

START

1789

CASE

CASE #1789

I N D E X

	Direct	Cross	Re-direct	Re-cross
William A. Rice	2	6		
Edward Cooper	11	14		
John J. Reid, Jr.	23	25		
Abraham S. Kasinsky	29	31		
Pasquale Pizuti	33			
Dominico Pece	34			
Paulo Paulino	35			
Abramo Pece	36	42	44	

I hereby certify that the foregoing
is a correct transcript of the
stenographer's minutes.

Thos H. Osborne
of Fred Stenographer

CASE # 1789

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

-----X
T H E P E O P L E

against

A B R A M O P E C E .
-----X

Indictment filed 14th day of May, 1913.

Indicted for Assault in the first and second degree.

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

For the People,

ASSISTANT DISTRICT ATTORNEY COLLIGAN.

For the Defendant,

JOHN PALMIERI, ESQ.

Tried before HON. JOSEPH F. MULQUEEN, J., and a
Jury, on the 3rd day of December, 1913.

Thomas W. Osborne,
Official Stenographer

2119

CASE # 1789

MR. PALMIERI: May I have all the witnesses excluded?

THE COURT: Yes.

(The witnesses are excluded from the court room).

W I L L I A M A. R I C E, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(First Inspection District).

DIRECT EXAMINATION BY MR. COLLIGAN:

Q How long have you been a member of the police force?

A About twenty months.

Q And were you connected with the First Inspection District on the 19th of April, 1913? A I was.

Q Did you go to premises 27 Cooper Square that evening?

A I did.

Q Those premises are in the city and county of New York?

A They are.

Q Who accompanied you there? A Officers Cooper, Hickson and Kasinsky.

Q Did you enter the premises? A I did.

Q When you entered did you see the defendant in this case?

A I did.

Q Where was he? A Standing about two foot from the doorway.

BY THE COURT:

Q Were you in uniform? A No, in citizen's clothes.

CASE # 1789

BY MR. COLLIGAN:

Q Had you ever seen the defendant before?

BY THE COURT:

Q None of the officers in uniform? A No.

BY MR. COLLIGAN:

Q Had you ever seen the defendant before? A No, sir.

Q You never had any trouble with him? A No.

Q How long did you remain in the building? A About ten minutes.

Q Who was with you? A Officer Cooper.

Q Where were the other two officers? A We left them on the sidewalk.

Q And when you returned from upstairs in the building, where next did you see the defendant? A He was still standing at the doorway when we came down.

Q Did you have any conversation with him then? A No.

Q What did you then do? A Walked to the corner with Officer Cooper, and we met Officers Kasinsky and Hickson and then walked down 5th street about ten or fifteen feet and stood in conversation relative to what police business we had entered 27 Cooper Square on. We were standing there about three minutes when this defendant walked up and looked at us and muttered something in a foreign language and walked away, and we did not pay any attention to him. About two minutes after that Officer Cooper

681789
CASE #1789

4

and myself started east on 5th street towards 2nd avenue. Officers Kasinsky and Hickson following about twenty foot behind. When we had gone about fifteen feet I turned around and hollered to Officer Hickson "What is that number" -- we had decided to go to another place.

MR. PALMIERI: I object to what he decided.

THE COURT: Strike it out.

MR. COLLIGAN: Strike it out.

THE WITNESS: I then turned and started eastward again and after going about fifteen foot I heard a quick step at my side and as I did I kind of turned sideways and as I turned sideways I saw the defendant's hand lunging in towards my stomach. I bent over, and as I bent over his hand went between my legs. Immediately after hitting my legs he brought his hand up quick and struck me on the chin with a knife. I then jumped back about three foot. As I did Officer Cooper made a grab for the defendant. As he did he broke away and lunged at me again. As he lunged at me again I jumped to the side and pulled out my revolver, and he came -- he turned to the side and as he did I jumped behind him and hit him on the head with my revolver, probably two or three times, I could not say which. As I did Officer Cooper grabbed him by the back of the neck and swung him around and threw him to the sidewalk, and as he went down

CASE # 1789

Officer Cooper grabbed him on one side and I grabbed him on the other, and just then Officers Kasinsky and Hickson came up to us and asked me what was the matter and I said "This fellow has stabbed me." He said "Where?" I told him I did not know, he had stabbed me in the chin, I did not know if he stabbed me below or not." He had hit me. He said "All right, you go in the store and see if he stabbed you below or not" and I went in the barber shop where I looked to see if he had stabbed me in the stomach, and then came out and proceeded to the station house.

Q You had no conversation with him? A No conversation whatever.

Q Have you the knife? A Yes.

Q Who took the knife out of his hand? A Officer Kasinsky I believe -- they took it out after I went into the store.

Q You did not see it taken out of his hand? A No.

(A knife is marked for identification People's Exhibit 1).

Q Is that the condition the knife was in when you saw it?

A Yes.

MR. PALMIERI: We admit that that was our knife. We admit that is our knife.

MR. COLLIGAN: I offer it in evidence.

(Exhibit 1 for Identification is received in evidence and so marked).

CASE # 1789

BY THE COURT:

Q Show the jury the cut? A I was cut from here (indicating).

THE COURT: Show it to the jury.

BY MR. COLLIGAN:

Q Were you treated by a surgeon? A I was.

Q Who was the surgeon? A Dr. Reed of St. Vincent's, I believe.

BY THE COURT:

Q You were taken to St. Vincent's Hospital? A No, I was treated in the station house, and then went home.

BY MR. COLLIGAN:

Q What treatment did he give you? A Put four stitches in the chin, I believe.

Q You have told us substantially all you know about it?
A Yes.

CROSS EXAMINATION BY MR. PALMIERI:

Q What doctor attended to this defendant? A I believe the same doctor.

Q Do you know how many stitches were put in his head?
A No.

MR. COLLIGAN: I object.

THE COURT: That is immaterial.

CASE # 1789

MR. PALMIERI: It is just as material as how many stitches he had in his head.

THE COURT: The officer is not on trial.

MR. PALMIERI: Our defense is entitled to some weight.

THE COURT: He does not know, he says, and it is immaterial whether he knows or not. Exception.

BY MR. PALMIERI:

Q Now officer, you never had any altercation with this man, you never saw him before in your life? A Not previous to this night.

Q You do not know his business or occupation or anything?

A No.

Q You do not know any reason to-day why this defendant should have assaulted you, do you? A No, sir.

Q You said that you were in company with a brother officer at the time you were assaulted? A Yes.

Q A young man about your age? A A little older.

Q Clean shaven? A Yes.

Q A young man about your age and in citizen's clothes?

A Yes.

Q Your badge was on the inside of your coat? A Yes.

Q You said the first intimation you had of any assault that was about to be committed upon you was that this defendant approached you; did he approach you from behind or in front?

CASE # 1789

A He walked right up alongside of me.

Q Then he did not approach you from behind? A No, sir.

Q He walked alongside of you? A Came up to the side of me.

BY THE COURT:

Q Did he approach you from behind or in front? A Came from behind.

Q And stood alongside of you? A Alongside of me.

BY MR. PALMIERI:

Q When he stood alongside of you, do you know if he ran towards you or walked towards you? A No.

Q You don't know if he ran or walked towards you? A No.

Q Was the street crowded at the time? A No, sir.

Q What time in the evening was it? A About 10:40.

Q Was it a clear evening? A Yes.

Q Lights on the street? A Yes, stores lit up there.

Q How far away from you were the other two officers to whom you shouted? A About fifteen feet behind.

Q About fifteen feet behind you? A Yes.

Q And then, as this defendant got alongside of you, he quickly made a motion towards your stomach which caused you to bend? A Yes.

Q What did your partner do at that time? A I do not know what he did.

CASE # 1789

Q Then when you went down this way, did you draw your revolver? A No, sir.

Q Did you grab the man? A No, sir.

Q Did not grab him at all? A No.

Q You were stabbed and then you said you hit him three or four times with the butt of your revolver from the back?

A Yes.

Q You got behind him and hit him three or four times from the back with the butt of your revolver? A Yes.

Q Did your partner do anything? A Only threw him to the sidewalk.

Q That was all he did, is that right? A That was all I seen him do.

Q From how many parts of the body was this defendant bleeding when he was taken to the station house? A I could not tell you.

BY THE 8TH JUROR:

Q Were you instructed by your superior officer to call at this place in Cooper Square? A We had a complaint that cocaine was being distributed at this point.

MR. PALMIERI: I object and move to strike it out as irresponsible.

THE COURT: Yes, the question is really improper. It does not make any difference whether he was instructed or

CASE # 1789

not -- he was on police duty.

MR. PALMIERI: The question is --

THE COURT: You may ask him if you wish.

BY MR. PALMIERI:

Q You were on police duty on your own accord or by direction of any inspector? A On our own accord and on answers --

BY MR. COLLIGAN:

Q You suspected cocaine was being sold there --

MR. PALMIERI: I object.

THE COURT: Yes.

BY THE COURT:

Q You were a detective? A Yes.

Q You were out looking for criminals? A Yes.

Q You are supposed to use your good sense and act on information? A Yes.

