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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

770822

ARCHIE PALLAS

v.

STAVROS ZAHAROPOULOS

APPENDIX

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Date Filed:
9/12/73

V I R G I N I A

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

STAVROS ZAHAROPOULOS	:	
Plaintiff	:	
vs.	:	AT LAW NO. 992
ARCHIE PALLAS	:	
Defendant	:	

AMENDED MOTION FOR JUDGMENT

TO: THE HONORABLE JUDGES OF THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE:

COUNT I - MALICIOUS PROSECUTION

COMES NOW the Plaintiff, Stavros Zaharopoulos, and moves this Honorable Court for Judgment against the Defendant, Archie Pallas, on the grounds and in the amount as hereinafter set forth:

1. That on October 12, 1972, the Defendants, Archie Pallas, and Maria Pallas owned the premises and business known as Archie's Pizza located at 2508 Fontaine Avenue, Charlottesville, Virginia.

2. That on said date, the Defendants entered into a Lease Agreement with the Plaintiff, Stavros Zaharopoulos. A copy of said Lease Agreement is attached hereto as Exhibit "A" and is hereby incorporated and made a part of this Amended Motion for Judgment.

3. That Paragraph one (1) of said Lease Agreement provided, among other things, that the Plaintiff would lease from the Defendants the business known as Archie's Pizza, all realty and improvements comprising the land and buildings used in the operation of said business, the business name, all trade names and all furniture, fixtures and equipment used in the operation of said business.

4. That said Lease Agreement did not make any provisions for default in the event that the Plaintiff did not pay any installment or security deposit due according to the provisions of the Lease Agreement.

5. That by February 13, 1973, the Plaintiff had paid every monthly installment called for by the provisions of the Lease Agreement, and had paid Four Thousand ($4,000.00) Dollars of the Six Thousand ($6,000.00) Dollars security deposit.

6. That on February 13, 1973, the Defendant, Archie Pallas, came to the premises known as Archie's Pizza located at 2508 Fontaine Avenue, Charlottesville, Virginia, and demanded that the Plaintiff return possession of the aforesaid premises to the Defendant, because the Plaintiff had failed to pay the remaining balance of the security deposit.

7. That on said date and upon the demand of the Defendant, Archie Pallas, the Plaintiff refused to transfer possession to said Defendant, because the Plaintiff was under no legal duty to return possession of the premises to the Defendants.

8. That the Defendant, Archie Pallas ascertained that an adding machine and a bread toaster, which were part of the equipment that the Defendant had leased to the Plaintiff, seemed to be not on the premises. That the Lease Agreement did not require that the said adding machine and bread toaster remain on the premises, nor was the Plaintiff under any duty to tell the Defendant where said equipment was located.

9. That on the same day, namely, February 13, 1973, the Defendant, Archie Pallas, swore out two Warrants of Arrest against the Plaintiff before N. E. Poole, Justice of the Peace for the

City of Charlottesville. One Warrant of Arrest alleged and charged that the Plaintiff did unlawfully and feloniously take, steal and carry away one bread toaster and one adding machine of the total value of more than One Hundred ($100.00) Dollars (Grand Larceny); and the other Warrant of Arrest alleged and charged that the Plaintiff was guilty of trespass on the premises known as Archie's Pizza.

10. That at approximately 5:00 o'clock P.M., on the aforesaid day, in accordance with said warrants, a police officer for the City of Charlottesville returned to the premises of Archie's Pizza with the Defendant, Archie Pallas, arrested the Plaintiff, and took the Plaintiff into custody, bringing him to the City Jail, where the Plaintiff was freed only after he posted a bond.

11. That immediately following the Plaintiff's arrest, and while the Plaintiff was at the City Jail posting bond, the aforesaid Defendant directed and caused all of the locks on the premises known as Archie's Pizza to be changed, thereby denying the Plaintiff any access or entry to his property.

