

Q What did you do with it? A I gave it up here to the policeman a little while ago.

Q Did you talk to anybody about the case? A No, sir.

Q Have you spoken to anybody about it? A No, sir; I wait down to get my subpoena, ate my breakfast, came up here and I was here at 10 o'clock.

Q When did you go to Fall River? A A few days after, a few days.

Q A few days? A Yes, sir.

Q Who sent you to Fall River? A I went myself, nobody sent me.

Q Who were you afraid of? A I was afraid of them people.

Q What people were you afraid of? A Every one of them.

Q Of every one? A Yes, sir.

Q Why? A Because--

MR. OSBORNE: Objected to.

THE WITNESS: They called me bad names; the policeman here he knows every one of them.

MR. OSBORNE: I object to that.

THE COURT: Objection sustained.

Q Did anybody give you the money to go to Fall River?

A I got the money.

Objected to; objection sustained.

Q When you came to the District Attorney's office, it was before you went to Fall River? A Yes, sir.

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Q Did you come with anybody here? A No, sir.

Q You came alone? A Yes, sir.

Q Did you speak in Arabic or in English? A In Arabic.

Q In Arabic? A Yes, sir.

Q Who did you speak to here in Arabic, at the District Attorney's office? A I was with the priest who was here.

Q What priest? A The priest.

Q What priest? A The brother of John Stephan.

Q One of those in the court room? A Yes, sir.

Q The last man over there? A He swore me to tell the truth.

Q The gentleman with the beard over there? A Yes, sir.

Q Did he interpret for you? A Yes, sir.

Q He interpreted it into English for you from Arabic?

A Yes, sir.

Q Did you tell the District Attorney your story in Arabic or English? A I told him in English.

Q In English? A Yes, sir; and the priest he make me swear, you know, to tell the truth.

Q Put you under oath? A Yes, sir.

Q Did you tell the truth? A Yes, sir.

Q Did you tell the District Attorney that you saw George Zreik stab John Stephan in the back and then shoot at him?

MR. OSBORNE: Objected to.

Q Didn't you tell him that?

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Objected to. Objection sustained.

Q You swear that you did not tell him that?

MR. OSBORNE: He swears he did not.

Q Do you swear now that you did not tell the District Attorney?

Objected to.

THE WITNESS: I never say nothing about that.

What do you try, to put me in a hole?

THE COURT: Is there any question before the Court?

BY MR. TRAIN:

Q Isn't it a fact that you told District Attorney Cardozo that when you stood at the top of the stairs you saw John Stephan stabbed in the back by George Zreik, that he changed his knife for a revolver and then fired again at him? --

A I never told him.

Q Can't you speak out? A I never told him that.

Q You never did? A No, sir.

Q But what you did say was in the presence of Bishop Stephan, wasn't it? A Yes, sir.

Q He was there? A Yes, sir.

Q And he knows what you said? A What I said.

Q Can you read English? A No, sir.

Q You can't read a word? A No, sir.

Q How long after you had been up here with the Bishop--

A No, sir, I was alone.

Q What is that? A I came alone.

Q Now, you say you came alone? A I came here alone.

I seen the Bishop inside.

Q The Bishop was here when you got here? A Yes, sir.

Q How long after it was known you were at the District Attorney's office with Bishop Stephan that you found it convenient to go to Fall River? A I was a long time, for about two weeks after I came here to the District Attorney.

Q Then you went to Fall River? A yes, sir.

CROSS EXAMINATION BY MR. OSBORNE:

Q John Hassoun? A Yes, sir.

Q Where do you live in Fall River? A 330 Flint street, Fall River, Mass.

MR. OSBORNE: The address of this envelope is Assad Shaheen, one of the committee. These people are, I claim, a committee.

MR. TRAIN: We have a statement by Mr. Osborne for the benefit of the jury that he claims certain things. Such statements are incompetent and improper, and I think should be with the rebuke of the Court.

THE COURT: I regret to have to say that it is not the first time that the counsel, in their talking to each other within the hearing of the jury, has merited the rebuke of the Court, and deservedly. I tell the jury to

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pay no attention whatever to what counsel say in these remarks. Counsel are not under oath, they are not witnesses, and no attention must be paid to what they say outside of the evidence adduced by their questions.

MR. OSBORNE: Personally, I shall not merit any remarks from the Court again.

BY MR. OSBORNE:

Q Mr. Hassoun, when you went away to Fall River did you leave your address in New York? A No, sir.

Q How did your friends in New York know how to reach you?

Objected to. Objection sustained.

Q Did you let anybody know where you were going when you went to Fall River? A Shaheen knew my number; I told him I was going to stay in some place.

Q Shaheen knew your number? A Yes, sir.

Q Did you receive letters from Assad Shaheen & Company while you were in Fall River? A Yes, sir.

Q This is one that you handed to me? A Yes, sir.

Q Now, did the District Attorney telegraph for you to come on here? A Yes, sir.

Q Raise your voice. A I got a telegram I don't know from whom.

Q David Adary-- you received a telegram from David Adary to come to New York, did you? A Yes, sir.

Q And the money was sent to you by David Adary? A Yes, sir; \$9.

Q \$9.? A yes, sir.

Q David Adary is with Salim Elias, in this case, is he not, as one of the committee? A I don't know.

Q What is that? A I don't know.

Q He is on the committee that has charge of this case--
Salim Elias and David Adary?

THE COURT: We will suspend here.

MR. OSBORNE: May I respectfully ask the Court to instruct this witness not to speak to anybody about this case until we convene.

THE COURT: He is so instructed.

The Court then admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure and took a recess until 2 o'clock.

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AFTER RECESS.

JOHN HASSOUN, a witness for the People, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. OSBORNE:

Q Assoun, at the time you saw Elias and George go upstairs, where were you? A I was in the store.

Q Where did you say? A I was in the store.

Q In the store? A Yes, sir.

Q How soon after that did you go upstairs? A Two minutes.

Q Two minutes? A Yes, sir.

Q Did you see Koury in the restaurant? Is this the man you talk about (pointing out George Koury)? A Yes, sir.

Q Now, how long after you went up and looked in was it that you saw Elias Zreik come downstairs? A Not quite five minutes.

Q Did you see where he went? A He went down to Sabba's store.

Q Did you see him go into Sabba's store? A Yes, sir.

Q How long did he stay in Sabba's store? A After he went in I did not see him no more.

Q Did you see him when he came out? A No, sir.

Q The next time you saw him was in the drug store?

THE INTERPRETER: He said that he searched three places before he went to the drug store.

Q You went to three places. Did you see Elias Zreik again

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until you went to the drug store? A I did not see him go into the drug store, while I was searching for him I saw him.

Q When you saw him in the drug store did you see a policeman there? A I took the policeman before I had ever seen him.

Q You saw the policeman before you saw Elias Zreik, did you?

A Yes, sir.

Q Did you go upstairs with the police officer, O'Sullivan, at the time when George Zreik was arrested? A After Elias had been arrested, while they were going to 81 Washington street they had arrested George Zreik and was bringing him down.

Q That is not the question I asked you. Will you consent, Mr. Train, that it be stricken out?

THE COURT: Strike out the answer. It is ambiguous, to say the least.

Q Did you go upstairs with the officers and point out George Zreik when he was arrested? Did you or not? A I went upstairs to Mrs. Madjalain's room and asked the lady if there had been any--

Q Never mind that. Did you go up there with that policeman? A Yes, sir.

Q Did you point out George Zreik? A yes, sir; after Elias was arrested.

Q All right, go on. A After Elias was arrested I went upstairs to point out George.

Q To point out George? A yes, sir.

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Q After Elias was arrested? A Yes, sir.

Q Was Galgott and Koury with you at the time you went upstairs with the officer? A Yes, sir.

Q What is that? A Yes, sir.

Q Now, did you tell the officers that Elias and George Zreik came into the restaurant and both had pistols and began shooting? A I tell him that?

Q Did he tell him that? A No, sir.

Q That is all I asked you. Are you the witness that went to the Morgue to point out or identify the body of John Stephan?

A Yes, sir.

Q What's that? A Yes, sir.

Q Did you learn there that there were no bullets found in the body of John Stephan? A He says that as soon as "I saw him I nearly fainted and I knew him although his scalp had been skinned down so far." (Illustrating)

Q Did he find out at the inquest or at the autopsy that no bullets were found in the body of John Stephan? A We said when I went over there I saw nobody-- the policeman just took me in and I went out, that is all I know.

Q Ask him the question again. Did he find out when he was at the autopsy that no bullets were found in the body of John Stephan? A I never saw bullets from the beginning, and I do not know anything about them.

Q Did he find out from Officer O'Sullivan, at the autopsy,

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that no bullets were found in the body of John Stephan? A I did not.

Q Didn't O'Sullivan tell you that no bullets were found in the body of John Stephan?

MR. TRAIN: I object to that.

Q I will put that again. After you came back from that autopsy, did you see Koury? A No, sir.

Q Have you seen him since that time at all, Koury?

THE INTERPRETER: Mr. Osborne, if you will permit me an explanation, the word "Khouri" in Arabic means the priest and if I translate the word as you give it to me he might misunderstand it.

Q I mean George Koury? A No, sir.

Q Did you see Galgoul at any time after you came back from the autopsy? A No, sir.

Q Didn't you see Sarkis Sardi after you came back at any time? A Yes, sir.

Q Did you talk to Sarkis Sardi? A Yes, sir.

Q Did you tell him you had been at the Morgue?

MR. TRAIN: I object to any statement.

MR. OSBORNE: I will come back to it in a minute.

Q Did you see George Nohra, the witness, after you came back from the autopsy on the body of John Stephan? A No, sir.

Q Ask him if he has seen any of these witnesses from the time the autopsy was performed down to the present day?

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A Yes, sir; I have seen them lots of times.

THE SECOND INTERPRETER: He said first, "I seen them all", and then he changed to "I seen them lots of times".

Q Lots of times? A I did not say all; I said I seen them lots of times; I seen them lots of times.

Q Seen them lots of times? A Yes, sir.

Q Now, how soon after you went down to the autopsy on the body of John Stephan,-- how soon did you see any of the witnesses, how soon? Did you understand the question? A I saw them all after I saw that dead body. I had been frightened ever since and when the subject is brought up I almost faint.

Q Now, come back to my question. How soon did you see these witnesses after you got back from the autopsy on the body of John Stephan? A I saw them the next day.

Q Did you ever get any other money from Adary besides that nine dollars? A No, sir; I did not have any money; he set me the ticket to come.

Q This letter or telegram said that he telegraphed you nine dollars. A I owe some money down in Fall River and I can't come down until I pay the money.

Q Did Adary give you any money before you went to Fall River? A No, sir.

