MR. GOLDSMITH: Objected to.

A I don't know about that.

MR. GOLDSMITH: I object to that, and ask that the question be excluded.

THE COURT: I do not think it has any bearing on the case.

BY MR. NOTT:

Q Now, have you ever made an arrest in there?

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MR. GOLDSMITH: Objected to, as immaterial, irrelevant and incompetent, and improper.

THE COURT: Yes, I will exclude that.

BY MR. NOTT:

Q Now, were you on post -- I withdraw that. At what time were you on post, on duty, on the night and early morning of December 29th? A From 12, at night, until 6, in the morning; the late tour.

Q On that night, did you see this man O'Brien?

A No, sir.

Q What? A Yes, sir; after, I saw him.

Q Where was he when you first saw him?

A In the drug store, No. 6 Bowery.

Q And what time was it that you first saw him there?

A Somewheres around 4 o'clock.

Q In the morning? A Yes, sir.

Q You don't know of your own knowledge how long he had been there? A No; that I couldn't say.

Q How long prior to that time was it that you had passed the premises No. 23 Bowery? A Well, I passed up and down the line there, all night; about every 20 or 25 minutes.

Q Did you pass there after one o'clock? A Yes, sir, all night, from 12 o'clock until morning.

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Q After 12 o'clock had you observed anybody going in there? A No, sir.

Q Or coming out? A No, sir.

Q Was the bar room lit up? A Yes, sir, and the bar exposed.

Q Did you see anybody in there after one o'clock?

A No, sir.

Q Not a soul? A No, sir.

Q And were there any lights in this back room?

A That I couldn't say. I couldn't see in there.

Q Couldn't you see, if there had been a light there?

A Well, I couldn't swear to that.

Q What? Did you look to see? A Yes, I looked.

Q But you didn't see any? A No, sir.

Q You didn't see any persons passing in or out of this place? A No, sir; neither in or out.

Q Well, did you look to see? A Well, when I passed there, I could see any one go in or out.

Q You were looking to see if any violations of law were committed there? A Yes, sir.

Q Did you hear any plane going there? A I didn't hear any.

Q Did you listen? A Well, I didn't listen. I didn't stop there.

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Q Do you know how long Smith has been in that place?

MR. GOLDSMITH: Objected to. There is no evidence that Smith had been in the place, or had controlled or managed the place.

BY MR. NOTT:

Q Well, when was it after that that you saw O'Brien, in the drug store? A Somewheres in the neighborhood of 4 o'clock.

Q And did you have any talk with him? A I asked him --

MR. GOLDSMITH: Objected to.

BY MR. NOTT:

Q No. I don't ask what he said or you said, but did you have a talk with him? Yes or no? A Yes, sir.

Q And, after that talk, what did you do? A I called an ambulance.

Q Did you see the ambulance come? A Yes, sir.

Q Did you make any examination of O'Brien's person, or notice anything about him? A Well, I looked at him and asked him --

Q And what did you see? A He was shot, and he said --

THE COURT: No, do not give the conversation.

BY THE COURT:

Q What did you see, with your own eyes? A I saw a little blood on his shirt.

BY MR. NOTT:

Q On what part of the shirt? A Somewheres around the navel.

Q Any hole in his shirt? A A little hole.

Q The ambulance of what hospital came? A Gouverneur.

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Q After the ambulance came did it take him away? A Yes, sir.

Q What did you do then? A Carried him out when the ambulance came.

Q Yes, I say, what did you do, after the ambulance took him away? A I went over to 23 Bowery.

Q Now, how did you come to go to 23 Bowery? A Well, there had been a rumor around there that he had been shot in 23 Bowery.

MR GOLDSMITH: I move to strike that out.

THE COURT: Yes. Strike it out.

BY THE COURT:

Q You went to 23 Bowery to see about the shooting? A Yes, sir; to see whether anything occurred in there.

BY MR NOTT:

Q When you got there, was there anybody in the place?

A Three men, in the back room.

Q Anybody in the front of the premises? A Yes, sir; an officer.

Q What was his name? A Keifer, of the Sixth Precinct.

Q What was he doing when you got there? A Well, nothing in particular, but just looking out for the place, because we heard somebody had been shot in there.