12. That at the time that the Plaintiff was arrested, there was, in the aforementioned premises, approximately Six Hundred ($600.00) Dollars in cash in the cash register, approximately One Thousand Five Hundred ($1,500.00) Dollars in cash in a safe, and approximately Two Thousand ($2,000.00) Dollars worth of food supplies that were owned by the Plaintiff. As of this date, the cash has not been returned to the Plaintiff and no remuneration as to the food supplies has been offered to him.

13. That in subsequent court proceedings involving the two Warrants of Arrest the Plaintiff was completely exonerated of all

charges against him.

14. That the said Defendant had no legal justification whatsoever for causing the Plaintiff to be arrested.

15. That the arrest and detention of the Plaintiff by the Defendant, Archie Pallas was prosecuted wrongfully, unlawfully and with malice.

16. That before the said Defendant caused the Plaintiff to be arrested and detained he knew that the Plaintiff was not chargeable with any crime or offense.

17. That the sole intent of the Defendant was to maliciously prosecute the Plaintiff in order to enable the Defendant to unlawfully evict the Plaintiff from the premises located at 2508 Fontaine Avenue, Charlottesville, Virginia.

18. That as a direct and proximate result of the aforesaid acts of the said Defendant against the Plaintiff, the Plaintiff was caused to sustain great mental suffering and humiliation, has been prevented from transacting his normal business, has suffered harm to his personal and professional reputation, has lost substantial business profits, and has incurred considerable expenses.

WHEREFORE, the Plaintiff, Stavros Zaharopoulos, demands judgment against the Defendant, Archie Pallas, in the amount of Fifty Thousand ($50,000.00) Dollars as compensatory damages and Fifty Thousand ($50,000.00) Dollars as exemplary and punitive damages and the costs on his behalf expended.

STAVROS ZAHAROPOULOS
By Counsel

LAW OFFICES OF:
A. C. Soutzos
301 Maple Avenue, West
Vienna, Virginia 22180
Counsel for Plaintiff
By: /s/ Douglas L. Pierson

Date Filed:
10/2/73

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

STAVROS ZAHAROPOULOS,
Plaintiff

v. AT LAW NO. 992

ARCHIE PALLAS,
Defendant

RESPONSE TO AMENDED MOTION FOR JUDGMENT

Comes now the undersigned Defendant, by counsel, and in response to the amended motion for judgment, states as follows:

Paragraphs 1 through 14 of the amended motion for judgment are the same as paragraphs 1 through 14 of County I of the original motion for judgment and paragraphs 15 through 18 of the amended motion for judgment are the same as paragraphs 2 through 5 of Count IV of the original motion for judgment.

The defendant hereby adopts the responses previously made to plaintiff's said allegations and claims. [The aforementioned responses are not germane to the issue in this limited appeal.]

The defendant further states that insofar as he caused plaintiff to be prosecuted, he did so on advice of counsel.

ARCHIE PALLAS
By Counsel

/s/ J. T. Camblos
J. T. Camblos
410 East Jefferson Street
Charlottesville, Virginia
Counsel for defendant

I hereby certify that I mailed a copy hereof to counsel for plaintiff this 2nd day of October, 1973.

/s/ J. T. Camblos

Date Filed:
2/18/77

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

STAVROS ZAHAROPOULOS
Plaintiff

vs. AT LAW NO. 992

ARCHIE PALLAS
Defendant

JUDGMENT ORDER

THIS CAUSE came on for trial on May 22 and May 23, 1974, both parties being represented by counsel;

WHEREUPON a jury of thriteen was called and examined on vior dire, and each side exercised its strikes, and the remaining seven jurors were put upon their oaths to well and truly try the issues joined in this case;

THEREAFTER, counsel for both parties delivered opening statements;

THEREAFTER, the Plaintiff presented his evidence and rested his case;

THEREAFTER, counsel for the Defendant moved to strike the evidence of the Plaintiff, and the Court denied said Motion;

