

day we met the officer who is here. The same officer who is here in this case, and we spoke to him, and he telephoned from 37th street, from the corner of 37th street to the station house and inquired as to when we should go down and make our depositions.

Q Where did you meet your partner before you met this police officer? A At the Geneva Cafe.

Q Where? A Between 39th and 40th streets.

MR. KELLY: I take it that is on Sixth avenue.

Q By appointment? A Well, we frequently visited that place, and we met in there.

Q In the morning? A About eleven o'clock in the morning.

BY THE COURT:

Q Did you have any communication with your partner from the moment when you saw him on the street, as you say, outside of the restaurant, on the evening of September 30th, until the time that you met him, as you say, about eleven o'clock in the restaurant that you have last mentioned? A No.

Q Did you go to 645 sixth avenue, your basement, at any time between the time when you say that you went to the door and looked in on the evening of September 20th, and the next morning at 11 o'clock when you say that you met your partner at another restaurant? A No, but I passed by outside. I saw it locked.

BY MR. KELLY:

Q What time was that? A Half past ten to eleven the next

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morning.

Q Who locked the door, do you know? A I don't know.

Q That was the usual way for it to be, wasn't it, at half past ten in the morning; you didn't open until late in the day did you? A We usually opened between half past nine and ten in the morning.

Q Who opened? A I did.

Q So when you got to the store every morning it was closed, wasn't it? A Yes, sir, it was.

Q And this morning when you saw it locked, it was nothing unusual for the store to be locked that morning, was it? A There was some difference because the time had gone over. The regular hour of opening had passed.

Q That time had gone over, the regular hour of opening, because you had not gone around there at the regular hour of opening, isn't that right? A I had left my coat inside of there with the keys in the coat, and I had no key to open it with. I was with the white jacket.

Q You were still wearing the white jacket? A No, I wore another old coat.

Q Did any one else have a key to the store besides you?

A My partner had one key.

Q You did not try to get into communication with him to get the key to open the store with that morning, did you? A No.

BY THE COURT:

Q In going from that restaurant, 645 Sixth avenue after this

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occurrence, to the corner of 37th street, did you run or walk?

A I was walking.

Q In going back from 37th street to the restaurant door, as you say, did you run or walk? A I was walking fast.

Q Going from the restaurant door back to the point where you say that you were at the time you saw the defendant, as you say, near the southeast corner of sixth avenue and 37th street, did you run or walk? A I was walking fast; I was not running.

BY MR. KELLY:

Q And at that time the defendant had just gotten to the southeast corner of 37th street and Sixth avenue, is that right?

A He passed the corner.

Q Just passed the corner; did you see him pass? A The first time that I got to the corner he had reached the middle of the block.

BY THE COURT:

Q When you say the first time you mean you saw him at the southeast corner when you reached the northwest corner of 37th street and Sixth avenue, on the first occasion of your going, on the evening of September 20th to that corner? A What I mean by the first time is when I reached the corner of 37th and sixth avenue I saw him in the middle of the block, west of Sixth avenue.

Q Now, I may not understand you; I want to get it right. I understand that after the defendant had passed out of the door of 645 Sixth avenue, you went out upon the sidewalk of Sixth

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avenue, is that so? A Yes.

Q I understand that you then walked fast along the sidewalk of Sixth avenue on the westerly side of Sixth avenue until you came to the northwest corner of 37th street and Sixth avenue, is that so? A Yes, sir.

Q I understand that you then turned back and walked fast back to the door of 645 Sixth avenue? A Yes, sir.

Q That you opened that door and looked inside? A The door was open.

Q And that you looked inside? A Yes, sir, I stepped in.

Q You stepped down the steps into the restaurant, is that so? A I entered the restaurant.

Q That you remained in there how long? A A second or so.

Q That you then turned and went back to the sidewalk in front of the restaurant, is that so? A Yes, sir.

Q And that you then again walked fast back to the northwest corner of 37th street and Sixth avenue. Now, about that I am not sure; tell me if that is so? A No, I crossed to the opposite corner, the northeastern corner, and there I saw defendant running towards Fifth avenue.

Q Now, whereabouts was the defendant? A Beyond Tsapalides's door

Q As you were walking fast, as you say, from the restaurant door down to the northwest corner of 37th street on the westerly side of Sixth avenue, did you at that time see the defendant?

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A yes, sir.

Q Now, while you were walking fast, as you say, down from the restaurant door to the northwest corner of 37th street and sixth avenue, on the westerly side of sixth avenue, on the sidewalk, where, with respect to yourself, was the defendant?

A I saw him in the middle of the block, between sixth avenue and Broadway, after I reached the corner of 37th street.

Q In other words, you did not see him while you were in the act of walking fast, as you say, from your restaurant door down on the westerly sidewalk of sixth avenue to the northwest corner of 37th street? A I did not see him because I was looking right and left for an officer. I was not looking in that direction.

Q But you did see him when you got to the northwest corner of 37th street and sixth avenue? A Yes, sir.

Q And at that time as I understand you the defendant was on 37th street, west of sixth avenue and towards Broadway? A Yes.

Q Now, at that moment was he running, walking or standing? A Walking slowly.

Q In what direction, east or west? A He was walking towards the furniture store.

MR. BROTHERS: Well, that will be conceded was in a westerly direction?

MR. CLARK: Yes..

Q Was he walking on the sidewalk? A On the sidewalk.

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Q On the uptown side of 37th street? A Uptown side, yes, sir.

Q Then when he turned back to walk along the westerly sidewalk of Sixth avenue to the door of your basement, I take it, that you lost sight of the defendant, is that so? A No, but I saw him again when I came out again.

Q Did you lose sight of him as you walked towards your restaurant? A No.

Q You mean to say you saw the defendant while you were in the act of walking from the northwest corner of 37th street to the door of your restaurant? A No, I could not see him then.

Q Then when you came up the steps, having entered your restaurant, as you say, when you came back and getting back on the westerly sidewalk of Sixth avenue in front of your restaurant, did you at that moment see the defendant? A No, I could not, but I saw him when I reached the opposite corner.

Q You crossed, as I understand, from that sidewalk in a diagonal direction, crossed the roadway of Sixth avenue, down to the northeast corner of 37th street and Sixth avenue, is that so? A Yes, I crossed the track, the railroad track to the opposite corner, diagonally.

Q And it was when you were down on that northeast corner of 37th street and Sixth avenue that you again saw the defendant? A Yes, sir, I saw him running and I saw people running after him.

BY MR. CLARK: Q And then what did you do after that?

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A I again turned around, looking for a policeman, and then went back to the store and found the door surrounded.

BY MR. KELLY:

Q But when you saw the defendant running east on 37th street, when you were at the northeast corner, you saw no policeman there at that time, did you? A I did not; there may have been a detective in plain clothes after him. I saw people running after him.

MR. CLARK: Your Honor, the Coroner is here and we have no objection to interrupting the cross examination.

MR. BROTHERS: If this cross examination takes much longer, I can put Coroner Feinberg on so as to let him go back to his duties.

THE COURT: Very well.

(At this point the witness leaves the stand.)

ISRAEL L. FEINBERG, (Coroner of New York County) called as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your occupation? A I am a coroner and a physician.

Q And you have been a coroner in the Borough of Manhattan for how long? A Six years.

Q You have been a physician how long? A Twenty-three years.

Q Graduated from what institution? A New York University.

Q And you have practiced your profession ever since in this

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city? A I have.

MR. CLARK: I will concede his qualifications.

Q On the night of September 20th, 1915, did you go to the premises 645 Sixth Avenue? A I did.

Q There you found a man had died as the result of a stab wound, did you? A Yes, sir.

Q While you were there did you see Officer Ditsch, and Mr. Murphy of the District Attorney's office? A There were a number of officers there. I remember Mr. Murphy of the District Attorney's office, and I think Officer Ditsch was there.

Q Do you recall examining a knife at that time? A Whether I examined the knife at the restaurant, or the basement, or subsequently examined it at the station house, I don't remember very clearly, but I do remember examining the knife that night.

Q And you were in both those places? A I was in the restaurant and in the police station, nearest to the scene of the crime.

Q Will you look at this knife, People's Exhibit 3 for identification, and tell me is that the knife which you saw on that occasion? A Yes, that is the knife.

Q When you first examined it did you observe the blade of it? A I did.

Q Did you see anything upon the blade? A There were dark stains on the blade, but not very profuse, dark stains; a little spot occasionally on the blade. That is, it was not a

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very profuse staining of the blade.

Q Did you form an opinion as to what those stains were?

A I formed an opinion as to what they probably were.

Q What was that opinion, with reasonable certainty? A Well, I could not give an opinion with reasonable certainty, unless a microscopic examination were made of those stairs.

MR. BROTHERS: Now, as I understand it, your Honor, a witness, although not a physician, may testify as to what the things appeared to be.

MR. KELLY: He said he could not state unless a microscopic examination were made of it.

MR. BROTHERS: A lay witness may testify that certain spots appeared to be blood, and certainly a physician can give his opinion as to the probabilities; that is what the Court of Appeals permits a witness to say, what it probably is.

THE COURT: A man may possibly be able to say that a given liquid substance looks like blood; he is not allowed to say that it is human blood as distinguished from the blood of an animal, but it is entirely conceivable that a person may see a liquid substance without being able to express any opinion as to whether or not it is blood. I understand from the answers of this witness given so far he has not been able to say whether it looked like blood.

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Q You say you formed an opinion as to what this substance appeared to be? A I did.

Q Can you give that opinion? A I thought that they were ~~were~~ probable blood stains.

Q You have had some experience looking at blood stains, as a physician and as a coroner? A Yes.

Q And that was the opinion that you formed at that time? A Yes.

Q And absolute certainty could be obtained by microscopic inspection? A To find red blood cells of human blood.

Q Of course you did not do that? A Which I did not.

Q There is not very much material on there now to work with, is there? A Not at this time, no, although you might find hematone corpuscles in the very points that are dark, blood corpuscles.

Q Do you recall at the station house that you made an examination of the defendant's clothing? A My attention was called to the defendant's underwear.

Q Will you tell the jury whether you observed anything about his underwear, and if so what it was? A On the left-hand side of his trouser band, on the upper part, above the trouser band and below the trouser band (indicating) was a distinct silhouette of metal, which was of such a character that it had the outlines of a knife.

Q At the time did you have this knife there? A That knife at the time was there.

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Q Did you do anything with the knife to anything else? A I don't remember whether Mr. Murphy put the knife over the silhouette, or whether I put the knife over the silhouette.

Q You were both there at the time? A We were both there at the time.

Q As to whether you did it or he did it, at any rate you were watching at the time? A I was watching and either I did it or he did it, took the size of the knife and the size and shape on the underclothing and compared them.

Q What was the result of that? A The size of the knife and the size of the shadow was approximately the same.

Q Was the clothing wet or damp? A It was slightly damp or moist as if the perspiration had caused the silhouette to form.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. KELLY:

Q How long ago was that, Coroner? What time was that? A I should presume that was some time between 10:30 and 11:30.

Q On the evening of September 20th? A Yes, September 20th, 1915, the night of the stabbing.

Q You went to the premises 645 Sixth avenue first, did you? A Yes.

Q Had you been home at the time or at the office? A I was investigating another case at the time when I called up the office on the telephone, and they told me that there was a stabbing.

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THE COURT: I think I will strike out what they told you, and I think I will also strike out the expression, "The night of the stabbing." The jury will disregard that.

Q Where were you when you received the notice that there was something for you to investigate at 645 Sixth avenue? A I could not remember off-hand, without looking up my record for the evening just where I had been.

Q But you went to the premises at 645 Sixth avenue? A I did.

Q And you waited there for them to make a diagram of the premises? A No.

Q Or make a general examination of the premises, first of all?

A I made a general examination of the premises myself. I looked over the point where the body was, or had been. I looked the general conditions over, the stairway, the exit, the tables and chairs, I looked into the kitchen of the place, and there was considerable confusion at that time, a lot of men going in and out, police officers going in and out, and gave my general instructions as to having the body sent to the morgue. Whether it had been removed to the station house just prior to that, I could not say at this minute, without looking up the record, or looking up the inquisition papers; and then ordered the officers to be at the Morgue for identification in the morning to identify the body to the Coroner's physician, and the usual orders which are given in cases of that kind.

MR. KELLY: I move to strike out about the orders

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which the coroner gave to the officers.

THE COURT: I do not think there is anything prejudicial there.

Q It was after all that had been done that you went to the station house, is that right? A Yes.

Q In regard to the spots that were on the knife, you cannot say with reasonable certainty that they were blood spots?

A Not with positiveness.

Q In making up your opinion that they were blood spots, was that opinion influenced or helped along in any way by reason of the fact that you had been told that that was the knife that had been used for stabbing? A No.

Q The fact that this knife had been handed to you as a knife which had just been used for stabbing, would not influence your mind in any way in deciding that those red spots which were on it might be blood? A No, it would not.

Q Were you told that this knife had been used? A No, I was told that that knife had been found in the grating on 37th street at that time.

Q That is all you were told about it at that time? A At that time.

Q It was after you went to the station house that you made this examination with reference to the silhouette on the trouser band? A No, on the undershirt, cotton undershirt, that was made at the station house, if my memory serves me correctly.

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BY THE COURT:

Q When you say made at the station house, what do you mean by that? A The District Attorney had the defendant in an adjoining room, either the Captain's room or one of the rooms adjoining to the large room in the station house, that is the lieutenant's desk, and there was an adjoining room, and I think it was in that room that Mr. Murphy told him to take his coat and vest off and shirt. Whether he took the shirt off or lifted it up, I am not perfectly clear.

Q What happened when he lifted up the shirt? A I saw the stain of the silhouette on the shirt.

Q And that was before the knife had been placed either by you or by Mr. Murphy against the shirt, is that so? A Yes, sir.

BY MR. KELLY:

Q Did you find anything of spirituous liquors in the kitchen of 645 Sixth avenue, at the time that you were there? A I didn't make any search for spirituous liquors at the time.

Q Were those stains that were on the knife, dry when you saw the knife? A They were not moist, but they were dry.

MR. KELLY: That is all.

MR. BROTHERS: That is all.

JOHN DERMISSES, recalled for further cross examination, testified as follows:

CROSS EXAMINATION BY MR. KELLY: (Continued)

Q How long had you known your partner? A About two years.

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Q How long have you been in this country? A Thirteen years, this is the second time I am here.

Q You have been here thirteen years in all, is that right?

A About nine years continuous residence in the United States.

Q Are you a citizen? A I just filed my application for the first papers.

Q When? A About a month ago, in Nashua, New Hampshire.

Q That was since this occurrence on September 20th, was it ?

A Yes.

Q What part of Greece do you come from? A From Trikala, Thellolia.

Q Is that in New Greece, or in Old Greece? A In old Greece, but northern Greece (indicating on the map).

Q In the northern part of Old Greece? A Yes.

Q How long have you been in the City of New York at the present time, as a witness in this case? A Last Saturday night.

Q You came here last Saturday night from New Hampshire?

A Yes.

Q Who did you meet when you came here? A I came back with the officer and with Mr. Caraginas, - Officer Ditsch.

Q You came here voluntarily, didn't you? A They did not write to me, and they came over there and brought me down.

Q But you knew that there was no necessity for you coming here, unless you wished to come here, from another State, didn't you? A I could not very well avoid coming down. I knew I had

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to come down, but I didn't know when the case was going to be called.

Q Did they tell you that you would have to come down? A Yes.

Q Where are you living in New York? A 301 West 39th.

Q Is that where you lived before you moved away from New York? A Yes, that is where I resided before. Now, I put up at the hotel.

Q You are living in a hotel now? A Yes, sir.

Q What hotel? A The first hotel I put up at was the Mills Hotel, the first night. Now, I live at No. 18 West street.

Q Did Officer Ditsch pay your expenses for coming to New York? A No, sir; I paid my own expenses.

Q You paid your own fare, is that right? A Yes.

Q Did you pay your own board at the Mills Hotel, and at 18 West street? A I paid right along for my expenses. I have no money left, and I wrote today for some money.

Q Did Officer Ditsch tell you you would receive your expenses for coming here? A No, sir, he did not say anything of the sort to me.

Q He never told you anything about receiving any expenses? A Yesterday only he told me that I will receive my expenses back.

Q He told you you would receive your expenses? A Yesterday, yes.

Q After this case is over? A Yes, sir.

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Q Did he tell you you would also be paid for the time you were in New York, away from your business in New Hampshire?

A No.

Q But you expect to be paid for that time too, don't you? A I am not expecting anything. Whatever the City has to do, it will do.

Q You are hoping for the best, however, aren't you? A I got a family and naturally enough I would like to get as much for them as I can.

Q Did you sell mosticha at 645 Sixth avenue? A No, sir.

Q You had none in the place, had you? A I had a small bottle for the personnel or staff of the restaurant.

Q Did Lialakus have any that night? A No, sir.

Q He was drinking coffee, was he? A He had eaten and he was having his coffee.

Q How often did you talk the case over with your partner, or with anyone else, any other witness? A Well, we are every day together since I came back. We came here four times together.

Q And you talked over this case every day, didn't you? A Well, we talked about our own troubles as to what we were going to do, what business to do, and so on.

Q Didn't you ever mention the testimony that you were going to give in this case to each other? A No, sir.

Q That is the one thing that you and your partner have avoided

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speaking of during the last three or four days that you were in New York, is that right? A No, we did not converse about the testimony. I saw my partner yesterday in the adjoining room here, and also once before.

Q But you talked about all your other troubles except this trouble of coming here as a witness? A No, sir.

(Interpreter adding, - meaning that is correct)

Q Did you talk the case over with the Assistant District Attorney, Mr. Brothers? A Yes, he put questions to me last night.

Q Did you talk it over with Officer Ditsch when you were coming down from New Hampshire? A About the case, only that the case is going to go to trial, that is all.

Q But you didn't talk about any testimony that you were to give, or what you would say, to Officer Ditsch? A No, sir.

Q Now, how long does it take to come from Nashua, New Hampshire, to New York City? A One hour from Nashua to Boston, and about seven hours from Boston to New York.

Q And you never talked over this case with Ditsch at all during that time? A No, sir. We each occupied a seat, and we each were asleep in our seats.

Q On September 21st, when you met your partner at the cafe at Sixth avenue between 39th and 40th street at eleven o'clock in the morning, did you talk over this happening with him then? A We talked about the closing of the store, and the loss it

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would involve to us.

Q But that is all you talked about? A Yes, sir.

Q Who bought the cutlery up in your place at 645 Sixth avenue? A We found the cutlery when I purchased the store in the store.

Q And you had no occasion to buy any knives or forks or any large knives for the kitchen during the whole time that you were in the store, is that right? A No, everything wanted was in there.

MR. KELLY: That is all.

BY MR. BROTHERS:

Q I understood you to say to the Judge when he asked you if you recognized this knife, that that was the blade that the defendant had? A (In English) The same blade. I saw the knife that way (indicating, right hand gripping knife dagger-fashion).

Q You did not see the handle at that time? A (In English) No, I could not see.

Q How do you know that is the same blade? A (In English) Because I saw this same bright thing.

Q You are talking English now, and you have been talking Greek before? A (In English) Not much, so many things I can't understand, that is the trouble.

Q When you went to the station house with the officer that morning, it was in the morning? A (In English) It was about next day, Officer called on the telephone.

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Q Did they take down what you said? Did they have a stenographer? A (Through Interpreter) I did not want to get confused. I would rather speak Greek. The officer telephoned to the station house, and inquired as to when we should present ourselves.

Q When you were there at the station house and they asked you questions about this occurrence, was there a man there that took the writing down of what you said?

(At this point the interpreter is again used.)

A No, we were brought down here and the inquiry, the questioning took place here.

Q At the District Attorney's office? A Yes, sir; I don't know what room it is but it is in this building.

Q This gentleman who went up to New Hampshire with Officer Ditsch, and brought you back, was he on your bond? A Yes, sir, for \$100.

Q You were held as a witness and you gave a bond for your appearance? A Yes, sir.

Q Did you leave your address with your bondsman when you went to New Hampshire, or write to him about it? A A relative of mine is employed by the man Carajinas, who was on my bond, and I had written to him, giving my relative the address.

BY MR. KELLY:

Q But even though you were under a bond to appear here again, Officer Ditsch, or some one connected with this case for the prosecution, told you last night that you would receive your

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expenses all right?

MR. BROTHERS: I told him that myself.

MR. KELLY: And Ditsch did too.

Q Mr. Witness, the only time you ever saw this knife, People's Exhibit 3 for identification, was the night you saw it in the defendant's hand, is that right? A Yes, sir, and now in court.

Q This is the second time you have seen it? A I saw it yesterday in the District Attorney's office.

Q This is the third time you saw it, then? A Yes.

Q When you saw it that night for the first time, did you notice any stains on it at that time? A It was a little dirty.

Q You were able to notice that on it too, were you? A Naturally I did. I was not in my mind anyway. I was afraid that I would get struck myself.

Q But you recognized, you noticed the spots on it, however?
A I saw something on there, but I was not in my right mind.

MR. KELLY: That is all.

(At this point the defendant resumes his place at the counsel table.)

STELLIOS PALAMAS, recalled for further cross examination, testified as follows:

CROSS EXAMINATION BY MR. CLARK: (Continued)

Q Last night I was asking you about your talking with this friend of yours who was making a disturbance, Lialakus, do

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you remember? A Yes, sir.

Q You went over and spoke to him when he began to make his disturbance, is that right? A (No answer)

(The Interpreter, Mr. DeVille, puts the question to him in Greek, and at this stage the Interpreter is used for this witness.)

A Yes.

Q At that time had he thrown any glass around at all, when you first spoke to him? A Yes, he had thrown glasses down first and then I spoke to him.

Q Did he throw down some more than? A After I spoke to him he threw another glass down.

Q And throwing glasses down on the floor in a place like this in that way, is a mark of insult to the management, isn't it?

A Whenever anything falls down always.

Q (Previous question repeated) A Well, the glass was thrown down and broke. I told the man not to do it.

Q That is what I ask you.

THE COURT: Do you want me to strike that out?

MR. CLARK: No.

MR. DEVILLE: I asked if he understands the word I am using for "insult" and he says "What is it?".