MR GOLDSMITH: I object to that and ask that it be stricken out.

THE COURT: Motion granted.

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BY MR NOTT;

Q Did you see any parties coming out of the place then?

A No, sir.

Q What did you do when you got there? A Went inside, and placed the three men--

Q Did any one go in there with you? A There was two or three officers come in with me.

Q And into what part of the premises did you go? A Through the hall, into the rear.

Q Well, was that the first time you had ever been in there?

A Well, I went--that is the first time I had ever been in there, up to that time.

Q The first time? A Yes, sir.

Q And you have been on that post a year? A Yes, sir.

Q Now, into what part of the premises did you go? A I went into the rear.

Q And who did you find in there? A Three men in there, Springer, Monahan and Kelly.

Q Did you find the defendant there? A No, sir.

Q Did you look for him? A Yes, sir; inquired for him.

Q And did you find him there? A No, sir.

Q You say you went in through the bar? How did you get in there? A I went in through the hall.

Q Through this private hall or the hotel hall? A The private hall, the hall on the side, not the upstairs hall.

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

Q Did you notice a plane when you got in there? A I didn't notice any. I didn't pay any particular attention to the plane.

Q Well, what other part of the premises did you visit?

A That's all.

Q Did you go upstairs? A No, sir.

Q Weren't you looking for Smith? A They told me he wasn't in there.

Q You took their sayso for that; did you?

MR GOLDSMITH: Oh, I object to that, if your Honor please.

BY MR NOTT:

Q Did you go upstairs, or make any search in the upper part of the premises? A No, sir.

Q Did you place these three parties under arrest?

A Yes, sir.

Q And where did you take them to? A To Eldridge Street.

Q To the station house? A To the station house.

Q After that did you see O'Brien anywhere? A I didn't see O'Brien after he went to the hospital.

Q Had you ever seen him before? A No, sir, not to my knowledge. I seen him around there but I didn't know him as O'Brien.

Q What post did you have on the 8th of May last?

MR GOLDSMITH: Objected to as immaterial, irrelevant and incompetent, and too remote, and as having no bearing on the issues, and not the subject matter embraced in the indictment.

THE COURT: How is it material.

MR NOTT: Well, just on that general question that we have spoken of before.

THE COURT: I think not; I will exclude it.

BY MR NOTT:

Q Did you go back to those premises again that night, after you made these arrests? A No, sir. The men in the house were sent out on that again.

Q Do you know when those three parties were employed in those premises, if at all? A Only from their own statements.

CROSS EXAMINATION: None.

J O H N A . Y O U N G , a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR NOTT:

Q Officer, you are a member of the Municipal Police Force?

A Yes, sir.

Q And you were in the month of December, 1904? A Yes,

sir.

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Q Did you go to the premises No. 6 Bowery on that night?

A On that morning.

Q Well, what time was it when you got there? A About 3:30, I guess, in the morning.

Q As near as you can place the time? A Yes, sir.

Q Who did you find there? A I found Hilly O'Brien there, with a pistol shot wound in his stomach, sitting on a chair.

Q Did you look at the wound? A Yes, sir.

Q Where was it? A Just about in here (indicating).

Q Just about the navel? A Yes, sir.

Q And you say it was a pistol shot wound? A It looked that way.

Q Well, a hole and blood? A Yes, sir.

Q Did you have a conversation with him? I don't ask you what it was. Did he talk to you? A Yes, sir, I spoke to him.

Q Did you see what was done with him? A I see he was taken in the ambulance and sent to the hospital.

Q What hospital? A The Hudson Street hospital, the New York Hospital in Hudson Street.

Q Did you observe O'Brien's condition as to sobriety?

A Well, he looked to me to be pretty sober. Of course, a man in that condition--

MR GOLDSMITH: I object to that, and ask that the answer be stricken out.

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THE COURT: No. I will allow that, whether he appeared to be sober or not.

BY MR NOTT:

Q Did you go over to the premises, 23 Bowery? A No, sir.

MR GOLDSMITH: No questions.

PHILIP E. KEIFFER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR NOTT:

Q You are a member of the Municipal Police Force? A Yes, sir.

Q And were you a member of that force on the 29th of December, 1904? A Yes, sir.