Q And you were out there solely in the discharge of your duty? A I was.

THE COURT: I will say as matter of law it is not necessary for a detective to sit down and wait until a superior officer says go here or go there, but he must go of his own initiative wherever he believes crime is being committed.

MR. PALMIERI: Your law is perfectly correct but in this case it has no application.

THE COURT: I know -- that is the reason I say I do not

CASE # 1789

want the jury misled by the question. The question was not one which was relevant.

BY MR. PALMINI:

Q How long were you on the police force when this happened?

A About a year.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2 o'clock.

AFTER RECESS. TRIAL RESUMED.

EDWARD COOPER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:
(First Inspection District).

DIRECT EXAMINATION BY MR. COLLIGAN:

Q Are you connected with the Inspection Department, and were you connected with the Inspection Department on the 19th of April of this year? A Yes.

Q And on that night you accompanied Officer Rice, the complainant in this case? A Yes.

Q Where and when did you first meet the defendant?

A Standing in front of premises 27 Cooper Square.

Q Did you enter those premises? A Yes.

Q Where was he when you entered them? A In front of the door.

CASE # 1789

Q How long were you in there? A About ten minutes.

Q Did you see the defendant when you returned? A Yes.

Q Where? A Standing in front of the door.

Q What did you do when you passed the defendant? A Walked up as far as the corner of 5th street and met Officers Kasinsky and Hickson.

Q Where did you proceed then? A About fifteen feet from the corner on 5th street, and started to talk about going up into 27 Cooper Square. While we were talking the defendant came over and mumbled something and then walked away towards the curb. Officer Rice and myself started to walk east on 5th street then and got about ten feet away from there and Officer Rice yelled back to Officer Hickson for the number, where we were going. We walked about five feet more and the defendant came over alongside of Rice with a knife in his hand.

Q Who was walking on the outside of the street? A Officer Rice. I was on the inside.

Q Did you notice the defendant come along? A No, sir, I did not.

Q What happened as he reached you? A The first I saw of it, Rice was doubled up this way, and the defendant was trying to reach him with the knife.

MR. PALMIERI: I object as a conclusion. Let him state what he saw.

CASE # 1789

THE COURT: Strike it out.

BY MR. COLLIGAN:

Q Did you see the knife in the defendant's hand? A Yes.

Q What was he doing with it? A He was trying to stab Rice.

THE COURT: Strike that out.

BY THE COURT:

Q He struck at Rice with the knife? A Yes.

BY MR. COLLIGAN:

Q What part of the body did you see him strike at first?

A The lower part.

Q What did he do next? A He struck him on the chin.

Q What did you do? A I grabbed him, and as I grabbed him he broke away from me and made another lunge at Officer Rice, and Officer Rice stepped aside and I went over and grabbed him and Officer Rice hit him on the head. I threw him on the ground.

Q What with? A The end of the revolver.

Q Up to that time he had not struck the defendant?

A No.

BY THE COURT:

Q It was after Rice was stabbed that he struck the defendant? A Yes.

Q Sure of that? A Yes.

BY MR. COLLIGAN:

Q Have you told practically all that you know about it?

CASE # 1789

A Yes.

Q You and Rice are younger officers than the others?

A Yes.

Q You had agreed to walk ahead of these other two men?

A Yes.

Q The other two officers are pretty well known in the district? A Yes.

MR. PALMIERI: I object to that.

THE COURT: Strike it out.

CROSS EXAMINATION BY MR. PALMIERI:

Q Now officer I am going to ask you a few questions -- the first thing you saw of this defendant, when he was by the side of Rice, was when Rice doubled up? A Yes.

Q You were right close to Rice then? A That was ^{not} the first time I saw him that night.

Q I ask you the first time you saw him at the time --

THE COURT: The question was misleading.

BY MR. PALMIERI:

Q Did you hear my question? A I saw him in front of the premises when I entered the premises. That was the first time.

Q Did I ask you a word about that.

THE COURT: Please proceed. The question was misleading. The question was in the form of a statement of fact of counsel.

CASE # 1789

MR. PALMIERI: I except.

BY MR. PALMIERI:

Q I ask you at the time of the assault, the first thing you saw of this defendant was when he was by the side of Rice?

A Yes.

Q You say that you noticed Rice doubled up this way?

A Yes.

Q As if he went down with the front part of his body?

A Yes.

Q And put his hand to his stomach? A I don't know if he had his hand to his stomach or not.

Q Where did he put his hands? A I couldn't say exactly. I know he bent down this way.

Q With his head forward? A Yes.

Q You were right close by? A Yes.

Q Did you grab the defendant then? A No.

Q Then you say the defendant cut Rice on the chin? A Yes.

Q And it was after that that you grabbed him? A Yes.

Q Where was it that you saw the defendant the first time?

A In front of 27 Cooper Square.

Q Where is 27 Cooper Square, near what street? A Between 5th and 6th streets.

Q Where did the assault take place? A In front of 207 East 5th street.

CASE # 1789

Q Near what avenue is that? A Right near Cooper Square.

Q Who searched this defendant at the station house? A I did.

Q What did you find -- have you got the stuff you found upon him? A No.

Q Where is it? A I turned it over to him -- money.

BY THE COURT:

Q What did you find? A A dollar and some odd cents, and I turned it over and got the receipt for the money.

Q That was all you found? A Yes.

BY MR. PALMIERI:

Q Are you sure that was all you found? A That is all I can remember.

Q Did you find some keys -- didn't you find a broken chain? A I don't remember.

BY THE COURT:

Q Have you a book? A I have no record here of it. I did not take nothing off him only money and I turned that over to him.

MR. PALMIERI: We do not claim the officer robbed him.

BY MR. COLLIGAN:

Q Do you recollect having taken any property off him?

A I don't remember.

Q Have you any record? A I could not say I have.

CASE #1789

Q Do you know if any of the other officers have any record?

A I was the only one that took it off him.

BY THE COURT:

Q If there was anything else upon him, it made no impression upon you? A Made no impression.

Q The only thing you recall is money, and you gave it to him back? A Yes.

Q The knife you got on the street? A Officer Kasinsky gave me the knife. He took it off him.

MR. PALMIERI: What has become of our keys and chain, that is what I am trying to get at.

THE COURT: I don't know that you ever had any.

MR. PALMIERI: He says he does not remember.

THE COURT: He is an honest man.

MR. PALMIERI: We don't know if he is honest or not. I never did any business with him.

THE COURT: Statements of counsel do not constitute evidence, and it is immaterial.

MR. PALMIERI: I don't know if he is an honest man, and I except to that remark.

THE COURT: The Court will withdraw that remark. The Court is merely giving his reasons for the ruling, and not to influence the jury in any way. It is not material to this case. The question is whether this defendant stabbed

CASE # 1789

the officer or not, and not what he had upon him.

MR. PALMIERI: I understood that it is material to show what this man had upon him.

THE COURT: So far it is not. You may make any defense you please, but the question is whether he stabbed this officer wilfully and wrongfully.

BY MR. PALMIERI:

Q When you got this defendant to the station house, what was his condition? A Seemed to be apparently sober.

BY THE COURT:

Q He was beaten up? A He had a couple of cuts on his head.

BY MR. COLLIGAN:

Q You saw him struck? A Yes.

BY MR. PALMIERI:

Q You did not strike him? A No.

Q Did not touch him, you only threw him down in the gutter?

A I threw him down on the sidewalk.

Q You only threw him down on the sidewalk, but did not hit him at all? A No.

MR. COLLIGAN: I object to this.

THE COURT: You may ask him any question you please, but state it as a question and not as a statement of fact.

MR. PALMIERI: I wish your Honor would not interrupt me when I am cross-examining this witness.

CASE # 1789

BY MR. PALMIERI:

Q I will ask you again, is it a fact that when you knocked this man down and threw him in the gutter, you never touched him?

MR. COLLIGAN: I object, there is no evidence he knocked him down.

THE COURT: I will allow the question.

A No, sir.

BY THE COURT:

Q You did not do any more to him than throw him down?

A No.

MR. PALMIERI: That is not my question.

THE COURT: That is the only question I allow. He could not throw him down without touching him.

BY MR. PALMIERI:

Q You only touched him gently?

BY THE COURT:

Q You touched him hard enough to throw him down? A Yes.

BY MR. PALMIERI:

Q Do you know anything as to why this assault was done at all? A No, I do not.

Q Do not know a thing about it? A No.

Q Did you get an interpreter for this man in the station house? A No, sir, we did not.

Q Didn't you have an Italian officer there? A An Italian

CASE # 1789

officer asked him his name and address. That was all.

Q Did you have an Italian officer, yes or no?

THE COURT: He has answered that question.

MR. PALMIERI: I move to strike out the answer as not responsive.

Motion denied. Exception.

BY MR. PALMIERI:

Q Do you speak Italian? A No.

Q What language did this defendant speak that night? A I could not tell you.

Q You don't know, then you do not know what questions were put to him? A No, sir.

Q You do not know what statements he made to the officer that spoke to him in a foreign language, do you? A No.

Q Is that officer here? A I don't know.

Q I ask you, don't you know if that officer is here or not?
A No.