Q What work are you doing in Fall River? A I was weaving.

Q Ask him where he saw these witnesses the next day when

he came back from the autopsy? A I saw them on Washington street.

Q Whereabouts on Washington street? A On the street, I don't know where.

Q On the street? A Yes, sir.

Q Did you see them at the office of Salim Elias?

A No, sir.

Q Did you know Salim Elias? A Yes, sir.

Q Did you know Mr. Faour? A Yes, sir.

Q Did you meet the witnesses at any of these houses?

A No, sir; I don't go in them, I seen them on the outside.

Q What is that? A No, sir; I didn't go in them, I seen them on the outside.

Q Outside of what? A On the street.

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Now, did you go with a policeman to the restaurant where Elias was arrested, or to the drug store? A Yes, sir.

Q Did you point him out to the policeman? A I did not pull him out, the policeman pulled him out; I did not pull him.

Q Did you point him out? A Yes, sir.

Q In the drug store? A Right in the office, too.

Q Now, Mr. Osborne asked you if you did not tell the officers that George and Elias came in the restaurant and both

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commenced shooting and you answered no. Do you know Dibs?

A He is a friend of mine.

Q You know he is a friend of this defendant? A Yes, sir.

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

MR. TRAIN: You concede that?

MR. OSBORNE: I do concede that Dibs knows the defendant and is friendly with him. I will concede the same thing about Sardi.

Q Did you tell the officer at the time to which Mr. Osborne referred that you saw George Zreik stab John Stephan in the back and shoot him? A I told the police that George Zreik shot, but I was frightened so I did not know what in the world I was saying.

Q You did tell the police you saw George Zreik shoot?

A I told him there were shots.

Q Did you tell him that George Zreik shot? A I never told him that.

Q Now, did you tell the police that George Zreik shot, yes or no? A No, sir.

Q Well, then, did you tell the jury just now what you told the police that George Zreik shot? A I said I heard the shot, I don't know who shot.

Q Did you just tell the jury that you told the police that George Zreik shot? A From my fright, yes, sir, but I didn't

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know who shot; I was so scared.

Q Now, do you say you told the jury just now that you told the policeman that George Zreik shot because you were frightened? A Yes, sir.

Q So when you told the jury that you told the policeman that George Zreik fired shots you told that to the jury because you were frightened? A I wish to explain.

Q Answer the question? A No, sir.

Q When you told the jury that you told the police that George Zreik shot, was that the truth or not? A Yes, sir; on account of the shots I did see George Zreik shoot.

Q You did see George Zreik shoot? A Yes, sir.

Q Where was he when he shot? A I was going down the steps, when he shot I went down the steps.

Q Where was he? A In the restaurant.

Q Did you see him do anything else? A He was fighting.

Q Did you see him stab anybody? A Yes, sir; I did, but I didn't know who it was.

Q Who did you see George Zreik stab? A I don't know.

Q Why didn't you tell us this morning that you saw George Zreik shoot and stab? A You did not tell me.

Q What is the translation? A You did not tell me; I say you don't tell me and I don't say he did.

Q Why didn't you tell us that this morning? A Because you didn't ask me.

Q Because I didn't ask you? A No, sir.

Q I asked you to tell us everything you saw in the restaurant? A Now you ask me and I answer you.

Q I asked you to tell us everything you saw in the restaurant, didn't I? A No, sir, you don't tell me.

Q I didn't tell you anything. We want you to tell us. Tell the jury. A Why, you have to ask me before I tell; I can't tell myself, because when I tell maybe you don't like it what I said.

Q I like it? A Yes, sir; but you have to ask me.

Q Did you see George Zreik shoot in that restaurant?

A Yes, sir.

Q Did you see him have a knife in his hand? A Yes, sir; he hit with the knife; hit him with the knife before he shot.

Q Before he shot? A He hit with the knife, after he hit with the knife he put it in his pocket, after he put it in his pocket he took the revolver and shot; I don't know who he hit.

Q You don't know who he hit? A No, sir.

Q Now, that is precisely what you told Mr. Cardozo, isn't it?

Objected to. Objection sustained.

Q You came down to the District Attorney's office?

A Yes, sir.

Q You saw this gentleman (pointing to Mr. Cardozo)?

A Yes, sir.

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THE COURT: We will not go into that.

RE CROSS EXAMINATION BY MR. OSBORNE:

Q Did you see a knife in the hand of George Zreik?

A Yes, sir.

Q Raise your voice? A Yes, sir.

Q Did you see a pistol in the hand of George Zreik?

A He put the knife in his pocket and after he raised the knife he took out a revolver.

Q Which hand did he have the knife in? A (No answer.)

Q You saw him put the knife in his pocket? A Yes, sir.

Q Now, what did George Zreik do after he used the knife and the pistol? A He was grabbed by some one, I don't know; when I saw it I went away.

Q Did you see Elias Zreik do anything? A They were gathered together.

Q Did you see Elias Zreik in the restaurant at all?

A Yes, sir.

Q What did you see Elias Zreik do? A They had hold of each other, the whole lot of them.

Q A whole lot of people had hold of each other?

A Yes, sir; the whole lot all together.

Q Did you see Elias Zreik have a revolver? A No, sir.

Q Did you see Elias Zreik shoot? A No, sir.

Q Didn't you tell the officer that George and Elias Zreik

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came in there and began to shoot right away?

MR. TRAIN: I object to that because he has already answered it in the negative.

THE COURT: I think that has been answered. I sustain the objection.

Q Did you tell the officer anything about stabbing at all?

A Yes, sir.

Q You did? A Yes, sir; I did.

Q I mean the officer that you went upstairs with-- so that there won't be any question about it-- I mean the officer you went upstairs with, the one with you when you pointed out George Zreik?

A No, sir; I didn't tell him it.

Q He said he did not tell him? A No, sir. I don't eat for three days I was so scared. At that time when the police went upstairs I didn't tell it for three days afterwards; I met the policeman on the street and told him.

Q Told him what? A About this stabbing.

Q You didn't tell anybody about the stabbing until after the Coroner's inquest or autopsy, I mean?

MR. OSBORNE: That is plain enough. I withdraw the question.

THE COURT: I think you have exhausted this witness.

BY MR. TRAIN:

Q Didn't Dibs and Sabba both come to visit you at Fall River?

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THE COURT: That is opening up, a new question. I would not go into that. I exclude it.

MR. OSBORNE: I do not object to it.

THE COURT: It is unnecessary opening up a new line.

MR. TRAIN: I would like to ask this witness if he did not spend the noon hour and take dinner with Dibs and Sabba.

THE COURT: I will exclude all those questions.

MR. OSBORNE: I do not object to them. I know he did not.

MR. TRAIN: If your Honor please, I object to that statement by Mr. Osborne.

THE COURT: The jury will disregard all these comments. There being no more questions to this witness I will discharge him.

(The Court then admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until Monday morning, October 8th, 1906, at 10.30 o'clock.)

New York, October 8th, 1906.

TRIAL RESUMED.

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

DIRECT EXAMINATION BY MR. TRAIN:

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

Q What precinct were you attached to on the 31st day of January? A The 2nd Precinct.

Q On that day did you arrest the defendant in this case?

MR. OSBORNE: Objected to as calling for a conclusion. I have my reasons for that, or I would not press such a close point.

THE COURT: Objection sustained.

Q Did you see the defendant in this case? A Yes, sir.

Q Where did you see him? A In the drug store at Rector and Washington streets.

Q Who did you go to the drug store with? A Nobody, only myself.

Q In whose company? A Only myself went there.

Q Who was there when you got there besides the defendant?

A Mr. Spingarn, the druggist.

Q Anyone else? A No, sir.

Q Did anyone come in while you were there? A A crowd of people came in.

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Q Where were you just prior to the time you went to the drug store? A I was on post on Greenwich street.

Q Without stating any conversation of any sort, tell us how you came to go to the drug store, what attracted your attention to the drug store? A I met Officers Murphy and O'Sullivan bringing one of the Zreiks--

Q After meeting them-- they had one of the Zreiks in custody? A Yes, sir.

Q Which one? A The younger one, George.

Q After meeting them you went to the drug store? A Because they told me to go down--

Q Never mind what they said. Where did you go after that? A I went to Washington and Rector streets.

Q To what place? A To the drug store.

Q There you found the defendant? A Yes, sir.

Q Did you take him into custody? A Yes, sir.

MR. OSBORNE: I object to that and ask to have the answer stricken out.

THE COURT: Objection sustained.

MR. OSBORNE: State what took place. May I have that answer stricken out?

THE COURT: Yes.

MR. OSBORNE: Please don't answer until the Court passes upon the question. I have not any objection to his telling what he said to Zreik.

MR. TRAIN: I don't care what Zreik said to him.

Q Did you take this defendant to the police station?

Objected to. Objection sustained.

THE COURT: The Court will hear every objection, and there is no other remark necessary except the objection.

If I wish to hear counsel I will invite their views.

Q Did you accompany the defendant to the police station?

MR. OSBORNE: No objection to that.

A Yes, sir.

Q When you got to the station house, what did you do with

him? A I brought him into the sitting room in the station house.

Q At that time did you observe his condition? A Yes, sir.

Q Did you take him anywhere else after taking him to the police station?

MR. OSBORNE: I object to the word taking.

Objection sustained.

Q Did you conduct him to any place? A No, sir.

CROSS EXAMINATION BY MR. OSBORNE:

Q Now, Officer Conroy--

THE COURT: Let us see before you proceed to cross-examine the officer. What has Officer Conroy testified to?

MR. OSBORNE: He said he found Zreik in a drug store and accompanied him to the police station house. That is all.

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THE COURT: Your cross-examination will be limited to that.

MR. OSBORNE: Now, may I respectfully submit to the Court that whether a man is arrested or not depends upon what happens between the officer and the prisoner.

Q On your way from the station house did you see anybody, that is, before you got to Zreik, did you see anybody? A Yes, sir.

Q Who was it? A Officer Murphy and Officer O'Sullivan.

Q Officer Murphy and Officer O'Sullivan? A Yes, sir.

Q They were going to the station house with George Zreik?

A Yes, sir.

Q Did you at that time intend to go to 31 Washington street?

A Yes, sir.

Q On your way to 31 Washington street did you meet somebody? A Yes, sir.

Q Was your attention attracted to the drug store?

A Yes, sir.

Q Then you went in? A No, sir.

Q What is that? A No, sir.

THE COURT: He said no.

Q Didn't you go into the drug store? A Yes, sir.

Q That is what I said. Before you went into the drug store your attention was attracted towards it? A Yes, sir.

Q After you went into the drug store did you find Zreik in

there? A Yes, sir.