Q Did you go to the drug store, No. 6 Bowery? A Yes, sir.

Q At what time was it when you went there? A Between three and four o'clock in the morning.

Q Who did you find there? A I found a man by the name-- I think it was O'Brien.

Q Had you ever seen him before? A No, sir; never see him before.

Q Who else did you find there? A Well, there was several policemen there. There was Roundman Horan and Officer Young and Officer McIntyre, and two or three citizens.

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Q When you got there did you observe anything about O'Brien?

A He was sitting in a chair and some one told me--

Q No. Never mind what anybody told you. Did you see anything about him? A I went over to him and examined him, and found he was shot in the stomach.

Q And then did you have any conversation with him? A I asked him who shot him.

Q No. Never mind what it was.

BY THE COURT:

Q Did you have any conversation with him, without telling what it was? A Yes, sir.

BY MR NOTT:

Q You did? A Yes, sir.

Q And what did you do after this talk?

BY THE COURT:

Q What did you do? A Well, we went out of this drug store across the street to No. 23 Bowery.

BY MR NOTT:

Q Yes. And who is we? A Officer Kreutzer, I think his name is, of the 12th Precinct.

Q And yourself? A Yes, sir. And then we were followed by the Roundsman, a little later.

Q Now, when you got to 23 Bowery, what was the condition of those premises, at that time? A The place was apparently closed?

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Q Was there any light in the barroom? A Yes, sir; there was a light in the barroom.

Q Could you see into the barroom from the street?

A Yes, sir.

Q And did you go inside or remain outside? A Well, I went inside of the door--right inside of the door.

Q Yes. Did you go back into the premises? A Well, we went inside of the doorway.

Q I knew that? A Roundsman Horan went back, I believe.

Q Did you go back, I asked you? A No, sir; I went just inside of the door of the barroom.

Q And who was in there, if anybody? A There was--I think he is a waiter--the bartender, and a fellow that said he was a piano player.

Q And what did you do with those parties? A Officer Kreutzer placed them under arrest, I believe, and brought them to the 12th Precinct station house.

Q And how was the bartender dressed? A The bartender--I guess he was in his short sleeves. I believe he had his short sleeves rolled up.

Q And the piano player? A He had--I think he had his coat and hat on.

Q Well, this was after four o'clock by that time?

A Yes, sir; somewhere around there.

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Q And the piano player was still there? A Yes, sir; he was there.

Q Yes? A And he said he was the piano player.

THE COURT: No. Strike that out.

MR GOLDSMITH: I ask to have that stricken out.

THE COURT: Yes.

BY MR NOTT:

Q Now, did you go upstairs? A No, sir.

Q Did you see any of the officers go upstairs? A No, sir; I didn't see anybody go upstairs. They might have went upstairs.

Q Did you see the defendant, Smith there? A Is this Smith (indicating the defendant)?

Q Yes. A No, sir; I didn't.

Q Did you make any inquired for Smith?

MR GOLDSMITH: I object to that, if your Honor please.

MR NOTT: I want to show that they were looking for him, or were alleged to be looking for him.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

A Well, I didn't.

BY MR NOTT:

Q Well, did you hear any of the other officers make inquiries for the defendant, Smith?

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MR GOLDSMITH: I object to it as hearsay.

THE COURT: I do not see that it is very material.

MR NOTT: Withdrawn.

BY MR NOTT:

Q And then where did you go? A We went to the 12th Precinct station house with these prisoners.

Q With these prisoners? A Yes, sir.

Q And then you went back on post? A Yes, sir.

CROSS EXAMINATION: None.

WILLIAM O'BRIEN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR NOTT:

Q Now, O'Brien, will you kindly say whatever you see fit to say in a voice loud enough for this jury to hear you?

MR GOLDSMITH: I object to that injunction to the witness, what he sees fit to say.

THE COURT: Well, he will only answer questions.

MR GOLDSMITH: Yes, sir, he will only answer questions that are put, I believe.

BY MR NOTT:

Q How old are you? A Thirty-five.

Q What is your occupation? A Fireman.

Q You have been convicted of crime heretofore?

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A Yes, sir.

Q More than once?

A Yes, sir.

Q Do you know a woman named Sadie Ennis?