Q Weren't you talking outside with a number of officers?
A I was.

Q With whom were you talking?

Objected to.

THE COURT: This is all immaterial. I sustain the objection.

Exception.

CASE # 1789

THE COURT: It makes no difference, gentlemen of the jury, what happened in the station house.

MR. PALMIERI: I except.

THE COURT: The question is what assault was committed if any, on this officer.

MR. PALMIERI: I except.

THE COURT: The assault was all over by the time they got to the station house.

MR. PALMIERI: I except. I say that all these questions are perfectly material for the purpose of attacking the credibility of this officer, and it is the purpose of the defense to go into these questions in detail unless the Court tells me I cannot do it.

THE COURT: I only rule on the questions put. He said he did not understand the language.

BY MR. PALMIERI:

Q What is the name of that officer that spoke to him? A I could not tell you.

Q Did you see him this morning in court? A No.

Q Did you see him this afternoon in court? A No.

Q Was that officer attached to your precinct at that time?

A No, sir.

Q Where did you get that officer from? A He was in the precinct.

CASE # 1789

Objected to.

THE COURT: I will exclude it as immaterial.

Exception.

Q Did you know how he happened to be in the station house?

Objected to.

THE COURT: Excluded as immaterial.

Exception.

Q Do you know the name of that officer?

Objected to.

THE COURT: I will allow him to state the name of the officer.

THE WITNESS: I could not say the name of the officer.

BY MR. PALMIERI:

Q For how long did that officer speak to this defendant?

Objected to as immaterial. Excluded. Exception.

Q Did that officer subsequently speak to you about the case?

Objected to as immaterial. Excluded. Exception.

Q When did you next see that officer after that night?

THE COURT: Excluded as immaterial.

Exception.

THE COURT: I think you are verging closely on the border line, Mr. Palmieri. I think you have gone fully into that line.

CASE # 1789

MR. PALMIERI: I told the Court this is the line I propose to pursue, and if you object to my doing it, I will take an exception.

THE COURT: Those questions with regard to his knowledge of the officer I have excluded, and I think it is closely approaching contempt to proceed with that examination.

MR. PALMIERI: I except.

THE COURT: I have always treated you with great consideration, Mr. Palmieri, and given you great latitude in your trials.

J O H N J. R E I D, J R., called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 853 Lexington Avenue).

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You are a regular physician and surgeon? A Yes.

Q How long have you been such? A I left the hospital six months ago, but graduated in 1911.

Q How long were you in the hospital as surgeon? A St. Vincent's, I was there twenty-two months.

MR. PALMIERI: We do not question that he is a surgeon.

MR. COLLIGAN: And duly qualified?

MR. PALMIERI: Yes.

CASE # 1789

THE COURT: Mr. Colligan can qualify him in his own way.

BY THE COURT:

Q You have had experience in knife wounds and other wounds?

A Yes, sir.

BY MR. COLLIGAN:

Q And since then you have had experience? A Yes.

Q Did you attend the complainant, Mr. Rice, in this case?

A I did.

Q That was some time in April, was it not, 1913? A Approximately.

Q What condition did you find him in when you saw him?

A He had a wound -- I would not say just what it was done by, but there was a wound on his chin about two inches long from the lower part of his chin up to his lip -- up to the lower lip, extending right down to the bone.

BY MR. COLLIGAN:

Q Right down to the bone? A Yes.

Q What treatment did you give him? A I simply cleansed the wound out and put in, I believe, two sutures.

BY THE COURT:

Q You mean by that stitches? A Yes, sir, I believe two sutures, the details of which I cannot remember.

BY MR. COLLIGAN:

Q Describe more specially the character of the wound,

CASE # 1789

whether it was clean or not? A Of course, being a fresh wound like that, I presumed it was perfectly clean. I could not detect any infection at that time because it was really too early.

Q As to the width of it? A Well the width --

Q Was it sharp, what you would call a sharp wound, or was it a wound caused in your opinion by a blunt instrument or a sharp instrument? A The character of the wound resembled one done by a sharp instrument.

CROSS EXAMINATION BY MR. PALMIERI:

Q Did you attend this defendant in the station house that night, or another doctor? A I was there. I remember that there was another man there who had several wounds upon his head.

Q There was another man what? A Who had several wounds on his head.

Q Look at this defendant, and I ask you whether this is the man? A Well, that is away back, and I have seen so many cases since I cannot recall him.

Q You can recall the officer? A Yes, sir, of course I met him outside.

Q Outside here? A Just as I came in.

Q Now, doctor, just look at these wounds and see if they will refresh your recollection, kindly come over here?

MR. COLLIGAN: I do not see the materiality of this.

CASE # 1789

We do not doubt that he knocked him on the head.

(The witness examines the defendant's head).

BY MR. PALMIERI:

Q You did treat a man in the station house? A Yes.

Q Professionally? A Yes.

Q For a great number of wounds on the head? A Yes.

THE COURT: He did not say a great number -- be careful of the questions. You must not ask leading questions.

MR. PALMIERI: I except. I have a perfect right to ask leading questions on cross-examination.

THE COURT: This is not cross-examination. This is new matter.

MR. COLLIGAN: I do not see the materiality, and I object to it.

THE COURT: I will allow it, but it is new matter and you are making him your witness on this point, Mr. Palmieri. I want to warn the jury again that statements of counsel on either side are not evidence. It is the duty of counsel to ask questions and not state facts. Proceed. You may ask him how many wounds he had.

BY MR. PALMIERI:

Q Just answer the question?

BY THE COURT:

Q How many wounds did he have, if you recall? A All I can state is he had more than one.

CASE # 1789

BY MR. PALMIERI:

Q You cannot remember how many? A No, I cannot remember how many.

MR. PALMIERI: Will you remain here.

THE COURT: Why should the doctor be kept.

MR. PALMIERI: I need him as a witness.

THE COURT: You may question him now.

MR. PALMIERI: We may need him when the defendant goes on the stand.

THE COURT: He has seen his head again. I will let you put him on the stand now.

J O H N J. R E I D, J R., resumes the stand:

BY MR. PALMIERI:

Q Would the wounds in this man's head now refresh your recollection as to how many wounds he had that night? A He may have had more before I saw him. His hair is all cut off now and they would show up better than that night when he did not have his hair cut so closely. He may have had more wounds -- he may have had previous injuries, which, with his hair cut short, would show up now. Do you understand what I mean?

Q Yes, I understand, but did you treat this man for wounds on his head? A Yes.

Q Do you mean to say he did not have those wounds that night? A No.

CASE # 1789

Q Did you make a record of those wounds -- you usually make a record of wounds. A Yes.

Q Why didn't you make a record of the wounds found upon this man's head? A I never make a record of each and every wound.

Q Did you make a record of the officer's wounds?

THE COURT: Let him answer the question.

THE WITNESS: I made a record "lacerated wounds of the head", but I didnot say just how many.

BY MR. PALMIERI:

Q Your record shows there were several lacerated wounds of his head? A Yes.

Q And you cannot tell how many? A How many I don't remember.

BY MR. PALMIERI:

Q That is all.

BY MR. COLLIGAN:

Q Do you know as matter of fact whether your record says several? A Why I think I made the record myself, and having so many cases you cannot waste all the time writing out an individual history of every wound.

Q You do not recollect what your record does say, just now? A No.

BY MR. PALMIERI:

Q Have you the record here? A No, it is in the hospital.

CASE # 1789

Q Can you produce it? A I cannot.

Q Before this trial is ended?

THE COURT: It is not in his custody, he says.

THE WITNESS: I cannot do that; you will have to get it from the hospital.

THE COURT: If counsel wanted it here he could have subpoenaed it.

MR. PALMIERI: I except.

A B R A H A M S. K A S I N S K Y, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(First Inspection District).

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You were connected with the First Inspection District on the 19th of April of this year? A Yes.

Q That day did you accompany officers Rice, Cooper and Hickson to a place on Cooper Square? A Yes.

Q Did you see the defendant there that night? A I did.

Q Where did you first see him? A I saw him in the doorway of -- standing in front of the door of 27 Cooper Square.

Q You subsequently left that place with the other officers, that number, and went to some other place? A Yes.

Q When did you see the defendant next? A I saw him about

CASE # 1789

ten feet east of Cooper Square, on 5th street, the north side of the street, ten or fifteen feet.

Q What were you doing at that time? A Conversing.

Q What was he doing? A He came up to us and muttered something in a foreign language I didnot understand.

Q What did he do then or what did you do then? A After he muttered something he walked away.

Q When next did you see him? A The next time I saw him about twenty feet from there he was on the ground.

Q On the ground? A Yes.

Q What did you do when you saw him on the ground? A I asked what was the trouble.

Q Whom did you ask? A When I got there -- Officer Rice I asked --

MR. PALMIERI: I object upon the ground it appears that this defandant does not speak the English language and could not have understood.

Objection sustained.

Q What did you do? A I saw Officer Rice was out. I asked him if he had the knife.

Objected to.

THE COURT: Strike it out.

Q Did you see the knife there? A Yes.

Q Where was it when you first saw it? A In the defandant's right hand.