THE COURT: Which one?

MR. OSBORNE: Elias Zreik.

Q At that time was he stripped to the buff? A Yes, sir.

Q What do you mean by the buff, the skin? A Yes, sir;
down to the skin.

Q Was Dr. Spingarn present at that time with him? A Yes,
sir.

Q Was Dr. Spingarn examining his wounds?

Objected to. Question excluded.

Q What was Dr. Spingarn and he doing at the time you got
in there? A We was standing one side.

Q Who was? A Dr. Spingarn.

Q Did you tell Elias Zreik that he would have to go to the
station house and get treatment there?

Objected to. Objection sustained. Exception.

MR. OSBORNE: Will the Court hear me on that?

THE COURT: No, not in view of this witness' direct
examination.

MR. OSBORNE: I think I see the point made by the Court.

BY MR. OSBORNE:

Q Was he leaning on your arm going to the station house?

A Yes, sir.

Q When you got to the station house did you tell the
sergeant that he had a bullet wound in his breast and was in need

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of medical attention?

Objected to. Objection sustained. Exception.

Q Did you take him into the back room and put him in a chair?

A Yes, sir.

Q Did you go for an ambulance surgeon? A The sergeant sent for the ambulance.

Q Did the ambulance come in a few minutes to take the defendant to the hospital?

Objected to. Objection sustained.

JOSEPH MAHFOUZ, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Do you speak English at all? A No, sir.

Q Now, Mr. Mahfouz, where do you live? A In New York.

Q What address? A 54 Washington street, and at Brooklyn.

Q How long have you lived in Brooklyn? A I don't know the number, it is on Henry street.

Q Well, does he live in New York or Brooklyn? A I sleep in Brooklyn and my business is at New York.

Q Now, what is your business? A Drummer.

Q Please keep your voice up and speak loud. How long have you been in the United States? A A little over three years.

Q With what firm or house are you employed as a drummer?

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A Salim Elias and T. Abdou.

Q Have you been in their employ ever since you came to the United States? A No, sir.

Q For what other person have you worked? A I was the editor of a paper, I used to have a paper.

Q What was the name of the paper? A El Zeman.

Q How long ago was it that you were the editor of that paper? A I was at that occupation one year, from one January to the next.

Q When did you become a drummer for Salim Elias and T. Abdou?

A About two years.

Q About two years ago? A Yes, sir.

Q Where have you just been? A I was in the country selling.

Q Where? A In Texas and Louisiana.

Q You have come back on a telegram? A Yes, sir.

Q Were you in Sardi's restaurant at 61, Washington street on the evening of January 31st, last? A Yes, sir.

Q What time did you get there? A That day I was feeling indisposed and I went to the restaurant about 6 o'clock in order to take a cup of tea.

Q To take a cup of tea? A Yes, sir.

Q Who was in the restaurant when you got there? A There was not anyone there; there was a woman.

Q What was the woman's name? A Catherine.

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Q Who was she? A Catherine from Zugarta, I don't know her other name.

Q Was she getting her meal in the restaurant? A No, sir; she is the one I told to fix me up a cup of tea.

Q Now, how long did you stay in the restaurant?

THE SECOND INTERPRETER: There was not anybody else in the restaurant but her.

Q How long did you stay there at that time? A I stayed about an hour, perhaps an hour and a half until after she fixed me a cup of tea and some soup afterwards.

Q Who is this Catherine, what has she got to do with the restaurant? A I knew her to be a servant there in the restaurant.

Q A servant? A Yes, sir; in the kitchen.

Q How old is she? A I do not know her age; I have not the book of her age.

Q Do you know Sophie Salim? A No, sir.

Q Now, who was the next person to come into the restaurant, if you remember? A After I came then came the proprietor of the restaurant and some other persons; I did not take any notice to them, and the persons that were seated at the table.

Q How many persons came into the restaurant and sat down and began to eat before you left? A My and George Koury and George Nehra, Kalil Galgoul, Manheem Chabryel and Madowar and the deceased-- and the proprietor of the restaurant was there.

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Q What was his name, Sardi? A Sarkis Sardi.

Q Well, did any other persons come in or go out? A I don't think so.

Q Now, where were all these people that you have mentioned?

A We were sitting at one table.

Q Which table was it? A The table near the window, facing Washington street.

Q With a mirror close to it, which table, the small table?

A Oh, it must have been a double table, I think a table combining two tables.

Q Was it near the main door or far from it, where was it?

A No, sir; it was far from the door; it was near the wall.

Q Where were you sitting, at this table? A I was sitting next to the mirror; the mirror was at my back.

Q Were you the nearest person to the mirror? A I was just right by the mirror almost.

Q Is that near the Washington street wall, in that front of the building? A Yes, sir; I could see Washington street through the window.

Q Was your back or face towards the main entrance?

A My back.

Q Who was next to you on your right? A I think it was Menheem Chabryel and the next to him was Madowar.

Q Who was opposite to you, do you remember? A Opposite me was George Koury.

Q Now, what occurred while you were in the restaurant?

A While were sitting Elias Zreik opened the door and his cousin was close behind him.

Q Now, is Elias Zreik the defendant that you see sitting here? A Yes, sir; that is the one.

Q What did he do, if anything? A He entered with a cane hooked over his arm and his other hand in his pocket.

Q Go on? A And wearing a long overcoat. He walked in until he almost approached the table and he asked, "Who is George KouryAhadny"?

MR. OSBORNE: Who is that?

THE INTERPRETER: That is the name that pertains to George Koury.

THE WITNESS: George Koury arose up and said, "I am he, what do you want." Then he asked, "Who is John Stephan?" And John arose and said, "I am he, what do you want?" And he said, "Are you that insinuated the beard of the Bishop and one to trop over the Greek orthodox." Then he said, "I am going to destroy your religion." And he took hold of John Stephan with one hand and the other upon his throat.

Q What did he say? A He took hold of his throat with one hand, then we got all alarmed and arose and by that time his cousin approached from behind John Stephan and stabbed him in the back twice. Then John Stephan sank this way (illustrating) and

then we got alarmed and arose and then his cousin began shooting. As John was rising again Elias Zreik gave him a blow right here (indicating the chin). Then a general alarm occurred and some were screaming police and others were frightened and we ran to get hold of them and call for the police, and the second occurrence of shooting occurred after that and they escaped.

Q Now, how many shots did George Zreik fire at John Stephan?

A Twice.

Q How far was he from his cousin and John Stephan when he fired? A Not very far, about a distance corresponding from here to here.

MR. TRAIN: He indicates five or six feet.

Q Did you see any revolver in George's hand? A No, sir; I heard the shots only.

Q Did you see a knife in George's right hand? A Yes, sir; I saw him stabbing.

Q Now, while George Zreik was stabbing John Stephan, did anyone have hold of John Stephan? A The big Zreik was holding him.

Q Will you step down here and show how he had hold of him. Put your hand on him.

(The witness illustrates by placing his left hand on the right shoulder of a court officer.)

Q Now, at what point did you at the table arise?

THE INTERPRETER: I did not catch that question.

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Q At what moment in the occurrence did you, who was sitting at the table, get to your seat? A When they came together, I arose.

Q At the beginning? A When they first came together I went up, I arose.

Q Now, when was the second shooting to which you refer?

A After he was stabbed by the knife we got alarmed and arose and got to screaming police and other things and then the second shooting occurred.

Q After the shooting that you have described by George Zreik--

A What do you mean by the shooting?

Q You have said that George Zreik fired two shots at John Stephan after having stabbed him. A Yes, sir.

Q Now, who fired the other shots? A I don't know.

Q Where were they fired, in what part of the room?

A Right at the door, almost.

Q Now, who was at the door when the shots were fired?

A I cannot remember; there was a great alarm and confusion.

Q How many shots were fired at the door? A I think about two.

Q Now, after the shots were fired by George Zreik, what happened to John Stephan? A John Stephan then had one hand up to his side and another here and was going on so (illustrating by a gasp), and his tongue was protruding out of his mouth.

Q Where was he? A There was no particular place, he would

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sit in one chair and arise and sit in another and come back to the chair, he was going from one place to another.

Q Now, where did you go? A I went to Faour and told him that a man was killed, to go and see about it.

Stricken out.

Q Where did you go? A To Faour.

Q To who? A Faour.

Q Faour? A Yes, sir; to his place of business.

Q That is across the street, the man that owns the building?

A No, sir; you can't go down the street, you go up.

Q Now, do you understad this diagram? This is the front of the room, the windows looking out. A Where is the mirror?

Q Here. A There is the mirror. I was sitting there.

(Indicating seat No.6.)

Q You were facing Koury? A Yes, sir; Koury was here and I was here. (Pointing to No.1 for Koury.)

Q Do you understand that this is the spot of the restaurant in the public hall and that here is the door leading into the kitchen? A Yes, sir.

Q That this is the stove? A Yes, sir.

Q Here is the iron post in the middle of the room?

A Yes, sir.

Q Now, put your finger on the spot where the defendant seized hold of John Stephan? A Right about there. (Indicating)

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MR. TRAIN: I place concentric circles there.

Q Where was it that John Stephan fell to the floor?

A After John Stephan was struck by Elias Zreik, what became of John Stephan? A After that I went away.

Q He said there was a shooting and a stabbing by George and that John Stephan sank down and then rose up again and after that Elias struck him in the chin. Now, what happened to John Stephan after the striking in the chin? A He had hold of his throat this way and then he would move from one place to another.

Q When Elias Zreik let go of him, what became of him, what did he do? A After he left go of him he had hold of himself this way (indicating) and he began moving.

Q That is, Stephan had hold of himself? A Yes, sir; and began moving from one place to another.

Q Did he at any time fall down? A I don't remember the time, he was moving from one place to the other.

Q Now, where was it that you saw him with his hands on his neck, John Stephan? A In the same place.

Q In the same place? A Yes, sir.

Q At what place in the room was he when you noticed his hand on his neck? A Right along here somewhere.

Q Between the stove and the mirror? A Yes, sir; right along here.

Q Where? A (Illustrating)

Q Moving around? A Yes, sir.

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Q Now, was the blow struck by the defendant on John Stepha's chin before or after the shots were fired by George Zreik?

A After George stabbed John twice and as he was sinking to the floor, at the same moment almost the shots were fired from George. As he was sinking the shots were fired and as John arose again he received a blow at the hand of Elias.

Q Now, what was the next thing that happened after the blow was struck? A After that there was a general alarm and confusion, screaming for police and doctors.

Q Did you see Elias and George leave the room? A Yes, sir.

Q Which door did they go out of? A The entrance door, the same door that they came in they went out.

Q When they went did either one leave anything in the restaurant? A The smaller one left his hat and returned to take it but he could not get it.