Q And throwing glasses down on the floor in a place like this in that way is a mark of insult to the management, isn't it?

A No, it is not.

Q Were you annoyed by it? A I told you what I did. I told

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him when he threw the glass down not to do it again.

Q What did he say? A He did not say anything but stood up. He lifted his arm and stood up, and Angelas Sturkos stood up also.

Q What did you say when you spoke to him? A I told him to sit down and remain quiet; if he did not act properly I would put him out.

Q Did you say that quietly or did you say it quite loud? A In a good way, in a quiet way.

Q How far away could that have been heard?

MR. BROTHERS: We object to that.

THE COURT: Objection sustained.

Q Speak in about the same tone of voice that you used then?

A I said, "Nicholas, sit down, quiet; these things you do are not right things or the proper things."

Q At this time was the music playing? A It was.

Q And the defendant was dancing with Olympia? A Yes, sir, he was dancing.

Q There was quite a little noise in the restaurant, was there? A Not much noise.

Q Except for the music and the dancing? A Yes.

Q How many waiters were there there that night? A One.

Q Just you yourself, or one other man? A My partner and I and the waitress.

Q How long have you known Dermisses? A Four months, since

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we became partners.

Q Never met him before you became partners? A We had talking acquaintanceship.

Q For how long? A One year and six or seven months; something like that.

Q Who owned this place before you got it? A Some one whose name is Vangelin, the nickname, Nellis Thomas.

Q You and Dermises talked over taking the place together before you bought it? A Yes.

Q And the morning after this man died in your place, did you go back to open it up again? A No, I did not.

Q Why not? A On account of this trouble.

Q Didn't you go back at all, down to the place? A Well, after I had gone down here into this building, into court I went back and removed the furniture.

Q How about your other property? A What other property.

Q Was the furniture all that was there? Weren't there some supplies of some sort and dishes? A They had taken the furniture and brought it to the court house, some where in First avenue.

BY THE COURT:

Q When you use the word "furniture" what do you mean? A Dishes, silverware, tables, chairs and everything.

MR. CLARK: He means furnishings, in other words.

BY MR. CLARK:

Q Are you quite clear in your mind that when you went over

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there and spoke to Lialakus, that you did not seize him by the head and shake him? A No.

Q Did you lay your hand on him at all? A No. The deceased lifted his arm and his friend Sturkos stood up at the same moment, and he was talking just like we are talking now.

Q When you told him to stop making a noise and he threw down some more dishes, weren't you angry? A No, I was not.

Q Were you pleased by it? A How could I be pleased when a man break my dishes?

Q Well, I would like to ask you how you could keep from being angry, if you told an old friend of yours to stop throwing things down on the floor and he immediately threw something else down? A You want to know whether I got angry or not? Well, I told him not to continue breaking dishes.

Q And he immediately continued breaking dishes? A When I had walked away a certain distance from the table, he picked up another glass and threw it down. That is the moment that the defendant walked towards him, took the knife and stabbed him.

Q I am asking you what you did? A I stood a distance away from him, talking to his friend Sturkos.

Q You were the proprietor of this place and were out there to keep order, weren't you? A Yes.

Q And you went out there and this man who had been a regular customer had thrown some glasses on the floor? A He did throw.

Q And you asked him to stop and he immediately threw something

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on the floor? A When I told him, "Don't break any more," he did not break any more.

Q Well, now, did he or didn't he; we have it both ways.

A When I spoke to him and asked him not to break any more, I walked a certain distance away and then he broke the very last glass.

BY THE COURT:

Q In other words, he had broken something before you spoke to him, and after you had spoken to him he broke something else?

A Yes, sir.

BY MR. CLARK:

Q Now, isn't it a fact that you got very angry with him at first and went over and spoke to him, and then when he immediately threw something else, didn't you give even more angry, and didn't you yourself come over with a knife and stab him?

A What knife?

Q With the knife that he was stabbed with? A The knife was in the hands of Mike Savas, the defendant.

Q Didn't you stab him yourself? A No, I did not.

Q You did not lay hands on him at all? A The only thing that happened, when I was talking to him, the deceased lifted up his arm, and his friend spoke to him.

Q And you never touched him at all? A And then I touched his arm, and then I walked away, and his friend Sturkos was talking to him.

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Q Did he make a motion to strike you at that time? A I made this motion, exactly as I am pointing (extending the right-hand with the palm downward to right side). He was sitting at that moment.

Q But except for merely raising your hand upon his arm, you never touched him at all? A I caught hold of his hand, and then his friend pulled him back.

Q Now, the other witnesses who have testified here are all people that were regular customers of yours, aren't they, the other greeks?

MR. BROTHERS: Objected to, unless he gives their names because he is including Mr. Murphy.

THE COURT: I think it might be well to give their names. I suppose the witness was not in the room when they testified.

MR. CLARK: Manolias, I think, is the only other customer who testified so far.

Q Manolias was a regular customer of yours, was he? A Yes.

Q He was a good friend of yours? A Well, we became acquainted later, for the past five or six months.

Q Was he a regular customer of yours at that store? A He would call regularly; whenever he had nothing else to do he would call.

BY THE COURT:

Q Did he work for about one week for you and your partner

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in the capacity of a musician in that restaurant? A Yes, sir.

BY MR. CLARK:

Q And what was he doing while he was working there? A Music.

Q Where were you born? A Macedonia.

Q Whereabouts? A In the Turkish section, Kosana.

Q That is up near the Thracian peninsula, is it? A One day's walking distance from Monastir. (Indicating on map) Between Greece and Servia.

Q Oh, it is not in Greece then. A Not yet.

Q How long have you been in this country? A Ten years.

Q Are you naturalized? A No.

Q How long have you lived in New York? A Nine years.

BY THE COURT:

Q Did you yourself serve anything to the defendant, after the defendant had entered the restaurant on that night?

A No.

BY MR. CLARK:

Q Did you see what he was doing? A He did not sit down at the table; he just sat for two minutes; then he got up immediately.

Q Didn't he order anything in the way of food? A He did not order anything from me.

Q Didn't you see whether he got anything or not? A How could I see. I was busy looking all over.

Q Wasn't that your business to see that customers were

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served out there? A Well, what do you expect me to look out first?

Q I did not expect you to look after anything at all. I want to know what you did in that room with about twenty people in it? A I was waiting on the customers before.

Q But you didn't pay any attention to him apparently, did you? A No, I didn't pay attention to him.

Q Did you have any mosticha there? A No.

Q None at all in the place? A For ourselves, yes we had.

Q Where was that? A Inside the kitchen.

Q And nobody but yourselves ever got any of that? A Sometimes we would treat a friend.

Q How many did you treat that night? A Any of my personal acquaintances that came I treated; I don't know, - two three or five, or ten, according to how many friends came down that evening.

Q In other words, anybody that you knew was all right, and wanted some you would serve it to them; isn't that what it was? A Well, any countryman of mine that came there, and personal acquaintances, I would treat to mostachi, I would treat him myself, and even if it was a man who came from another part of Greece who was known to me, I would treat him also.

Q Did you allow them to pay for it? A No.

Q Did you ever sell any alcoholic drinks for money there,

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or did you ever get money for alcoholic drinks that were delivered to customers there? A No.

Q And so far as you know, absolutely no one in that place that night had anything to drink other than soft drinks or coffee?

A Just soda and coffee, yes, but no intoxicating liquors.

Q No intoxicating drinks served there that night, so far as you know? A No.

Q How old are you? A Thirty-five or thirty-six.

Q Just one more question: after this had occurred and you went out on the street, did you yourself chase this defendant?
A No.

Q How long did you stay in the restaurant after this man was stabbed, before you finally left for the night? A About fifteen minutes.

Q You did not wait until the police came, did you? A Well, the moment I stepped up on the sidewalk, I saw the police officers going down the steps.

Q And did you come back? A No.

Q You did not tell them you were the proprietor? A No, I got scared and went away.

Q Didn't you go away a long while before that? A No.

Q Didn't you leave that place just the minute the man was stabbed? A No.

Q Did you see your partner go out? A I did not. I knew he was in the kitchen.

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Q You didn't see them go out at all? A I did not.

Q So you don't know whether you went out before him, or after he did? A No.

Q And you didn't wait for the ambulance surgeon to come ?

A When the officers went down the stairs I went away, and then I telephoned for the ambulance.

Q But you enever went back? A No.

Q And it was not until the police got after you and took you in custody the next day that you went around to take any further interest in your friend that was killed?

MR. BROTHERS: I object to the form of the question.

It assumes that the police went after him.

Question withdrawn.

Q Did the police go after you the next day? A No.

Q How did you get in touch with the police the next day?

A I was in the Geneva cafe on sixth avenue and people came in there and we went together down.

Q Down where? A To the station house.

BY THE COURT:

Q Accompanied by police officers? A No,,I came here with Ditsch.

Q No; but did you go from the Geneva, or whatever the name of that restaurant is, to the police station house in the company of one or more police officers? A Two detectives were with us.

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Q In other words, detectives came to the Geneva restaurant where you were on the morning after September 20th, and you were accompanied by those detectives and went to the police station house? A Yes.

BY MR. CLARK:

Q Did you go home that night? A Yes, I obtained bondsman and I went home.

Q I mean on the night of the killing; did you go home?
A Yes.

Q And between the time that you left that restaurant that night and the next day when the detectives found you in this restaurant, you did absolutely nothing about your friend who was killed? A No.

MR. CLARK: That is all.

THE COURT: Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you. The court will take a recess until 2 o'clock.

(The court takes a recess until 2 p. m.)

AFTER RECESS, 2 p. m.

ANGELUS STOYCOS? (328 West 34th street), a witness called in behalf of the People, being first duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Stoycus, in what business are you engaged? A In the candy business.

THE COURT: Will you have the kindness when you answer questions to raise your voice and speak loudly enough so that everybody hears you easily.

Q Where are you engaged in the candy business? A On 37th Second avenue.

Q You are how old? A Twenty-six years old.

Q Did you know Nicholas Lialakus? A I did.

Q For how long a time? Had you known him? A I knew him in this country about six years, and I know him from the old country also.

Q How long have you been here in the United States? A About ten years.

Q Did you know the basement restaurant at 645 Sixth avenue?
A I did.

Q Were you in there on the night of September 20th, 1915?
A I was.

Q With whom did you go there? A I was with Nick Lialakus.

Q What time did you and Nick go into that restaurant? A I went there about five o'clock.

Q At 645 Sixth avenue? A Yes, sir.

Q Did you remain there all the time? A I remained there until seven o'clock, then I went to the barber and got a shave, and

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came back there about nine o'clock.

Q When you came back at nine o'clock was Nicholas still with you? A Yes.

Q Had he gone out with you? A No.

Q Do you know where he was while you were at the barber shop? A I don't know.

Q When you came back to the restaurant was Nicholas still there? A He was in there.

Q Did he and you sit down somewhere? A Yes.

Q Will you tell the jury where you sat, and all that occurred after you got there, after nine o'clock? A We were at a four corner table. He complained that he lost his pocket book. He told me "We are fools to come in this place and spend our money and lose my pocketbook in here." He searched his pocket, went around looking for his pocketbook. Then he could not find it, he said, "I am going to break everything in here so they put me out, so I never have to come back here again." I told him, "You are a fool, why you should do that, we can go out like gentlemen do." Then he started breaking dishes that he had in the front of the table, and finally the boss came along, the proprietor and said he should stop it. When the boss told him that, he was kind of excited and got up. I went between them, I turned this way and told the proprietor he should not do anything. (Witness indicates by turning slightly to the left) That we came in here to spend money, that he should not make any trouble, he would go out alone. In the

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same minute when the proprietor turned, I seen Nicholas Lialakus drop that down. I spoke to him, I said, "What is the matter, Nick?" He did not speak to me. I seen all the people in there went out, all excited. I said, "What is wrong?" Nobody answered me until they all went out, and one hollered from upstairs that he was stabbed. I looked around and I could not find no blood, so I took his clothes and seen the wound in here (indicating left side of chest).

Q Where was the wound? A On the left-hand side. (Indicating).

Q Where you are pointing now? A Yes. (Indicating lower part of chest, left side).

Q Did you see who stabbed Nicholas? A I did not see, sir.

Q At the time that you say he sank down where was Palamas the boss? A All that time he was by the desk or register, where it is, a small desk, they had there.

Q The man that came there, as you said, told Nicholas not to break dishes; now, where was he at the time Nicholas Lialakus fell down? A I could not tell, because I had my back to that side, I was looking outside.

Q He was in front of you? A Nicholas, the party, the dead man.

Q I am afraid you do not understand that. Did you understand my question? A I did not.

Q You say you had your back to Nicholas at one time, is that right? A When they started to argue with the boss.

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Q Well, now, tell us again what happened at the time of the argument. Tell that again.

BY THE COURT:

Q Kindly say that over again and talk so that everybody hears you? A Nicholas Lialakus said, "I must break dishes so they can put me out, and never come back here again." He started breaking dishes. So the proprietor came along and told him to stop making any trouble, or anything of the kind, otherwise he had to go out. He rose up, he said, "You are going to put me out?" When I seen all this, I got up and told the boss he should not speak so, account we are Greeks, we come from one country, and we spend money here and all that, so the boss did not say anything, he went about a few feet back. In the same minute I seen Nicholas drop down.

BY MR. BROTHERS:

Q Well, that is what I want to know right there.

BY THE COURT:

Q When you saw Nicholas drop, where was the boss? A The boss was on my left side.

Q How far from Nicholas? A About four or five feet.

Q How far from Nicholas were you when you saw him drop? A About two feet.

BY MR. BROTHERS:

Q Where were you? Were you between the boss and Nicholas when Nicholas fell down? A Yes, sir.

Q Did the boss strike Nicholas at any time? A I don't think so.

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Q Did you see him strike him? A I did not see him.

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

Q Where was he when you noticed him? A He was dancing.

Q With whom was he dancing? A With a girl.

Q Did you see anything that the defendant did besides dance?

A I did not see.

Q Did you see him when he went out of the place? A I did not see him.

Q If he did go out? A I did not see him.

Q Were you there when the officer came back with him? A I was alone.

Q How is it that you did not see who stabbed Lialakus? Will explain what you were doing that time? A I was speaking to the proprietor, and I had my back turned, I spoke to him in kind words he should not start anything; the same minute he dropped down, and I thought probably something happened.

Q Whatever did occur, you were looking and talking to the boss at the time? A Yes, to the boss.

Q And that boss is the man who told Nicholas not to break the glass? A Yes.

MR. BROTHERS: I think that's all.

CROSS EXAMINATION BY MR. CLARK:

Q Where were you born, Stoycos? A Cozane, Greece.

Q How do you spell it? A C-o-z-a-n-e. (Spelling)

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Q What part of Greece is that in? A It is macedonia.

Q Is that up near where the boss comes from? A Yes.

Q Do you know him? A I do.

Q How long? A All my life.

Q You have known him all your life? A Yes.

Q He has been a friend of yours? A Well, yes.

Q What do you mean by that? A I know him; he is older than me. I was in school and I knew him. It is a small town and we all know eachother.

Q You were fellow townsmen in the old country? A Yes.

Q And when you found he had a restaurant you used to go around there? A Yes.

Q You went there frequently? A Yes.

Q How frequently? A Often.

Q Was that your regular evening place? A No, sir.

Q You went there in the evening? A Well, yes.

Q Pretty often? A Yes.

Q What did you do when you went there? A Just go there, give the man a show, or something.

Q Just went there to give the man a show? A Yes.

Q How did you give him a show? A Spending my money.

Q What did you spend it for? A I wanted to see the man make some money, I mean.

Q What did you spend your money for, what did you buy? A Coffee.

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Q Just coffee? A Just coffee.

Q Anything else? A Nothing else.

Q Did you get any food there; where did you have your dinner that night? A There.

Q What did you have for dinner? A Chops.

Q Then you bought food there? A Yes; I thought you said fruit.

Q And coffee? A Yes.

Q Anything else? A Tomato salad, I think.

Q Did you have anything to drink there besides coffee? A I never drink.

Q You never drink at all? A No.

Q How about Nick? A He drank.

Q What did he drink? A A Beer.

Q He had beer there that night, didn't he? A Yes.

Q How much beer did he have? A I could not tell you.

Q How was the beer brought in? A This I don't know.

Q In glasses? A In glasses.

Q Did they bring him in the glass of beer? A Yes.

Q Brought it from the kitchen? A I don't know where from.

Q Did you notice where the food came from? A Yes.

Q Where did that come from? A From the kitchen.

Q But you don't know where the beer came from? A No.

Q Did you notice anything unusual about bringing in the beer? A Not that I know of.

Q He ordered from the waiter a glass of beer, and they

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brought it in, is that it? A I don't know if he ordered it or not. I don't drink anything, so I don't know anything.

THE COURT: Will you have the kindness to talk loud?

Q How many glasses of beer did he have? A I don't know.

Q More than one? A I could not tell you.

Q Are you sure he had one? A I don't know.

Q Do you know where he lived? A He lived in his pool room, in the place of business that time.

Q Up in Sixth avenue? A Yes.

Q Did you go up in his poolroom often? A Yes.

Q You knew him well, too? A Yes.

Q Did you ever see the defendant before? A Never.

Q He was an entire stranger, was he? A Yes, to me.

Q So far as you know he did not know anybody there that night? A I don't know.

Q You knew most of the other people there or a number of them? A Yes.

Q Friends of yours? A Yes.

Q It was a regular meeting place for a lot of you?
A Yes.

Q And a lot of friends from the same part of the old country gathered there? A Yes.

Q The proprietor was your friend and their friend? A Yes.

Q You would not want to see anything happen to the proprietor that would hurt the man? A No, sir.

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Q Did Nick have any mosticha there that night? A I don't know.

Q Do you know what he did have there? A I know beer he had on his table.

Q At your table where you were sitting? A Yes.

Q You went out at seven o'clock and came back at nine? A Yes.

Q He sat there when you went out? A Yes, sir.

Q And he was there when you came back? A Yes.

Q He had some beer before you went out, with his dinner?

A Yes.

Q And then when you came back later he still had some beer there, didn't he? A Yes.

Q And he was excited when this thing occurred about his pocket-book, wasn't he? A Yes, sir.

Q When the proprietor came up to him, when Palamas came up, you say he asked him not to make a disturbance? A Yes.

Q What did he say? A He told him he should not break the dishes.

Q "Don't break the dishes"? A Yes.

Q What did Nick do then? A He got up. When the proprietor told him he should not break dishes he told him he would put him out, if he did. He said, "You can't put me out. "

Q He said, "You can't put me out"? A Yes.

Q What did Palamas say to that? A He did not say anything. I got up and told him he should not start any argument.

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Q Did you put your hands on Nick? A I did not.

Q Did Palamas touch Nick at all? A I did not see that.

Q You did not see him come up there and take hold of Nicholas's head like that (indicating) and shake him? A No.

Q Could he have done that? Were you so placed there that if he had done that you would have seen him? Were you where you could have seen that if it happened? A Yes.

Q So that did not happen? A It did not happen.

Q When you turned around and saw that, Nick was sitting down? A He was sitting down, he dropped down.

Q He dropped on the floor? A Yes.

Q And you didn't know what happened at all? A No.

Q What were you doing on the moment? A I was speaking to the proprietor.

Q Did you see anything else happen at all? A I seen them all go out. I seen the people go out.

Q Did you see the defendant go out? A I did not see him go out.

Q Did you see the knife in the defendant's hand? A I did not.

Q Did you ever see this knife here (showing People's Exhibit 3 for identification)? A I saw it after the policeman brought it in.

Q You remained in there with your friend who had been stabbed?
A Yes, sir.

Q Did you see Palamas go out? A Yes, all go out.

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Q Everybody went out? A Yes.

Q And you were left there all alone with the dead man? A All alone.

Q After the proprietor spoke to Nick, did he throw down some more dishes? A I don't know; I don't remember.

Q And Palamas did not come back that evening, so far as you saw, did he? A No, sir.

Q Did you know Dermisses, the other boss? A Yes.

Q Did he come back that evening? A Yes, he did, I think he did. I asked him for some ice.

Q You asked for some ice? A Yes.

Q You saw him then after the others went out? A After they all came down. A lot of them came down after.

Q A lot of them came back when the police came back? A Yes.

Q And Dermisses was there when the police were there? A Yes.

And you asked him for some ice? A Yes, ice or vinegar, I don't remember, quite. I asked for something. I was excited and they told me to rub him.

Q Was Manolias there? A Yes, he was there.

Q He is another old friend who was there frequently? A I know him because he is a musician.

Q Did you know him in the old country? A No, sir.

Q Just known him since you have been here? A Yes.

Q You met him there frequently? A Yes.

MR. CLARK: No further questions.

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BY MR. BROTHERS:

Q When you saw that Nick had fallen down, then you did all you could for him, didn't you? A Yes.

Q You paid attention only to Nick? A Yes, sir.

Q You were not at that time looking around to see who was going in and out of the door? A I did not.

Q You did all you could to revive Nick? A Yes.

Q He did not speak did he? A He did not speak a word.

MR. BROTHERS: That is all.

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S O P H I A D E M E T R I O U, (238-1/2 West 39th street)
called as a witness on behalf of the People, being first duly
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What kind of work do you do, Sophia? A Waitress.

Q Where are you employed now? A The boss I worked for
before he was in 35th street and he moved to 37th street.

Q What is the number? A I don't know the number; it is
upstairs in the saloon, between Eighth and Ninth avenue.

Q Can you talk a little louder? A Between Eighth and Ninth
avenue, upstairs in the saloon, but I don't know the number.

Q What is the name of the boss? A John Fillitis.

Q Is he a Greek? A Yes.

Q Are you a Greek? A Yes.

Q Did you work for Mr. Palamas when he had a restaurant at
645 Sixth avenue? A Yes.

Q Were you working in that place on the night of September
20th, 1915 when the man was stabbed? A Yes.

Q You were the only waitress? A Yes.

Q Do you remember seeing the defendant in the place that
night? A Who?

Q Do you see anybody here that you saw there that night?
BY THE COURT:

Q Look around this room and see if there is anybody in the
room that you saw in the restaurant on that night. A I think

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this gentleman over there (pointing toward the defendant).