CASE # 1789

Q What did you do? A I took it out of his hand.

Q What happened after that? A After that we took him to the station house.

Q That is all you know? A Yes.

Q Is that the knife you saw in his hand (Exhibit 1)?

A Yes.

CROSS EXAMINATION BY MR. PALMIERI:

Q People's Exhibit 1 is in the same condition in which it was when you took it out of the defendant's hand that night?

A Yes.

Q You did not bend it yourself? A No.

Q It was in the same condition as it is now when you took it out of his right hand? A Yes.

Q He was then in the gutter, on the ground? A He was on the ground.

Q On his back? A No, on his side like that.

Q Anybody holding him down? A Yes.

Q Who? A Officer Cooper and Officer Hickson.

Q Which is it, Hickson or Cooper? A Both. I held him down myself, held his hand while they took it out of his hand.

Q There were three of you holding him down? A Yes.

Q Any more? A No.

Q Were there not four officers there? A Officer Rice went into the barber shop there. We sent him in to a barber shop.

6811 #1789
CASE

Q Did you see this defendant bleeding? A I did.

Q From what part of his body? A From his head.

Q How many parts of his head was he bleeding from? A I could not say.

Q When you took him to the station house did you get an interpreter for him? A I asked an officer in the station house.

Q Was he in the station house? A He was.

Q Was that officer able to speak Italian? A He was.

Q He was an Italian officer? A Yes.

Q Is he here to-day? A No, sir.

Q What is that? A No.

Q That officer had a conversation with him? A I asked the officer to ask the defendant --

Q I did not ask what you asked.

BY THE COURT:

Q Did that officer talk to him? A Yes.

BY MR. PALMIERI:

Q For how long did that officer talk with him? A I guess about ten seconds.

Q Now who searched this defendant in the station house?

A Officer Cooper, I believe.

Q Do you remember what he took out of his pockets? A No.

MR. COLLIGAN: THE PEOPLE REST.

MR. COLLIGAN: The rest of my evidence is cumulative and it will be the same story, so I will rest.

CASE # 1789

MR. PALMIERI: Your Honor has often stated that the jury will disregard statements of counsel.

THE COURT: Yes, the jury will disregard statements of counsel. Jurors will take the law from the Court and decide the facts from the evidence.

MR. COLLIGAN: THE PEOPLE REST.

P A S Q U A L E P I Z U T I, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 673 East 181st street).

DIRECT EXAMINATION BY MR. PALMIERI:

Q What is your business? A Foreman in a ladies' tailoring business, employed by Joseph Johnson.

Q Where is that factory? A 19 to 27 West 21st street.

Q Was this defendant ever working under you? A He was for the past five years with me.

Q At what factory? A Joseph Johnson's.

Q Of which you were foreman? A Yes.

Q You are still foreman there? A Yes.

Q You have come here in response to a subpoena? A Yes.

Q What work did this defendant do, what kind of work?

A Ladies' tailor.

Q Do you know other people who know this defendant? A Yes, a lot in the factory.

CASE # 1789

Q What is his reputation for peace and quietness during the five years that you have known him? A During his employment with me I find the man good in every respect.

Q You have seen him every day for five years? A Yes.

(No cross-examination).

D O M I N I C O P E C E, called as a witness in behalf of the defense, being duly sworn and examined, testified through the official interpreter, Mr. Mustaki, as follows:

(Residence 215 West 10th street).

DIRECT EXAMINATION BY MR. PALMIERI:

Q What is your business? A Contractor tailor.

Q You take or make contracts with firms for the purpose of manufacturing their goods, is that what you mean? A Yes.

Q And as such do you employ help, other people to do your work? A Yes, sir, about thirty of them and more.

Q Do you recognize this defendant at the bar as one of your workmen? A I know him as one of the best of my workmen; I never had a complaint about him.

Q How many years has he worked for you as a ladies' tailor?
A Two years.

Q Do you know other people who know him? A Yes.

Q Who know the reputation of this defendant? A Yes, all the workmen I had were always friendly towards the defendant and

CASE # 1789

they all know him.

Q What do they say about his reputation for peace and quiet, is it good or is it bad? A Very good -- everybody says it is good.

(No cross-examination).

PAULO PAULINO, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 78 Kenmere Street).

DIRECT EXAMINATION BY MR. PALMIERI:

Q Have you a boarding house in this city? A Yes.

Q Is that conducted under your own name? A Yes.

Q For how many years have you known this defendant?

A About seven years.

Q Do you know other people who know this defendant for his reputation for peace and quietness? A I have several friends of mine.

Q What is the reputation of this defendant for peace and quietness, is it good or is it bad? A Very good.

(No cross-examination).

ABRAMO PEECE, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified through the official interpreter, Mr. Mustaki, as follows):

CASE # 1789

DIRECT EXAMINATION BY MR. PALMIERI:

Q How old are you? A Forty-three.

Q How many years have you been in this country?

A Thirteen.

Q During those thirteen years in this country have you ever been arrested or convicted of any crime whatsoever? A Never -- never knew the inside of a court room.

Q What is your business? A Tailor.

Q Have you worked at your trade during the thirteen years you have been in America? A Yes, sir, always worked at that trade.

Q Do you remember the night of this occurrence? A On the 19th of April.

Q Was it Saturday evening? A Yes, sir.

Q What time did you stop work that day? A At 1 o'clock on Saturdays.

Q Where were you living at that time? A 284 Mulberry Street.

Q Near what street is that? A Near Houston.

Q Houston Street in this city? A Yes.

Q Now about half past seven on the evening of that Saturday when this trouble occurred, did you go out of your house to go anywhere? A I went to 14th street just to have a little leisure time in a moving picture place.

Q Did you go into that moving picture place? A Yes.

CASE # 1789

Q How many hours did you stay there? A About two hours.

Q After you came out did you take a car or did you walk for the purpose of going home? A I was walking.

Q How far did you get before anything happened to you?

A About 5th street this happened.

Q What happened to you when you -- do you mean 5th street on the Bowery? A Yes.

Q Were you walking along the Bowery from 14th street for the purpose of going to Houston Street where your home was, near where your home was? A Yes.

Q Now just tell the jury what was the first thing that happened to you on the Bowery as you were walking to your home?

A A young man about the age of twenty or twenty-one years old seized my chain and tore it away from my vest. I ran after him. I ran about five blocks continually chasing this young man who seized my chain, and suddenly I received a blow.

Q Which way did the young man run that got your property?

A I don't know the name of the street. He went in the direction where the Jews reside.

Q That is, on East 10th street where this trouble occurred?

A Yes.

Q You are not a Jewish man? A No.

Q You had no business in that Jewish neighborhood, no friends? A No.

CASE # 1789

Q And the only thing that brought you there was the chasing of this man or boy that robbed you of your watch, is that correct?

A Yes.

Q Now just before you were pursuing him, did you have a knife in your pocket? A Yes, sir, immediately my chain was snatched I put my hand in my pocket and took this knife out.

Q Is this the knife? A Yes, sir. (Referring to the one in evidence).

Q It was not open as it is now when you first took it out, was it? A No.

Q Did you open it? A Yes.

Q And did you have it in your hand as you were pursuing this robber who got your watch and part of your chain? A Yes.

Q Did a part of your chain remain on your vest? A Yes.

Q Now coming down to the point where you received a blow on your head, do you know who gave you that blow on the head? A That one who says I stabbed him.

Q Did he hit you from the back or did he hit you from the front? A From the back.

Q When he hit you from the back, did you fall? A Yes.

Q Now as you fell, how many men got on top of you? A Three or four.

Q What did they do to you as you went on the ground with the knife in your hand? A They were assaulting me, and I was

CASE #1789

shouting police. I was trying to defend myself.

Q What did you do with the knife as you went down, while you were on the ground with this open knife? A I defended myself with that penknife as much as I could all the time they were assaulting me. Afterwards they took it away from me.

Q Now what was your condition when they took you to the station house, what was your physical condition? A I was half unconscious and I was all saturated with blood.

Q Is this the collar that you had on that night? A Yes, sir.

Offered in evidence. Received and marked Defendant's Exhibit A.

Q And from the wounds you got on your head is this the cotton that was applied to your head by the doctor? A Yes, sir.

MR. COLLIGAN: We will concede that that is the cotton.

BY MR. PALMIERI:

Q When you got to the station house was the interpreter called? A Yes, that is, they called somebody and said he was a policeman.

Q What became of your chain -- what did you have on your person when you got to the station house in this condition?

A Only had the chain and the watch was gone.

Q Was the chain broken or was it intact? A I don't know, because the chain has been taken away at the station house. I don't know.

CASE # 1789

Q Did you ever get it back? A No.

Q How about your keys? A Everything they took away they have got.

Q How about your money? A I received the money back in the court in 1st street.

Q But you did not get the broken chain or keys back? A No, they have it there in the station house.

THE COURT: Strike out that they have it in the station house. The answer is no.

BY MR. PALMIERI:

Q How many cuts did you have on your head that night?

A Five or six.

Q Have you any marks to show on your head now? A Yes.

Q Will you please stand up and show it to the Judge and jury?