Q Did you see how he came to leave his hat? A How he left it I don't know, but I saw him on the floor trying to get it and there was a crowd there and he could not get it.

MR. OSBORNE: I ask to have that "he could not get it" stricken out.

THE COURT: Strike it out.

Q Did you see that he came back? A Who came back?

Q George Zreik. A Come back where?

Q To get his hat?

MR. OSBORNE: I object to that, his coming back to get

his hat.

MR. TRAIN: I withdraw the question.

Q After he had left the restaurant did he return at any time? A No, sir; not after he went out, but as he was going out he dropped his hat and he returned to get it and could not get it.

CROSS EXAMINATION BY MR. OSBORNE:

Q Mr. Mahfouz, where did you come from that afternoon to go to the restaurant? A When I went to the restaurant I was coming to the store.

Q What store? A 54 Washington street, Salim Elias and T. Abdou.

Q When you got into the restaurant what was the first thing that you did? A The first thing I did I asked for a cup of tea.

Q That was at 5 o'clock, was it? A I do not know the exact time, but nearly, more or less about 5 o'clock.

Q Did you remain there until the two Zreiks came in, or did you go down for any purpose? A No, sir; I remained in the restaurant until they made the soup and got that.

MR. OSBORNE: Now, please strike out that answer.

My question is, did he remain there until George and Elias Zreik came in. You can say yes or no to that.

THE WITNESS: Yes, sir.

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Q Now, who is the first person that came into the restaurant after you got there? A The proprietor of the saloon.

Q Who was the next? A I think George Koury came next.

Q And who next? A I don't remember the details how they came in, but I do remember that John Stephan came last.

Q Came last? A Yes, sir.

Q He was sitting at the table with you? A Yes, sir; I was opposite from George Koury.

Q Who else? A Menhem Ghabryel, David Madwar, George Nohra, Kalil Galgoul and the deceased.

Q And who? A The deceased.

Q Now, who came next to John Stephan? A No one.

Q Now, you were sitting on the other side of the table from Koury? A Yes, sir.

Q Your face was towards Koury? A Yes, sir.

Q Did you see the Zreiks when they came in? A Yes, sir.

Q Did you turn around to see them come in? A I am not nailed to the chair and I can look around.

Q Well, he is not nailed to the chair and I thank him for his kind information and also for his politeness. A He is more thankful.

Q Now, how did you happen to turn around just as these Zreiks were coming in? A When the door was opened I turned to see.

Q Are you sure that the door was opened? A Yes, sir.

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Q Ask him if that is not the first time he has ever said any such thing as that in this case? A (No answer.)

Q Isn't that the first time you testified to any such proposition as that in this case? A (No answer.)

Q Were you examined at the Coroner's inquest?

THE COURT: I will exclude the last question.

Q Were you examined at the Coroner's inquest?

THE COURT: Let us assume that he was.

MR. OSBORNE: I want him to testify to the fact that he was. If it is conceded by Mr. Train I will be obliged to him.

MR. TRAIN: I suppose he was if you say so.

THE COURT: Well, Mr. Osborne, what do you wish to establish here?

MR. OSBORNE: I want to show that at the Coroner's inquest he never mentioned at all the fact of any door being opened.

THE COURT: Why not ask him that question?

MR. OSBORNE: I did ask him that question.

MR. TRAIN: I object to it as immaterial, whether he testified to it or not. He may not have been asked anything about how they came in.

MR. OSBORNE: I will read it.

THE COURT: I will exclude the reading.

MR. OSBORNE: If your Honor please, I am trying to show

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that this witness has changed his testimony.

THE COURT: What you wish to show now is that this witness has testified to some matter here on this trial for the first time since the happening of this affair. Now, ask him that question.

MR. OSBORNE: I did ask him and Mr. Train objected.

THE COURT: I will permit you to ask him that question.

Q Did you testify at the Coroner's inquest when you were under oath, that you saw any door opened when the Zreiks came in?

A If they asked me I answered.

Q Just put that question to him until you get him to say yes or no to it.

MR. TRAIN: I submit that is an answer.

THE COURT: Ask the witness if he has any recollection now that he testified to that matter that the door was opened.

BY MR. OSBORNE:

Q That the door was open when the Zreiks came in.

THE COURT: Have you any recollection now that you testified at the Coroner's inquest that you saw the door opened when the Zreiks came in?

THE WITNESS: I don't think they asked me that question; if they asked me I would have told them.

MR. OSBORNE: May I read the question and answer as put to him and ask him if he testified to it?

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THE COURT: Yes.

Q Now, the first question is, "Was anyone with them when they came in? A No, sir; he did not see anyone at all".

The next question is, "Now, where were they when you first saw them? A They came through the door".

THE COURT: Ask him if he testified to that.

MR. TRAIN: I will concede that he did.

MR. OSBORNE: You concede it and then I will pass on.

MR. TRAIN: Yes, I do.

Q At the Coroner's inquest did you say one word--

MR. TRAIN: If you say he did not I will concede it.

MR. OSBORNE: Now, Mr. Train, I will have to proceed

in my own way.

BY MR. OSBORNE:

Q Now, at the Coroner's inquest, did you say one word about Elias Zreik striking John Stephan?

THE COURT: Do you concede he did not?

MR. TRAIN: If Mr. Osborne says that is so I will concede it.

MR. OSBORNE: Now, I will have to read it and it will all come out.

THE COURT: Mr. Train concedes it if you state it as a fact that the record will show that he did not so state.

MR. OSBORNE: Now, if your Honor please, I will be compelled to ask him if this is not what he did testify to.

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It is very short. "Now, will you go on from there, that is, when they came through the door." This is by Mr. Frank Garvan, "Go on from there and tell exactly what you saw happen after the Zreiks came through the door?"

A Elias Zreik walked up to a position about a yard or a yard and a half from the seat of John Stephan. Q What

did George Zreik do? A George Zreik was coming behind.

Q Well, what happened after they got within a yard and a half of John Stephan? A As he came along there was a cane hanging from his arm and when he got about a yard and a half from the table, or the position of John Stephan, he asked, who is George Koury, then he asked who is John Stephan; they stood up and said, 'We are they, what do you want'; then he said, 'Do you slander the beard of the Bishop;' then they answered, 'What is that to you,' and he said, 'I am going to break your head.' The testimony here is 'I am going to destroy your religion'. "He approached John Stephan and grabbed him by the shoulder and pulled him towards him.

"THE INTERPRETER: Right after he said, 'I want to break your head the witness said he used violent language.

"Q Who? THE INTERPRETER: Zreik. Q Can you remember the language? A I don't remember." Now, Mr. Frank Garvan said, "Let me represent John Stephan, the deceased, and you represent Elias Zreik and show me just exactly"--

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THE COURT: We have gone far enough.

MR. OSBORNE: If your Honor please, I have not finished this.

THE COURT: I will not permit it.

Mr. Train, from your point of view, do you see any impropriety in conceding that such testimony was given at the Coroner's inquest as Mr. Osborne has read?

MR. TRAIN: None whatever.

MR. OSBORNE: I want to read the rest of it. It will only take me a second and it will make it perfectly clear.

MR. TRAIN: Read the testimony and don't tell what Mr. Garvan did.

MR. OSBORNE: Now, Mr. Garvan's question is, "Let me represent John Stephan the deceased, and you represent Elias Zreik and show me just exactly what Elias did to John Stephan, exactly what he did? A When he came and stood there and after what was said about the beard of the Bishop, he approached quickly, took hold of him by the shoulder and grabbed him by the throat. Q What did George Zreik do, if anything? A When Elias Zreik and George were together, or rather when Eliashad hold of John by the shoulder and throat, John at that time had hold of him and was struggling, they did not stay in one particular place but were moving here and there and George at that time, George Zreik stabbed Stephan's twice. Q What happened

then? A During this incident there was a great noise in the room, some were screaming for police and others were excited; everybody at the table stood up, George fired two shots, just at that moment or near that moment Stephan sank down. Q In what direction did George aim his shot?

A Towards John Stephan. Q As he sank down then what happened? A After he sank down he rose up again and the Zreiks had gone away." That is the whole account.

THE COURT: You concede that?

MR. TRAIN: Yes, sir.

MR. OSBORNE: You concede that the witness testified in that way.

BY MR. OSBORNE:

Q Now, did you see a pistol in the hand of Elias Zreik?

A No, sir.

Q Did you see any weapon in his hand at all? A No, sir.

Q You saw a cane hanging on his arm?

THE SECOND INTERPRETER: The other hand is in his pocket.

MR. OSBORNE: Will you concede that at the time he told his story in the District Attorney's office, on Saturday, February 3rd, he never mentioned the striking by Elias Zreik?

MR. TRAIN: I don't know anything about it.

MR. OSBORNE: Let me have his statement.

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MR. TRAM: I don't know that there is any such.

BY MR. OSBORNE:

Q You went there to the District Attorney's office on the 3rd of February, didn't you, Saturday, February 3rd? A I went once, I don't remember just the time.

Q Didn't you go from the funeral of John Stephan at 81 Washington street? A Yes, sir; I went from the funeral, the police took me and we went.

Q From 81 Washington street? A No, sir; there is a place, some kind of an office, we went down there, opposite the church, and that is where the police took me.

Q It was from Washington street that he went? A Yes, sir.

Q Answer the question directly. Now, ask him was Nohra with him when he came to the District Attorney's office?

A I think he was.

Q Don't you know it? A I remember that I went with George one time, I don't know whether it was the first or second time.

Q Was Officer Cohen with you? A I don't know their names; I know two.

Q Ask him who it was that gave his name to the police as a witness? A I don't know.

Q Wasn't it Mr. Faour? A I don't know who it was.

Q Do you know where the police got your name as a witness?

A Faour pointed me out to him and the police went to me and got me.

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Q Mr. Faour pointed you out, that is your understanding of the testimony; isn't it?

MR. TRAIN: I think everybody understands that.

Q How long have you known George Nohra? A Since I came to New York, about two years and a half.

Q Did you and George Nohra ever live together in the same place? A He was a truckman and I was the editor of a paper.

Q Did you and George Nohra ever live together? A No, sir; I living at one place and he at another.

Q Where did you live on the 31st of January, 1900?

A At Brooklyn.

Q In Brooklyn? A Yes, sir.

Q Now, were you in the habit of going to Sarkis Sardi's restaurant to get your meals? A Yes, sir.

Q At the time when Mr. Faour pointed you out as a witness, did he point out George Nohra also to the police? A I don't know anything about any other-- I know about myself.

Q Now, weren't you and George Nohra together at this funeral and didn't you both go to the District Attorney's office together? Don't you recollect that? Put that question to him and ask him if he don't know that the first time that he went to the District Attorney's office he went with George Nohra?