BY MR. BROTHERS:

Q Would you mind getting down and pointing him out?

(Witness steps down from the witness chair, walks toward the defendant and points out the defendant.)

Q Put your hand on him. (Witness puts her hand on defendant.)

(Witness resumes the stand.)

Q Now, what was that man that you have indicated, the defendant, doing in the restaurant when you noticed him first?

A He came in and sit down and then started dancing with the girl who was working with the musicians.

Q What was the girl's name? A Olympia.

Q When he was dancing had he his coat on? A He took his coat off after.

Q Did you notice the shirt he was wearing? A Yes, I noticed the shirt.

Q What kind of a shirt was it? A It was kind of a yellow, with stripes.

Q Were you waiting on the customers? A Yes, sir.

Q Do you remember whether you served this man, the defendant, anything? A Yes, sir, I served him.

Q Was that before he danced or after? A Before he danced.

Q What did he have, do you remember? A No, I don't remember.

Q Do you remember whether he sat alone at the table or had some one at the table? A He sat back here, right in front of

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the door, on the side.

BY THE COURT:

Q Was there anybody else at the same table with him, or was he alone? A Yes, he was with somebody else. Three were there, two or three other men.

BY MR. BROTHERS:

Q What happened in there that night; will you tell us all about that? A I don't know much what happened, but the other fellow he was drunk. Before he came out he was drunk, the fellow that got killed. Mr. Palamas, the boss went over to see what was the matter with him, but I don't know what he said. He said something to Palamas. He had a bunch of money in his hand, nickels and dimes. He threw it at the people who were dancing, I don't know what he threw, but he threw it on the floor and there was money all around.

Q What happened after that? A After what happened I don't know. I was going back and forth, doing my business. I did not see much.

Q Then what happened; can you tell us what else happened in there? A I didn't see nothing. After that I heard big fight and I wanted to go out. The door got stuck and I could not go out and a lot of people. Somebody hurt my hand; I did not see who did it.

Q You wanted to go to the street? A Yes.

Q Where did you go? A I could not get out. I got hurt.

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Q To what place did you go to get out, to what part of the restaurant? A That was right at the door.

Q The front door? A Yes.

Q When you got to the front door, tell us what happened then. A I did not see much what happened. I wanted to go out myself. Many people were there and I did not see much. Some people wanted to go out. I did this way with my hand on my eyes (indicating, witness puts her left forearm over her eyes). I did this with my eyes and then I got hurt in my hand, because I was always taking care of my eyes.

Q Tell us how you got hurt at the door? A I wanted to get out, somebody hurt me at the door.

Q How did you get hurt; did somebody punch you in the eye or step on your feet or what?

MR. CLARK: She said she could not tell what happened, she had her hand over her face.

Q Tell us-how you got hurt, in what part of your body were you hurt? A I was in the door. I wanted to go out and the man wants to get out too.

Q A man wanted to get out? A Yes; if he had a knife at that time or what, he hurt me.

Q Where did he hurt you? A Threw the door.

Q Show us on your body. A On my arm (witness showing left forearm to jury, showing mark on inner side of left forearm), I wanted to go this way for my eyes (witness indicating by put-

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ting her left arm over her eyes) and I got hurt there.

Q You say a man hurt your arm? A Yes.

Q Was your arm cut? A Yes, a man hurt me, because that man was there.

Q Did your arm bleed? A Yes.

Q Tell the jury about the man who cut your arm; who was that? A I didn't see the man cut my arm.

Q You did not see the knife?

MR. CLARK: That is objected to, she said man.

THE COURT: Objection sustained.

BY THE COURT:

Q When your arm was cut -- A I wanted to get out of the way.

Q Listen to me; when your arm was cut, in what position was your arm; how were you holding your arm at the moment that it was cut? A I hold my arm this way (indicating by holding left arm over her eyes).

Q You mean to say your arm, at the moment it was cut, was up and in front of your eyes? A Yes, sir.

Q At the moment that your arm was cut, how close to the door were you, meaning the door going out to the street? A I was right by the door, I wanted to go up.

Q You were right at the door? A Yes, sir.

Q Was the door at that moment open or closed? A It was closed.

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Q And where did you have your hand that was not cut, the arm that was not cut, where was that; your right arm, where was that, how close to the door? A Right to the door, just as far as here (witness puts her right hand on the Judge's desk).

Q Did you have hold of the door? A No. There was a bunch of men wanted to get out.

Q A bunch of men were trying to get out of the door? A Yes. And I was at the same time.

Q Were those men in front of you or behind you? A Some behind me and some in front of me.

Q You put up your hand in front of your eyes, did you?
A Yes, sir, this way, and in this hand I got cut (indicating left arm).

Q Just before you put your hand in front of your eyes and you were in front of the door, what did you see? A I seen a man was in a hurry to get out.

Q How many men? A One.

Q Had you seen that man before in that restaurant that night? A While he was dancing.

Q That man was dancing? A Yes.

Q Who was he dancing with? A He took the girl with the musicians to dance. He was dancing the Greek steps.

Q Do you know the name of that man? A No, I don't know.

Q How was that man dressed? A Well, he had a silk shirt, I remember, with stripes, kind of yellow shirt, silk.

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THE COURT: You may go ahead, Mr. Brothers.

BY MR. BROTHERS:

Q When you, as you told the Judge, saw this man near you at the door with this striped shirt on, you put your hand up?

A Yes.

Q In front of you? A Yes, he wanted to get out.

Q Did you see whether the man had anything in his hands?

A I didn't see; I put my hand up. Somebody wanted first to go out very quick. I put my hand up this way (indicating as before).

Q Did the man in the shirt that you have described, that had been dancing, have anything in his hands at the time you put your arm up in front of you? A Yes.

Q What did he have? A I didn't see what he had. He wanted to get out.

Q Why did you put your arm up in front of your face? A Because he wants to get out so fast.

Q How soon after you put your hand up in front of your face did you feel your arm being cut? A The door opened, the man came up to me and arm was cut.

Q Will you tell the jury why you put your arm up in front of your face? A Because I was frightened when I seen him going out so fast, and I put my hand up to my eyes.

Q You came down to my office last week, didn't you? A Yes.

Q And you and I talked about this case? A Yes.

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Q Do you remember I showed you this knife (indicating People's Exhibit 3 for identification)? A Yes, I saw the knife, I don't know how large.

Q Where did you see that knife at the time you were going out of the door?

MR. CLARK: That is objected to.

THE COURT: Objection sustained.

Q At the time you were at the door, did you see this knife, (indicating People's Exhibit 3 for identification), or any knife like it? A I told you I was frightened and I didn't see. I saw the knife. A man had it in the hand.

Q A man had the knife in his hand? A Yes.

Q What man had the knife in his hand at the door, is the question? A I didn't see it. That was the man that had the silk shirt that was dancing. I didn't see the man have the knife on. He keep the knife under the hand.

Q Didn't you just now say you saw a man with this knife in the restaurant? A Yes.

Q Who was the man that had it? A I didn't look at the man, I didn't see who had it.

Q Did you see any knife when you were near the door? A Yes.

Q Who had the knife near the door? A I didn't look the man in the face.

Q How was the man dressed at the door who had the knife?

A I didn't see him. When I seen the silk shirt, the man he was

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dancing.

Q Do you understand me perfectly? A Yes, sir.

Q Did you understand me perfectly when you talked to me before?

MR. CLARK: I object to this questioning going any further on this line.

THE COURT: I will allow the question.

Q Did you understand me perfectly when you talked to me in my office? A I think I did the same thing. I saw the knife but I didn't see the man who had it.

Q You didn't know the man? A No.

Q But will you tell the jury how the man was dressed who had the knife?

MR. KELLY: Objected to; the witness already said she did not know how he was dressed.

MR. BROTHERS: The State of New York should not be bound by the unwillingness of any witness. We are not a private party, but this is a public entry into the truth, and if I have reasonable assurance why she hesitates, I ought to be permitted in a general way to refresh her recollection in the most general way. I shall not press this on the defendant's rights.

THE COURT: I think you have gone far enough, Mr. Brothers.

MR. BROTHERS: May I ask another question, which I think

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is squarely within the rule.

THE COURT: You may ask the question.

Q See if this will refresh your recollection; did you tell me in my office last week that the man in the striped silk shirt had a knife at the door; look at People's Exhibit 3 for identification.

MR. KELLY: I object to that.

THE COURT: I think under the authorities that is allowable.

MR. KELLY: I respectfully except.

Q Did you say that to me? A I said there was a man with the knife at the time, he wants to get out, but I didn't see if the man in the silk shirt had the knife.

Q Was there more than one man at the door? A There were too many men wanted to get out.

Q Did you know either of them? A No.

Q Did you know their faces? A Yes, I know if I saw them.

Q Do you see either of them here today? A Yes, some of them here.

Q I mean going out of the door. You say two men tried to get out of the door? A Too many men, a crowd.

Q Who was the nearest man to you at the time? A There was a bunch of men around me, all wanted to get out. Just the same as any, I wanted to get out and they wanted to get out too.

Q Who was the nearest man to you at the time you were cut?

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A I didn't see it. The man wants to run from the back in the middle of the place; I don't know whether he was the man, he was running so fast. I went with my hands this way (indicating as before). I was scared.

Q Who was the man nearest to you at the time you put your arm up?

MR. CLARK: I object, he has asked that three times.

BY THE COURT:

Q Can you tell us who the man was who was nearest to you at the time you raised your arm? A No, I didn't look at the face, I was trying to get out.

BY MR. BROTHERS:

Q Did you look at any part of him other than his face?

A No; -- what you say?

Q Did you look at his body, if not at his face? A No, I didn't look.

Q At the time you put your hands up or your arm up in front of your face, where was the defendant at that moment?

MR. CLARK: May it be noted on the record that the witness throws out her hands in response to the question?

A I saw men who wants to get out. I didn't see who were the ones that wanted to get out.

Q At the time you put your hands up in front of your face, where was the defendant? A I didn't see; too many crowds there; they all wanted to get out.

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BY THE COURT:

Q The moment before you put your hand to your face, did you see the defendant; that is to say, did you see the man whom you pointed out? A I left him in the place, inside the place. I wanted to get out myself. I turned my back, I wanted to get out, and he was in the place.

BY MR. BROTHERS:

Q Did you go out before the defendant did or after? A When they cut my arm, I stayed behind, they all went out. I stayed the last one in.

Q Then where did you go? A Across to the drug store, across to the drug store to fix my arm. He said he could not do it.

Q At the time you were trying to get out of the door, where was Mr. Palamas, do you know? A He was talking with the dead man.

Q He was back by the dead man? A Yes.

Q Are you afraid of anything today? A No, I don't be afraid of anything. I tell what I know, that is all.

Q When you talked to me the other day, you wanted to tell me exactly what you knew, didn't you? A Yes, the same thing; I don't know any better.

Q Do you remember we had a stenographer writing at the time?

A Yes, sir.

Q You realize, do you, that you are under oath now, do you know that? A Yes, sir, I know.

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Q And that you must tell the truth? A Yes, must tell the truth; anything I know I must tell.

Q I am going to ask you again, with his Honor's permission, whether you saw this knife, or one like it in shape -- did you see this knife, People's Exhibit 3 for identification, or one like it, when you were at the front door trying to go into the street? A Yes, I saw knife.

Q And where was it when you saw it? A I could not remember myself now where it was.

Q Was it lying on the floor? A No, a man had it in his hand.

Q How did he have it in his hand; show the jury. A Like this way (indicating by holding knife in hand dagger fashion)

Q How close to you was that knife at that time? A By that place, by that hat (indicating hat in front of juror No. 1, about four feet away).

Q About three or four feet? A Yes.

Q The man had it up in his hands this way? (Indicating.)

A I could not tell you how he has it. I was scared.

Q You saw it? A Yes.

Q And you were frightened? A Yes.

Q Did he say anything to you? A No.

Q Did he look at you? A No.

Q Did you look at his face? A No, I did not look.

Q Well, you looked at him, you were looking right at him

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as you are looking at me? A You know when it is excited. The place was excited, you can see nothing, you were trying to get away, to be away from the fight.

Q Was the man walking toward you when you saw the knife in his hand. Was he coming toward you? A When I saw the man with the knife I rushed out of the door.

Q You did not go out before you were cut? A I could not go out, that is why I got cut.

Q Were you cut while inside the door? A Yes, inside. I was right by the door, and a bunch of men around me wanted to get out, but I could not get out, then I got cut, and I stand back until all the men went out.

Q As soon as you saw the knife in front of you, you put your arm up, did you? A I saw a man wants to go out fast, that is all. I saw the knife.

Q Did you see whether or not the man who had the knife up in front of you had a coat on or not? A I didn't see it.

Q How did you know he wanted to get out fast?

MR. CLARK: That is objected to.

THE COURT: Objection sustained.

Q As soon as you put your arm up you were cut? A Yes, sir.

Q Show the jury again how you had your arm up; roll your sleeve up. A This way (indicating holding arm over eyes).

Q Can you see me now? A No.

Q You did not close your eyes then, did you? A The time

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I was scared.

Q Did you close your eyes? A Yes.

Q Was there any other man near you at the time? A Too many, over fifteen people. All wanted to get out.

Q Were you right at the front door? A Yes, right at the front door.

Q Did you have your back to the door? A Yes.

Q Were you against the door, this desk being the door, with your hand on the knob? A No. There was another man trying to open the door. As soon as he opened, I wanted to go out myself, but he could not open.

Q At the time you were cut, you were against the door?

A Yes, against the door.

Q And the man who cut you was right in front of you? A No, over there, so far, he ran fast. He did not let me go out. He said Greek.

Q You saw all that? A Yes.

Q Can't you tell us who the man was? A I could not tell you; too many.

Q Can you tell us how he was dressed, whether he had a hat on or a coat?

MR. CLARK: I respectfully submit this has gone far enough. If there is anything to indicate that this witness has been tampered with, I would be glad to have it brought out.

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THE COURT: I think that is far enough, Mr. Brothers.

Q Now, after going to the drug store, how long did you stay in the drug store? A I went across to the drug store. He said he could not do anything for my arm because he is afraid it get poisoned, I have to go to the doctor.

Q It was bleeding badly? A Yes.

Q Didn't they do anything for it in the drug store?

A No, nothing at all.

Q When you came out of the drug store, what did you see?

A I seen my cousin wants to take me home.

Q What is his name? A Steve Silvestos.

Q Is that the cousin that was with you last week in my office? A Yes.

Q He heard what you had to say there? A Yes.

Q Did you go back across the avenue, to the restaurant that night? A I crossed to 38th street and got home.

Q Did you go into the restaurant? A No.

Q Did you ever go back to that restaurant? A No.

Q Did you see anything further of the defendant that night after he went out the door? A No.

Q Did you see him go out of the door? A I didn't see him. I saw a man run fast. I didn't see him.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. CLARK:

Q You never seen that boy again until today, did you?

A No.

Q Have you ever seen me before? A No.

Q Ever seen Mr. Kelly? A No.

Q Ever seen Mr. Coraginas, the interpreter? A No.

Q None of us have talked to you at all since last week?

A No.

Q In fact, you only talked to the District Attorney about this? A Yes, sir, when I was upstairs.

MR. CLARK: That is all.

MR. BROTHERS: Mr. Interpreter, please tell her not to leave the building.

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J O H N E C O N O M O, called as a witness in behalf of the People, being duly sworn through official interpreter DeVille, testifies as follows:

(The witness states he resides at No. 18 West street.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q Your name is John Economo? A Yes.

Q And in what business are you? A Restaurant.

Q On the 20th of September, 1915, in the evening, were you in a restaurant at 645 Sixth avenue? A Yes, sir.

Q In whose company were you? A Jim Manolias and another young man named John, who is also a witness.

Q Do you know his last name? A I believe his name is Demetrio.

Q What time did you get to the restaurant? A 9, or 9:30, I do not remember exactly.

Q Now, will you tell us all that happened after you and your friends got into the restaurant? A I was having a cup of coffee, drinking a cup of coffee, when I noticed the defendant dancing with the girl. I saw the man, the defendant, who was dancing with the girl, going in the direction of a man and stab him, a man who was sitting at a table.

Q Did you see any knife? A I saw the blade of the knife.

Q Will you describe it?

THE COURT: Suppose he goes right on and tells us everything. Go right ahead.

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Q All right. Tell everything. A As soon as I saw him stab the deceased with the knife, I got up and went away. I do not know what happened after that. A crowd gathered. As soon as I saw the man fall down, I went away. I took the elevated train and went back to my place.

THE COURT: Now you may interrogate him so as to get all the details.

Q Did you know the defendant before that night? A No, I did not.

Q And the dead man, had you known him? A Yes.

Q What was his name? A Niko -- I do not know his last name.

Q Will you describe the knife that you saw used? A I only saw the glitter of the blade. It was a knife with a shining blade, and I got up -- as soon as I saw the knife produced I intended to run out, but before I had time to get out I saw the defendant stab the deceased.

BY THE COURT:

Q Pardon me. When you entered the restaurant -- I did not hear -- did you enter it alone or in company with anyone?

A Accompanied by two others.

Q What are their names? A I do not remember their names, they were two passengers residing at my hotel at the time, and they were in transit here. They have departed for Greece.

Q Now, you and these two men whose names you have forgotten, when you entered the restaurant, where did you first go? A I

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went to the first table and sat down. Later on two others came in and I called them over and treated them. Manolias was one.

Q No; these two men that you spoke of as being guests of your hotel, they entered the restaurant with you, is that so?

A I took them from my place and brought them over.

Q That is to say, you went with them to that restaurant, is that so? A Yes, sir.

Q And when you entered the restaurant, did you go and sit down at a table? A We sat down at the first table, the nearest to the music.

Q That is to say, the table on the side of the music platform, is that so? A Yes, right in front of where the woman danced.

Q And the two men who had gone to the restaurant with you, they sat down at that same table with you, did they? A Yes, sir.

Q Now, did you continue seated at that table with those two men? A Those two men left the premises, but I remained there.

THE COURT: Perhaps he can indicate on the diagram where he was sitting.

BY MR. BROTHERS:

Q This is Exhibit No. 4. Will you show, if you can understand it, where you were sitting?

MR. CLARK: Show him the entrance.

THE COURT: That is the entrance (indicating).

A I sat at this table. (Indicating.)

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THE COURT: Make a mark.

A (Witness continuing.) I sat with the back of my chair to the wall, touching the wall. This table was a little further away from the wall, so I was sitting there. (Marking diagram.)

THE COURT: He indicates the table nearest to the platform.

A (Witness continuing.) Right here were the two passengers I spoke about (marking diagram). Later on two others came in and sat on the other side.

BY THE COURT:

Q What were the names of those people? A John Manolias, and John -- who is a witness and whose last name I do not know.
BY MR. BROTHERS:

Q Now, can you show us on that plan, Exhibit No. 4, where the fellow was who was stabbed? A If I am not mistaken he sat at either this table or that table, but I am almost sure it was at this table (indicating).

Q The table nearer the railing? A Yes, sir.

Q Where was the defendant dancing? A Right here (indicating).

Q Indicating the space immediately in front of the platform. Where was the deceased when this man went over and stabbed him, can you show us that? A On this side of the table (indicating).

Q On the right hand side of the table as you go in? A The center table.

Q Of the center table? A Yes.

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THE INTERPRETER: Placing his finger on the No. 1 mark.

Q Were you in the restaurant when the officers came in?

A No, I went away.

Q And those two men who entered the restaurant with you, do you know where they are now? A They are in Greece.

Q Did you see them off on the steamer? A Yes.

Q Did you notice the kind of shirt that the defendant was wearing when he was dancing? A A colored shirt, striped. He had no vest on, and no coat.

CROSS EXAMINATION BY MR. KELLY:

Q Where were you born? A In Kalambaka, Province of Thelassia.

MR. KELLY: That is in Turkish Greece, too?

THE INTERPRETER: No.

Q (Showing map to witness.) A Kalambaka, large type (indicating).

Q Are you of Turkish descent? A No.

Q Full Greece, are you? A Yes.

Q How long have you been in this country? A Eight years.

Q Were you ever naturalized? A No, sir. I have my first papers.

Q When did you get them first papers? A Three years ago.

Q You and the two proprietors of this hotel at 645 Sixth avenue were friends, were you not? A Yes. Well, I know them because they were in the same line of business I was in, but just colleagues more than friends.

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Q And you knew Lialakus too, didn't you? A Who is Lialakus?

Q Nick, the dead man. A Yes, I knew Nick.

Q Did you know where his place was at that time, 780 Sixth avenue? A Yes, sir.

Q Had you ever been up in his poole room up there? A Yes, several times.

Q Now, you arrived at this place between 9 and half past 9, did you, at 645 Sixth avenue? A Well, I calculated it must have near about that time, but I am not sure about the hour.

Q Was the defendant in the restaurant at the time you arrived there? A No, but I noticed him only when a couple of minutes after I arrived he got up to dance.

Q A couple of minutes after you arrived in the place he got up to dance with somebody, is that right? A Yes, sir.

Q And he was dancing up at the end of the diningroom or restaurant nearest to the kitchen, up here, wasn't he? (Indicating.) A I believe that is the spot (indicating), I am not sure, I cannot read the design well. Is not this the platform? (Indicating.)

Q Yes, here is the platform. (Indicating.) A Well, around the platform he was dancing.

Q Now, while the defendant was dancing did you see Nick at all? A Yes, as I told you, Nick was sitting at the adjoining table, the middle one, as I told you before.

Q With some other people, was he? A With two or three

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others.

Q Did you see any argument between him and the proprietor, Palamas? A Palamas, one of the proprietors, went over and told Nick, who had broken a plate or a cup or something, told him to stop, not to continue doing it.

Q And what happened? A Well, while the conversation was going on between Nick and Palamas the defendant backed off and went in that direction and stabbed the deceased.

Q Did you see Palamas put his hand on Nick at any time? A I did not pay attention. I saw them talking together, but I did not catch the conversation.

Q You were sitting in a position where you would be facing this table, weren't you (indicating on diagram)? A I was turned towards the table where they were sitting, but I was paying attention all the time to the man and the girl who were dancing.

Q You kept watching them up here, is that right? (Indicating.) A Yes.