THEREAFTER, the Defendant presented his evidence and rested his case, whereupon rebuttal was presented on behalf of the parties;

THEREAFTER, the Defendant moved to strike the evidence and enter final judgment for Defendant and the Court denied said motion;

WHEREUPON, jury instructions were presented to the Court by counsel for both parties, and the Court granted some; refused others; and amended some, with both counsel noting their objections;

THEREAFTER, both parties delivered closing arguments to the jury and the jury retired to the jury room;

WHEREUPON, the jury returned to the Court Room and delivered a verdict which awarded judgment in favor of the Plaintiff against the Defendant in the amount of FOUR THOUSAND TWO HUNDRED DOLLARS ($4,200.00) compensatory damages and EIGHT HUNDRED DOLLARS ($800.00) punitive damages, and the jury was then polled at the request of counsel for the Defendant;

THEREAFTER, counsel for the Defendant filed a Motion to Set Aside the Verdict, a Motion to Set Aside the Verdict as Excessive, a Motion for Remittitur, and a Motion for a New Trial, and said Motions were argued before the Court on August 22, 1974, said Motions and argument being taken under advisement by the Court;

THEREAFTER, said Motions were re-argued on January 17, 1977, and all of said Motions were overruled by the Court; and

IT APPEARING TO THE COURT that judgment should be entered in accordance with the Court's rulings and the jury's verdict, it is therefore

ADJUDGED, ORDERED, AND DECREED that judgment be awarded in favor of the Plaintiff, Stavros Zaharopoulos, against the Defendant, Archie Pallas, in the amount of FOUR THOUSAND TWO HUNDRED DOLLARS ($4,200.00) actual damages, and EIGHT HUNDRED DOLLARS ($800.00) punitive damages, plus the costs of this case, and interest, which

shall accrue from the date of this Order.

ALL EXCEPTIONS to this Judgment Order and which were made in the trial and argument of this matter by the parties are noted. And the Court directs that the transcript which has previously been filed with the papers, is made a part of the record.

AND THIS CAUSE IS FINAL.

ENTERED this 18th day of February, 1977.

/s/ Herbert A. Pickford
Judge

LAW OFFICES OF:
Soutzos & Pierson
301 Maple Avenue, West
Vienna, Virginia 22030

BY: /s/ Douglas L. Pierson
Counsel for Plaintiff

SEEN; EXCEPTIONS NOTED:

CAMBLOS AND CAMBLOS
414 East Jefferson Street
Charlottesville, Virginia 22901

BY: /s/ J. T. Camblos
Counsel for Defendant

1 CAMBLOS: I do mind Your Honor, I want to hear
2 the examination as well as make this examination....Your Honor,
3 I want to check the proferred copy carefully - it's several
4 pages.
5 COURT: Why don't we take a five minute recess,
6 members of the jury.
7
8 (Recess.)
9
10 COURT: All right, Mr. Soutzos.
11 Q Steve, I show you this document, can you identify
12 it?
13 A Yes sir, this is the lease that I make with Mr.
14 Archie Pallas.
15 Q This is the lease you made with Mr. Archie
16 Pallas?
17 A Yes.
18 Q Is that your signature?
19 A Yes sir, it is.
20 Q And where was this lease entered into, any particular
21 attorney's office?
22 A At Mr. Callaghan's office.
23 Q And who was Mr. Callaghan representing at the
24 time?
25 A Mr. Archie Pallas.

1 COURT: All right, sir.

2

3 The check dated January 16, 1973 was marked and

4 received into evidence as Plaintiff's exhibit number 5.