A (No answer.)

Q Ask him if he doesn't know that at that time, when he first went to the District Attorney's office, he went with George

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Nohra?

MR. TRAIN: I will concede that he came with Nohra if you want it that way.

MR. OSBORNE: It is conceded by the District Attorney that the first time that he went to the District Attorney's office he came with George Nohra.

MR. TRAIN: Subject to correction if it is not so.

Q Now, what is your full name? A Joseph Mahfouz-- my general name is Joseph Mahfouz, but my full name is Joseph Elkourie Michael Mahfouz.

Q He goes by the name of Joseph Mahfouz? A Yes, sir.

Q Is that right? A Yes, sir.

Q When you first came to this country you landed in Louisiana, didn't you? A Yes, sir.

Q You were a peddler, were you? A Yes, sir.

Q You became the editor of a newspaper, did you print it yourself or just simply write the newspaper and have somebody else print it? A No, sir; I used to print it at "Al Moheeb".

Q Where were you the editor of a newspaper? A Here in New York.

Q New York City? A Yes, sir.

Q How long were you able to keep that up? A About one year.

Q Then you gave that up, did you? A Yes, sir.

Q Then you became a salesman, did you? A Yes, sir.

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Q Have you been working for the same man ever since?

A Yes, sir.

Q Did George Koury work for the same person that you do?

A He was there.

Q How long did you and George Koury work together?

A Perhaps a little over a year.

Q Do you live with George Koury? A I ~~was~~ was in George Koury's house, but George Koury and I had stayed together at the house of the proprietor of the store, our employer.

Q You and George Koury lived together at the house of Salim Elias? A Yes, sir.

Q Were you living there at the time that John Stephan died?

A Yes, sir.

Q How long did you and George Koury live together?

A It was very irregular, sometimes we stayed together a month and then a month and a half and he would go out and I would remain in and I would go out and he would stay in.

Q Did you occupy the same room? A Yes, sir; in the same room.

Q Now, after John Stephan was shot did you and George Koury talk over what happened? A No, sir; we did not talk matters over at all.

Q Did you tell this story that you told here to-day to any person between the time of the killing of John Stephan down to the time that you told it to the officers who brought you to the

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District Attorney's office? A Yes, sir; I told a whole lot of people; we were going in a boat to Brooklyn after this thing occurred and they were talking about it.

Q Tell me somebody you told it to? A I remember I told it briefly to Faour and to my employer, and as we were on the boat to Mr. Javal, these people I do remember; the others I don't remember.

Q Now, did you tell the officers down at the District Attorney's office your story of what you knew about this case?

A I don't know how to talk to them; I sort of made them understand by motions.

Q Did you say anything about EliasZreik having struck John Stephan?

Objected to. Objection sustained. Exception.

Q When you went to the District Attorney's office, did you tell the young man that took your statement, either Mr. Garvan or Mr. Cardozo, whichever one it was, that EliasZreik had struck John Stephan?

Objected to. Objection sustained. Exception.

Q Were you present at the Morgue on the second examination of John Stephan's body by Dr. Williams and Dr. Massour?

A No, sir.

Q Did you hear the result of that examination from anybody?

A No, sir; except in the Coroner's trial, down here in the court.

Q Not one person in the Syrian colony told him that no

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bullets were found in the body of John Stephan before he went to the District Attorney's office? A No, sir.

Q How long had you known John Stephan? A Twelve or thirteen years.

Q How long had John Stephan been in the city before he was killed? A About two weeks.

Q How long had he been away from the city before that time? A I don't know.

Q About three years? A I don't know; I left him a long time ago, and when he came back the last time I don't know when he came and when he went or when he came last; I left him long ago at the old country.

Q Did you tell anybody that night about the killing of John Stephan or that you saw it, to any of the policeman?

A There was an old man, an old policeman that I told that night, but I told him by motions.

Q What is his name? A I don't know; I did not baptize him.

Q You told him by motions only? A Yes, sir.

Q Was that in the room? A Yes, sir; in the room where the killing occurred.

Q About what time?

THE COURT: In fairness to this witness it should appear on the record that the witness could not speak intelligently to this policeman.

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Q What time was that? A After the Zreiks left and the police came.

Q Was it either Officer Murphy or O'Sullivan that you told it to?

MR. TRAIN: I object to that because he says he don't know the officer's name.

THE COURT: He answers now that he does not know.

THE WITNESS: I don't know their names.

Q Were you in Sarkis Sardi's restaurant on the Friday, the day before the funeral? A No, sir; after John Stephan was killed I never returned to that restaurant-- I never returned to that restaurant.

Q Now, was either of these two officers (pointing to Officer O'Sullivan and Officer Murphy)? A (No answer.)

Q Just stand around and face this witness. Can you see these two men there? A Yes, sir.

Q Can you see them? A Yes, sir.

Q Now, did you see them there that night? A No, sir.

Q You did not see them? A No, sir.

Q Neither one of them? A No, sir; the man that I saw was an old man.

Q Now, where did you go immediately after the killing?

A I went down and straightforth went to Faour's house and told him.

Q Never mind what you told him. When did you leave the

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restaurant, how soon after the Zreiks left? A After the police came, I was afraid to go down, after the policeman came, the old man, I went down.

Q Why, these are the policemen that came?

MR. TRAIN: I object to any statement.

THE COURT: That is argumentative. This witness says he did not see either one of these officers there.

Q Didn't you say that you didn't see either of these two officers there?

THE COURT: He didn't say that. It is apparent to the Court and jury.

MR. OSBORNE: That he did say that?

THE COURT: Yes.

Q How soon after the officers got there did you leave?

A Three or four or five minutes.

Q Did you see the officers when they arrested George Zreik?

A No, sir.

Q Had you gone by the time the officers arrested George Zreik? A I never knew when they arrested George Zreik; I went immediately to Faour and told him a man was killed and for him to attend to him.

Q How soon after you got to Faour's was it that you returned to 81 Washington street? A I never returned.

Q You never returned that night? A No, sir.

Q Where was this old officer that you speak of, that you

made signs to, where was he? A Right by the door, right at the table, close to the door.

Q In the restaurant? A yes, sir.

Q Then you did go back to 81 Washington street, that night?

A No, sir.

Q When was it that you told that to that old officer?

A When he came, after he came I told him.

HARRY McCUTCHEON, a witness called on behalf
of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Officer, you are attached to the Second Precinct?

A I am.

Q Were you so attached in February, 1906? A I was.

Q Did you go to the premises 81 Washington street and
examine the walls and ceilings of Sarkis Sargi's restaurant?

A I did.

Q What date was that? A That was on the 6th or 7th of
February.

Q Now, did you find on those walls or on the ceiling or
on the floor or anywhere else marks which you believed to be
bullet marks? A I did.

Q How many? A One.

Q And no others? A That is all.

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Q Anywhere in the room? A No, sir.

Q Or in the entry? A No, sir.

Q Or the public hall? A No, sir.

Q So that the only mark on that floor or in the public hall, the passage and restaurant that you found, which you believed to be a bullet hole,-- there was simply one? A Yes, sir.

Q Now, where was that one? A That was on the ceiling about ten feet from the north wall.

Q In the middle of the room? A Well, no, it was in the center, yes, sir.

Q In the center of the room? A Yes, sir; almost the center.

Q Now, I want you to describe as nearly as you can just where in the ceiling this bullet hole was? A Well, it was about two-thirds across the room, about ten feet from the north wall, south.

Q In a line with what object-- can you describe it in that way? A Well, it was not directly in line with the door but it was--

Q You mean the door into the passage? A Yes, sir; the entrance; it was almost directly opposite the door leading from the rooms in the back.

Q Almost directly opposite the door leading into the kitchen, that is the room you mean? A Yes, sir.

Q So much for that. Now, what was its latitude, so to

Q speak, how was it in relation to the stove or the iron post?

A Well, it was between the stove and the wall.

Q It was between the stove and the wall? A Yes, sir.

Q Now, here is a diagram. Have you ever seen this?

A No, sir.

Q Well, here is the big table, here is the kitchen, here is the door into the kitchen? A Yes, sir.

Q Just arrange it any way you want. Here is the door you came in? A Yes, sir.

Q Here is the stove and here is the big table, here is the mirror? A Yes, sir.

Q Here is the door leading into the kitchen? A yes, sir.

Q Now, just put that pencil point approximately where that was? A (Witness indicates.) I should judge it was about around there.

Q There? A Yes, sir; I think just where that round hole is.

Q Now, this board which I show you is a board which you removed from the ceiling, it was in the ceiling that way (illustrating)? A yes, sir; that is the board, yes, sir.

Q What was the direction when that was in the wall, what was the direction? A Well, the bullet took about that course (indicating).

Q Now, show us the direction. Take this and use it as a

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ruler and arrange that board as a ruler to show the course of that bullet? A (Witness indicates.)

MR. TRAIN: Now, I have drawn a long pencil line, Mr. Osborne, to show the general course of that bullet. That may be marked "X" and "Y".

MR. OSBORNE: Suppose you explain it to the jury.

MR. TRAIN: The officer says that in the ceiling he found the only mark he believed to be made by a bullet, and that that bullet, from his experience, apparently came in that direction when it struck the ceiling.

MR. OSBORNE: Here is where it was in the ceiling.

(Indicating)

MR. TRAIN: Yes; imbedded in the ceiling just right over the spot where one witness said that Elias Zreik was holding John Stephan, I don't know which witness it was now.

The piece of board referred to is admitted in evidence and marked People's Exhibit No. 2.

CROSS EXAMINATION BY MR. OSBORNE:

Q I understood you to say that the bullet's direction started from about No. 4?

MR. TRAIN: He did not pretend to say how it started. He said where it struck. It must have been fired in that line somewhere.

Q In a line drawn from about No. 4 in the direction of the

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iron post, is that right? A I don't know where it was fired from

Q I know you don't, but fired in that line of direction?

A Yes, sir.

Q It struck the ceiling at about the place indicated here?

A Yes, sir; it did.

Q Do you know which side of this board was towards the public entrance? A The side that you have down.

Q This is the public hallway, isn't it? A Yes, sir.

Q Now, you see here is the public entrance to the restaurant? A Yes, sir.

Q Here is the entrance going to the kitchen? A Yes, sir; that's it.

Q That is the way it was, wasn't it (indicating)? A That is the way, yes, sir.

MR. OSBORNE: Indicating the slot with the knot in it-- that was parallel with the public hallway and the one next to the public hallway?

THE WITNESS: Yes, sir, next to the public hallway.

Q The tongue of the wood was next to the public hall?

A Yes, sir.

Q The painted part being down? A Yes, sir.