Q Did you hear any talk between Palamas and Nick, the deceased? A No. Before I had time to realize what they said or did, when I turned in the direction to where the proprietor was talking to the other man, the man fell down.

Q And that all happened so quickly that you could not remember any conversation that occurred between Palamas and the man Nick? A No.

Q Nick had nothing to do with the defendant here at all, did

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he? A I do not know.

Q They had no words together, had no argument of any kind, did they? A No, I did not see them quarrel or anything.

Q And the only quarrel that went on was between Palamas and Nick, is that right? A Yes, sir.

Q How many dishes did Nick break in there? A I only saw one plate broke; whether he broke others I could not tell you.

Q Did you hear more than one crash of dishes falling to the ground or being thrown to the ground? A I only saw one plate broke; if he had broken any before I could not tell you. There was many people in there.

BY THE COURT:

Q Did you hear more than the crash or the noise of one breakage? A I did not.

BY MR. KELLY:

Q If there was more than one plate or one piece of crockery broken, you would hear it? A Well, I do not know whether I would have heard it, because there were others intercepting my view, and some were coming in and others were going out.

Q There were some people in between you and Nick and the proprietor, is that right? A Not to remain, but to pass by, others were coming in and others were going out.

Q And then you saw this defendant walk from the girl down to Nick? A Yes, sir.

Q Did you stand up when you saw him going down towards Nick?

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A I stood up and I saw the knife he had in his hand. I saw the blow aimed at Nick; then I tried to get out. I do not know whether he hit him or hurt him or anything.

Q You did not see the defendant stick Nick with the knife, did you? A I saw the hand come down with the motion, and I said, "What is the matter," and they told me and that he killed Nick.

MR. KELLY: No.

MR. BROTHERS: Never mind that.

THE COURT: No, strike out what they told him. Do not state that.

A (Witness continuing.) I saw his arm uplifted from the spot where he was dancing and walking.

Q And he just brought it down once, is that all? A I saw the hand lowered. Whether he did it once or twice, I could not tell you.

Q You cannot say that he hit Nick though, can you? A Well, I saw him dead afterwards. I went near and I saw the deceased dead.

Q How long did you stay there? A Ten minutes. As soon as I saw Nikos lying dead, I went out. I wanted to see some one who knew him to notify his relatives.

Q You did not wait for the police to arrive there then?

A I just looked around for some one to notify at his house.

Q You never went back to the restaurant at 645 Sixth avenue?

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A I did not. I heard that Nick was --

THE COURT: No.

Q No, not what you heard. Was Palamas there when you left the place? A I left them all in there. The first that left the place were myself and two or three other customers.

Q You were the first two to leave the place, is that right?

A Well, two or three men walked out ahead of me, but very close.

BY THE COURT:

Q At the time that you left the place was the defendant in the place or had he already gone out? A He had gone out already.

BY MR. KELLY:

Q And had anyone followed him out? A Several. We all went out trying to get the police.

Q Did anyone go out before him? --

MR. KELLY: I move to strike out about trying to get the police, your Honor.

THE COURT: Yes, strike that out.

Q (Repeated as follows:) Did anyone go out before him?

THE COURT: You mean before the defendant?

A I did not see any.

Q A lot of you went out right after him, is that right?

A Behind the defendant.

BY THE COURT:

Q Did you see a waitress in that place that night? A Yes, only one waitress; she brought the coffee to us.

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Q As you passed out of the door to leave the place, did you see that waitress? A The waitress disappeared immediately after the affray. When this occurred everybody stood up trying to look and see what happened, and they all looked at the prostrate body, and I did not see the waitress after that.

Q John Demissos, one of the witnesses in this case, is now living over at your hotel at 18 West street, isn't he? A One night he stayed there.

Q When was that? A Sunday night.

Q That is the man that you could not remember the name of, isn't it?

MR. BROTHERS: Demetrio, he said.

MR. KELLY: I withdraw that question. That is all.

JOHN DEMETROPOULOS, called as a witness in behalf of the People, being duly sworn, through official interpreter DeVille, testified as follows:

(The witness states he resides at 119 West 26th street.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q Your business is what? A Musician.

Q Do you know James Manolias? A Jim Manolias.

Q You know him as Jim Manolias? A Yes.

Q Well, do you know John Economo? A I know him also, yes.

Q Were you in Palamas' restaurant at 645 Sixth avenue on the night of September 20th, 1915? A Yes, sir. I went there with Mr. Manolias.

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Q Did you meet anybody in the restaurant whom you knew?

A John Economo spoke to us and offered to treat us and we sat at the table.

Q Did you see anybody else that you knew there? A There were several others, but I do not remember them.

Q Did you know the man who was called Lialakus? A I did not know him.

Q Do you know the defendant here? A That was the first time I had seen him.

Q Did you see the defendant in the restaurant that night?

A Yes, sir, I saw him dance together with the woman --

Q Well, tell us all about it, everything that you saw, please.

A -- the musician.

Q Go right along and tell us what you saw. A I went to the toilet just about that time, but before I went to the toilet I saw the deceased throw newspapers in the direction in which the defendant was dancing with the girl. -- I want to tell you the truth, I did not see the deceased throw the papers, but afterwards I heard somebody tell --

MR. BROTHERS: No.

THE COURT: No, strike that out. You just tell us what you saw and nothing else.

MR. BROTHERS: Please tell him I want him to tell what he saw.

Q Tell what you saw yourself, and heard, not what somebody

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told you. A Well, when I came out of the toilet I saw the deceased throw a glass in the air. Then I saw the defendant pass like lightning in the direction of the deceased and strike at the deceased twice. At the first one the deceased dodged, and at the second one he touched the table and he was struck.

Q What, if anything, did you see the defendant strike the man with? A With a knife.

Q Could you tell us just where you were when you saw the defendant hit him with the knife? A Three or four steps from the spot the deceased was struck at.

Q Well, were you on your way from the toilet back to your chair? A Yes, I was walking from the toilet door and when I saw the affray I stopped short.

Q In what part of the restaurant was the toilet? A On the left, when you start from the kitchen to go out of the premises.

Q Well, is it at the front or the rear or on one side?

A On the side, in the direction of Sixth avenue.

Q Well, you know where the front door is, that goes to the street? A Yes, sir.

Q Well, is that near the toilet? A On the side of the entrance door.

Q Do you see it on this plan, Exhibit No. 4?

THE INTERPRETER: May I point out to him where the entrance is?

MR. BROTHERS: Yes, please do.

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A When we enter it is to the right. That must be it (indicating).

THE COURT: He indicates the toilet as shown on the diagram.

Q Now, will you show -- do you remember whether there was any railing in that room across the room, like this? (Indicating rail in front of jury box.) A There were the railings (indicating).

Q Now, will you point out on the plan, Exhibit No. 4, about where you were at the time the defendant stabbed Lialakus?

THE COURT: Make a mark.

Q Put a D there, where you were. A On a straight line with the door. I had taken three steps when I saw the affray. (Marking letter D on diagram.)

Q Can you point out upon that plan, Exhibit No. 4, just where you remember Lialakus was when he was stabbed? A Around about here. (Indicating.)

THE COURT: Make a mark where you say he was or about where he was.

Q Make a mark. A The defendant was dancing around here. (Indicating.)

Q Now you are getting away from that.

MR. KELLY: Let him walk over and stab him.

A -- and he went right around and like a flash came over here --

THE COURT: Make a mark where the deceased was.

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THE WITNESS: I assume that it must have been there.

(Indicating.)

MR. BROTHERS: No, we do not want his assumption.

MR. KELLY: Well, that is his recollection.

BY THE COURT:

Q What is your best recollection as to the place where the deceased was at the time when he was stabbed? A I believe that is where he was. (Indicating.)

BY MR. BROTHERS:

Q Mark it D-2. A (The diagram is marked D-2 at the spot indicated.)

Q Now, at the time that he was stabbed, do you remember whether he was inside the rail or whether he was on the outside of the rail? A Inside the rail.

Q And did you see where he lay after he fell down on the floor? A He did not fall down immediately.

Q Well, after he did get down on the floor and stretched out, where was he? A I was there, yes.

Q Well, where was he? A He fell outside the railing.

Q Now, by outside the railing do you mean the side towards the street? A He walked two steps.

Q (Handing diagram to witness.) A He fell down there. (Indicating.)

Q Will you mark that, please?

THE COURT: Mark it D-3.

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(So marked.)

MR. BROTHERS: Perhaps I had better show this to the jury. He says that he was here where this is marked D when he saw the stabbing and the deceased was where D-2 is when he was stabbed, and that when he finally fell down he was outside the railing where D-3 is. (Indicating to jury.)

Q Did you see what the defendant did after stabbing Lialakus?

A My attention was directed to the deceased and I did not see him.

Q Well, did you see anything further that night of the defendant? A When they placed him under arrest and brought him in.

Q Did you see him when he went out of the restaurant?

A Certainly I did.

BY THE COURT:

Q Where were you when the defendant left the restaurant?

A I was nailed to the spot where I stood while the stabbing took place.

BY MR. BROTHERS:

Q Did you go over to the dead man at any time? A After his friend who was supporting him tried to revive him and rubbed him with vinegar, I just got near and looked at him.

Q Was that before or after the defendant went out? A After.

Q Now, you say you saw the defendant go out of the restaurant, is that right? A I certainly saw him, and he ran away.

Q Did you see what happened at the front door as he went

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out? A When he went away I did not go out to see him or where he went.

Q No, but before he got out the door did you see anything happen? A I did not.

BY THE COURT:

Q Was there a waitress there that night? A The woman over there. (Indicating.), who has been here as a witness was there.

Q Did you see her at the time when the defendant left the restaurant? A No, there was some slight confusion and I did not notice anything.

BY MR. BROTHERS:

Q Well, where was the confusion? A Well, there was confusion immediately after the stabbing and everyone was trying to get out.

CROSS EXAMINATION BY MR. CLARK:

Q Where were you born, Mr. Demetropoulos? A In Nission.

Q Where is that? (Handing map to witness.) A (Witness indicates on map.)

Q That is down at the southwestern corner. How long have you been in this country? A Next March I will be here five years.

Q You say that Lialakus had a glass of beer before him?
A Who is that?

Q Nick. A I did not notice what he had because the way I was seated the deceased was on my back.

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Q What was on your back? A He was behind me.

Q What did you have to drink? A Coffee.

Q Did anybody at your table have beer? A I cannot well recollect about that. They sold beer in that place, they did certainly sell beer.

Q They sold other liquors there too, didn't they? A Naturally, mosticha.

Q Mosticha. Anything you wanted in the way of drinks you could get there, couldn't you, if you ordered it? A Certainly.

Q And Nick was drunk, wasn't he? A That I could not tell you. I could not tell you whether he was intoxicated or whether he had full command of his faculties.

Q Didn't you see him drinking beer and other things? A No.

Q Now, had the defendant Savas had any words at all with Nick so far as you saw; had he spoken to him at all? A No.

Q And Nick had not spoken to him as far as you saw, had he?
A No.

Q Nick was dancing around with Olympia? A Nick?

Q I do not mean Nick, I mean Savas was dancing around with Olympia? A Yes, sir.

Q And you say that he simply stopped dancing, walked over and stabbed him, is that it? A Yes.

Q That is all there was to it? A The only thing I saw was that.

BY THE COURT: Q Did you hear anything said by Nick to the

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defendant or by the defendant to Nick immediately before the stabbing? A Nothing; not even a word.

BY MR. CLARK:

Q Did you hear the conversation between Nick and the proprietor? A I did not hear; I saw them conversing together, but I did not hear what was said.

Q Where were you? A I saw unpleasant relationship in so far as posture was concerned, but that is all.

Q In other words, they were having a controversy of some sort or other, is that it? A It was akin to a controversy.

Q And did you see Palamas take hold of Nick and shake his head? A I did not get there in time to see that; I heard it said --

MR. CLARK: Well --

THE COURT: Well, do you want that stricken out? Strike it out.

MR. CLARK: I did not ask for it.

Q And you did not see what happened after this stabbing occurred at all? A Well, what else did you expect me to see? The defendant had departed; from the premises.

Q I think you had seen all you were expected to see then. How long did you stay there? A Until the arrival of the automobile containing police officers, and they packed us in and took us to the station house.

Q How many of you were there? A Seven or eight.

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Q And you were taken in custody by the police that night?

A Yes, sir. I remained nine days in the custody of the police.

Q Nine days? A I came out under bond.

Q And while you were there you were interviewed by Mr. Murphy, were you not? A Who is that?

Q The District Attorney, Assistant District Attorney. The fellow with the big glasses. A Yes, he did come. He did not come to visit me particularly, he visited everybody.

Q But he asked you questions through an interpreter, didn't he? A I do not remember.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q You were held by the Judge as a material witness, were you?

MR. CLARK: Oh, I object to that as calling for a conclusion. If he knows what the Judge said, I have no objection.

MR. BROTHERS: Well, do you dispute that he was held as a material witness and was not arrested charged with any offence? You have asked him and he stated he was locked up for nine days; you do not want to put me to the necessity of proving all that, do you?

MR. CLARK: I assume that the gentleman with the glasses insisted on his being retained.

MR. BROTHERS: And will you concede he was held as a material witness under bonds?

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MR. CLARK: Subject to correction.

MR. BROTHERS: All right, that is all. And now, would your Honor be good enough to adjourn at this time? It is a few minutes early, but I may make perhaps quicker work of it in the morning.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial or form or express any opinion thereon until the same is submitted to you.

(The Court then adjourned the further trial of the case until tomorrow morning, January 13th, 1916, at 10:30 o'clock.)

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THE PEOPLE vs. MICHAEL SAVAS.

New York, January 13th, 1916.

TRIAL CONTINUED.

MR. CLARKE: Before another witness is called, may I move that the Court direct that arrangements be made to take the jury for a view of the scene of the crime? The situation up there is one which I am quite sure, if your Honor has seen it, you will realize has not been and cannot be adequately portrayed by the testimony of witnesses to the jury, to make it clear, and there are so many facts with regard to running back and forth and going up and down stairs, that I am quite clear in my mind that the jury will be absolutely unable to form any definite conception.

MR. BROTHERS: Wait moment. We must not permit any statement of evidence of opinion at this time as to what the jury could or could not do.

THE COURT: Is the idea of the application opposed?

MR. BROTHERS: we do not oppose anything. We leave it to the jury and the judge, of course, reminding the Court that this is most unusual, and would involve a great expenditure of time, and probably serve no useful purpose one way or the other. It is impossible to reproduce now the same conditions that existed at that time. It is a different hour, the weather conditions are probably different, and we

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have no knowledge that the place now is in the condition that it was then. It would necessitate our taking the witnesses there and having a demonstration.

MR. CLARK: The real part that I am particularly anxious the jury should see is the outward appearance of the place.

THE COURT: I will reserve the decision on the motion until the evidence is all in. I can determine it then.

MR. BROTHERS: Then, if the Court please, I advise that at this time I will rest the People's case. There may be some other proof, but it does not at this time appear to be material.

MR. CLARK: At this time, if the Court please, I respectfully move that the Court direct that the issue of murder in the first degree be withdrawn from the jury on the ground that after hearing all of the evidence produced by the prosecution there is no evidence tending to show the commission of the crime of murder in the first degree.

THE COURT: Motion denied.

MR. CLARK: I respectfully except.

MR. CLARK: We make the same motion also in regard to murder in the second degree.

THE COURT: Motion denied.

THE COURT: You had better take an exception to that.

MR. CLARK: I take an exception also to that.

(Mr. Clark opens the case in behalf of the defendant to the jury:)

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DEFENDANT'S CASE::

M I C H A E L S A V A S, (Full name Gerasimos Zavardinos), the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows, through Official Interpreter DeVille:

DIRECT EXAMINATION BY MR. CLARK:

Q Where were you born, Mike? A In Greece.

Q Whereabouts? A In Leukas.

Q And where abouts is that? (Showing map to the witness)
On a little island on the western coast of Greece? A Yes.

Q How old are you, Mike? A (In English) Twenty-seven.

Q Do you speak English? A (In English) No.

Q How much English do you understand? A (In English) Only
for my work.

THE COURT: Mr. Clark, I would suggest, if agreeable
to you, that the name on the indictment be amended now.

MR. CLARK: Yes, I was going to do that at the close
of the testimony. I will do it now at your Honor's sug-
gestion. I do so now.

THE COURT: Amendment allowed.

Q How long have you been in this country? A Three years.

Q Prior to that time where were you? A In Greece.

Q At that same place where you were born? A Yes, sir.

Q Did you live with your parents there? A Yes.

Q What are your parents? What is your father's business?

A- Agriculturist.

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Q A farmer? A Yes.

Q You say you came over three years ago? A (In English)
Yes, sir.

Q What brought you over to America? A I came here to work;
to earn a living.

Q And where did you go? A Ainsley, Alabama.

Q How did you come to go to Ainsley, Alabama? A A cousin
of mine resided there.

Q How long did you stay there? A Twenty-two months.

Q That is nearly two years? A Yes, sir.

Q What were you doing down there? A I was working in a
copper factory.

Q You left there about something over a year ago? A A little
over a year, yes.

Q And where did you go from there? A (In English) Boston,
Massachusetts.

Q What did you do in Boston? A I worked as a bus boy in a
hotel.

Q That is you were a waiter's helper? A (In English) Yes.

Q Where did you work? A Brookline House.

Q How long were you there? A (In English) About five
months.

Q Was that in the summer of 1914? A (In English)

A Yes, sir.

Q And where did you go from there? A (In English) Sche-
nectady.

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Q What did you do in Schenectady? A Night cashier in a restaurant.

Q Who was your employer? A George Halkaipolous.

Q That is the man that was here the other day as a witness?

A Yes.

Q How long did you stay there? A (In English) About six months.

Q Where did you go from Schenectady? A I worked twice at that place.

Q That is, you went away once and came back again, is that it? A I went to Albany.

Q How long were you in Albany? A (In English) About a month.

Q How long were you working there? A Ten Eyck's Hotel.

Q What were you doing there? A (In English) Bus boy.

Q And from Schenectady, when you went back there the second time where did you go? A I remained in Schenectady one month without employment and I came to New York After.

Q About when did you come to New York? A The beginning of June.

Q Of this last year, 1915? A Yes.

Q What did you do in New York? - A I could not obtain steady employment, and I worked as extra man in various places.

Q Where are some of the places you worked? A The first time, the first employment I got after that was at the Hotel Taft in

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New Haven.

Q What were you doing in the Hotel Taft? A Same work.

Q How long were you up there? A (In English) Seven days.

Q What was that, some sort of special job you had there? A (In English) Yes.

Q What was it? A It was soon after graduation. I was sent with others from the club in New York up to New Haven to work as extra for a week.

Q During the commencement activities up there? A Yes, sir.

Q You worked, didn't you, for one of the classes that was having a re-union, isn't that so? A Yes, sir.

Q Did you come back to New York from New Haven? A Yes.

Q What did you do when you came back? A Saturdays and Sundays I worked regularly at Long Beach, at the hotels, Castles-by-the-sea.

Q What did you do other times? A I was looking for steady employment, but I was not able to find one.

Q Did you have any other extra work? A At the Hotel Knickerbocker.

Q What did you do there? A Same thing.

Q You worked as a bus boy there? A Yes.

Q On the night of the 20th of September when this man was killed in the place at 645 Sixth avenue, where were you that night? A I went down there to hear the entertainment, and I ordered a coffee, and I felt like dancing and I got up.

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Q Had you ever been there before? A (In English) Three or four times before.

Q Did you go alone on this particular night? A With a friend of mine.

Q What is his name? A Nicholas Raspogianopolous.

Q When did you last see Nick? A That evening.

Q Do you know where Nick is now? A No.

Q Have you tried to find him? A How could I find him? I was locked up.

BY THE COURT:

Q Did you know where he was living that night? A He was employed as a cook somewhere, but I don't know where. I did not.

BY MR. CLARK:

Q Where did you meet him that night, Mike? A Sixth avenue.

Q On the corner? A On the corner, near 39th or 40th street.

Q You went down together to this restaurant, you say? A Yes.

Q What time did you get there? A About nine thirty.

Q What happened when you got in the restaurant? A We sat down and we ordered two beers.

Q Two beers? A (In English) Yes.

Q Were you served with beer? A Yes.

Q Did you have some of it to drink? A Yes, I did.

Q Had you had anything else to drink before that evening?

A No.

Q Now, I show you this diagram which has been marked People's Exhibit 4: there is a stairway down into the restaurant (indi-

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cating). There are the railings (indicating). Here is the platform where the girl danced (indicating). Show to the jury where you were sitting, you and your friend; first, did you sit down? A I sat at this table (indicates table at the extreme southeast of the room).

BY THE COURT:

Q That is on the left-hand side as you go in, nearest to the front?

MR. CLARK: Yes.

BY MR. CLARK:

Q You and your friend sat there? A Yes, sir.

Q Where was the kitchen with regard to that? A (In English) Out there. (Indicating)

Q How long did you sit there with your friend? A (In English) About ten minutes.

Q What was going on in the place while you were sitting there? A Nothing in particular. The music was playing and everybody was drinking.

BY THE COURT:

Q About how many were in the place when you and your friend entered it? A (In English) About thirty.

BY MR. CLARK:

Q About thirty people were sitting around these various tables? A (In English) Yes.

Q You say you sat there with your friend for about ten minutes?

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A Yes.

Q What did you do? A I got up and danced.

Q Where did you go before you danced? A (In English) Went out there (making a round circle to the north of platform).

Q With whom did you dance? A (In English) With the girl.

Q What was the girl's name? What did they call her? A (In English) I think Olympia; I am not sure.

Q Did you know her? Had you ever met her before? A No.

Q Had you been there before during this period while she was signing in this restaurant? A Yes.

Q And had you seen other people dancing with her at those times when you have been there before? A (In English) No.

Q How did you come to dance with her? A Well, it is customary in such gatherings amongst us, whoever desires to dance, to get up and invite the woman to perform.

Q You understood that she was there for that purpose? A Yes.

Q And you went up and asked her to dance with you? A (In English) Yes.

Q Did she come down and dance with you, without any objection? A I inquired of the boss whether it was permitted for me to dance with her, and he said yes.