A Yes, sir.

Q Do you know whether or not she was that woman that was brought in here a couple of times?

A Well, I didn't see her brought in.

Q Well, she was out in the hall?

A Yes, sir.

Q How long have you known her?

MR GOLDSMITH: Objected to as immaterial.

THE COURT: Well, I will allow it.

MR GOLDSMITH: Exception.

A Well, I ~~was~~ I knew her between two and a half and three years; something like that.

Q Do you know a young man named Brennan?

A Yes, sir; I did know him.

Q Yes. Were you present when he was shot?

MR GOLDSMITH: Objected to.

THE COURT: Yes. I exclude it, unless it was on this occasion.

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MR NOTT: No, sir; it was not. Now, if your Honor please, it is my purpose to prove, as I have already outlined--

MR GOLDSMITH: One moment. I object.

THE COURT: I think I know what you want to prove, but I think I will exclude it. I will not go into that, in this case. It is a simple case, Mr Nott.

MR NOTT: Well, it is simple in one way, and not in the other.

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THE COURT: The question is, did the defendant shoot this man, on the stand; and, if he did, was he justified in doing it?

BY MR. NOTT:

Q Now, do you remember 9th, not the 29th day of December, 1904?

MR. GOLDSMITH: Objected to.

THE COURT: I will let that question be asked, does he remember that day.

A Well, tell me something that occurred that day, and may be I will remember. I don't remember the 9th day. Tell me something that occurred, and I may remember.

BY THE COURT:

Q You have no recollection of any occurrence on that day? A No, sir, not at present; not until he asks me something about that day.

BY MR. NOTT:

Q Now, do you remember being a witness as to something that occurred on that day, in December?

MR. GOLDSMITH: Objected to.

THE COURT: I will not ~~not~~ go into any other matter than the particular subject matter of this indictment. It could not have any bearing on the case,

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except, possibly, on the question of motive, and you are not obliged to prove motive.

BY MR. NOTT:

Q Prior to the 9th day of December, 1904, had you ever had any trouble with the defendant? A No, sir.

Q Do you remember the night of the 29th of December?

A The 29th?

Q Yes. Do you remember the night you got shot?

A Well, I don't remember the day, but as far as I remember back --

BY THE COURT:

Q You remember the occurrence? A Yes, sir; I remember the occurrence.

BY MR. NOTT:

Q Well, you were only shot once, in the month of December? A That's all.

Q Now, had you been drinking, that night?

MR. GOLDSMITH: Objected to as immaterial, irrelevant and incompetent.

MR. NOTT: I think that is very material.

THE COURT: I think that might be better on the cross examination, better than on the direct.

BY MR. NOTT:

Q Where were you shot? What part of your anatomy?

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A What do you mean by anatomy?

Q In what part of your body were you hit? A Down around here (indicating).

Q Have you got the scar there yet? A Yes, sir.

MR. NOTT: Well, I ask you to show the jury.

MR. GOLDSMITH: I object to it, any illustration or exhibition.

THE COURT: Do you concede that he was shot there?

MR. GOLDSMITH: Yes, sir. I concede that, that he was shot there.

THE COURT: Well, he concedes it.

MR. GOLDSMITH: The defendant concedes that he was shot. What do you want?

MR. NOTT: Well, don't shout; I'm not deaf, whatever I want.

BY THE COURT:

Q You were shot right below the navel? A No, sir. About there, down about the fifth rib (indicating).

BY MR. NOTT:

Q And where were you taken, after you were shot?

A Well, as I remember, I walked down the street, after I was shot, and was then taken to the drug store.

Q No. 6 Bowers? A Yes, sir.

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Q And where were you taken from there? A To the Gouverneur Hospital.

Q Do you remember any of the doctors that attended you? Dr. Tandes, for instance? A Yes, sir.

Q And how long were you in the hospital, suffering from this wound? A I think, 19 or 20 days. I don't exactly remember right. 19 or 20 days.

Q And, since you get out of the hospital, are you living in the Borough of Manhattan? A Yes, sir; I live in Brooklyn.

MR. GOLDSMITH: Is that all?

MR. NOTT: That is all.

CROSS EXAMINATION BY MR. GOLDSMITH:

Q You recollect the night that you had this trouble, don't you, O'Brien? A I do.