Q Is that right? A Yes, sir.

Q You made a search in the hallway and passageway and room for bullet marks, didn't you? A Yes, sir.

Q That is the only one you found? A Yes, sir.

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MR. TRAIN: That is all. The People rest.

MR. OSBORNE: If your Honor please, I respectfully ask your Honor to take from the consideration of the jury the charge of murder in the first degree.

Motion denied. / Exception.

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Mr. James W. Osborne opened the case on behalf of the defendant as follows:

May it please the Court, you Mr. Foreman and each of you, gentlemen of the jury:

There were several remarks in the opening address of Mr. Train that I agree with, and on those propositions that I do agree with him, in order to save valuable time, I might as well mention them now and then pass on to those things that I dispute.

Now, on page 9 of his opening address he said as follows:

"Now, there seems to be no doubt that for some time past there has been in the Syrian colony of New York a somewhat bitter religious feud." That is true.

"They have had from time to time encounters arising out of the feeling which existed between the two elements."

I don't think he stated that quite accurately.

Now, he also said, "There was a large table in the room at which there were seven men, probably more."

I agree with that proposition too; there were more than seven.

Now, he said also, and this I agree with: "You have a somewhat difficult task to perform, gentlemen, because in the first instance you are dealing with a race or a nationality which is excitable and which is animated by a

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feeling in regard to their religion that is extremely unusual in Occidental countries." That is, Western countries.

"Those of you who have studied the wars in the Far East, who are familiar with the history of Egypt, Syria and Turkey, will appreciate what I mean. Here are a class of men who are just as much Syrians as their countrymen who remain in Syria, who bring with them to the United States all their customs, who rarely become able to speak the English language with any degree of fluency, who retain all their national characteristics, who herd together."

I agree with all of that, except so far as it is applicable to my client, the defendant, Elias Zreik, and I state to you, with absolute assurance, that he never has had a fight with anybody since he has been in the United States, as far as I know; that he has never had the slightest part or parcel in any one of these religious controversies, not in the least; that he has always been for peace, always. He will be put on the stand, and you, yourselves, will see him. I will examine him and Mr. Train will cross examine him. I say to you that he has not the slightest ill-feeling towards anybody on account of his religion, not the least bit. And, as you will see, as we proceed in this case this religious feeling, in that sense, was not in any way caused by the defendant, as I will demonstrate.

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It is true that the colony was divided into factions and that there were many bitter fights between them, but these fights did not grow out of that particular view, though all the witnesses who appear against Elias Zreik belong to this one faction and are all bitter towards him, the Greek Orthodox Church, to which he belongs. He himself has never been actuated, nor was not on that night actuated by the slightest feeling against the religion of the deceased, not a bit, as you will see.

Now, Mr. Train said that the defendant "is charged with having killed John Stephan by strangling, for that is the way John Stephan came to his death."

I will produce evidence in this case from my physicians who will testify positively that it is impossible to strangle a man in the manner described by the witnesses for the state without leaving marks on his throat. I ask Mr. Train to call for Dr. Schultze, the Coroner's doctor, and see if he will dispute that proposition. I will produce medical testimony that is absolutely incontrovertible that you cannot choke a man with your hands and kill him without leaving marks of the fingers on his throat.

Now, Mr. Train said that the whole thing occurred in a brief moment of time. Mr. Train in his opening said that and I agree with him there. This affair happened, just as Madovar stated, in a very brief moment of time, and

so the man could not have been strangled by Elias Zreik. I will say here now that I believe that as nearly as a mathematical proposition can be made clear by human testimony, I will show that Elias Zreik never touched John Stephan nor George either. I will prove that as far as it can be done by human testimony.

I am going to call as my witnesses in this case, gentlemen of the jury, the physical facts that have been put in evidence by the People, the physical facts. Circumstantial evidence is called upon often to convict people. Many people are prejudiced against circumstantial evidence because they don't believe in it. My God, what would innocents do without circumstantial evidence. It is the circumstances in this case that will prove the defendant's innocence beyond any question and those are the witnesses I am going to call particularly.

Now, there is one thing right here that we can agree on and that is that bullet mark right there. It shows, as Mr. Train said in his opening, that a bullet was fired from a spot at which was neither George nor Elias Zreik. He knew it and he knew that he had to admit it. What is the deduction from that,-- that every one of the witnesses for the Prosecution swore to a deliberate falsehood, because each one of them swore, as far as I remember, that not a shot was fired on their side. Right there you begin to see

the motive for this whole tale that was told to you. Right there, that little bullet mark, I call as my first witness. That itself shows that the shot was fired from the direction of that table, right there. The Zreiks were over here and could not have fired it. Thank God for that witness that cannot be sworn out of this case. You start right with that, gentlemen, and you start with another little physical fact in this case that I had a great deal of trouble to get out in evidence, and that is the Coroner's report that was filed by Dr. Schultze. Those are two physical facts that I begin with.

Now, Elias Zreik had a bullet wound in him. He was shot by somebody at that table. Now, what is Eastern mind going to do, not the Occidental, good old American mind that I know you are working with, but what are these fellows going to do? Are they going to admit that they shot Elias Zreik? He was shot over the heart and spent two or three weeks in the hospital. Are they going to admit that they nearly killed him? No. What have they got to do? They must then bring in two men; they can't get out of it; because they have got to have somebody there to shoot Elias Zreik. That is the necessities of their case. I want you to start with the assumption that Elias Zreik was shot and shot by one of these men at the table. Then, gentlemen, you have got the whole explanation

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of this case and I don't need to talk to you any more.

Mr. Train agrees with me on that proposition and I am going to read you what he said. I want you to pay particular attention to what Mr. Train says here because we agree on this proposition. "The defendant was seen to seize him by the throat and yet firearms were being discharged, a knife was being used and half the people in the restaurant thought John Stephan had been killed by shooting, and so firmly convinced were certain of these people that he had been shot to death that even when the autopsy was performed and he was found to have been stabbed and strangled these men persisted that they saw him shot and would not believe that he had come to his death in any other way and insisted upon another autopsy being performed at which their own Syrian doctor would be present."

Some of these witnesses, according to Mr. Train, went on, as he said, and changed their story when they were confronted with the fact that no bullet would was found. He says they changed their story because they believed it to be in the cause of justice. I will have my comments to make on a man who will change his sworn testimony in a murder case because of "the cause of justice" and commits perjury.

MR. TRAIN: You don't mean to suggest that any of the witnesses that I have called did that?

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MR. OSBORNE: You promised to call them but you did not and you can make your explanation to this jury later on why you did not keep your promise.

MR. TRAIN: I deny that.

MR. OSBORNE: I beg pardon, Mr. Train, you did say it and I will read it to you.

MR. TRAIN: I said that some of them had changed their testimony.

MR. OSBORNE: He admits that they all changed their story. It is conceded then that these witnesses first came down and charged Zreik with shooting up the place and then changed their testimony.

This is the simplest case I think you gentlemen ever will have while you live.

Why, gentlemen of the jury, if you ever represented a man on trial for his life and you knew that a lot of people were willing to change their testimony to meet any emergency you would lie awake all night, you could not sleep. These men who were willing to change their testimony come here to swear a man's life away, according to Mr. Train's own statement.

Now, I am going to show you, gentlemen, where they changed their testimony, why they do it and the necessity for it. If I don't do that I will not have fulfilled my duty by my client. I can do it without any trouble. You

can see the kind of people these are; you know they are not cultivated people; they are not brilliant people though they are cunning. When, for instance, they were building this story up they did not take into account that bullet wound in the wood. There are two or three other things which I desire to show you they did not take into account. Here is what Mr. Train said: "I believe that the chances are that after the attack by the defendant on John Stephan guns were used in the restaurant, naturally, of course, that is justifiable-- I don't believe that these two men could have entered the restaurant and accomplished their purpose without meeting with resistance or at least if not with resistance with some effort to retaliate after the act had been accomplished. It would not be human nature and it certainly would not be Syrian human nature. We made a most careful examination of the premises and found in the walls a bullet hole which seemed to show that a pistol had been discharged from some other point in the restaurant than that at which George Zreik and Elias Zreik stood."

Now, that is conceded on both sides of this case, "There is evidence that the defendant was found to have a bullet wound over his heart and that he was in a drug store on Washington street having that wound attended to when he was arrested."

That last part I disagree with. He never was arrested

in the drug store; never.

Now, gentlemen, you see where we start from. Mr. Train and I start together. Elias Zreik is shot, he is shot by one of the men at that table; he is shot over the heart and he is in danger of death. Now, what are these Eastern people going to do? What was Madewar doing up at 3 o'clock that morning? Did you get any information why he stayed up until 3 o'clock that morning and did not go home to Brooklyn? We claim that Madewar shot the defendant. It is conceded that somebody at that table shot him. Now, why did they do that? They had to place two men in that room and they had to place a pistol in the hand of that other man and they had to come here with their cock-and-bull story about the man walking up, stabbing the man twice, then walking back, turning around and shooting him. My goodness, if that came out in the Arabian Nights, I might believe it. If you have another man, holding him by the throat, and you have a knife here pounding him in the back, why do you want to walk away, turn around here and fire at him with a pistol? That is silly. They had to do that in order to account for the bullet wound in the back and they had to account for the bullet wound in the wood and the bullet wound in Elias' chest and they had to put it in the hand of another man and then claim that Elias was accidentally shot by George. That is as clear as can be.

Q Now, let me show you how they started their story. Dr. Schultze, the Coroner's Physician, filed a report. I have got that report in evidence, thank God. It is a public document. These fellows told that story to the police and they believed it was a case of shooting only. That was before the doctor filed that report. There were shots fired. John Stephan was dead. Spingarn comes upon the scene and finds what he believes to be a bullet wound in his neck. They knew that there had been shooting. Stephan is dead and so they claim that Zreik shot him.

Now, gentlemen, I call another witness in this case, and I am going to leave it to the honor and conscience of every one of my American citizens here, I don't want to exaggerate or go too far, but I don't believe that there is a man in the jury box that when I state the simple proposition, which is not denied in this case, that will not leave that jury box this minute without saying that there was a third man there who killed John Stephan.

Now, why do I say that? On John Stephan's face, on the left side was found a long cut, going down to the bone, and Dr. Schultze, when he made his report, failed to put that on his report, so that when these fellows, when they were building up their story, only had to account for stab wounds and strangling and they accounted for the strangling by the catching at the throat and accounted for the stabbing

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by saying that George Zreik put a knife in his back. Now, gentlemen, I ask you wasn't there somebody to plant that knife wound in the face? Who did it? George didn't do it, because they have sworn, with the greatest degree of care, that George went up, stabbed him twice in the back, they then saw George walk away and fire two pistol shots. Elias didn't do it because Elias didn't have any weapon in his hand at all.