Q Which man do you mean by the boss? A The stout man who was a witness here.

THE COURT: I think we will concede on the record that was Palamas.

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MR. CLARK: Yes.

Q How long were you dancing there? A (In English) About twenty-five minutes.

Q Did you have your coat on? A (In English) No, off.

Q You had your coat off? A (In English) Yes.

Q Where had you left your coat? A (In English) I put it down by the table.

Q Did you have a vest on when you were dancing? A No.

Q This was a hot summer's evening, was it? A (In English) Yes.

Q You danced just with your shirt? A (In English) Yes.

Q No coat or vest on? A (In English) Yes.

Q No hat of course? A (In English) No.

Q You had your hat off? A Only my shirt.

Q Then tell us from the time you began to dance what happened about the place that attracted your attention? What did you see or hear, and what did you do?

MR. BROTHERS: He is talking in English.

THE WITNESS: I could not answer all your questions.

Q Tell us what happened, in English, if you can, Mike.

MR. CLARK: It is very doubtful whether he can really express what he intends to say. I want to meet the imputations of the learned district Attorney.

MR. BROTHERS: I just remarked he was talking in English.

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THE COURT: This man is a foreigner. I notice he speaks English very imperfectly, and we can get his meaning better if he talks through the interpreter. It seems to me so.

MR. CLARK: I entirely agree with your Honor.

MR. BROTHERS: The District Attorney agrees.

A While I was dancing I noticed that they were breaking glasses at some table in the middle of the room. I continued dancing.

Q Did you see who was breaking the glasses? A No, I did not.

Q Did you know any of the people in that place at all, except your friend? A No one. I saw the boss arguing and quarreling with some individual in the middle table. Then I saw a gathering or group of about ten people very close together forming a compact mass. Then I saw that they began fighting and everybody stood up, and I saw people leaving the premises, and then I stopped and went to the table where my coat was, and I picked it up and went out.

Q Did you put on your coat while you were down there? A I started putting my coat on while leaving the room there, and I proceeded putting it on while ascending the stairs.

Q Did you have your hat on? A Yes, sir.

Q Did you have a knife in your hand? A No.

Q Did you carry a knife? A No.

Q I show you the article which has been marked Exhibit 3 for identification.

MR. BROTHERS: I forgot to offer the knife in evidence.

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It was a pure oversight and I trust the Court will not think the lapse has anything to do, or will prevent my offering it at this time.

THE COURT: I think, Mr. Clark, the defendant is not prejudiced by having it offered now.

MR. CLARK: I do not like to waive any rights of the defendant. I suppose I am in duty bound to except to the ruling.

THE COURT: I think it will be well for you to take an exception, but I will receive the knife in evidence.

MR. CLARK: I of course object strenuously to the admission of the knife in evidence on the ground that it has not been connected with the defendant sufficiently.

THE COURT: I will receive it in evidence.

MR. CLARK: Exception, please.

(The knife is marked in evidence as People's Exhibit 3.)

MR. BROTHERS: And I would also offer at this time for the same reason, People's Exhibit 2 for identification, the paper envelope.

MR. CLARK: I object to that, if the Court please, in the most vigorous fashion.

THE COURT: I will sustain your objection to that. I will not receive it in evidence.

MR. BROTHERS: But I may offer it later, of course, later in the case. Of course, if the proof is the same as

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it is now I suppose the Court will make the same ruling, but if there is any change it may be offered.

THE COURT: As the evidence stands now I will not receive it.

Q I was showing you this knife, which we will now call People's Exhibit 3. I want you to look at that knife carefully, Mike, have you ever seen it before? A (In English) No.

Q Did you ever see this knife at all before you saw it produced here on the trial? A The Assistant District Attorney, who arrived at the premises in question, placed the knife against my abdomen here. He measured something, but I don't know whether it is the identical knife or not.

Q Apart from that you never saw it before? A No.

Q Did you carry that knife yourself? A No, sir.

Q Have you ever carried a knife like that? A No.

Q What happened after you left the place, Mike, after you went upstairs, and put your coat on, what did you do? A I proceeded to 37th street.

Q Did you walk down on the west side of the avenue, or did you cross the street? I show you People's Exhibit 1 in evidence.

A I crossed diagonally towards the northeast corner of Sixth avenue and 37th street (indicating).

Q Were you running? A No.

Q What became of your friend? A I don't know; I didn't notice him after that.

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Q How many people went out at the same time as you did, if any? A Well, a flock of them. I saw others ahead of me and some pressing behind me.

Q You are sure you were not the first man out? A No, others went out ahead of me.

Q You saw the waitress who was on the stand here yesterday, did you? A Yes, sir.

Q Did you see her that night? A (In English) I am not sure. (Through interpreter) I saw a woman there, but I did not pay any attention to her features, and I could not tell you whether it is the same one or not. There were other women waitresses there, but I am under the impression they were changed there frequently.

Q It was not this woman that you were dancing with, the one who was on the stand? A No.

Q Have you seen her here on the trial, Olympia? A No.

Q Have you seen her since that night? A At the inquiry or inquest.

Q At the Coroner's Court? A Where the boss was questioned and interrogated I saw the girl Olympia there also.

Q You have not seen her here in the court room during this trial? A No.

Q After you got over to the northeast corner of 37th street and Sixth avenue, what did you do? A I walked on the sidewalk (indicating north side of 37th street).

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Q Then what did you do? A Two or three citizens stopped me and held me right about that spot (indicating about the middle of the block on 37th street in front of buildings 35 and 37, on the north side).

Q Then what happened, Mike? A I asked them why they held me and they did not answer me. They pulled me along and brought me back to the premises 645 Sixth avenue.

Q Did they take you down into the basement there again?

A Yes, sir.

Q What did you find when you got there? A I saw a man dead.

Q Did you know him? A No.

BY THE COURT:

Q Was any one of those men who took you back, a police officer in uniform? A No.

Q So that up to that time, that is to say up to the time you got back to the basement, 645 sixth avenue, you had not seen a police officer in uniform, is that so? A Right about this block.

MR. CLARK: (Indicating point in the middle of the track, near the mark "T", put there by the witness Tetzner.

A I saw a uniformed policeman when I was being brought back.

Q When you got back there to that place, is that so? A Yes.

BY MR. CLARK:

Q So that when you went downstairs that policeman was with you, was he? A Then I saw others, several.

Q And they went downstairs with you, did they, these police-

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men? A Yes.

Q Then they took you down there into the basement of 645 where the restaurant was, and you saw this dead man lying there?

A Yes, sir, I saw some one upon whom they were pressing ice.

Q Where was this man that you refer to as the dead man?

A (In English) Right here.

MR. CLARK: Indicating point approximately half way between "D" and "D-3".

Q Did you know that man? A (In English) No.

Q Had you ever seen him before? A (In English) No.

BY THE COURT:

Q When you say you had not seen him before, had you seen him before that same night? A No.

Q In other words, you had not seen him in the restaurant early in the evening, is that so? A No.

BY MR. CLARK:

Q Did you notice the men who were in the restaurant that evening at all in that ten minutes before you began to dance?

A No.

Q So you cannot say whether that was one of the men who were there at that time? A I could not tell you as to that.

Q You cannot tell us whether he was the man who was throwing the glasses down that you speak of? A No.

Q What were these dances that you were dancing with Olympia?

A A dance called Sirto, and another dance called Djmiko.

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Q What sort of dances are those? A Greek dances.

Q Are they dances in which you hold your partner as you do in the one step, or in the waltz? Do you know the American dances at all? Have you seen them danced? A I know the way Americans dance, but I could not dance them.

Q Describe the way these two dances are danced: do you walk back and forth with your partner, or do you hold your partner and dance around? A The girl offers her right hand, and the male partner his left hand, and usually there is a handkerchief held by both, so that the hands do not touch, and in that manner they dance.

Q Does that apply to both of them? A Yes, sir.

Q Did you know the proprietor of this place, Palamas at all?

A Yes.

Q Had you ever spoken to him before that night? A No.

Q And were any of the men whom you saw in that restaurant that night men whom you knew at all, who were acquaintances of yours? A No, I had no acquaintance of mine, or friend of mine at the time in the premises; I did not see any. The only man I knew is the man that sat with me.

BY THE COURT:

Q How long had you known Nicholas, your friend Nicholas? How long had you known him? A I made his acquaintance in Schemectady.

BY MR. CIARK:

Q That was a few months before? A About five months before.

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Q Now, Mike, some of these witnesses have said that you broke away from the girl that you were dancing with and put your hand inside of your shirt and pulled this knife out and walked up to this man and struck at him once, like that (indicating), and missed him, and then cut him, like this (indicating), and stabbed him again, right down in there (indicating left side of chest)? Did you do any of those things? A No.

Q When you got out side on the street did you go down south towards 37th street on the west side of the street and turn the corner toward Broadway? A No.

BY THE COURT:

Q To what place were you going when you crossed, as you say, diagonally sixth avenue, to the northeast corner of Sixth avenue and 37th street and walked, as you say, along the northerly side of 37th street towards Fifth avenue? What was your destination? A I wanted to getaway from the crowd, and I crossed the street and I was walking without any aim towards Fifth avenue.

BY MR. CLARK:

Q Did you know at that time that there had been some serious trouble there at 645? A Before I was brought back I didn't know what had occurred.

Q But you knew there was some sort of a row there and you wanted to get away? A I realized that something happened when I saw everybody stand up, and I got out to get away from it.

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Q Had you any feeling of enmity or hostility to this man who was stabbed? A No.

Q Did you know he was the man who had thrown the dishes down on the floor? A No, I didn't know it.

Q Were you hit by any of the pieces of dishes or glasses that he threw on the floor? Did they strike you while you were dancing? A No.

BY THE COURT:

Q Or by anything contained in any of the glasses? A No.

Q Did you see any one throw a handful of coins on the floor, or towards the platform while you were dancing with Olympia?
A I heard the jingle of coins striking on the floor, but who threw them I could not tell you.

Q Did you hear any complaint about the loss of money, or the loss of a pocketbook? A No.

BY MR. CLARK:

Q Are your parents in this country now, Mike? A No.

Q Where are they? A In Greece.

Q And while you have been working over here in this country have you made any money? A well, comparatively, yes.

Q What have you done with the money that you have made? A I had some saved and I sent it over to Greece.

Q Over to your parents? A Yes, sir.

Q You had been arrested once before the police took you this night, had you?

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THE COURT: That ordinarily would not be competent.

MR. CLARK: I understand, but if having been brought out, I ask the question.

A Yes, sir, in Schenectady.

Q What was that for? A I was accused of having addressed a young woman, but she was mistaken; she admitted her mistake.

Q Did the Judge discharge you? A Yes, sir.

Q Have you ever been arrested at any other time? A No.

Q While you were living down here in New York you say you were working Saturdays and Sundays? A Yes.

Q When you were up in Schenectady were you working during the day or Sundays? A Straight along.

BY THE COURT:

Q On September 20th, on the night of this occurrence, where was your room? Where were you rooming? A 141 West 43rd street.

BY MR. CLARK:

Q Had you lived there right along since you came to New York?

A Only that evening I had gone and rented that furnished room.

Q When you were arrested that evening, when you were taken downstairs by the policeman, what happened downstairs there?

A They made me sit down on a chair and kept me there, and I saw that they were placing ice on the deceased's wound.

Q What else did they do? A Nothing else. They took me away from there and brought me to where the questioning took

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place between Second and Third avenue on the same street. I don't know where.

Q That is the place that has been referred to as the station house? A It seemed like that, but I could not tell you whether it was or not.

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

Q Did you have a lawyer? A No.

Q Did you have any friends here in New York? A Only the young man who came with me.

Q When did you first see Mr. Kelly and me? A Some months later.

MR. CLARK: May we have it conceded on the record as to the date when Mr. Kelly and I were appointed by your Honor?

THE COURT: Yes.

MR. KELLY: It was after election, possibly the 3rd or 4th of November.

THE COURT: The order is here. It appears to be dated November 4th.

Q And so until you saw Mr. Kelly and me you had no lawyer at all? A No.

Q You saw the policeman, Tetzner who was on the stand, the first policeman who was on the stand? A Yes, sir, I saw him.

Q He says that on that night after he had taken you into custody, he said to you, "What did you cut that fellow for?" do

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you remember that? A I don't.

Q He says that you said, "I don't know; I don't know anything about it? A No, I didn't say that.

Q When they got you over there to that station house, Mike, did they ask you questions? A First the detective or the Assistant District Attorney questioned me, yes.

Q What did you tell them? A I told them that I knew nothing about it.

BY THE COURT:

Q In what language did you speak to them? A Through an interpreter.

BY MR. CLARK:

Q Now, there have been a number of Greek witnesses who have appeared here, Manolias and Palamas, Dermisses, Stoycos, Demtriou, Economo and Demetropoulos? Do you know any of those people?

A I don't, only the boss.

Q He had been there when you had been there before, and you had seen him in that way. Is that all you knew him? A Yes. I recognized him as the proprietor of the place.

Q But apart from that you did not know him at all? A No.

MR. CLARK: I think that is all.

CROSS EXAMINATION BY MR. BROTHERS:

Q May I see your shirt that you have on today? Will you unbutton your vest? A (Witness does as requested)

Q Is that the shirt you had on the first day you came into

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court this week?

MR. CLARK: I object to the question as absolutely immaterial, whether he had on the same shirt, any more than whether he has got on the same underwear or sox.

THE COURT: I will let him answer.

A No.

Q Now, when you came into court the first day you had on a very bright striped shirt, did you not?

MR. CLARK: I object to that question if the Court please. I do not see what difference it makes what shirt he wore when he first came into the court room.

A Yes.

THE COURT: well, I will let it stand temporarily.

I may strike it out on motion.

Q You have sitting alongside of you through the trial a man who spoke Greek to you, have you?

MR. CLARK: I object to the form of the question. I have no objection to conceding that Mr. Tragidis has been sitting beside him and can speak Greek, but the phrase "you have" might imply that he engaged him or procured him; as a matter of fact, we procured him to sit there.

BY THE COURT:

Q There was a man sitting next to you during the trial who could have spoken in the Greek language to you, is that so?

A Yes.

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BY MR. BROTHERS:

Q Do you remember that on Monday afternoon, just before court adjourned that I told the jury about the bright color shirt that you wore on the night of the stabbing?

MR. CLARK: I object to that question as utterly immaterial, whether he remembers what counsel said in his opening.

THE COURT: I will allow it.

A I didn't notice that, but I do own a shirt which is bright in color.

Q And you had that shirt on last Monday here in court? A Yes.

MR. CLARK: I object to that, if the Court please.

THE COURT: I will allow it.

MR. CLARK: I take an exception.

A I had a bright shirt on on Monday afternoon, but it is not in the trial that I wore it on September 20th in the evening.

Q You have not worn that same shirt since Monday, have you?

MR. CLARK: I object to that, if the Court please.

THE COURT: You have all that now. I think I will sustain the objection.

MR. CLARK: I am perfectly willing to concede as he has a different shirt on than he had Monday.

THE COURT: I think we will not go into that. It does not appear to be material.

Q Didn't the gentleman who sat by you at the table tell you

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that I had told the jury about the bright shirt, and is not that the reason why you did not wear it since in the trial?

MR. CLARK: Objected to as utterly immaterial.

THE COURT: Sustained. I do not regard that as at all material. I exclude that.

Q What did you do with the shirt that you wore the night that you were arrested?

MR. CLARK: I object to that, if the Court please as immaterial and irrelevant.

THE COURT: I will allow it.

THE COURT: Exception.

A I had it with me and I wore it for about two weeks thereafter. A friend of mine called to see me in the jail, and I gave it to him to have it washed.

Q What was the name of that man? A Peter Meridgos.

Q Where does he live?

MR. CLARK: I object to that as utterly immaterial.

THE COURT: I will allow it.

A 315 West 40th street.

Q And do you know where he works? A He works in Hotels; the same work I do, as a bus boy.

Q Is he a friend of your friend Nick? A No.

Q Has Peter called at the Tombs to see you more than once ?

A He came two or three times.

Q Have you any other friend who called to see you at the City

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Prison?

MR. CLARK: I object to that as utterly immaterial and irrelevant.

THE COURT: Objection overruled.

MR. CLARK: Exception.

A Many of them, yes.

Q How many would you say? A Five or six.

Q And was Nick among them? A No.

Q Didn't you ask any of your friends to look for Nick?

MR. CLARK: I object to that as irrelevant and immaterial.

THE COURT: Allowed.

Exception.

A I do.

Q Have you been known to your friend Nick as Mike Savas, is that the name he knew you by? A Yes.

Q Are you able to tell us whether Nick left the restaurant before you did or after? A I don't know.

Q Well, when you went to get your hat and coat did you see Nick still at the table? A I didn't pay attention; they were all standing up.

Q Since giving the shirt that you have referred to as the shirt that you wore on September 30th, to the friend that you have named for the purpose, as you say, of having it washed, have you seen that shirt? A No, he did not bring it back again.

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BY MR. BROTHERS:

Q Did you ask him to bring it back?

MR. CLARK: I object to all this line of examination as to anything further that became of the shirt.

THE COURT: I will allow it.

Exception.

A I did, but he brought me another shirt instead.

Q Well, you told him to take the shirt and destroy it, didn't you? A No.

Q In the station house they talked about your shirt, did they not, on the night of your arrest?

MR. CLARK: I object, if the Court please, whether they talked about his shirt. He has already said he had on another shirt that night, that it was a bright shirt. There is no question made about it. The shirt has disappeared and the District Attorney has proved what became of it.

MR. BROTHERS: If they attempt to destroy anything, I think I can show it.

THE COURT: At this stage I will exclude it. You may follow it up afterwards by showing what became of it.

Q Now, the restaurant was well lighted, was it not? A Yes.

Q Do you agree with the draughtsman that there were six lights, electric lights? A I did not particularly notice the position of the light.

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MR. CLARK: I call the Court's attention that there are seven indicated there, instead of six.

Q You had no difficulty in seeing, did you, while you were in the restaurant? A I certainly could.

Q You say you sat away out here at this table (indicating first table on the left)? A Yes.

Q Did you understand the witnesses that I called to say that you sat over on the other side of the room where I am indicating (indicating second table on the north side of the room)?

A I sat at that table (indicating second table, north side) after I was brought back by the citizens, and remained there sitting for a while. When I entered the room before the occurrence and the stabbing, I sat at this table (indicating table on the left side as you enter nearest the front, the first table).

BY THE COURT:

Q Now, before your arrest, and while you were in the restaurant before your arrest, did you sit at any time at any other table than the one that you have indicated? That is to say, the one nearest the door on the left-hand side? A At no other table but this one (indicating the first table nearest entrance door on left hand side).

BY MR. BROTHERS:

Q Now, from that table that you have just spoken of, you could see the singer up on the platform clearly, could you? A Yes.

Q And you could see the musician sitting up there? A Certainly.

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Q And had you a clear view of all the other people in the restaurant? A I certainly could.

Q Was there any reason why you sat at that table? A No, except that it was the only vacant table.

Q How long had you been in the restaurant before you began to dance? A About five or ten minutes.

Q And you say that you danced for twenty to twenty-five minutes with the girl? A Yes.

Q While you were dancing with the girl were there any other people dancing? A No.

Q While dancing, did you notice people sitting at the tables?
A No.

Q Were there people sitting at the tables while you were dancing? A I told you all the tables were occupied.

Q But while you were dancing did you see that people were sitting at the tables? A I saw all the tables occupied and people sitting.

Q Did you hang your coat and hat up on a hook, or did you lay them on a chair? A On the table.

Q When did you take your coat off? A In the middle of the dance.

Q You mean you started to dance and then took your coat off?
A Yes, sir.

BY THE COURT:

Q In other words, you mean that you were dancing first

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with your coat on, and that then you took it off, is that so?

A Yes, sir.

Q And then did you walk back to the table at which you had been sitting and put your coat there on the table? A Yes, sir.

BY MR. BROTHERS:

Q And is that the same table at which Nick was sitting?

A yes, sir.

Q Was he still sitting there when you put your coat down?

A The table I was sitting at, yes.

Q Now, when you came to go out of the restaurant, where did you find your hat and coat? A At the same table.

Q And when you picked them up was Nick still there at the table? A I didn't notice him at all; they were all standing up.

Q Didn't you want Nick to go out with you? A I didn't see him; I don't know.

Q Didn't you look for him? A No.

Q Did you call out his name? A No.

Q When they got out on the street did you look for him?

A I looked to the right and to the left, looking for him, but I didn't see him.

Q Why was it that you wanted to get away from the crowd?

A They were all going out.

Q But you said that you went across the avenue to get away from the crowd. Why did you want to get away from the crowd?

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A Well, there was a crowd gathered around there and running too, and I didn't know what was the matter, and I went across the street to get out of the way.

Q But why did you want to get out of their way? A Well, they were all going away, and I didn't know what had happened.

Q Where were you going? A Walking towards the Fifth avenue.

Q But you lived on 41st street, west of Sixth avenue? A I was going for a walk.

Q Well, were you trying to get away from the crowd, or were you just taking a walk, which was it?

MR. CLARK: I object to the form of the question. There is nothing inconsistent in the two, if the Court pleases.

MR. BROTHERS: I press the question. I think it is very material.

THE COURT: I will let him answer.

MR. CLARK: I respectfully except.

A For a walk.

Q Well, were you frightened when you came from the restaurant on to the sidewalk? A No.

Q You were not frightened at all? A No.

Q Do you remember that when you were asked some questions by Mr. Murphy at the station house that you were asked this question: "And you ran out?" And you answered, "Well, I went

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out and I was kind of frightened, and I took my way out." Did you say that to Mr. Murphy? A I didn't say that.

Q Now, when you came on to the street, was there anything to prevent your going towards 38th street? A No.

Q That would be in your way, would it, towards 38th street?

A Yes, sir.

Q When you got to 37th street did you look behind you? A No, I was walking.

Q Did you run at any time? A No.

Q When you went around the corner of 37th street in which direction were you going? A Directly towards Fifth avenue.

Q Do you remember that you turned first towards Broadway and saw a large crowd of people in the street? A I did not go towards Broadway.

Q Did you look towards Broadway and see a crowd in the street?

A No, sir.