THE COURT: It is immaterial whether he has one cut or six, under the circumstances, but you can show it to the jury if you desire.

MR. PALMIERI: I except. It is perfectly material the injuries that this man received.

THE COURT: Not at all. He says he was suddenly struck on the head by somebody and knocked down, and then he stabbed. If the jury believe that, they will acquit him.

MR. COLLIGAN: We admit that we are the ones who struck him in the head.

CASE #1789

THE COURT: If he was struck by the police officers after he stabbed a brother officer, it is immaterial how many times he was struck.

MR. PALMIERI: But if he was struck before by these officers.

THE COURT: If he was struck before the jury will acquit him. That is all there is to it. Under the state of facts developed here, the jury will have to decide whether he is telling the truth or the officers. They say he stabbed this officer before he struck him and he says he did not.

MR. PALMIERI: They said they saw him in Cooper Square in an opium joint.

THE COURT: They did not say that. They said they saw him in the door of a tenement house from which they came, and that he came up and spoke to them.

BY MR. PALMIERI:

Q Do you know where Cooper Square is? A No.

Q Do you know where 27 Cooper Square is? A I do not know the street, let alone the number.

Q Just before this occurrence, before you were cut on the head, were you ever at the door or in front of the door of a house No. 27 Cooper Square, or any such place as that, or did you ever stop in front of any place as you were going home?

A No.

CASE # 1789

CROSS EXAMINATION BY MR. COLLIGAN:

Q How many years have you lived in New York City? A Thirteen.

Q How far away were you from Cooper Square when you were assaulted, as you claim? A I do not know this Cooper Square.

Q Do you know where 5th street is? A Yes, sir, the Bowery.

Q Did you ever walk across 5th street into any square, in the thirteen years you have lived down there? A No.

Q You were not standing in any doorway at all when you saw four men pass you? A No.

BY THE COURT:

Q You saw these officers on the stand to-day? A Yes.

Q Did you ever see them before? A No.

Q Didn't you see them that night? A Yes.

Q You never talked to them before? A No.

Q They never had any trouble with you at all? A No.

BY MR. COLLIGAN:

Q Where were you at the time this man took your watch?

A 5th street and the Bowery.

Q It was about half past ten in the evening, was it not?

A About that.

Q It was quite light, was it not? A The lights in the street were the only lights.

Q The stores were lighted, some of them, Saturday night?

A Yes, some of them.

CASE # 1789

Q Describe to the jury the appearance of this man of whom you speak, the man who is supposed to have taken your watch?

A Medium height, fair complexion, blond.

Q How was he dressed? A Brown suit.

Q So far as you know, how did he approach you, from behind or coming towards you? A Face to face.

Q You had a good look at him, didn't you? A Yes, I would know him if I saw him again.

Q How far did you run after him? A About five or six blocks.

Q How near were you to him most of that time? A About half a block.

Q You had a knife in your hand? A Yes all the time with the knife.

Q Now in the event that you caught him, what were you going to do with the knife?

MR. PALMIERI: I object. I think a man has a right to protect his property. The law does not prohibit the carrying of this penknife. I have carried bigger ones than this myself.

BY MR. COLLIGAN:

Q What did you intend to do with the knife in the event that you caught him?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

CASE # 1789

44
A If I had been able to lay my hands upon him and hold him, there would be no necessity to use the knife.

Q But if you could not hold him, you intended to cut him?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A If he was armed I certainly would have defended myself.

BY THE COURT:

Q You are quite sure you never saw this officer before that night? A Never.

Q You never had done him any wrong? A No.

Q Nor any of the other officers? A No.

Q Quite sure of that? A Yes.

RE-DIRECT EXAMINATION BY MR. PALMIERI:

Q And the other officers never did you any wrong before that, did they? A Never, none of them.

Q Did you know that they were officers at all when they were holding you on the ground and hitting you? A No.

Q When did you discover that night for the first time that the men who threw you down and hit you and caused you to bleed were officers? A At the station house.

THE DEFENDANT RESTS.

THE PEOPLE REST.

TESTIMONY CLOSED.

CASE # 1789

THE COURT'S CHARGE.

MULQUEEN, J.:

Gentlemen of the Jury, this defendant has been indicted by the Grand Jury for the crime of assault in the first degree.

The indictment charges that in the Borough of Manhattan, County of New York, on the nineteenth of April of this year, he made an assault upon one William Rice, and that he made this assault wilfully and feloniously with a certain knife, and that the knife was a dangerous and deadly weapon, and that he then and there did wilfully and feloniously strike, beat, stab, cut, bruise and wound, with intent him, the said William A. Rice, thereby then and there wilfully and feloniously to kill, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

You understand by this time what an indictment is. It is a mere charge, it is a written accusation made by the Grand Jury, requiring the presence of the person charged before this court or some other competent tribunal to have the question decided. The indictment is no evidence of guilt. The indictment is merely the statement that this defendant violated a statute in the particulars set forth therein, and it is intended solely to let the defendant know what the charge is, and to let you know what the charge is when he is brought here for trial. So that you must not have any mis-

CASE # 1789

apprehension about that.

What is the charge? The charge is a very simple one when put in ordinary English -- that this defendant made an assault upon William A. Rice with a knife, and that he intended to kill him, and that that was a felony; that he had no legal excuse, no justification for his act, and they say that that is an injury to the dignity of the People of the State of New York. This is not an action between William A. Rice and Abramo Pece. There are two parties to this action. The defendant is one, Abramo Pece, and the other is the People of the State of New York. That term means organized society in this state -- that is the union or association or the combination of ten millions or more of people who live in this state, who have their own notions of right and wrong, who have their own notions of how lives should be lived, how people should conduct themselves, and who have put their notions into rules, and they say to all the people of the world "You may come to New York State if you wish to, no matter where you were born, without regard to condition, creed or color, but you must obey our rules, if you do. If not, stay away. They say this defendant did not obey the rules; that he broke a law made by the people to protect all persons in the enjoyment of their lives, liberty and property, and that that is an offense against the majesty, the dignity of the State of New York -- that is the charge, and they

CASE # 1789

say that offense is known as assault in the first degree. Society, in order to carry out its purposes, in order to protect every one in the enjoyment of his person, has passed this statute, Section 240 of the Penal Law: "A person who with the intent to kill a human being or to commit a felony on the person or property of the one assaulted or of another, assaults another with a loaded firearm or any other deadly weapon, or by any other means or force likely to produce death, is guilty of assault in the first degree." You see there are three elements there. There must be an assault, second the means of the assault, the weapon, must be a loaded firearm or any other deadly weapon, or any other means or force likely to produce death, and lastly that assault must be made with intent to cause death. You will therefore see that death is the prominent idea in assault in the first degree. One, who, intending to kill another, assaults him by some means or weapon which is capable of carrying out that intent, is guilty of assault in the first degree, whether he actually kills him or not. If he kills him, of course it will be a different crime.

It is conceded here that this officer was struck by the defendant. The officer has told you his story as to how he struck him, and the defendant has told you his story. If you have any reasonable doubt as to which story is true, you must acquit the defendant. If you have no reasonable doubt,

CASE # 1789

if you believe that the officer was struck while in the discharge of his duty, as he says, and without any legal justification or excuse on the part of the defendant, why then that striking would be assault in the first degree, if the weapon used were capable of producing death, and if the intent of the defendant was to cause death. You can see the weapon -- you can see the scar made by the wound on the officer, but you cannot see the intent of the defendant, because that is the operation of the man's mind; that is locked up in his breast; he is the only one who knows what his intent was, but, we prove intent by proving a man's acts, and the law is that if a man be sane, if his judgment be not obsessed by overwhelming passion or stupefied by drugs or narcotics or alcoholic intoxicants -- that is, if a man have a mind and be able to use it, if he is able to form an intent, you can find his intent from his acts. If you see a man aim a loaded revolver at the heart of another man and pull the trigger, hear the report and see the flash, and the man drops dead, from those facts you can find that that man who pulled that trigger intended what he did -- namely, he killed a man, and you can find that he intended to kill him. If a man rushes up to another and makes a lunge at his stomach with a knife, then makes another lunge and cuts his chin to the bone, and the knife be one which could cause death if it went into his stomach, or cut his throat, you may find

CASE # 1789

from that that the man intended to kill, if death would be the natural and ordinary consequences of his act. That is plain law. No one can complain of that. So that you have to find out here whether the defendant intended to kill the officer when he cut him. If you have any reasonable doubt upon that proposition, you must acquit the defendant of assault in the first degree.

If you should decide that the defendant was not guilty of assault in the first degree, there are two other counts in the indictment charging assault in the second degree. Even if those counts were not there, the law says you may fix the degree of the crime, if you are satisfied beyond reasonable doubt, that any crime has been committed. Assault in the second degree is a lower grade of crime than assault in the first degree.

The statutes provide by Section 242, sub-division 3 of the Penal Law, "that a man is guilty of assault in the second degree who wilfully and wrongfully wounds or inflicts grievous bodily harm upon another either with or without a weapon?"