Now, gentlemen of the jury, when they first concocted that story they did not know of that wound and that makes me make another deduction. According to that story, that knife wound was put there by a third man. You saw them describe exactly what Elias did. They say that George stabbed him in the back, walked away and then fired at him. You saw them lying right here and building up their story before the jury. You saw it. You don't need to have Mr. Train admit that they are willing to do it nor you don't need me to tell you that they are willing to do it. George Nohra came on this stand and how did he attempt to account for that? He said Elias did it; that was an attempt to account for that, after he found out at the Coroner's inquest, which was the first time that Schultze publicly testified to it, the presence of that wound. Nohra found out he had made a dreadful blunder and so he comes here and prepares to account for it, but he didn't have the courage

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to swear up to the knife. Right here you saw him build that up. I tell you, gentlemen of the jury, that Nohra was not there that night at all. He got into this case on Saturday. Who is the other witness who attempts to build that up? The witness Mahfouz, and he says that Elias had no weapon. Now, I will produce to you overwhelming medical testimony in this case and I will prove to you that such a wound could not be made with a blow of the fist. It is impossible. Now, you see just how this story was developed. We have the Coroner's report and thank God for it.

Now, I want to congratulate Mr. Train and I want to say that Mr. Train has behaved in a most honorable way, because if he had just let these witnesses loose they would have come here with a knife in their hands and would have seen Elias Zreik strike him in spite of the fact that they had sworn differently at the Coroner's inquest.

Now, let us go on.

Now, this shows, gentlemen, the presence of a third witness, if you believe the story of the Prosecution, because admitting all that they swore that George did and all that Elias did, neither Elias nor George inflicted that knife wound there.

Now, let us go on. I could admit, as far as I am concerned, everything that is sworn to against both my

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clients and yet neither one of them killed John Stephan, for this reason, the doctors swear positively that the knife wound did not kill him and the doctors will overwhelmingly testify that you cannot strangle a man with your fingers that way without leaving marks. And did you hear the wise Judge, from his own great knowledge say to me, "Hadn't you better ask about the mechanical means of strangulation?" I was afraid to do it; I was afraid to do it at that time for fear they would build their story up to fit any kind of testimony that might come into the case.

What is the true explanation of that matter? All the witnesses who were there, Galgoul, Koury and Madowar were in a royal Syrian fight; that Elias Zreik, this great, big, good natured chap, walked into that restaurant without any weapon in his hand at all, walked in because, as he came upstairs, somebody hollered to him and said, "There is Zreik now," and being addressed and this being a public restaurant, he had a right to walk into that room. Now, didn't you notice this last witness', Mahfouz's, contribution to this case, something which had never been testified to by any witness, that the door was shut? I will also call your attention to one other witness, Ganim, who swore it was open and who looked out. I must call your attention right there to Mahfouz's contribution to help along this man to the death chair. Elias walked in because he was addressed

and when he got in he got into a fight, a royal fight, with Koury. This quarrel was between him and Koury. Galgoul was on the other side and Madowar shot him, and when Madowar shot him he walked downstairs. He didn't know John Stephan; he did not know John Stephan was in town. According to their own story John Stephan was here two weeks and John Stephan never was mixed up in any of these quarrels at all, not a bit; he had been away for three years according to their own testimony. This man had not the slightest feeling against him. He doesn't know how Stephan came to his death there, but these people that were engaged in this fight know what took place and know what happened to Elias Zreik while they were fighting. You know very well that in a great big restaurant like that, with a whole lot of Syrians there are liable to be many fights. There was a little fellow named Gahut who got into the fight with John Stephan, and stabbed him, and, according to our testimony, strangled him in a way that a man could be strangled without leaving marks. Now, that is the truth. Now, these witnesses never could have told this story about coming in and shooting up the restaurant if they hadn't seen it. That is the first point and Mr. Train admits that they did. If they had seen it that would account for this wound on his face which they did not know of until Dr. Schultze testified at the Coroner's court. His first report did not

contain it. But there was a dead man; Dr. Spingarn said that he had found a bullet in him; they had been using pistols and the shots had been fired by them, and Elias Zreik was wounded over the heart and they had to account for it. That accounts for the concoction of this whole story.

I want to say to you, gentlemen of the jury, that you won't find any physical facts in this case except those that support my position. No weapon was found on Elias Zreik; no weapon was found on George Zreik. There was no weapon on Elias Zreik before he went upstairs and he will tell you why he was going upstairs. What was the last thing he did before he went upstairs? He stopped and had a pleasant chat with a couple of policemen on the corner, gave them his business address in Brooklyn and talked to them about his camel. Now, gentlemen, I say that that physical fact is absolutely inconsistent with the idea that he was going up there to commit a murder. Outside of the Arabian Nights did you ever hear of a man about to commit an assassination giving his name and address to the nearest policeman? Here is big Elias sailing along, he meets two policemen on the corner, and, with murder in his heart, and according to the Prosecution driven by religious frenzy, to give his address in Brooklyn to the policemen, walks one hundred feet away and commits murder, and, what is the next thing you see him do

walking out, not running, walking out to the nearest drug store where he had been known for ten years and having his wound treated. Does that tend to show that that man had murder in his heart? I demand; and I say the word demand in the softest way I can say it, but I pray you, gentlemen of the jury, to take that physical fact into

consideration. He made no effort to escape. Now, as to George, they claim that he was a diabolical murderer too. What did he do? He went upstairs twenty feet away and stayed in a room with the door unlocked, waiting there to be taken to the electric chair, with the hallway absolutely open and a door where he could have gotten away. I call all these physical facts as witnesses.

I will call, as I told you, my witnesses and we will show as I have described here, that the witnesses for the People never could have seen this fight because if they had they would have described it as having occurred in some way that would have accounted for these wounds that actually were inflicted.

Now, gentlemen of the jury, I say to you that I believe that I will prove as clearly as a man can prove anything that is not mathematical, that Elias Zreik never put his hands on John Stephan at all.

The Court admonishes the jury in accordance with Section 41b of the Code of Criminal Procedure and took a recess until 2 o'clock.

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AFTER RECESS.

HAMILTON WILLIAMS, a witness for the Defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. OSBORNE:

Q Dr. Williams, you are a graduated physician, are you?

A Yes, sir.

Q Sir? A Yes, sir.

Q Were you for some years connected with the Coroner's Office? A Four years and four months.

Q What was your position there? A Coroner's Physician.

Q Where were you graduated in medicine? A Dublin; in Dublin, at the Kings and Queens College of Physicians.

Q How long have you been in New York County? A New York County?

Q New York City? A Well, the Greater New York altogether about 27 years, 26 or 27.

Q During that time you have been a regular practitioner of medicine? A Yes, sir.

Q Have you performed many autopsies? A Quite a number.

Q How many? A Well, including autopsies that I was present at and those in which I operated some thousands.

Q Thousands? A Yes, sir; more than a thousand, some thousands.

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Q You have testified in court in many cases, have you?

A Yes, sir.

Q In prominent cases? A Yes, sir.

Q Among others in the Patrick case, have you not?

A Yes, sir.

Q Testified for the People there? A Yes, I did, sir.

Q Now, did you attend what might be called the second examination of the body of John Stephan? A Yes, sir.

Q Who was present at that time? A Mr. Garvan, Dr. Schultze and a number of Syrian gentlemen and others.

Q A number of Syrians? A Yes, sir.

Q Dr. Massour was there to? A Yes, sir; he was present.

Q He is a Syrian physician? A Yes, sir.

Q And the purpose that you went there to that examination was to see whether the man had a bullet wound in him or not? A Exclusively.

Q Exclusively for that purpose? A Yes, sir.

Q May I ask at whose request you went there? A I went there at the request of Mr Salim Elias.

Q He is a prominent Syrian merchant in the town, is he not? A Yes, sir; conveyed to me through his son.

Q Now, Doctor, did you examine the throat of this man?

A I did, sir.

Q Of John Stephan? A I did.

Q Will you state to the jury what you found? A I found on the throat some old scars and other marks depending upon prior tubercular disease of the lymph nodes or lymph glands in the throat.

Q That is about ten scars that you found? A Oh, about that number, eight or ten.

Q Doctor, in your opinion, from the examination of the throat of this man was it possible for him to have been strangled by the human hand? A No, sir.

Q Will you state your reason, purely from what you observed yourself? A From what I observed myself.

Q Then I will put another question including what Dr. Schultze found? A It is impossible, in my opinion, to strangle a man with the human hand without external marks of violence. I might be precise and state what I mean by strangulation. Strangulation is essentially the impeding of the entrance of air into the lung through the main respiratory passage, such impediment to the air passage being produced by external compression of any kind. Now, the human hand cannot compress--this is a matter of experience--cannot compress the main respiratory passage, the windpipe, without leaving external marks.

Q Please describe to the jury what kind of marks the human hand does leave in the case of strangulation? A You

must remember that we have got a wedge shaped body to compress with the hand, the base of the wedge, the point of the wedge (illustrating) if I catch the wedge, the point being directed towards me, I have very little purchase on it; it will slip, more especially if it be smooth or greasy, even if the greasiness or lubrication be only such as may be found in the normal human neck. To maintain ^{my} grasp on the neck I am compelled to fasten the fingers in behind the windpipe, and the hands of the normal strong man, the ordinary adult man, will infallibly leave most serious lesions apparent upon the surface. As far as the possibility of producing internal lesion is concerned--

Q I am going to come to that in a minute. Now, would there be ecchymosis directly under the skin in a case of that kind? A Yes, sir.

Q And fingernail marks? A Not with my fingernails, I have none, they are cut short, but assuming they were of any length, protruding beyond the ends of the fingers you would get those fingernail marks.

Q Bound to be marks? A Yes, sir; bound to be marks.

Q There are two kinds of strangulation, are there not, what you call two kinds? A Yes, sir.

Q Tell the jury the two kinds? A As I said before, the essential element in strangulation is the obstacle which you put to the entrance of air into the lung, but that object may

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immediate in production or may be retarded in production.

Q Explain that? A I might take a man and by force, compression of my fingers obliterate the passage by pressing the walls of the windpipe, the one against the other, either anterior in the posterior or in the lateral direction,--there is sudden strangulation in that case.

Q That is where a man holds him until he dies? A Yes, sir.

Q In that case would you be bound to leave finger marks?
A Unquestionably.

Q What is the second case? A The second case is where that compression of the throat does not kill by the immediate of the production, inability of the air to pass through, by compression of one wall against the other, but by the bringing about of a condition in the walls of the windpipe inflammatory in character.

Q Inflammatory in character? A Yes, sir.