Q Isn't that the reason why you turned around and went towards Fifth avenue? A No.

Q Have you the coat now that you had on that night? A No.

Q What has become of the coat? A I gave it to a friend of mine who called at the City prison, for the purpose of having it pressed, and he told me that his sister lost it.

Q The lining on the right sleeve of that coat was cut, was it not? A I didn't see any tear in it.

Q You cut it with this knife, People's Exhibit 3, when you

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put it in your sleeve coming out of the restaurant, didn't you?

A No, I did not.

Q And you have never seen that coat since the man took it to have it pressed? A I was wearing it continually until two weeks ago, when it was lost.

Q Now, did you put your coat on as you went out towards the door? A Yes, on the stairway.

Q And when you came up on to the street were you hoisting your coat up over your shoulders, as I am doing now? A No. I had put my coat on before I reached the street.

Q So that you had time, did you, going up the stairs, to put it all the way on, is that right? A Yes, sir.

Q And were there other people going up the stairs with you? A Yes, I saw two or three in front of me.

Q Were any behind you? A Yes, they were.

Q Now, as you went up the stairs, let me ask you whether you didn't have this knife as I now have it and put it into your sleeve as I am now putting it in my sleeve? A No, I had no knife.

Q Didn't you run around the corner and when you got near the corner throw it under the grating? A I know nothing about that.

MR. CLARKE: May we inspect the inside of Mr. Brothers's coat to see if the sleeve is cut, your Honor.

MR. BROTHERS: Is that in the nature of a request or a question?

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MR. CLARK: A question.

THE COURT: I suppose it will be assumed it is not cut.

MR. BROTHERS: I hope not; it is the only coat I have.

Q Did you have this paper, People's Exhibit 2 for identification down inside of your clothes where you had been carrying your knife? A No.

Q And as you ran towards Fifth avenue, it fell out of the trouser leg, on to the sidewalk?

MR. CLARK: I rather object to that. I don't think there is any proof with regard to this.

MR. BROTHERS: I am asking him.

A No.

BY THE COURT:

Q Did you ever see that before, before you saw it in court now (referring to People's Exhibit 2 for identification)? A No.

Q When did you see it for the first time? A When the Assistant District Attorney that same night placed it here against my abdomen.

BY MR. BROTHERS:

Q Was it this paper he placed there, or was it the knife he placed there? A I don't know which of the two; I was looking upwards towards the ceiling. They were measuring me and I tilted my head upwards. They took off my clothes.

Q Didn't you look down to see what they were doing? A No.

Q Weren't you interested in it? A He asked me, the

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Assistant District Attorney asked me, and I told him I don't know anything.

Q Do you remember that shortly after you started back through 37th street to the restaurant that this paper, People's Exhibit 2 for identification was handed right in front of you to Police Officer Tetzner? A I didn't pay attention.

Q Were there any women in the restaurant besides the waitress and Olympia? A I didn't notice.

Q Do you know Theodora? A Yes, Theodora.

Q Your cousin? A I know her, yes.

Q She was in the restaurant that night? A I don't know, I didn't notice her.

Q She was with a man, was she not? A I don't know; I didn't notice her.

BY THE COURT:

Q What is your cousin's last name, referring to this Theodora? A Theodora Vlachos.

Q And she lives where? A I don't know.

BY THE COURT:

Q She lived with you for a while, didn't she? A No.

Q Didn't she sit at this table (indicating table B-2 on plan, People's Exhibit 4)? A I don't know.

Q Didn't you see her sitting right there with this man, the violin player? A I didn't pay attention. I didn't look in that direction.

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Q Weren't you looking for her that night? A No.

Q Where was she working on that occasion, do you know? A She was working in concert halls, similar to this one.

Q And where was it? A At 40th street.

Q Hadn't you been around there that evening? A Yes, I had called there before.

Q And you asked for her, did you? A No.

Q Why did you go there? A I went there; I had a cup of coffee and went away.

BY THE COURT:

Q What number is that in 40th street? A 693 or 695, on Sixth avenue, under Carajina's saloon.

BY MR. BROTHERS:

Q What time was it when you went to that place 693 Sixth avenue? A About half past nine.

Q And from there you went to this restaurant where the fight took place? A I beg your pardon? About which place did you inquire first?

Q I mean where Theodora was working? A That evening Theodora was not working anywhere.

BY THE COURT:

Q No; but did you go to the place 693 and 695 Fifth avenue on the eveing of september 20th, before you went to 645 Sixth avenue? A Yes.

Q And was your friend Nick with you when you went to 693

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Sixth avenue? A No, he came there after I got into 693.

BY MR. BROTHERS:

Q well, you said you met him at 39th street or 40th street, you said, didn't you? A Yes.

Q Was that right near where Theodora worked? A I don't know where Theodora was working.

Q But you have just told us she worked in this place under the saloon? A A week previous to that, yes, I saw her working there.

Q Did you ask for her on the night of September 20th, when you went in there? A No.

Q What was the name of the man that Theodora was going around with, the violin player?

MR. CLARK: I object to the question as being absolutely irrelevant and immaterial.

MR. BROTHERS: We will make it material, we hope.

THE COURT: That assumes something that I think is not yet in evidence. You may ask him whether she was at this time going around with a violin player, whether she was frequently to his knowledge in the company of the violin player.

MR. BROTHERS: Yes; ask him that question, please, Mr. Interpreter.

Q (Question put by the Interpreter) A She is married to him under the American laws.

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Q What is his name? A John Alexion Delis.

Q He was known as John, was he? A Yes.

BY THE COURT:

Q Where does he live? A He was living on 36th street, I din't know the number.

Q What avenue? A I believe to be Seventh and Eighth.

Q Which side of the street, uptown or downtowh? A On the downtown side.

BY MR. BROTHERS:

Q Now, Theodora had been your girl, hadn't she? She was your sweetheart? A No.

Q Hadn't you quarreled with her about going with John? A No.

Q And weren't you looking for them that night that this knife was in your possession? A No.

Q And didn't you tell the man at the restaurant, up on Sixth avenue at 695 Sixth avenue, that when you found them that you would finish them?

MR. CLARK: I object to that as irrelevant, incompetent and immaterial, if the Court please. It is not charged here. that this man was at that place.

THE COURT: I think it is, Mr. Clark, some bearing on the question of the defendant's possession of the weapon. I am only receiving it for that purpose.

MR. CLARK: I except, your Honor.

A That is an untruth. I did not.

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Q Do you swear that they were not in the restaurant of Palamas when you got in there? A I could not give you any information about that, because I did not see them.

Q What does your cousin Theodora look like? What is her appearance? A She is a stout, well built woman.

Q Didn't she ever live with you? A No.

Q Sure about that? A Sure.

Q You understand my question in English, do you? A You asked me whether I am certain about the previous question.

Q What question do you mean? I do not want to have any misunderstanding. A You asked me at the previous question as to whether I had ever lived with her, and you asked me on the second question as to whether I was certain about that matter, and I said no.

MR. CLARK: He answered "yes." The first question "no" and the second question "yes".

MR. DEVILLE (The Interpreter) He answered denying it and was sure.

MR. CLARK: Yes.

Q When you went from the place where you were standing to where you got your coat, which way did you go? A On the space between, on the run-way between.

Q Which runway? There are two. Which run-way did you take?

A The right-hand side one. Let me have the plans. (Plans handed to the witness) (The witness indicates southern one.)

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Q When you passed through this space and opening in the railing, what did you see? A Nothing; I only saw the crowd that had gathered around this spot. (Indicating space at the northern opening of the railing) And the musicians had stood up and were proceeding in the same direction that I was, and I passed through and got my coat.

Q You mean the people were gathering around as if to see what had happened? A I don't know why.

Q Well, they were all collecting there, going towards that spot? A Yes.

Q People who had been sitting at the table? A Yes.

Q And you didn't go over to see what they were looking at, did you? A No, sir.

Q Why didn't you? A What reason did I have to?

Q Didn't you want to see what had happened? A That was not a matter that I should have looked into.

Q Well, did you decide that it was not to be looked into by you while you were in the restaurant? A There was no reason why. I didn't know of any reason I should look.

Q Did you know then that anybody had been hurt? A No, I did not.

Q Did it look as though anybody had been hurt?

MR. CLARK: I object to the form of the question.

THE COURT: Objection sustained.

BY THE COURT:

Q Did you know before you left the restaurant 645 Sixth

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avenue on the night of September 20th that anyone had been hurt in that restaurant? A No.

BY MR. BROTHERS:

Q Well, as you passed that group of people who were gathering, as you indicated on the plan, did you think that anybody had been hurt? A Well, I didn't know. I could not tell you; I saw them quarreling and naturally enough I conjectured that something serious might be the outcome.

Q Well, they had been quarreling how long before you started to go out? A Well, that occurred all of a sudden, the gathering and the shouting and the people getting up, and I lost my bearings in the place. I only directed myself towards where my coat was and got out.

BY THE COURT:

Q Did you hear any one say, before you got out of the restaurant, that any one had been hurt inside of the restaurant? A No.

BY MR. BROTHERS:

Q Did you see any one going out of the door with a knife?

A No.

Q Did you see the waitress at the door? A No.

Q Or the boss, John Dermises? A I didn't see any one.

Q Did you see any commotion at all at the front door? A No.

Q Did you have any difficulty in getting out of the door?

A No, the door was open.

Q Had any people gotten out before you got there? A I saw two or three on the stairway.

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Q Well, as you went from the back of the room toward the front, did you see any of the people going out of the door? A I saw people going out.

Q Well, at the time that you determined to go out, you were about the furthest person in the restaurant from the door were you? A Yes.

Q You had to go the full length of the restaurant to get to the door? A Certainly I had to.

Q Now, you were walking, as I understand it, through 37th street when some citizens took ahold of you? A Yes, sir.

Q How many citizens? A Two or three.

BY THE COURT:

Q And I understand that you were on the uptown sidewalk of 37th street? A Yes, sir.

BY MR. BROTHERS:

Q How many citizens did you say? A Two or three.

Q Could you tell us who they were or what they looked like?

A I do not know them.

Q Had you ever seen them before? A No.

Q What did they say as they took hold of you? A Two of them spoke to me in Greek.

Q What did they say? A They said to me, "Stop". I said "Why?" And they did not reply to me.

Q Did they take hold of you with their hands? A Yes.

Q Did you try to pull away from them? A No.

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Q Were you alarmed? A No, sir.

Q Weren't you afraid they were going to do you an injury?

A No.

Q Then what happened? A They took me into the restaurant.

BY THE COURT:

Q Now, were either of those Greeks or persons who spoke to you in Greek, persons you had seen in the restaurant, 645 Sixth avenue on that evening? A No.

BY MR. BROTHERS:

Q Have you seen them here in court? A No.

Q Did you go back with them freely, or did they compel you to go? A They pulled me and I went.

Q Were you struggling so as not to go? A No, sir.

Q Did you call out for help? A No.

Q Did you know why they wanted you to go back there? A No.

Q Did they say where they were taking you? A No.

Q Did you know where they were taking you? A I saw when they brought me downstairs.

Q Did you pass any people on the street on your way to the restaurant with these men? A A great many people.

Q You saw ^a policeman there, didn't you? A I don't remember.

Q Didn't you tell Mr. Clark when he questioned you that you saw a policeman about where that "T" is on the diagram, People's exhibit 1? A Yes, it seems to me that when they were bringing me back, I saw the officer at or about that spot.

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Q Was he looking at you? A I don't know.

Q Did you call to him? A No.

Q Didn't you think you needed help? A Well, as long as they were taking me down I didn't ask for help from any one.

BY THE COURT:

Q Did that officer come over to you before you got back to 645 Sixth avenue? A I don't remember.

BY MR. BROTHERS:

Q But no policeman had hold of you at any time until after you got into the restaurant, is that correct? A I don't know. I do not remember; I do not know who the two people were who got hold of me, and that spoke to me.

Q Did they approach you from in front or from behind as you were on 37th street? A From behind.

Q And when they brought you into the restaurant did anybody say anything there to you? A When I was brought down there the only one I heard was the first officer, the detective, he was cursing and using blasphemous words.

Q Is that all that was said in the restaurant? A I don't remember anything else.

Q Did any one in there say that you had stabbed the man?

A No.

Q Not a word? A I don't remember.

Q Did you ask the officers why they had you there? A I did not ask them.

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Q Did you say anything to them in the restaurant? A I didn't know how to talk.

Q There were plenty of people there who spoke Greek, weren't there? A There were, but one of them was using cuss words all the time, and I requested the police officer to make him stop.

Q Why did you speak that way about an officer swearing? Why did you not ask the officers why they had you under arrest? A I didn't know how to converse well. That is the reason I did not.

Q You do speak some English, do you not? A Only on matters pertaining to my employment.

Q When Mr. Murphy was asking you questions, you understood a good many things that he said to you, didn't you? A I answered him through an interpreter.

Q You also spoke in English to him? A How do I talk English, when I don't know English.

Q Haven't you been talking English here today? A I can say very few words.

Q Now, let us see? Did Mr. Murphy ask this question: "What is your name?"

MR. CLARK: I rather object to counsel reading off here, giving the impression that an examination was conducted in English, unless it shall appear that the examination actually was conducted in English. I haven't any objection to the questions being asked.

MR. BROTHERS: I will incorporate that.

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Q Was this question asked you in the English language, and did you reply to him in English: "What is your business?", and did you answer "Mike savas"? A I can't give answer to that.

Q Were you asked the question: "What is your name", and did you answer "Mike savas"? A Yes.

Q Did he ask you, "Do you speak English", and did you answer: "Oh, a little bit"? A (In English) Yes.

Q "Would you rather speak Greek", and did you say "Yes, I speak Greek", did you say that? A (In English) Yes.

Q And then they had a man there who spoke Greek to you, do you remember that? A Yes.

Q He talked in Greek to you, did he? A (In English) Yes.

Q He asked you questions? A (In English) All Greek language.

Q How? A Greek language.

Q When he talked to you he asked you questions? A Yes.

Q And you replied to him, did you? A Yes.

Q And was there a gentleman there with a pencil and a book was who was writing at the time? A Yes.

Q Did you understand that that man asked you in Greek? A Certainly, very well.

Q And sometimes you understood the English and you replied in English, did you? A No, I was not paying attention to the questions as put in English; I waited for the Greek interpretation.

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Q Did Mr. Murphy first tell you who he was, and that you need not answer any questions if you did not want to?

MR. CLARK: I ask that the same qualification be made here as to whether it was told him in English or in Greek.

THE COURT: Yes.

Q Was that said to you in either Greek or English?

MR. CLARK: How can he tell whether it was in English?

A That is how the question was put to me: "This is Mr. Assistant District Attorney Murphy, he desires to interrogate you. Are you willing to be interrogated and reply, or not", I said, "Yes, I am ready."

Q Did he also say to you that you were not compelled to say anything unless you wanted to? A Yes.

Q And that if you did say anything it might be used against you on the trial? A I don't remember his using such words as that.

Q You were perfectly willing to talk to Mr. Murphy, were you? A Yes.

Q I will ask you again, perhaps your recollection is better now: did he ask you this question, and did you answer it as I read, "And you ran out", and did you answer, "Well, I went out, and I was kind of frightened, and I took my way out"? A How could I remember every little detail about every answer I gave.

Q Then you may have said that? A I don't remember.

Q You don't deny it? A How could I remember what I said on

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that occasion?

Q Well, were you frightened? A No.

Q When you walked away from there did you walk fast or slow?

A Walked fast.

Q And you were going away from your home, were you? A Yes, sir.

BY THE COURT:

Q From what place had you moved when you moved to 141 West 43rd street? You told us you hired a room at 141 West 43rd street on September 20th, before you went to the restaurant at 645 Sixth avenue. Now, from what room had you moved? A I moved that same afternoon, early in the afternoon. Previous to that I was living with a friend whose name I mentioned before, Peter Merigis. We were living at 315 West 40th street, and as the weather was very warm, and we were sleeping in the same bed, I thought it advisable to move to a room by myself.

BY MR. BROTHERS:

Q Did Mr. Murphy ask you this question on that occasion, and did you answer as I read: "Didn't you go down Sixth avenue first? A No, I turned to the left and I ~~see~~ so much crowd that I took my way out". Did you say that?

MR. CLARK: I object to that unless we can get something more about where that is. The question does not mean anything to me now, whether he means the avenue and got out into the street.

MR. BROTHERS: I will read everything here in that

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connection.

Q Right after the question put to you, "And you ran out", and you said, "I went out and I was kind of frightened, and I took my way out", do you remember this: "And where did you go?

A I went down Sixth avenue, some street I don't know, the street on the left side." Were you asked that? A How could I remember; after a lapse of such length of time I could not remember everything that was said.

Q Well, you don't deny that you said it, do you? A I do not remember, how could I deny it.

Q Then were you asked this question: "Well, when you came out you came upstairs, didn't you? A Yes, sir"? A Yes.

Q "And then you turned to your right? A Left." Did you say that? A I don't remember.

Q You don't deny that you said that? A I don't remember at all what I said on that occasion.

Q And immediately after: "Q didn't you go down Sixth avenue first? A No, I turned to the left and see so much crowd that I took my way out." Did you say that? A I don't remember.

Q Then were you asked this question: "Well, where did you go? A Well, I seen a crowd and I tried to get away and somebody came along and grabbed me"? A I don't remember.

Q "That was an officer, wasn't it? A I don't know who he was. I thought he was a Greek". Did you say that on that occa-

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sionsion? A I don't remember.

Q Well, you tried to tell Mr. Murphy the truth, didn't you?

A I was answering to his questions.

Q Well, were you telling the truth? A Certainly, the truth.

Q Now you remember that a man was bought in when the District Attorney was talking to you, that is, into the room where you were being examined, and that he was there when they put the knife against your underclothes? A The first witness who was interrogated on Tuesday, I believe, is the one that was present.

Q Mr. Manolias? A I don't know his name.

Q Do you remember after he went out that Mr. Murphy asked you this question: "Now, you heard this man that was just in here?", and did you answer, "Let him prove what he said and I am willing to take my medicine if I am guilty of the crime". Do you remember that?

MR. CLARK: I object to that question if the Court please. There is nothing here to show that Manolias said that, so far as anything appears, the conversation with Manolias may have been in regard to any one of a number of things.

A I don't remember.

MR. CLARK: Just a moment, please, did your Honor rule on that?

THE COURT: If he answers that he does not remember, I think that meets your objection.

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A (Continued) I don't remember; you have all my answers written down, and it is easy for you to read out of my answers. I don't remember anything that was asked of me, the answer by me four months ago.

Q Well, you don't dispute that I have given it correctly here, do you? A How could I answer that question? I don't remember. I don't remember what was put to me in the shape of questions.

MR. CLARK: May we have it appear on the record what hour this examination occurred, if the Court please?

MR. BROTHERS: It took place on the morning of September 21st, 1915, beginning at 1:33 a. m., and finished at 2:10 a. m.

MR. CLARK: That is after midnight on that morning?

MR. BROTHERS: Yes.

MR. CLARK: Can it appear who was present there?

MR. BROTHERS: Well, they were not all present at all the times.

MR. CLARK: There were police officers there?

MR. BROTHERS: Some.

MR. CLARK: And Mr. Murphy was there?

MR. BROTHERS: A Yes, and Mr. Birchall, the stenographer, and the interpreter.

MR. CLARK: And no counsel for this defendant, that is conceded?

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MR. BROTHERS: Yes.

Q Then were you asked this question by Mr. Murphy--"Q He and two others say that you are the one that stabbed this man, why should they lie", and did you answer, "If they saw me, I don't want to get a sentence, but I would rather get the Chair." Did you say that on that night? A I don't remember anything at all about questioning and answering. I don't remember any of my answers.

Q You can't remember a thing about it? See if you can possibly go back and remember this: "Q What do you mean by that?", and did you answer, "If they claim that they saw me kill this man I am willing to die myself.", and the next question: "Q Are you willing to die for something that you did not do? " and your answer, "Yes, sir"? Did you give those answers to the questions? A I don't remember anything about the whole questioning over there.

Q Do you remember this question: "Was this man telling the truth", and did you answer: "I don't know"? A I told you I don't remember what was asked of me and what I answered.

Q And this question: "You did not stab anybody? A No, sir." You remember that, don't you? A That was certainly asked of me and I said no.

Q And you can remember that, can't you? A Well, I remember that, because it is the gist of the whole question. I answered no, because I did not do it.

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Q Well, your mind goes back and remembers that Mr. Murphy used those words: "You did not stab anybody," and you said "No, sir"? A I remember that question, certainly.

Q Do you remember when you were brought back into the restaurant at 645 Sixth avenue that you took some water from one of the tables and wiped your hand off with it?

MR. CLARK: I object to the question in that form, as there is absolutely no evidence he did anything of the kind. That is assuming a fact.

THE COURT: He may ask him did he do that.

MR. CLARK: Exception.

A I only requested some one to give me water, for the purpose of drinking it.

Q Did they give you water to drink? A Yes, sir.

Q And did you moisten your hand with it and wipe it off, as I am doing? (Mr. Brothers indicating by moving both hands as in the attitude of washing them) A No, I wiped my forehead with my handkerchief, wiped the perspiration.

THE COURT: Now, we will take a recess.

Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you. We will take a recess until 2 o'clock.

(Recess until 2 o'clock.)

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TRIAL CONTINUED, 2 p. m.

THE COURT: The defendant will resume the stand.

MR. BROTHERS: I have finished.

MR. CLARK: I have just a few questions.

MICHAEL SAVAS, the defendant, resumes the stand.

MR. CLARK: I think I have no further questions.

BY THE COURT:

Q About what hour did you leave your room on the afternoon, or the evening of September 20th, before you went to the restaurant

A About five or six p. m., I don't remember exactly.

Q That was the room in 141 West 43rd street, is that so? A Yes.

Q When you left it were you alone or accompanied by anyone?

A Alone.

Q Where did you first go after you left that room? A To some show, to some theatre.

Q Where was it? A On Sixth avenue, corner of 39th street.

Q About what time did you get there? A Six o'clock.

Q Did you go in to see that show? A Yes, sir.

Q Did you go in alone or accompanied by any friends? A Alone.