If the injury inflicted upon that officer was grievous bodily harm, it makes no difference by what means it was inflicted, if it was done by this defendant wilfully and wrongfully. It is also assault in the second degree to use a knife or other weapon capable of producing grievous bodily harm on another man wilfully and wrongfully.

CASE # 1789

It is an assault in the second degree to strike at any one with a knife, with intent to injure, if the knife be one likely to cause grievous bodily harm, and if the act be done wilfully and wrongfully, even if no injury be in fact inflicted.

So therefore you have to consider the law, which is very plain. One who assaults another without legal justification or excuse, is guilty of assault in the first degree if he intends to kill, and uses a weapon or force likely to produce death, or capable of producing death. He is guilty of assault in the second degree if he does not intend to kill, if he merely intends to do harm, to injure, and the weapon used is capable of producing grievous bodily harm, or, if he does in fact produce grievous bodily harm either with or without a weapon.

The words wilfully and wrongfully have been used in the statutes, and they require definition and explanation.

Wilfully means intentionally -- the intent to stab. If a man rushes up to another and makes a jab at him with his knife, you can find he did it wilfully. He may have made a mistake in the man, may think it is Jones when it is Brown, but, if he intends to cut any one and cuts an innocent person, a person who has not violated the law himself, that is what the law means by a wilful cutting.

Now as to the word wrongful. We have a statute in

CASE # 1789

this state that any man may use force necessary to preserve himself from the imminent danger of death, and, not only from imminent danger of death, for in that case you have a right to kill in such circumstances -- if your own life is in danger you have a right to use all the force necessary to ward off such danger, but also when the danger is of receiving injury not as great as death, you have a right to use force. It says here "to use or attempt to use force or violence towards the person of another is not unlawful when committed either by the party about to be injured or by another person in his aid or defense in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense. That is, if this defendant was running along with an open knife in his hand, and somebody struck him from behind and knocked him down, and he did not know who it was, and people jumped on him, it would not be any crime for him to use a knife. On the other hand, it would not be any crime for the officers to knock such a man down, because, the same statute provides that an officer may use force when necessarily committed by a public officer in the performance of a legal duty, or by any other person assisting him or acting by his direction. That is, if a police officer saw a man running through the

CASE # 1789

street with an open knife in his hand, it is his duty to stop him. He must not speculate and wait until he attacks somebody, but stop him at once and use all the force necessary to stop him, and if he has to knock him on the head to do it, he has nothing to apologize for, but he is to be commended as a good officer. That is his duty. Or, if an officer saw a man stab at a brother officer, he must not stop to reason what force to use; he may use all the force necessary and even, if necessary, take the life of the assailant, and he has nothing to apologize for. That is his duty. Or, if an officer came along and saw you, a citizen, in the clutches of a man who was aiming at your heart with a knife, you would not expect him to speculate and wait to see what injury you were going to get. He would have to stop him, and use all the force necessary. That is what he is paid for. That is what the law authorizes him to do, and he would not have to apologize for it in any court. I say this to you, and I instruct you in the law, because you have to decide on the facts. It is the duty of the Court to put the law plainly before you. I have done so. You are the sole and exclusive judges of the facts and of the credibility of witnesses.

What does the credibility of a witness mean? Facts are proved by witnesses. Our law gives every defendant a fair trial. What does that mean? It does not mean a trial on

CASE # 1789

false issues or a trial on sentiment or sympathy or prejudice. Those motives should be altogether absent from an American jury box. Every man is entitled to an absolutely square deal, but that includes police officers as well as defendants. There must be no prejudice in the jury box. The law is, as a great judge of this state has said, that a fair trial means a legal trial, not a trial blinded by prejudice or by sympathy, but a legal trial in which the defendant is represented by counsel who has a right to cross-examine to every proper limit and extent, has a right to call witnesses in his own behalf, and the right to have the facts fairly decided after the law has been correctly stated to the jury. The defendant has received such a trial. He has had a fair trial. In some countries he would have to prove his innocence, but that is not our law. He is entitled to the same treatment as if he had been here, or his ancestors, for five hundred and not thirteen years. He is entitled to all the rights of an American citizen, but no more. He has no right to stab a policeman or anybody else, except under the conditions prescribed by law in defense of his life or person or property from unjust attacks or aggression, or under such circumstances that he may really and justly believe that it is necessary for him to commit an act to ward off threatened injury. Such being the law, you must remember every witness who takes the stand is to be weighed by you. You are

CASE # 1789

the judge of whether he is telling the truth or not. You pass on his credibility. That word credibility means worthiness of belief. What witnesses here were worthy of belief? There are no rigid rules which bind a jury in the performance of that very important function. You are the sole judges of that, and if you are honest judges, you do not have to answer to any one. The only things you have to satisfy are your own judgment and your own conscience. The law gives you very great powers, but the law does not make you Czars. The law expects you to exercise your power within the law, in a law abiding spirit. You must remember that the functions that you are discharging now are the most important that a citizen is ever called upon to do in this country in time of peace. In time of war, men may have to leave their wives and families and go to war. That is their duty. They must do that. In time of peace you have to give up your business at great sacrifice to many, to come here and sit as jurors to pass upon these questions of fact, and all the law asks you to do is to be honest, to go into the jury box animated only by one motive -- not to protect any official or any criminal, not to be prejudiced in favor of one man as against another, but to give all men a square deal and keep the law in mind as the Court gives it to you, and then weigh the evidence and decide for yourselves. You have not more wisdom this week as jurors than you had last week when you

6811 #
CASE # 1789

were not jurors, than you will have next month when you are not jurors, but, all the good sense and all the honesty of purpose that you possess, you should devote to the solution of these questions, and you must not go outside the case. You must not speculate. You must confine your thought and deliberation to the evidence in the case. In passing upon the credibility of witnesses you note the manner of the witnesses on the stand, you will consider their intelligence and you will consider what interest, if any, they have in the controversy; what motive they would have for telling you what was not the truth. These officers have come here and they have stated to you that that night they were out on police duty, that they were not in uniform. They are not on trial here for any violation of the law that night. They have a right to go out -- that is unquestioned -- to look for violators of the law, and they say in the course of their occupation that night they saw this defendant. They do not say that he was a lookout at an opium joint. They said nothing to him. They went off some distance, a few feet or more, and talked among themselves, and while talking this defendant approached them and said something in a foreign tongue, muttered something, and they paid no attention to him, and then, when they were going, after finishing their plans for their evening campaign, this defendant suddenly came up and attacked Rice -- coming from the side he made a

CASE # 1789

lunge at Rice, and Rice seeing it, tried to avoid it. You have to decide whether that is anything extraordinary or not -- whether a man seeing a knife being aimed at his stomach would naturally bend forward or not -- and then, before he could do anything he was struck by the knife in the chin. He told you he did not dodge that. That then the other officer grabbed the defendant at once, and Rice beat him.

If the defendant had assaulted Rice, Rice had a right to take measures to see that he would not assault him again. He had a right to beat him, if he was struggling with the officer, and whether he gave him one blow or ten is absolutely immaterial -- no matter how hard the blows were or how much he suffered, if he stabbed the officer in the way the officer says, the officer had a right to arrest, and to use all the force necessary, and the officer would not be to blame if he killed him. So you can remove that element from the case absolutely. If the officer is lying, if the defendant did not stab the officer, then that is a different matter. You have the statements of the other officers as to how they saw the occurrence and what they say they saw. You have to decide whether these men had any motive to invent that story or not. I tell you as matter of law that if they saw this man running through the street with an open knife in his hand, and struck him down to prevent him from using that knife, they would not have to apologize or to lie about

CASE # 1789

it. All they would have to say is that they made a mistake, and he would be the only one to blame for acting in that way. The officers would not be censured. That was their duty to stop him. You have to decide whether they had any motive to lie or come here and tell the truth, or whether they have gratuitously and without any motive, deliberately committed perjury here. Because if the defendant was struck before Rice was stabbed, Rice is a perjurer. Perjury is a crime punishable by twenty years in State Prison. It is a crime for a person to go on the witness stand under oath and testify falsely on a material point knowingly. Rice knows whether he was stabbed first or whether this defendant was struck first, and that is a very material point in the case in one aspect of it. If Rice was not stabbed first in the way he says, and if this defendant did not assault him in the way he says he did, you can acquit the defendant and Rice is guilty of perjury, because Rice knows whether he was stabbed before he struck the defendant. All the officers know whether he was stabbed first or not. If they say this defendant stabbed Rice first, and then they struck him, and that is not true, they are all guilty of perjury, unless you can possibly find some way that they could have been mistaken in that. If they could have been mistaken on that point, of course it is not perjury. Perjury is a wilful misstatement. You have to decide whether these officers are intelligent

CASE # 1789

enough to know who struck first; whether they are intelligent enough to see whether a man simply rushes up to one and stabs him, or whether one of them struck him while he was running amuck with a knife in his hand. You can decide that, and if they are intelligent enough and deliberately conceal the truth from you and state what is not true on a material point in the case, they are guilty of perjury. What motive was there for it. They had not done anything that required an explanation on their part. They did nothing illegal. You can consider the intelligence of the defendant and his interest in the controversy, and whether he is as free from motive as they are; whether he realizes that he has committed a crime and is testifying falsely to avoid the consequences of it, or whether he is an honest man telling you what really happened. You may consider also the position of the wound. Weigh carefully upon all the facts and circumstances established the testimony given by the witnesses on the stand. When you have weighed the evidence calmly and quietly, keeping in mind the law, using the law as a guide, if you are satisfied beyond a reasonable doubt of the guilt of the defendant, you must say so by a verdict of guilty. If you have a reasonable doubt of his guilt, you must acquit him.