Q You can't forget it, can you, very well?

A (No answer)

Q Do you know who shot you?

MR. NOTT: Now, if your Honor please, I just wish to make the remark, that I haven't gone into this, and that he makes him his own witness, and that I have the right to cross examine.

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THE COURT: I will allow it.

BY THE COURT:

Q Counsel asks you who shot you? A Well, I had some trouble that night, and I --

MR. NOTT: Now you have answered the question. I object to anything further.

BY THE COURT:

Q Now who shot you? A Well, the party that I accused --

MR. NOTT: No. I object.

BY THE COURT:

Q Now who shot you? A To the best of my knowledge, I didn't see it.

BY MR. GOLDSMITH:

Q Was it the defendant? A No, sir.

Q Did you have some trouble, that night?

A Yes, sir.

Q Where did you have the trouble? A Corner of Canal and Bowery.

Q Now were you shot there, or on the sidewalk?

A In front of 17 Bowery. I won't say in front of 17 Bowery. Between 15, 17 and 19., something in that line, because I didn't hear no shot getting fired, or seen no pistol going off, but I felt a zip (illustrating) in my side, and I

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put my hand down to my side, and I pulled my hand out from my shirt, and I seen some blood on my shirt, on my hand, and I walked to an elevator post, and I lifted up my shirt, and seen a wound there.

BY THE COURT:

Q Well, but you haven't told us yet who shot you.

A Well, positively I didn't see no man shoot me. I wouldn't accuse the party that shot me.

Q Don't you know who shot you? A No, sir.

Q You say, on your oath, that you don't know who shot you? A No, sir. Probably it was the man in front of me, but I haven't seen no man in front of me.

Q You say positively, under your oath, that you don't know who shot you? A I haven't seen nobody in front of me.

Q I haven't ask you that. Positively, under your oath, you don't know who shot you, under your oath?

A No, sir.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q You remember that you were in 23 Bowery, that night?

A I was.

Q And you had a fight in there, didn't you, with this Sadie Huns? A Well, you could call it a fight. She came over

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to the table, and got talking to me, and she said, "Now, you are on a drunk again. Why don't you give me that money that you promised me?" And I got up, and pushed her away from the table. I didn't hit her.

Q And then somebody got up and hit you, and there was a general row? A No; nobody hit me.

Q Did you see a sailor in there, about that time?
A No; I didn't see no sailor. There was this party that I --

Q Now, do you remember when you got in the drug store?
A Well, part of it, yes.

Q Do you remember saying to one of the officers -- and you remember the officers there asking you there who shot you, don't you?

MR. GOLDSMITH: Now, I object to that. I object to the conversation that he had in the drug store.

MR. NOTT: This is cross examination.

MR. GOLDSMITH: I object to anything that was said in the absence of the defendant.

THE COURT: I think the District Attorney may justly claim that this is an unwilling witness.

MR GOLDSMITH: Well, then, he should have put the questions on direct, and said that he was an adverse witness. One moment. I object, if your Honor please on the ground that the record does not show that this witness is an adverse witness. He is a witness brought here by the prosecution.

THE COURT: I will let the question be asked.

MR GOLDSMITH: Exception.

BY MR NOTT:

Q Do you remember the officers asking you who shot you?

MR GOLDSMITH: The same objection.

THE COURT: Question allowed.

MR GOLDSMITH: Exception.

A I do.

BY MR NOTT:

Q Do you remember stating to one of those officers that it was Billy Smith that shot you? A No, sir.

MR GOLDSMITH: Objected to.

A (Answer continued) When the officer asked me who shot me, I said I was shot in front of 17 Bowery. I recollect very well what I said.

BY MR NOTT:

Q Now, do you remember having a conversation in the hospital with the stepfather of this man, Brennan? A I do.

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Q Do you remember Brennan asking you who shot you?

MR GOLDSMITH: I object to that, if your Honor please.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

A Brennan didn't ask me; no.

BY MR NOTT:

Q I mean his stepfather? A Yes, sir.

Q And do you remember saying to Brennan that you got it and you got it good, and you would settle it yourself when you got out? A I did.