Q How long did you stay at that show? A (In English)
About two hours.

Q Leaving there about what time? A About eight.

Q And when you left that show where did you go? A I went across the avenue to some lunchroom, and I had something to eat.

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Q That lunchroom is between what streets? A Between 39th and 40th streets on the east side of the avenue.

Q When you say the avenue, do you mean Sixth avenue? A Yes.

Q About how long were you in that lunch room? A Fifteen to twenty minutes.

Q Eating alone or with some companions? A Alone.

Q When you left there did you leave alone or were you accompanied by anyone? A Alone.

Q And when you left there where did you first go? A I went to the park, Bryant's Park, above 40th street.

Q Did you sit down on a bench in the park? A I accidentally came across that friend of mine, Merigis with another man.

Q You met your friend. What is his name? A Peter Merigis.

Q You met him with another man in Bryant Park? A Yes.

Q That meeting, you say, was accidental, and not by appointment? A Yes.

Q After meeting your friend, Peter Merigis and a companion, what did you do? A We sat down and conversed five to ten minutes in the park, and then we got up and we went to the Cafe 695 Sixth avenue.

Q That is to say, you and these two men that you speak of went to that cafe at 695 Sixth avenue, is that so? A Yes, sir.

Q Did you go into that cafe? A Yes, sir.

Q Did these two men go in with you? A Yes.

Q Did you have anything to eat or drink in that cafe? A A cup

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of coffee each.

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

Q And when you left there where did you go? A Well, in that cafe the other man, Rasponopolous came in and sat at the table with us, and had a cup of coffee.

Q So that, at that cafe, at 695 Sixth avenue, there were four of you seated at the table? A Yes, sir.

Q When you left that cafe did you leave accompanied by the other three men? A Peter Merigis, and the other man whom I met in the park first, left us and said they were going home to sleep. Nick Rasponopolous and I went back into the park, and walked around for a while, and after that we proceeded towards 645 Sixth avenue.

Q Do you know the last name of the girl Olympia? A No.

Q Do you know where she lives? A No.

Q Had you seen her at any time before the first time that you went to that cafe at 645 Sixth avenue? A No.

Q While you were dancing with her were you talking with her?
A No.

Q Did she say anything to you while dancing? A No.

THE COURT: That is all. Mr. Clark, is that your case?

MR. CLARK: If the Court please, I have introduced, as your Honor will recall, interfering with the order of the prosecution's case, testimony of a character witness. I had hoped to bring down another man from Boston, Massachusetts,

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and I wrote a letter to a former fellow townsman of the defendant and received an answer from him. I fully appreciate that under the strict rules of evidence it is not admissible.

THE COURT: I am rather inclined to think that if you give the name of the witness and his address, and his business to the District Attorney, the District Attorney will concede that if called as a witness--

MR. CLARK: I am perfectly willing to show the letter which I received, the letter I wrote and the answer I got. I never saw the man before.

(Both counsel confer with the Court.)

MR. CLARK: I will not press the offer, your Honor. We have no further testimony to introduce, your Honor, and at this time I renew the motion which I made earlier.

THE COURT: Well, there may be some rebuttal evidence.

R E B U T T A L.

P A T R I C K S H E E H A N, recalled on behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer Sheehan, while you were in the restaurant at 645 Sixth avenue, after the defendant was placed under arrest, did you give him a glass of water? A Yes, sir.

Q And when you brought it to him what did you do with it?

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A I set it right on the table in front of him.

Q Did you continue there near him for a while? A About three minutes.

Q During that time were you watching him? A Yes.

Q Did he drink the water? A No.

Q Did he do anything with it at all? A Not while I was there, no, sir.

Q Then where did you go? A There was one of the men became very much excited, and I told him to sit down.

Q No, did you remain there, is the question. A In the place, yes.

Q Did you remain with the defendant, or did you go elsewhere?
A Yes, sir.

BY THE COURT:

Q Which is it? Did you stay with the defendant, or did you go out? A I stayed right there.

BY MR. BROTHERS:

Q Did you see anything he did with the water? A No, sir.

Q How long were you with him? A About two or three minutes.

Q Then at the end of two or three minutes, what did you do?

A There was a man--

Q Did you go away or remain? A I went away.

Q How long were you absent from the defendant's side then; did you return at any time to him? A No, sir.

MR. BROTHERS: That is all.

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MR. CLARK: No further questions.

BERNARD A. DITSCHE, recalled as a witness on behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer Ditsch, while you were in 645 Sixth avenue, the night of September 20th, did you see the defendant in the restaurant at any time with some water before him? A Yes, sir.

Q And it was in water? A It was in a glass to the left-hand side of the defendant.

Q What, if anything did you see him do with it?

MR. CLARK: If the Court please, I object to evidence of this kind on the ground it is not directly rebuttal testimony. If there is any deduction to be drawn as to anything the defendant did with the water, that I should think was part of the People's case in chief.

MR. BROTHERS: We have a right to reserve it for the defendant's explanation.

THE COURT: I will receive it.

MR. CLARK: Exception.

A The defendant took hold of the glass of water and poured it over his right-hand, and when he done that I looked down between the right index finger and the thumb and I noticed there was a red spot and he poured the water over in this fashion, and done that with his hands (witness indicating by putting his hands through a washing motion). I grabbed his hands, and I told him

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"What are you trying to do, washing the blood off", and that is all he done, but in this fashion.

Q Well, he did not answer? A He did not answer.

MR. CLARK: I move to strike out what he said then, the defendant not replying to him.

THE COURT: I will strike out what was said.

Q Did he drink any water? A He did not drink any water in my particular sight. I did not see him drink any water.

MR. CLARK: May the jury understand they are not to bear in mind what Ditsch said that he said.

THE COURT: They are so instructed; you are so told, Gentlemen.

Q Oh, that girl Olympia, that I should have asked you about before, I think the Court will let me ask that now. Did you learn her full name?

MR. CLARK: I object to that on the same grounds.

THE COURT: I will allow the answer.

MR. CLARK: Exception.

Q Did you learn her full name, did you learn the full name of Olympia? A I did.

Q Have you made an investigation as to her present whereabouts? A Yes, sir.

Q Can you tell me where she is?

MR. CLARK: I object to that unless it is shown he knows of his own knowledge.

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THE COURT: Objection sustained.

Q You have not seen her? A I did not see the girl, no.

Q The last time you saw her was when? A In the Coroner's office to the best of my recollection on September 20th or 21st, I am not quite positive.

Q According to your best information do you know of your own knowledge whether she is now within the city of New York?

MR. CLARK: I object to that, if the Court please. How does he know?

THE COURT: Objection sustained.

Q You have searched for her? A Yes, sir.

Q Where did you look? A I went to a former address, also to a place where she used to play, and the information which I did receive--

MR. CLARK: I object to what information he received.

A (Continued) I failed to find her at this place she went to.

THE COURT: I think it is competent to show he made efforts to find her.

MR. BROTHERS: I shall not press it, if they make no point of not having her here. We have done the best to we could to get her here.

MR. BROTHERS: Do you make any point of her absence?

MR. CLARK: Well, I would like to have her absence explained.

BY THE COURT:

Q When did you first go to look for the woman whose name

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was Olympia? Kindly give me the date? A It was about three weeks ago.

Q Just give me the date as near as you can when you first started to look for the woman named Olympia? A The 26th or 27th of December, also on the 19th of December.

Q The 19th came first; so you started to look on the 19th of December? A Yes.

Q On the 19th of December to what place did you go to look for her? A I went to 29th street and Sixth avenue.

Q To any building? A Yes, sir.

Q To what building? A It is a corner building.

Q What corner? A It is the northeast corner.

Q What part of that building? A On the first floor.

Q You mean one flight up? A One flight up; some call it the second floor.

Q Front or back? A Front--well, in fact the building runs all through.

Q I take it that you had some conversation with some person in the building, yes or no? A I did, sir, your Honor.

Q Did you see Olympia in that building? A She was not there, no.

Q As the result of that talk where did you go next to find Olympia? A It was an impossibility.

Q Where did you next go? Did you go to any other place?
A No other place.

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Q That is what you did on the 19th? A Yes, sir.

Q Then the next time you looked for her was on the 27th of December? A 28th.

Q On the 28th of December where did you go to find her?

A In the same premises.

Q Did you see her there at that time? A She was not there, no.

MR. CLARK: I move to strike out this answer as not responsive.

THE COURT: Strike out "She was not there."

Q Did you see her there? A No.

Q Did you go there again? A On the 29th.

Q Did you see her there again? A She was not there.

MR. CLARK: I make the same motion with regard to that.

THE COURT: Strike it out.

Q You did not see her there on the 29th? A No.

Q Did you go inside the different rooms there? A I went to the first room I mentioned on the first floor front.

Q Did you look for her at any other place besides that place? A No, sir.

Q Did you look for her on any other day except the 19th of December, the 28th of December, and the 29th of December? A I did not.

BY MR. BROTHERS:

Q Have you had any correspondence about the subject, Officer?

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A Not personally. I saw some correspondence.

Q You have not been able to serve a subpoena upon her? A No.

MR. BROTHERS: That is all.

BY MR. CIARK:

Q Were you there in 645 when the defendant was brought in?

A I was not, no.

Q How long had you been there before you saw him with the water? A The water was standing on the table when I came in.

Q You knew the defendant had been held there and that some people had said that he had done the stabbing? A Not at that time.

Q How long did it take you to find that out? A About eight minutes.

Q How many officers were there there at the time? A About six officers or five officers.

Q And you were with him as one of the men in the detective Bureau, one of the detectives? A No, sir, detective COoney was there.

Q What is he? A A detective sergeant, same as myself.

Q same grade that you are? A Second grade.

Q You are superior then in rank; you are first grade rank?

A I am not superior in rank. It has no increase in pay. It does not carry anything else with it.

Q It took you eight minutes to find out who the man was there that people said had done the stabbing, did it? A Yes.

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Q What did you do then? A After I learned that the defendant here was the suspect--at the time we only learned he was a suspect of the occurrence, and I sat down and tried to speak to him.

Q Was the water still in front of him then? A It was to his left-hand side.

Q Did you do any more than speak to him? A No.

Q Did you look at his hands? A No. I sat near him and tried to question him.

Q You did not look at his hands? A Not at the time.

Q You did not look at his clothes? A Not at the time.

Q How long before you did? A Until he took the water from the table and poured it between the thumb and right index finger.

Q That must have been ten or fifteen minutes after you got in there? A About ten minutes.

Q He was in there before you came? A He was sitting down at the table.

Q What time did you get there? A About 10:20.

BY THE COURT:

Q When, Officer, for the first time did you tell anybody what you have now told? A I informed the assistant district Attorney, Mr. Brothers, about it, I think, the day before yesterday.

Q You have never told that to Mr. Murphy? A I don't recollect

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having said it.

Q You did not bring that out that night at half past one at night when you were examining these witnesses? A I had forgotten the incident then.

Q You just remembered it the day before yesterday? A Yes, we were very busy that night.

Q You have been working up homicide cases how long? A Since the Homicide Squad has been established, that is about seven months.

Q Did you ever work on murder cases before that? A I did.

Q You have had quite a little experience working on murder cases? A Yes, I did.

MR. CIARK: That is all.

MR. BROTHERS: That is all.

MR. BROTHERS: I want to recall Mr. Manolias. I sent a message to him; I told him I would call him on the telephone and we had a little trouble reaching him. I understand he has not arrived here yet, but he is on his way. I do not want to delay matters. Perhaps if I told your Honor what it was I was going to question him about, privately, you might rule whether it is admissible or not.

(Both counsel converse with the Court.)

MR. BROTHERS: The People will rest.

(At this point Mr. Manolias comes into the court room.)

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MR. BROTHERS: I think that is all we have.

MR. CLARK: In the first place, if the Court please, I move the dismissal of the charge against the defendant, first in the matter of murder in the first degree, on the ground that there is no evidence before the Court tending to show the crime of murder in the first degree.

THE COURT: I deny that and give you an exception.

MR. CLARK: I make the same motion with regard to murder in the second degree.

THE COURT: Same ruling.

MR. CLARK: Exception.

MR. CLARK: I make a motion for a dismissal of all the charges involved.

THE COURT: Denied and you have an exception.

MR. CLARK: Exception.

MR. CLARK: If the Court please, I renew the motion which I made before, to have a view of the external premises; the internal premises I do not think are so material.

THE COURT: I think it is unnecessary and I will deny it.

MR. CLARK: I respectfully except.

MR. CLARK: If the Court please I move that there be stricken from the record, and that the jury be instructed to disregard all testimony in regard to the wrapping paper which the prosecution has marked for identification People's

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Exhibit 2, on the ground that there is not the slightest evidence to show any connection between that paper and the defendant.

THE COURT: The evidence as it now stands, as I recall it, is that it was handed by some one to an officer inside of the place.

MR. BROTHERS: No, the testimony of Officer Tetzner is he arrested the defendant in front of No. 4 West 37th street, and that he was returning towards Sixth avenue with his prisoner, the defendant, and about in front of No. 10, when a citizen handed him this paper, and that they were then on the south side of the street, the same track that had been taken by the defendant up to the place where he had been arrested.

THE COURT: I may be wrong about it, but I have an impression that you will find testimony there to the point that that paper was handed to an officer inside of the place.

MR. BROTHERS: That is in there also.

THE COURT: By Manolias?

MR. BROTHERS: That is true. Officer Tetzner says he brought it to the restaurant. The knife was brought there and these things were there in the restaurant. It got into Ditsch's hands from Manolias, he probably picked it off the table.

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MR. CLARK: The testimony is not that. It is (Reading)

"Q Officer, was this article handed to you that night--
I forgot to ask you that (indicating paper article)?

A Yes. Q Where were you at the time it was given to
you? A On 37th street, on the south side of 37th street
near Fifth avenue, between Fifth and Sixth avenues. Q Who
handed it to you? A A citizen, a young man unknown to me."

THE COURT: I will tell the jury to disregard that testimony.

MR. BROTHERS: If the defendant had gone over that
ground and somebody had picked up a weapon that was found
between the place the defendant was accosted at and the
place where the crime had been committed--

THE COURT: There is not the slightest evidence when the
thing was picked up.

MR. BROTHERS: No, but it fits the weapon perfectly.
I think the evidence about it should remain in the record,
but if your Honor thinks better not to have it in, I
shall not press it. I think your Honor's judgment will be
better than mine if we have not the article, the testimony
about it will not be material.

THE COURT: I will strike it out.

MR. CLARK: I wonder if the jury understood your ruling
on that.

THE COURT: There was some testimony offered during

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the progress of the trial regarding the handing to the officer who testified first in the case, of a certain article which was marked for identification during the progress of this trial. Now that testimony is stricken from the record, that is to say, the testimony relating to that particular article. Do the jury understand that?

(The jury nod in the affirmative.)

THE COURT: I take it that you do, Gentlemen.

MR. CLARK: Apropos of my motion with regard to a view of the premises, I call your Honor's attention to the evidence that concededly these diagrams were made on November 20th, two months after the occurrence.

THE COURT: I am perfectly clear in my mind that a view is unnecessary in this case. It will serve no useful purpose.

MR. CLARK: I take an exception.

MR. BROTHERS: Shall we both sum up?

THE COURT: Yes. I was very anxious that this case should progress as far as possible today, as I have a special panel tomorrow. I think I will have to ask you to proceed to sum up.

MR. CLARK: May we have a recess for about five minutes so I can get my papers together?

THE COURT: Certainly. I do not know how long you gentlemen would like to have.

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MR. BROTHERS: If Mr. Clark should take an hour, I think I would probably finish in that time at the outside.

THE COURT: I am going to try to have the submission on both sides if possible this afternoon, even if I have to take a recess and come back again. I regret to inconvenience anybody, but I do so because the special panel has been here a number of times.

(MR. Clark sums up to the jury at 2:40 p. m.)

(Mr. Brothers sums up to the jury at 4 p. m.)

(At 5:05 p. m. the Court takes a recess for ten minutes.)

THE COURT: We will take a recess for ten minutes. You are admonished not to converse among yourselves on any subject connected with this trial, nor form nor express any opinion ^{thereon} until the same is submitted to you. The Court will take a recess until a quarter past five.

TRIAL CONTINUED, 5:15 p. m.

MR. CLARK: If the Court please, I should like to make an objection to the statement in the learned District Attorney's address in which he purported to testify as to facts with regard to other witnesses. It seems to me entirely improper that he should put himself in place of a witness and testify as though under oath.

THE COURT: I think Mr. Clark, in order that your

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objection may of value to you in any contingency that might arise, it would be better for you to have the remarks that you object to read by the stenographer to me, and then I can see what you refer to, because your characterization might not be regarded perhaps as well made.

MR. CLARK: I refer to the portion of the remarks in which the Assistant District Attorney said that he stood before them on his oath as an officer in this county, to state that every endeavor to obtain every possible witness had been made.

MR. BROTHERS: I would like to be heard on that. Counsel for the defense told the jury that we had not produced all the available proof. He had no evidence of that. If he will withdraw his statement I will withdraw mine.

MR. CLARK: I do not charge that. I said there were other persons who were there in the patrol wagon and in the station house that night, according to the testimony of the prosecution's own witnesses-- I said it was a proper thing for the jury to consider the failure to call them.

THE COURT: I will say in reply to the suggestion made by Mr. Clark, or rather in view of that suggestion, that there is testimony, as I recall it, given by Officer Ditsch of the police force that he on three certain days that he named, made inquiries respecting the whereabouts of the woman who has been called Olympia, and that at the place

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where he inquired he was unable to find her. Apart from that there is no evidence in the case, as I recall it, of any search for any person said to have been in the restaurant not produced as a witness upon the trial. The District Attorney's statement may be regarded as in answer to a suggestion made, going perhaps to the effect that with greater diligence others who are said to have been inside of that restaurant might have been produced. In other words, as an assertion of diligence on the part of the District Attorney's office. Of course it will not be regarded as evidence in the case.

MR. CLARK: And I respectfully request the Court to instruct the jury to disregard it in so far as it might be regarded as any proof of the fact.

THE COURT: The jury are to disregard it in the sense of not taking it into consideration as proof in the case. Of course the same statement may be made in respect to any similar remark, or remark of an opposite character made in the summation by the counsel for the defendant.

MR. CLARK: I respectfully except to the manner in which the instruction is given to the jury.

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THE PEOPLE vs. MICHAEL SAVAS.

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THE COURT'S CHARGE, Crain, J.

Gentlemen of the Jury: The defendant, indicted under the name of Michael gavas, is charged with the crime of murder in the first degree. That charge is contained in an indictment preferred by the Grand Jury of the County of New York, and the charge is that on the 20th of September, of the year 1915, the defendant killed one Nicholas Lialakus in the County of New York, under circumstances making the killing the crime of murder in its first degree. That is the substance of the charge contained in the indictment against this defendant.

An indictment is an accusation in writing. It creates no presumption that the defendant is guilty, and defendant has said by his plea that he is not guilty, and you have been impaneled and are acting as jurors in this case so that in your capacity as the exclusive judges of the facts you may determine from the evidence and from the evidence alone, and from the evidence as you recollect it, whether or not the defendant is guilty of the crime of murder in the first degree, as that crime will be defined to you in this charge, or guilty of any of the lesser degrees of homicide as they will respectively be defined to you in this charge.

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The Court has observed with satisfaction the manifest attention which you were giving to the evidence in the case as testimony was given by the different witnesses who have been called, and as exhibits were offered and received in evidence; and the Court has observed with equal satisfaction the very thorough and painstaking way in which this case has been tried, both by the learned Assistant District Attorney, representing the People, and the learned counsel representing the defendant.

The law devolves upon the judge presiding at the trial the duty of bringing to the attention of the jury the law applicable to the case. The law is the measuring stick, and the evidence is that which is to be measured. The law represents the weights on one side of the scales, and the evidence is that which is to be weighed on the other side.

The law says that a certain thing done under certain circumstances constitutes a certain crime, and the function of the jury is to determine whether or not the evidence satisfies them beyond a reasonable doubt that that thing which the law says may not be done under those circumstances, has in point of fact been done, and done by the defendant who is charged with having done it.

In the domain of fact, you are supreme. It follows from that, that if your recollection of the evidence differs from anything which may have been said respecting it

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by counsel for the defendant, or by the Assistant District Attorney, or which may be said respecting it by the Court, your recollection of the evidence will control you when you retire to deliberate; and if after you have retired to deliberate there should arise a controversy or dispute among you as to what in point of fact the evidence was regarding a particular matter, it will be your right, at your request, to be brought by the officers having you in charge again to the seats in which you are now sitting, where, in the presence of the defendant, and in the presence of his counsel, and in the presence of the Assistant District Attorney, and in the presence of the Court there may be read to you from the stenographer's official minutes that portion of the testimony as to which such dispute or controversy has arisen among you, in order that from such reading you may the better ascertain what in point of fact was testified to.

The evidence in the case consists of the spoken word of witnesses responsive to questions put in so far as the answers have been allowed to stand, not having been stricken out either upon motion of the defendant's counsel, or on motion of the Assistant District Attorney, or by the Court on the Court's own motion. The evidence also includes any exhibits which have been offered and received in evidence. The evidence does not include anything which was said by any witness which was stricken out under any of the circumstances

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mentioned. It does not include any exhibits, if any such there be, merely marked for identification and not received in evidence. It does not include any colloquy or conversation that there may have been between counsel during the progress of the trial. It does not include anything which may have been said by the Court in passing upon any objection taken to the evidence, or in deciding any motion during the pendency of the trial, or otherwise.

You are pointedly and explicitly told that you will draw no inference whatsoever as to the possession by the Court of any opinion as to what your verdict should be from any decision which the Court may have made of any motion during the pendency of the trial, as such decision imports no opinion whatsoever by the Court as to what your verdict should be.

It sometimes transpires during the progress of a trial that certain statements are embodied in questions put to a witness, and it sometimes happens that when a question embodying a series of statements is put to a witness, the witness will answer the question either in the negative, or to the effect that the witness has no recollection respecting the truth or accuracy of the statements embodied in the question. Of course in either of those events, the statements embodied in the question form no part of the evidence in the case. In other words, the evidence in the

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case does not consist at all of statements embodied in questions put, except those statements are ratified and affirmed by the answer as given by the witness to the question as put.