What does a reasonable doubt mean? It means the doubt an honest juror may properly entertain under all the circum-

CASE # 1789

stances of the case. If, after a careful examination of the evidence, he is unable to say that he is convinced to a moral certainty that the defendant is guilty, that is reasonable doubt. The law does not put an impossible burden upon the People. The People of the State of New York make the law. No one thirteen years or thirteen hundred years in the country can upset the law. The law prohibits certain things. But when the People of the State of New York charge a man with violating that law, the People of the State of New York must prove him guilty beyond a reasonable doubt. He is presumed to be innocent, and in the absence of proof beyond a reasonable doubt of his guilt, he must be acquitted. When the People prove him guilty beyond reasonable doubt, when the evidence of witnesses brought here before you by both parties, including the good character witnesses, carefully and calmly considered, convinces you of his guilt beyond reasonable doubt, then the obligation which the People voluntarily assume is met, and it is your duty to say so. You should not say he must be proved guilty beyond all possible doubt. That is not what the law means. You must not be actuated by passion or prejudice or caprice to avoid doing your duty. It may be disagreeable to bring in a verdict. This court is not intended to please people. Disagreeable things happen here every day. This is a place of sorrow and not joy. You are here to do your duty. Two and two are four. We know that;

CASE # 1789

that is what we call mathematical certainty. You do not find that in every day life. We have what we call probability or moral certainty in life. You make up your mind in your business whether you do one thing or another. You reason pro and con upon all the facts as you know them, make up your mind and then you act. Your act may be a wise one or it may turn out badly, but you use your best judgment. If the evidence here is sufficient for you to make up your mind to act upon it, if it satisfies you to a moral certainty that the defendant stabbed this man, that he intended to kill him, and that he used a weapon or instrument capable of inflicting death or likely to inflict death, the People have met the burden of proving him guilty of assault in the first degree. If you are satisfied a crime was committed however, but you have a reasonable doubt as to the question of the intent to kill, which is the main element of assault in the first degree, you could not find him guilty of assault in the first degree. In that event you should determine whether he assaulted him wilfully and wrongfully, and inflicted grievous bodily harm upon him, or assaulted him with a weapon or instrument capable of producing grievous bodily harm. If so, he is guilty of assault in the second degree. The weapon is here. It is conceded that he used the knife. Did he use it criminally or otherwise. Is he guilty or innocent of any crime? That is for you to say from all the

CASE # 1789

facts, keeping in mind the law as given you by the Court.

MR. PALMIERI: I did not hear your Honor charge assault in the second and third degree?

THE COURT: I read the statute. I decline to charge assault in the third degree.

MR. PALMIERI: I except.

THE COURT: It is either assault in the first or second degree.

MR. PALMIERI: I except, and I wish to except to that part of your Honor's charge in which you say to this jury in other countries the defendant would have to prove his innocence. I wish to except to that part of your charge in which you say to this jury now what motive would these officers have in explaining their conduct on that night; they certainly had no explanation to make for their act, for if they had struck this man down while he was running with a knife, they were certainly doing their duty and if they had killed him they would not have been held accountable for their acts. I wish to except to that part of your Honor's charge, wherein you say that in substance.

THE COURT: The first part of the statement, that in other countries a defendant would have to prove his innocence, I will withdraw, if it is objectionable. He is charged here with a violation of our law, and the only thing that concerns you gentlemen is our law. Our law presumes

CASE # 1789

him to be innocent. The People assume the burden of proving him guilty beyond reasonable doubt, and if they have failed to meet that burden, you must acquit him. As to the other part, many things were said by counsel as to the number of wounds he had. I ruled that immaterial. It is immaterial. If these officers in the discharge of their duty, seeing a man running through the street with a knife in his hand, stopped him with a wound, they are not answerable. If that was the fact, conceding that was the fact as stated by him, they would not be guilty of any crime; they would not have any legal fear of any punishment for doing that. That is their duty. Men are not to be allowed to run through the streets wildly with knives in their hands. Officers are not to stand quietly by and wait to see what they are going to do. They must stop them and use all the force necessary to do so, no matter how much force is used or what is the result of that force. That was what I wanted to make perfectly plain to you.

MR. PALMIERI: I except to that.

THE COURT: There is no doubt about the law in this case. You gentlemen will find the facts.

MR. PALMIERI: I ask your Honor to charge the jury that what you stated to them with reference to the officer having a right to stop a man is not the contention of the officers in this case, and is not their story.

CASE # 1789

THE COURT: I so charge. It is the defendant's story, however, that he was running after a man.

MR. PALMIERI: That is not the defendant's story.

THE COURT: He said he was running after a man who had stolen his watch, with a knife in his hand.

MR. PALMIERI: And he was struck by this man while he was doing this, he was protecting his property. I wish to except to that part of your charge in which you say to this jury that if they disbelieve the officers in this case, then they are guilty of perjury.

THE COURT: I qualified that and told the jury what perjury was. Perjury is a statutory offense. It is the wilful misstatement of facts on a material point in the case. I told you that it was a material point in this case who struck first. That issue has been made by the defendant. He says that he was struck first and then stabbed, thinking he was protecting himself and did not know they were policemen. Now, the officers all say, as I recall their testimony, but of course your recollection must guide you, that Rice was stabbed and struck first by the defendant, before any assault was committed upon the defendant. If the officers knew the truth, and you must decide whether they were intelligent enough to know the truth -- if they knew the truth and wilfully went on the stand and told what was false on that material point, they would be guilty of perjury.

LIBRARY
CASE # 1789

MR. PALMIERI: I wish to except to that and wish to except to your definition of perjury, in the first part of your charge, and also in the latter part of your Honor's charge.

THE COURT: I will read it.

MR. PALMIERI (continuing) And I except to your Honor's reading any definition of perjury to this jury at this time, because we are not trying a perjury case, and it is unfair and unjust that you should do so at this time, because the jury are not going to convict anybody of perjury but decide whether this defendant struck his blow while he was on the ground or whether this officer was struck by this defendant, without striking him a blow first. What does your Honor do with my request?

THE COURT: I have not heard any request. I am going to read the statute. I gave you the substance of the law.

MR. PALMIERI: That is done under my objection and exception.

THE COURT: Yes. You will decide, gentlemen, whether the defendant charges these men with perjury or not, when you hear the statute.

MR. PALMIERI: I except to that.

THE COURT: Section 1620 of the Penal Law defines perjury as follows: "A person who swears or affirms that he will truly testify, declare, depose or certify, or that any

CASE # 1789

testimony, declaration, deposition, certificate, affidavit, or other writing by him subscribed, is true, in any action, or a special proceeding, or upon any hearing, or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding or on such hearing, inquiry or other occasion, wilfully and knowingly testifies, declares, deposes or certifies falsely, in any material matter, or states in his testimony, declaration, deposition, affidavit or certificate, any material matter to be true which he knows to be false, is guilty of perjury." That is the law of this State. If you believe any witness has committed perjury, you can reject all his testimony although you are not obliged to. The law makes you the sole judges of the credibility of witnesses. Of course you will not be influenced by any testimony you believe to be false. The law is you may believe all or any of a witness' testimony. You may reject it all or believe it all, or believe part and reject part. That is your function, but the law expects you to be honest men, and to exercise that function calmly and quietly, without passion or prejudice, and solely because you are acting in accordance with the dictates of your judgment and conscience. The law requires you to take the law from the Court and not make laws of your own, and

CASE # 1789

then find the facts from the witnesses.

MR. PALMIERI: I wish to except to that. I would like to have your Honor charge the jury that the fact that this defendant was in possession of a knife that night, which is in evidence here, he was committing no crime.

THE COURT: I will so charge. The mere possession of a knife is no crime.

MR. PALMIERI: And should have no prejudice against him or because he was in possession of that knife.

THE COURT: I so charge.

MR. PALMIERI: I also ask your Honor to charge the jury that if this defendant was robbed of his watch, that he then took out his knife for the purpose of pursuing the man who robbed him of his watch, that he was committing no crime.

THE COURT: I so charge.

MR. PALMIERI: Also to charge the jury that the officer in knocking this defendant down and assaulting him with three other officers, if while that was being done this defendant with his knife cut those persons who were on top of him, that he committed no crime.

THE COURT: I so charge. That is, if they believe that act was necessary to protect himself from harm, or if it was done in an accidental way.

MR. PALMIERI: Upon that point I ask you to charge the jury that this defendant did not know that the persons who

CASE # 1789

had knocked him down were officers; that there is no evidence these persons told him they were officers.

THE COURT: I so charge.

MR. PALMIERI: That they were not in uniform that night.