Q That is where you would make an internal lesion?
A Not only that, but a rupture of the tissue around that, pouring the blood out into the tissue, and that compressing the passage; in that case the man might die quite a considerable time afterwards.

Q It might take him some considerable time to die where the blood flows in, swelling the parts? A Yes, sir; where

the blood flows in swelling the parts, in that it might take 24 hours for him to die, if the obstruction were not due so much to the effusion of blood brought about by the compression, but through after consequences, the setting up of inflammation from the exudation of the watery matter of the blood into the tissue; that might take 24 hours.

Q Now, in that case would you leave finger marks if it was done with the hand? A Oh, yes.

Q Why, tell the jury why. Go on and tell the jury?

A For the very simple reason, compression, any degree of compression which will bring about the actual ecclusion of the air passage, or what I might term a retarded ecclusion, will give you ecchymosis, that is to say, injure the blood vessels under the skin, and the entry of blood into the tissues.

Q And leave marks? A Yes, sir; unquestionably.

Q No doubt about that? A No, sir; no doubt about that.

Q Now, are those marks obliterated after death? A No, sir.

Q They are not? A No, sir.

THE COURT: You mean are they obliterated by death.

MR. OSBORNE: Yes, sir.

Q Are they obliterated by death? A They are not, and for this reason, if you will permit me to illustrate: Many times it is brought to the notice of a Coroner's Physician,

these claims of violence are made to the Coroner's Physician, and blue marks and red marks are found upon the body, mostly in a dependent position. It is the Coroner's Physician's business to determine whether that mark was due to violence or was due to the post mortem action, the settling of the blood down. There is one way of resolving that. You draw your fingernail, or back of a penknife, across the blue or red mark. If that is nothing more or less than the after-death, post mortem discoloration due to the settling of the blood, the blue or redness is obliterated and you get a white line, because the blood is within the blood vessels and is simply forced away up into the blood vessels and you get your white mark below; while if that be due to violence during life, due from effusion of blood from the blood vessels into the tissue, the blood vessels being broken, you cannot force blood back into them, and the discoloration remains.

Q In this case there were no marks? A No, sir; no marks.

Q In your opinion, did the scars which were present in any way interfere with your diagnosis? A No, sir.

Q Tell the jury why they did not? A For the very simple reason that the capillary supply, that is the ultimate vascular supply, these little vessels, they remained in the skin, and they would have been, had they been pressed upon-- I mean

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in the skin over these scars--they would have been pressed upon.

Q They would? A Yes, sir; by physical compression.

Q And so far as the diagnosis as to whether this was done by the human hand or not, these scars are negligible, are they? A Yes, sir; absolutely.

Q Absolutely? A Yes, sir.

Q Assuming that the strangulation was what you call retarded, and done by the hand, in your opinion, could it have been done so that the man would die in twenty minutes, if done by the hand alone? A I don't think so.

Q Please give your reasons for that? A Well, I will tell you. To bring around, or bring about death within such a short period as twenty minutes, a period which will negative the possibility of any compression arising from inflammatory processes, there must have been a very serious tearing of the tissues around the upper portion of the windpipe or larynx; that, I hold, is impossible to bring around by the hand without leaving serious lesions, for this reason--I mean right back in the floor of the mouth and back towards the rear of the mouth--for this reason: You take my fingers as they are now (illustrating), my open hand, just slightly curved. If I have a large ball in that hand, occupying the whole calibre of the hand, so to say, I will not exercise very much force upon it. That force will only consist of, or be exercised when I con-

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tract the hand in that shape (illustrating). Now, I can exercise full force, but the amount of force that I can exercise on the ball is very trifling, compared with the force I can exercise or manifest in the case of a smaller body occupying this portion of the hand as it is now (illustrating).

Q In your opinion, choking could not be done with that hand in retarded strangulation? A I don't think you could do it.

Q You don't think so? A No, sir. Just let me help you out, and help the gentlemen to understand. You have got two large muscles here, indicating the sternum mastoid muscle, the muscle running from the mastoid process here down to the sternum or breastbone over on this side (illustrating). Now, when the neck is rigid, held rigid as it would be in a struggle, these two muscles will form an almost insuperable barrier to pressure by the fingers, and the retarded strangulation I speak of will be rendered impossible. Now, the whole hand now is on the throat in that way (illustrating). I cannot exercise the force through the ends of my fingers, my finger and thumb in this position (illustrating), that I would in this position where I had the windpipe between my hands. In addition to that, not alone is the force reduced to a minimum when the hand is extended like that, but I have the barrier of the strong mastoid muscle on both sides opposing its resistance

to the end of the fingers.

Q Now, in a case of retarded strangulation ~~it~~ which requires twenty minutes, is it your opinion that force must be applied in a different manner from what it would be by the hand? A Yes, sir.

Q Doctor, can you conceive of a strangulation by some process which would not leave marks? A I can and I cannot, and I will give you both. I will explain.

Q I am talking about the external marks, of course?

A Well.

Q You understand my question? A I do.

Q Explain that? A I refer to my former statement that strangulation is essentially death produced by ecclusion of the respiratory passage. It is possible to exclude that passage without any mark, by getting a large ribbon, we will suppose of velvet, in breadth from an inch and a half to two inches, and as you press upon that it will force the anterior wall of the larynx or windpipe against the posterior. On the other hand, if you are to take anything answering for that, or for this ribbon, simulating, if I might so phrase it, that ribbon, the back of my arm about inches in breadth and reasonably padded, and with a smooth skin, that is a skin sufficiently smooth not to make any scratching marks on the surface you might bring about that strangulation.

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Q Pressing your arm? A Yes, sir.

Q Now, suppose that the arm was brought with great violence against the neck, assume that-- A Yes, sir.

Q With great violence, as, for instance, if one man fell on top of another on the floor, pressing him down with great force and violence on his neck, would that leave a mark?

A It might in one case largely depend upon the position, the part of the neck upon which the pressure or to which the pressure is applied. If the pressure was applied over the Adam's apple, which is the prominent portion here, (illustrating), the thyroid cartilage, it is quite conceivable that even with the softest hand pressing upon that you might get an effusion of blood, this answering as a point of resistance, the protruding portion here, the thyroid cartilage; but above the thyroid cartilage, up, I indicate here (indicating) if the pressure is made by the arm or by the bamboo stick I spoke of a moment ago, it is quite possible in that case to kill a man without leaving marks; but I question whether that can properly be described as death by strangulation.

Q What would you describe it as? A Well, I prefer to call it death by choking.

Q By choking? A Yes, sir.

Q But if the arm was not held above there until death occurred, that would be a case of retarded strangulation?

A You can call it strangulation retarded, if you like.

Q That is the blood would flow in the small vessels on account of the rupture made by force? A Precisely so.

Q I understand you to say that in that case it is conceivable it could be done without leaving a mark? A Yes, sir; in that case.

Q Now, Doctor, I wish you would come down here for a minute and illustrate that. I place my left hand on your right shoulder and I place my righthand on your throat. Is it possible, in your opinion, to produce death by strangulation in that manner and without leaving any marks of the human hand at all? A It is not possible.

Q Either retarded strangulation or immediate strangulation? A Impossible.

Q Impossible? A Yes, sir; that is the universal consensus of opinion on that subject.

Q Doctor, in a case of strangulation by the hand in that manner that I have described, and a case of subsequent strangulation, the neck of the man would undoubtedly move about, wouldn't it, the hand would slip and leave marks, wouldn't it, if death resulted from strangulation? A Yes, sir. You must remember this thing, that an attempt at strangulation might last--there are cases in which it has lasted over fifteen minutes. You will find those cases reported in Bruardels work

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on Hanging, Strangulation, Drowning and Suffocation. In strangling a man or woman moves the head backward and forward, the compression is not continuous. Now and then a little air will get into the lung. The act of strangulation might last from thirteen to fifteen minutes.

Q It might? A Yes, sir.

Q Now, in these cases of retarded strangulation, as I understand it, the violence will have to be very great to tear the tissues inside? A Yes, sir.

Q And it could not be done with the human hand without leaving marks? A No, sir.

Q That is your opinion? A Yes, sir. I would wish to have it distinctly understood that I do not call the killing of a man by the pressure of the arm or a bamboo stick up here strangulation; I think it is etymologically incorrect.

Q I don't care what you call it--but he dies? A Yes, sir; he does.

Q You would call that choking? A Yes, sir.

MR. OSBORNE: Now, I want to get this correct, if your Honor please, as it is technical matter. I have written it out from the testimony from the record, and I will put the question to the Doctor in this form. If you want to take the book, Mr. Train, you may do so, to see that I make no mistakes. It is from Dr. Schultze's exam-

ination.

Q Assuming that a man was strangled, and that after death the tongue is found protruding and clenched between the teeth of the upper and lower jaw, and that the muscular tissues at the base of the tongue and the floor of the mouth near the hyoid bone, that is the bone to which the tongue is attached, were found contused, infiltrated with blood and swollen, and this condition was more marked on the left than on the right side, and that the left fold on the opening of the larynx was found oedematis, and the left lung was found bound down with adhesions, and the blood and contents of the lung were normal; that the left side of the heart was contracted and the right side was dilated, and the blood was fluid and dark; that there were old adhesions between the liver and the diaphragm and between the spleen and the diaphragm; that the omentum and mesentery were adherent, and that the liver showed numerous old retractal scars upon the surface and was intensely congested and slightly cirrhotic, and the spleen was congested; that the kidneys were intensely congested and slightly enlarged; that mesentery lymph nodes, or lymph glands, as they are sometimes called, were found enlarged with numerous cheesy areas; also the peritoneal lymph nodes were found enlarged, so that the entire group presented a mass along the posterior wall of the abdomen.

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Assuming that no marks were found except two stab wounds in the back, which, for the purposes of this question, are immaterial, one stab wound on the chin, which was three centimetres in length along the left side of the chin, gaped, one centimetre, two-fifths of an inch in width, parallel to the lip, and three centimetres in length and located two centimetres below the lower lip, and that there were numerous scars upon the neck, about ten in number, that varied in size from one to five centimetres; they were located along the lower margin of the lower jaw and along the angle of the lower jaw, and on each side of the sternum mastoid; these scars were the result of previous operations or inflammatory reactions with suppuration from tuberculous glands of the neck; these scars were old, in the median line of the neck, one-half the distance from the chin to the fold of the neck a scab wound was found which when taken off disclosed a granulated spot and a superficial sinus more recent than the others, and that there were no finger marks or finger nail marks on the neck, or anything of that sort; that there was no ecchymosis immediately under the gland;

Now, assuming that those were all the marks, in your opinion, would it be possible for this man to have been strangled by the use of a hand grasped on the throat?

A No, sir.