Q And didn't you say, "That is what a man gets for going up against cops"? A Yes; I said that. And I said, "And that is what you get for not minding your own business, for going up against cops, and not minding your own business".

Q "And that is what you get for not minding your own business, for going up against cops, and not minding your own business"? A Yes.

MR NOTT: Now, it seems to me, if your Honor please, in view of the attitude of this witness, it seems to me material to show his connection with that other case.

THE COURT: No.

MR NOTT: If your Honor please, I have not a couple of doctors that I wish to call, and they had an operation at two o'clock to-day, and I told them that they could go for that and come in the morning; and it is so near now

the hour of adjournment, within six minutes of it, that if your Honor will indulge me I will put them on in the morning.

MR GOLDSMITH: Do you think that they can tell that this man did the shooting?

MR NOTT: No; I didn't say anything of the kind.

MR GOLDSMITH: I object to the adjournment, if your Honor please, unless your Honor is going to adjourn promptly at four o'clock.

THE COURT: I shall adjourn anyway at four o'clock.

Gentlemen of the Jury, it is so near four o'clock, I think it is better to adjourn now, even if we had the witnesses here.

Do not talk about the case, or form or express any opinion in reference to it. You may go until to-morrow morning at half-past ten o'clock.

(The trial was then adjourned until Friday morning, February 17, 1905, at 10:30 ..)

TRIAL RESUMED.

New York, February 17, 1905.

APPEARANCES:

Assist. District Attorney CHARLES C. NOTT, for the People;
HENRY J. GOLDSMITH, Esq. and THOMAS J. DINNEAN, Esq., for
the Defense.

ARCHIBALD T A B E S , a witness called in behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR NOTT:

Q What is your profession, please? A Physician.

Q And how long have you been a physician, Doctor?

A About two years.

Q And were you connected with any institution in this
city during the month of December, 1904? A Gouverneur Hospital,
in this city.

Q And what position did you hold there? A Senior Surgeon.

Q And were you Senior Surgeon, on the morning of December
29, 1904? A Yes, sir.

Q Did you, in the course of your duties, treat one William
O'Brien on that day or morning? A Yes, sir.

Q Where was he when you first saw him? A In the--upon a carriage in the Recovery Room, just before he was taken into the Operating Room.

Q And did you have more than one William O'Brien under treatment at that time? A No.

Q Tell the jury from what injuries, if any, you found him suffering? A He was suffering from a bullet wound of the left chest wall. It was situated about four inches to the left side of the median line, and in the neighborhood of the sixth rib.

Q And did you treat the wound? A I assisted. It was treated in the Operating Room.

Q Will you put your finger on the place where the wound was, on a corresponding place, I mean? A Yes, sir (indicating).

BY THE COURT;

Q In the chest? A In the chest wall.

BY MR NOTT;

Q On the left side? A Yes, sir.

Q And how many inches below the heart? A It was just a little below the apex of the heart.

Q Is that portion of the body in which the wound was received a vital part of the body? A It depends upon the direction of the bullet.

Q Well, it speaks for itself. Well, you say it is just below the heart? A Yes, sir.

Q And how long was O'Brien in the hospital? A I don't remember the exact number of days, but he was there about three weeks.

Q And was then discharged? A Yes, sir.

MR NOTT: Will you call O'Brien, please?

BY MR NOTT:

Q Just look at that man (indicating). Is that the man that you treated? A Yes, sir.

MR NOTT: I suppose that it may appear on the record that that is the witness O'Brien, who testified yesterday.

CROSS EXAMINATION: None.

MR NOTT: The People rest.

MR GOLDSMITH: The defense rest.

THE COURT: Gentlemen, do you want to go to the jury?

MR GOLDSMITH: Well, I renew my motions made at the close of the People's case. I don't think that there is sufficient to go to the jury.

THE COURT: I shall submit the case to the jury.

MR GOLDSMITH: Then I take an exception, sir. Will your Honor take away the second offense in this indictment?

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THE COURT: No. There are two counts, assault with intent to kill and assault with intent to do grievous bodily harm. I think I will submit it under the first count.

MR GOLDSMITH: I take an exception, sir.

(The jury found the Defendant, Guilty of Assault in the First Degree, as a second offence, as charged in the indictment)