If you have followed me in what I have said, it has gone mainly to the point that you were the exclusive judges of the facts, that it devolved upon you from that circumstance to weigh the evidence in order that you might determine what was the truth, so that your verdict might represent that which you believe to be the truth, and that then there was brought to your attention for your guidance what was included under the term "evidence" as so used, and what was excluded: what, in other words, you were to take into consideration, and what you were not to consider.

I now invite your attention to the law's definitions of the various degrees of homicide as they are found in the Penal Law, and I will read from the Penal Law in the first instance without any comment, or without any statement by way of analysis, or without any effort to direct your attention to any particular or specific points, and in the reading I shall omit certain portions which in the opinion which I have formed are inapplicable in any conceivable view of the evidence in this case.

It is the law that no person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of killing by the

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defendant as alleged are each established as independent facts, the former by direct proof, and the latter beyond a reasonable doubt.

Homicide is the killing of one human being by the act, procurement or omission of another.

Homicide is murder, or manslaughter, or excusable homicide, or justifiable homicide.

The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed, or of another.

Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation.

In a case other than those specified in sections 1044, 1046 and 1047, homicide, not being excusable or justifiable, is manslaughter.

Section 1044 is the one which contains the definition of murder in the first degree.

Section 1046 is the one which contains the definition of murder in the second degree,

And Section 1047 is the one which relates to the guilt or criminality of one who fights a duel outside of the State.

Such homicide is manslaughter in the first degree

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when committed without a design to effect death; in the heat of passion, but in a cruel or unusual manner, or by means of a dangerous weapon.

I do not bring to your attention the law's definition of what it is that constitutes excusable homicide, nor the law's definition of what it is that constituted justifiable homicide, nor the law's definition of the crime of manslaughter in the second degree, because, unless I am requested by counsel to bring those definitions to your attention, I do not think that they are definitions which would aid you in reaching a determination in this case.

We will now retrace the ground together in order that these definitions may be brought to your attention in connection with an analysis of them, and when I say "these definitions", I mean the law's definitions of murder in the first degree, the law's definition of murder in the second degree, and the law's definition of manslaughter in the first degree.

I read again from Section 1044 of the Penal Law the law's definition of murder in the first degree:

"The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed, or of another."

In the case of the People against Koenig, reported in Volume 180 of the New York Reports, and decided by the

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Court of Appeals in the month of December, 1904, Chief Judge Cullen, writing the opinion of the Court, says:

"Probably the best definitions of murder in the first degree under our present law are to be found in the opinions in Leighton against the People, 88 New York, 117, and the People against Majone, 91 New York, 211", and further on in the same opinion he adds, "I very much question whether these statements of the law, (referring to definitions in those cases) can be substantially improved, and I think it would be far wiser for trial courts to adopt these definitions than to refer to cases which arise under different statutes."

Following the suggestion thus made by Chief Judge Cullen in the opinion in the case of Koenig, which opinion was concurred in by the other members of the Court, I invite your attention to what is said respecting what it is that constitutes the crime of murder in its first degree, in the opinion which was delivered in the case of Leighton against the People of the City of New York, reported in Volume 88 of the New York Reports, and being a decision by the Court of Appeals in the month of February, 1882, the opinion being written by Judge Danforth, and concurred in by other members of the Court of Appeals.

"To bring the case within the statutory definition of murder in the first degree", says Judge Danforth, "it was necessary that the crime should be perpetrated from the

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deliberate and premeditated design to effect the death of the person killed."

And after referring to the statute he adds: "An act coexistent with and inseparable from a sudden impulse, although premeditated, could not be deemed deliberate, as when under sudden and great provocation one instantly, although intentionally, kills another. But the statute is not satisfied unless the intention was deliberated upon. If the impulse is followed by reflection, that is deliberation; hesitation, even, may imply deliberation; so may threats against another, and selection of means with which to perpetrate the deed. If, therefore, the killing is not the instant effect of impulse, if there is hesitation or doubt to be overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder."

Not long afterwards, that is to say, not long after that opinion was written by Judge Danforth, the Court of Appeals decided the case of the People against Majone, the decision being in the month of January of the year 1883. The Majone case is reported in Volume 91 of the New York Court of Appeals Reports, and the opinion in the Majone case was written by Judge Earle, and was concurred in by all of the other judges of the Court.

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Referring to what it is that constitutes the crime of murder in the first degree, Judge Earle said in the course of his opinion:

"Under the statute, there must be not only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time. But the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for choice to kill or not to kill, and for the formation of a definite purpose to kill. And when the time is sufficient for the purpose, it matters not how brief it is. The human mind acts with celerity which it is sometimes impossible to measure, and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case."

Does the evidence in this case satisfy you beyond a reasonable doubt that Nicholas Lialakus came to his death in the County of New York on the 20th day of September 1915? If so, does the evidence in the case satisfy you beyond a reasonable doubt that he came to his death through the act of this defendant? If so, does the evidence in the case satisfy you beyond a reasonable doubt that the defendant designed to effect the death of Lialakus in what you may believe the defendant to have done? If so, was that

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design on the part of the defendant a deliberate design, and if it was a deliberate design, was it a premeditated design as those words "deliberate" and "premeditated" are defined in the two cases which have been brought to your attention, namely, the case of Leighton against the People, and the case of the People against Majone?

If the defendant was possessed of a design to kill Lialakus, and thereafter did an act which carried that design into effect, and that design answered to the description of a deliberate design, and also to the description of a premeditated design, and the defendant's act in the killing was neither excusable nor justifiable, then the defendant is guilty of the crime of murder in its first degree.

When you retire to deliberate, you will consider first the question of this defendant's guilt of the crime of murder in the first degree. If upon the evidence you believe him to be innocent of that crime, or if upon the evidence you entertain a reasonable doubt respecting his guilt of that crime, as reasonable doubt will hereafter be defined in this charge, then it will be your duty to consider the question of this defendant's guilt of the crime of murder in the second degree. Your attention is therefore again directed to the law's definition of murder in the second degree, and Section 1046 of the Penal Law, which defines murder in the second degree will be again read so

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that you may consider its language.

"Such killing", and the force of the word "such" either is to exclude homicide which is justifiable, or homicide which is excusable, - "such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation."

There is a similarity between the crime of murder in the first degree, and the crime of murder in the second degree, and there is a difference between the crime of murder in the first degree and the crime of murder in the second degree. The similarity consists in the circumstance that in both murder in the first degree and murder in the second degree, the evidence must satisfy a jury beyond a reasonable doubt that the defendant was possessed of a design to effect the death of the person killed, or of another, in what he, the defendant did. The difference consists in the circumstance that, as you have already been told, the design in the case of murder in the first degree must answer to the description of a design which is both a deliberated upon, and a premeditated upon design, while the contrary is true respecting the character of design which is sufficient to constitute the crime of murder in the second degree.

In murder in the second degree the design to effect

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the death of the person killed need not be a design which has been deliberated upon, or a design which has been premeditated. It is a design without deliberation and premeditation.

If, under the circumstances mentioned, you come to the consideration of the question of this defendant's guilt of the crime of murder in the second degree, but should thereupon believe him to be innocent of that crime, or upon the evidence should entertain a reasonable doubt as "Reasonable doubt" will be defined to you in this charge, of his guilt of that crime, it will become your duty to consider the question of this defendant's guilt of the crime of manslaughter in the first degree.

The law says, and now your attention is being called to the law's definition of manslaughter in the first degree:

"Such homicide (and "such" again there has the force of excluding homicide which is either justifiable and homicide which is excusable) is manslaughter in the first degree, when committed without a design to effect death; in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon."

If this defendant did an act which was neither excusable or justifiable, but which produced the death of Lialakus, and the defendant did what he did in that regard

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without a design to effect the death of Lialakus, or did it in the heat of passion, and in the alternative, either in a cruel and unusual manner, or by means of a dangerous weapon, he is guilty of that degree of homicide known to the law as manslaughter in the first degree.

You will see that there is a marked difference between murder in its first degree and murder in its second degree on the one hand, and manslaughter in the first degree on the other hand, and the difference consists in the absence, in the case of manslaughter, of a design to effect death in what is done, and the necessity for the presence of such a design in both degrees of murder.

There is a difference in what is known to the law as "intent," and the legal definition of motive, and that difference was pointed out by Judge Werner in delivering the opinion of the Court of Appeals in the case of People against Molineaux, reported in Volume 168 of the New York Court of Appeals Report, at page 297. There Judge Werner said in part,

"In the popular mind 'intent' and 'motive' are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect that result. When the crime is clearly proven to have

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been committed by a person charged therewith, the question of motive may be of little or no importance, but criminal intent is always essential to the commission of crime."

You will note the circumstance under which Judge Werner says that motive may be of little or no importance. The circumstance referred to by Judge Werner is when a crime is clearly proven to have been committed by a person charged therewith. The crime of murder in either degree may be committed without proof of any motive. It is not a matter of legal necessity that the evidence should establish the presence of a given motive on the part of one who is accused of the crime of murder in the first degree, or of the crime of murder in the second degree, but such a person, if the evidence be otherwise sufficient, can be convicted of one or the other of those crimes.

It is also true that the jury in their deliberation as to the guilt of a defendant of the crime charged in the indictment, or of any lesser degree of that same crime, may consider the question as to whether or not there was a motive disclosed by the evidence for the commission of it, as bearing upon the truthfulness of testimony given respecting the defendant's alleged commission of it. I hope I have made that plain. For the sake of greater clearness I will put it in somewhat different language. Where what would constitute the crime of murder in the first

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degree, or what would constitute the crime of murder in the second degree, or what would constitute the crime of manslaughter in the first degree, has been established to the satisfaction of a jury, and beyond a reasonable doubt to have been done by a defendant on trial charged with the commission of one or the other of those crimes, it is not material that the evidence should likewise disclose what the motive of the defendant charged with the commission of those crimes, or any one of them, was in the commission of the crime, but in considering the weight which is to be attached to testimony bearing upon the guilt of a defendant of one or the other of those crimes, a jury may take into consideration what is disclosed by the evidence respecting the presence or absence of a motive by the defendant for the commission of a crime, and there are circumstances under which absence of motive may be regarded as a material and important circumstance in favor of a defendant if a jury find from the evidence an absence of such motive.

Certain witnesses have testified, as the Court recollects their evidence, to having seen the defendant do a certain thing on a certain occasion. Their testimony, as the testimony of every one who has been sworn during the progress of the trial, is the subject matter of scrutiny by a jury, and a jury has a right to take into consideration in determining the question of the truthfulness of

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such witnesses, among other things, the disclosure or non-disclosure of a motive on the part of a defendant for the doing of the thing or things attributed to him by such witnesses.

In this case the defendant has produced a witness who has given what is sometimes spoken of as character evidence. That is to say, testimony going to the point that he was acquainted with the defendant, that he knew other people who knew him, and that he knew what the defendant's reputation was for, I think in this case truthfulness and peaceableness, and that that reputation was good. The Court of Appeals has held in such cases that evidence of good character may create a reasonable doubt where but for the introduction of such evidence no doubt would exist in the minds of the jurors respecting the guilt of the defendant. It is, however, evidence which is to be taken into consideration in conjunction with all the other evidence in the case, and is to be given such weight, if any, as in the opinion of the jury it may be entitled to.

This, Gentlemen, is a criminal action, and the defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to an acquittal.

The burden of proof is upon the prosecution. That

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burden requires that before you can lawfully find the defendant guilty you must be satisfied from the evidence beyond a reasonable doubt of his guilt.

It has been said, and truly said, that it is a dangerous thing for a court to attempt to define what it is that constitutes reasonable doubt, because the definition is a mere substitution of other words for the words used, and there are no two words in the English language of plain-er meaning and more frequently used than the words "reasonable" and "doubt", and they mean, when used in the law precisely what they mean when correctly used in everyday life. Not every doubt answers to the description of a reasonable doubt. A reasonable doubt is a doubt that is founded in and sustained by reason. It is not a whim, it is not a caprice, it is not the action of unreasonable sympathy, it is not a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing. It is a doubt back of which there is a "because", so that a juror says that he doubts the guilt of the defendant for such and such a reason.

As I recollect the evidence in the case, on September 20th, 1915, there was located in the basement of 645 Sixth avenue a Greek coffee house or restaurant. That restaurant was situated on the westerly side of Sixth avenue, between 14th and 15th streets, the entrance to

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which was from Sixth avenue. The dimensions of the restaurant, the interior partitions, so far as there were partitions in it, and certain other details purport to be shown upon and by an exhibit which has been offered and received in this case.

There is some testimony going to the point, as I recollect it, that on the evening of September 20th, 1915, there were a considerable number of persons in that restaurant; the rear of the restaurant premises, that is to say, the more westerly end was separated from the balance, and formed the kitchen. Between it and the restaurant there was a door, and there was an opening in the wall so that dishes could be passed from the kitchen to the restaurant, and from the restaurant into the kitchen. The business was carried on by two men. Each purports to give his place of birth. Each purports to say how long he knew the other and how they became associated in business. Two other persons were in the restaurant besides the proprietors who may be said perhaps to have been connected with the management of the establishment itself in the sense of being employed there, on the evening of September 20th, 1915, one a waitress, produced here as a witness, on behalf of the prosecution, and the other a dancer whose first name was Olympia, who has not been a witness in this case. Apart from the proprietors and those two women

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and possibly some musicians there were a number of customers.

Into that restaurant on the evening of September 20th there came the deceased. He appears to have been in business at the time as the keeper of a pool and billiard parlor somewhat further uptown on Sixth avenue. He appears to have been in the restaurant, as I recollect the evidence, with a companion, or companions, and into that restaurant the defendant and a companion came, which appears not to have been the defendant's first visit to the restaurant. He seemed to have been there on several occasions before.

Some testimony has been given respecting the table to which the defendant is said to have gone upon entering the restaurant. As I recall the testimony in the case, no witness produced by the People purports to have seen the defendant in the act of entering into the restaurant. The testimony produced by the People, as I recall it, placed the defendant and another person at a table on the more northerly side of the premises, and on the westerly side of the railing; that is to say, between the railing and kitchen. The testimony given by the defendant in his own behalf places himself and his companion in the first instance at the table on the more southerly side of the premises, that is to say on the left-hand side of the premises as one enters and faced the kitchen at the table nearer to Sixth avenue on the southerly side. There seems to be no conflict in the testimony that, after defendant

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had been seated at a table, and after an order had been given or something served to him, he started to dance with the girl whose first name was Olympia. There appears to be no conflict in the testimony as to the general position that the defendant was in in the restaurant while in the act of dancing. He appears to be placed by all of the witness, so far as the testimony is now recollected, somewhat to the north of the platform indicated upon the exhibit as the platform occupied by the musicians, and towards the end of the premises nearest to the kitchen.

It is not a matter of dispute in this case that after the defendant was in the act of dancing with Olympia at about the place mentioned, the defendant did leave the premises; and it is not a matter of dispute in this case, as I recollect the evidence, that while the defendant was dancing, or at all events during a part of the time that he was dancing, he did not have on either a coat or vest. Defendant says that he removed his coat while he was dancing. That is to say, he had danced a little while with his coat on, and that he then took his coat back and placed it upon the table at which he had been seated, and danced without his coat. There is no dispute in the evidence, as the evidence is now recalled, that the defendant put on his coat while in the act of passing out of the

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premises and towards the sidewalk.

There is a conflict in the evidence, as the evidence is recollected, respecting the course that the defendant took after leaving the premises. The testimony on behalf of the prosecution, as recalled by the Court, is in substance that the defendant, after leaving the premises 645 Sixth avenue, moved along the more westerly sidewalk of Sixth avenue in a southerly direction, to the northwest corner of Sixth avenue and 37th street, and that he then turned down that street, going in a westerly direction and along its northerly side, that is to say, going towards Broadway. And then the prosecution claims that the evidence shows that the defendant retraced his steps and went in an easterly direction, crossed Sixth avenue, and at a certain point went out into the centre of the street and moved along the centre of 37th street in an easterly direction between Sixth avenue and Fifth avenue until he had reached a certain point in the block, when he went, according to the testimony of the prosecution, or some of that testimony, to the southerly side of 37th street, and then along the southerly side of 37th street to a point where, as the prosecution claims, he was placed under arrest by Officer Tetzner, the first witness called by the People.

There is some testimony on the part of the prosecu-

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tion as to the defendant's movements, as he is so said to have gone, that is to say his stopping, his looking back, the degree of speed with which he went, the varying course of speed, and so on.

The defendant says that after he left the restaurant he went in a diagonal direction and in a course which would be apparently southeasterly over to the northeasterly corner of Sixth avenue and 37th street, and thence along the northerly sidewalk of 37th street for a certain distance in the block where, as he says, he was overtaken by and halted by one or more civilians, that is to say, men not in police uniform, one of whom spoke to him in Greek, and that he was brought back by them to the restaurant.

The defendant purports to give a description of what transpired in the restaurant after he came there, up to the time that he left it, and then his movements afterward, and what happened after he came back to the restaurant.

Certain witnesses produced by the People who say that they were in the restaurant on the evening of September 20th purport to describe what they say they saw the defendant do. You will recollect what the testimony of those different witnesses was.

The defendant denies that he did any cutting. He says that he did not cut the deceased. He says that the knife which has been offered and received in evidence he

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did not see until he saw it on the table in the restaurant, or at all events in the restaurant after he had been brought back, as he says, by those persons not in uniform, to the restaurant.

Other witnesses called by the People say that they saw that knife, and that they saw it in the defendant's hands inside of the restaurant, and one or more purport to say that they saw him take it from his clothing and go from the place where he was when he took it, towards the deceased, and that he, the defendant, raised it with uplifted arm, and brought the arm with the knife in his right-hand down towards the deceased; that at the first thrust the deceased, by moving, remained uncut, but that the defendant made a second thrust at the deceased with the knife and that the deceased was then cut.

Some testimony has been given respecting the nature of the wound received by the deceased, and there is other testimony in the case going to other details said to have been observed by various witnesses.

Of course, this does not purport to be in any sense a full outline of the evidence in the case, or even a particularly accurate outline of what the evidence was. As you were told at the threshold of the charge, in the domain of facts you are supreme.

You are to determine whether the deceased met his

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death at the hands of this defendant, and whether, if he did, under what circumstances he met it; and that determination is to be made by you in the light of the rules of law and the legal definitions given to you in this charge. The Court has every reason to believe that you will give this case the painstaking consideration which it merits.

If you believe any witness has committed deliberate perjury respecting a material matter, then and in that event you are at liberty to wholly disregard the testimony of such witness. You are not obliged as a matter of legal compulsion to disregard portions of the testimony which you believe truthful, that is to say which you credit because you may consider other parts untruthful or intentionally false. It is merely a privilege or liberty that you have of disregarding everything which may be said by a witness whom you may believe to have committed deliberate perjury respecting a material matter.

Now, Gentlemen, if there are any requests, I will consider them.

MR. CLARK: Your Honor, there was just an inadvertent lapse on the part of the Court as to the location of that restaurant. You inadvertently said between 14th and 15th street. It was a mere slip.

THE COURT: I made a mistake in the location, and I am very much obliged to you for calling my attention to

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it. The restaurant is located between 37th and 38th streets.

The matters which you will take into consideration in determining what credence you will give the testimony are matters entirely within your own discretion. You may consider the import, in weighing the evidence, and take into consideration what may be disclosed by the testimony as to the relation of the witness to the controversy, whether biased or unbiased, interested or disinterested, as well as the witness' manner in testifying and the character of the statements made, regarded from the viewpoint of their intrinsic probability or improbability, but the considerations which will influence you in determining what credence you will give to any testimony are matters entirely within your discretion.

Mr. Clark, I am very much obliged to you for having called my attention to that mistake. I suppose, Mr. Clark, there will not be any objection, if these gentlemen desire through the Captain of the court to send some messages to their homes?

MR. CLARK: None whatever.

THE COURT: I take it you do not object, Mr. Brothers?

MR. BROTHERS: No.

MR. BROTHERS: Would there be any objection to have on the record the consent that the jury may have the exhibits in the juryroom, if they desire them, so that if

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counsel are separated, we will not have to send for them?

MR. CLARK: No objection. I wish to hand up this request, which I think you charged in another form. I conceive it to be a highly important request and I should like to have it charged in that form, if the Court sees fit. (Handing paper to Court)

THE COURT: I think I have sufficiently charged it, Mr. Clark, so I will deny it.

MR. CLARK: I would like to have it entered on the record, as I have it there, and respectfully take an exception

(The request reads as follows: "If you believe from the evidence that it is the fact that the defendant had no motive to injure the deceased, that fact is material in determining the guilt of the defendant".)

THE COURT: Now, gentlemen, you may retire.

(The jury retire at 6:25 p. m. The jury return at 8:30 p. m., and the jury's roll is called.)

THE CLERK OF THE COURT: Gentlemen of the jury have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have?

THE CLERK OF THE COURT: How say you, do you find the defendant guilty or not guilty?

THE FOREMAN: Guilty of murder in the second degree.

THE CLERK OF THE COURT: Hearken to your verdict as it stands recorded: You say you find the defendant guilty of murder in the second degree, and so say you all.

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MR. KELLY: Your Honor, will you permit motions to be made in this case tomorrow morning or on the day of sentence, as your Honor may suggest?

THE COURT: Do you want the jury polled?

MR. KELLY: Just as a matter of form I will have them polled.

(At this point the jury is polled, and each juror says individually that the verdict as recorded is his verdict.)

THE CLERK OF THE COURT: Hearken to your verdict as it stands recorded: You say each of you individually find the defendant guilty of murder in the second degree, so say you all.

THE COURT: Mr. Brothers, what is the custom as to making motions?

MR. BROTHERS: The usual motions may be made on the day of sentence, that is what we have been doing.

MR. KELLY: That will be satisfactory.

THE COURT: Your rights will all be reserved. What day shall we name as the day of sentence?

MR. BROTHERS: Say Monday.

(At this point the pedigree of the defendant was taken through an Interpreter, Mr. Themis Tragidis, of 249 West 104th street, who was duly sworn to act as interpreter).

The defendant is remanded until Monday January 17th, 1916, for sentence.

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