THE COURT: I so charge.

MR. PALMIERI: I also ask your Honor to charge the jury that in finding a verdict of acquittal for this defendant, it does not necessarily mean by their verdict that the officers had committed perjury, nor do they brand the officers with the crime of perjury.

THE COURT: I so charge. They must not reject the officers' testimony arbitrarily, and if they find the officers violated the statute concerning perjury, then they may reject their testimony. The officers may be mistaken. It is for you gentlemen to decide, if they innocently made a mistake. The malice of the crime of perjury is to do it knowingly. Men may go on the stand and testify to what is not true and believe they are telling the truth. There is no moral offense in that. That would not be perjury.

MR. PALMIERI: I ask you to charge the jury that in determining the truth of Rice's testimony, the complainant in this case, they must take into consideration the probabilities of his story -- that is, where he claims the knife which was struck at his belly went through his legs without making any cut in his body at all -- that is, in his clothes,

CASE # 1789

and that the partner who stood right by did nothing until after Rice was out, and it was then that he gently knocked him down -- you remember that testimony.

THE COURT: The word "gently" was not used.

MR. PALMIERI: They have a right to reject that kind of testimony and have a right to say for themselves what the probabilities were.

THE COURT: They have a right to take all the evidence in the case together and should not be influenced by one particular item of the evidence, but take it all, and decide on the probabilities of all the case.

MR. PALMIERI: I also ask your Honor to charge the jury that the presumption of innocence rests with this defendant throughout the entire trial.

THE COURT: With every defendant in a criminal case.

MR. PALMIERI: With this defendant. I am not concerned with any other.

THE COURT: Yes, with this defendant; that is the law. A defendant in a criminal action is presumed to be innocent until the jury find him guilty from the evidence.

MR. PALMIERI: I ask your Honor to charge the jury that this defendant has proven his good character; that his good character has not been contradicted by the prosecution; that good character in this case is a fact that they must consider.

CASE # 1789

THE COURT: The judge does not find any facts. They must take the evidence of good character and weigh it, the same as they weigh all the other evidence in the case. And courts have decided that good character evidence may of itself be sufficient ground to create a reasonable doubt where without it, none would exist. You will understand our law is this, that when a man is charged with a crime the People must prove him guilty of that crime beyond reasonable doubt.

MR. PALMIERI: I ask your Honor to charge the jury that the burden of proof rests upon the People throughout the entire trial.

THE COURT: I have already told the jury that the burden is upon the People throughout and until they retire and find him guilty from the evidence, and then that burden is met. Good character evidence may be offered, and the law is as I told you. Our law does not say that a good man has a right to commit one crime. That is not the law. If a good man violates the statutes I have read to you, they are crimes just as much as if a man who committed one hundred crimes before did it, but, in determining whether or not this particular defendant committed this crime, you must take into consideration the evidence of good character which has been offered to you as an essential part of the case, in deciding that question as to whether or not this particular defendant is guilty of the crime, and if you are satisfied on the

CASE # 1789

whole case, upon all the evidence, including the evidence of good character, that he is guilty, it is your duty to say so. If you have a reasonable doubt it is your duty to say so and to give the defendant the benefit of that doubt, and acquit him.

MR. PALMIERI: I ask your Honor to charge the jury that in considering the testimony of the two officers who testified that after they saw this defendant in front of a cocaine place, that they suspected that he --

THE COURT: I struck that out at your request.

MR. PALMIERI: That he approached them.

THE COURT: Yes, that he approached them.

MR. PALMIERI: And said something in a foreign tongue and they paid no attention and went along. I ask your Honor to charge the jury that if they do not believe that to be the fact and believe the officers have not told the truth about that, they have a right to disregard their entire testimony.

THE COURT: I decline to so charge.

MR. PALMIERI: I except.

MR. PALMIERI: I also ask your Honor to charge the jury as a proposition of law that if any witness in this case has wilfully and intentionally told an untruth with reference to a material fact in this case, they have a right to disregard their entire testimony.

6811789
CASE #

THE COURT: I so charge, and that applies to the defendant as well as to the People's witnesses -- I did charge that -- but the other is not a material point in the case.

MR. PALMIERI: I except.

MR. PALMIERI: I also ask your Honor to charge the jury on the question of the credibility of the defendant's story they have a right to take into consideration that he has not been contradicted that when he went into the station house that his chain was hanging down from his body.

THE COURT: There is no evidence of that except in his statement. They may believe that or not.

MR. PALMIERI: The officer said he did not remember it. The Italian officer to whom he told his story could have been produced here to contradict his story, and they have failed to produce him, and upon that point I want to ask your Honor to charge the jury that if the prosecution has a witness whom they can produce, and fail to produce him, that is a fact which the jury has a right to take into consideration.

THE COURT: I decline to so charge.

MR. PALMIERI: I except.

THE COURT: The rule is that if a witness be equally accessible to both sides, no inference is to be drawn from the failure to call a witness. The People have a lawyer, the District Attorney. The defendant has a lawyer, and

CASE # 1789

they decide how much evidence they will produce. If the People have not produced enough evidence, you must acquit the defendant. If they have produced enough evidence, you must convict, taking the whole case into account. If on the whole case you believe the defendant guilty, say so. If you believe him innocent, acquit him. Do not be led away. Keep the law squarely in mind and the evidence in mind, and find a verdict according to the law as given you by the Court, and the evidence.

MR. PALMIERI: You say that evidence which is easily accessible.

THE COURT: I did not say easily, I said equally accessible.

MR. PALMIERI: I did not know this officer's name and I could not find out what his name was. They did not tell me his name to-day.

THE COURT: The law is that declarations made any other place by a defendant, are not admissible here. The People might use them to contradict statements he made here but, to have a witness come here and merely repeat that this defendant said something at a certain time would not add any weight -- that is, where unsworn statements are made by an interested person, if he made any, the People are not bound to prove them, and the law excludes what are called self serving declarations. A man might go out and commit a

CASE # 1789

crime and then come around the corner and say "I have been to the theatre to-night." That is a declaration in his own interest, and he could not call witnesses to prove "I said I was in a theatre that night." The law forbids that. The People are not obliged to call a witness to prove that he said that.

MR. PALMIERI: I except.

THE COURT: You must not go outside and guess and speculate upon what might be or has not been done, but upon what has been done. If all the evidence on both sides satisfies you of his guilt beyond reasonable doubt, you will say so, and if it does not satisfy you, acquit him. If you find him guilty of any crime, then fix the degree of the crime.

Mr. Palmieri, if you want me to charge assault in the third degree, I will reconsider my refusal to do that.

Assault in the third degree is this: If an assault is committed and it is not assault in the first degree, which is an assault with intent to kill, or assault in the second degree, which is an assault resulting in serious or grievous bodily harm or with a weapon capable of producing grievous bodily harm, it is assault in the third degree. That is, if the consequences are less serious, or the character of the weapon used is not such as to place it in the class of weapons which are capable of producing grievous bodily harm.

MR. PALMIERI: Your Honor says we cannot make evidence

6811 # 1789
CASE

for ourselves but you fail to tell the jury that the District Attorney, if he so choose, could have produced that officer to contradict this defendant's story, if the defendant's story was not truthful.

THE COURT: I decline to tell the jury that. Exception

MR. PALMIERI: I also ask your Honor to charge the jury that if the evidence is equally balanced so that they have a doubt as to whether -- not as to whether the officer was cut by the defendant, because that is admitted by us, but as to whether the cut was administered while they were assaulting him or before they were assaulting him, if they have a reasonable doubt about that, or if they find that the evidence is equally balanced, they must acquit the defendant.

THE COURT: I so charge. You may pass out now, gentlemen, and if you have any doubt as to the testimony, or want any read, you can have it read.

MR. PALMIERI: If the jury want the knife can the jury have the knife?

THE COURT: Mr. Interpreter, stand where you are and ask the defendant personally whether he is willing to have the jury take the knife if they want it.

THE DEFENDANT (through the interpreter) I have no objection.

THE COURT: Very well. Now, gentlemen, you may take the knife if you want it. The defendant is the only one that

CASE # 1789

can object personally.

(The jury retire).

LATER: The jury return to court and render a verdict of guilty of assault in the third degree.

MR. PALMIERI: Can I have the knife?

THE COURT: The knife is in evidence.

MR. PALMIERI: I move to set aside the verdict on the ground it is contrary to law, contrary to the evidence and evidently it was a compromised verdict. We desire a verdict as to whether the defendant used that knife on the officer, or whether he did not. He was not indicted for punching this officer. He was indicted for stabbing this officer.

THE COURT: You yourself requested that I charge assault in the third degree. At first I did not think that it should be charged, but thought I would give you the benefit of it. The jury evidently decided the knife was not a weapon as described in the statute. They had the power to pass upon that as a question of fact. If they decided it was not grievous bodily harm, and they decided the weapon was not one of the kind which I read to them from the statute, which justified assault in the second degree, I can understand their verdict.

MR. PALMIERI: Upon all the exceptions and on the evidence in this case, I now ask for a new trial.
Motion denied. Exception.

CASE # 1789