5

6 Q And when was the February rent due, Steve?

7 A The February 16.

8 Q Did you pay him the rent?

9 A I don't.

10 Q Were you there on February 16?

11 A I not pay because they kick me out from the place.

12 Q When?

13 A February 13.

14 Q What happened February 13, Steve?

15 A Well, I was ....about 10:30 I start to open the

16 place, open the kitchen and everything and be ready for 11 o'clock

17 to start to open, and about 11 or 11:15, something like that

18 Mr. Callaghan with Mr. Archie come over to my place. Mr.

19 Callaghan walk in and I start to be busy with customers and

20 have customers sitting.....Mr. Callaghan tried to tell me,

21 Steve, you haven't paid the $2,000.00 and you should go out.

22 I say...

23 Q Let me interrupt you there, Steve, did he say

24 $2,000.00 rent or did he say security deposit?

25 A $2,000.00 for rent deposit, you haven't paid. And,

1 Q Rent deposit?

2 A Deposit.

3 Q Deposit?

4 A Security deposit.

5 Q Reference was made then to $2,000.00 which was

6 characterized as what?

7 A For security deposit. And, you are supposed to go

8 out. I say, Mr. Callaghan, do me a favor and leave me alone

9 right now because I have to serve my customers. And he started

10 to come in behind the kitchen, behind to the...

11 Q Steve, let me interrupt you one more time.

12 Is this the same Mr. Callaghan that you saw when you entered

13 into this lease?

14 A Sir?

15 Q The same attorney who drew up the lease?

16 A Yes sir, the same attorney.

17 Q And did you know this attorney from any other

18 time other than that lease arrangement?

19 A I know Mr. Callaghan, yes sir.

20 Q How did you know Mr. Callaghan?

21 A An automobile accident...

22 Q Who had an automobile accident?

23 A I did have at Charlottesville, Virginia, December

24 5 - January 5, I don't remember the correct date, and I go to

25 Mr. Callaghan's office and I tell him of the automobile accident,

1 Mr. Callaghan.

2 Q Why did you go to Mr. Callaghan's office?

3 A Just to take him my case...

4 Q But there are a lot of attorneys in Charlottes-

5 ville, why Mr. Callaghan?

6 A I don't know anybody else. I don't know anybody

7 else and so I go there and I say, Mr. Callaghan, I have an

8 accident. He say when, and I say yesterday and my wife went

9 to the hospital with an ambulance. Oh he say, very good, very

10 good, Steve, I'll take the case over. I say, fine, that's

11 all right. He say you think we make any settlement, we take

12 the money right away or do whatever you think. He say you

13 don't worry about it, I'll do whatever I think and he sent me

14 to some friend, doctor, you know, to check me out.

15 Q So he took your case?

16 A He took my case over.

17 Q Did he at any time tell you that he was represent-

18 ing Archie Pallas, continually representing Archie at that time?

19 A No sir.

20 Q Did he at any time tell you that there may be a

21 conflict in his representing Archie and representing you?

22 A No sir, he didn't tell me that.

23 Q Did he ever discuss at any time the fact that if

24 there was any difficulty between you and Archie that he would

25 have to represent one and not the other?

A No sir, he didn't.

CAMBLOS: May it please the Court, I see no reason why Mr. Callaghan should tell him any such thing. He can perfectly well represent one client in connection with an automobile accident and represent another one in connection with a lease. There's an implication here that he should have done something that I see no reason why he should tell him. I object to going into it any further.

COURT: You want to respond to that, Mr. Soutzos?

Q Well, I do - we are in the same situation as the last objection. Mr. Camblos brought this out in his opening statement. In all fairness and impartiality I think I've got an opportunity to go into this area. And number 2, in testimony, the next proferred letter will indicate that there was some indication of a conflict which was discussed.

COURT: I don't see any point in going into what has already been gone into, if you want to bring in this letter, we'll see...

CAMBLOS: May it please the Court, what was brought out in opening statement is Mr. Callaghan explained the possibility of conflict when Mr. Zaharpoulos came to him -- he thought about the accident and then started talking about a lease.

COURT: I think - that's my recollection.

Q On that occasion you went to Mr. Callaghan about

1 the accident, did you discuss the lease at all?

2 A No sir.

3 Q Did there come a time when you received this

4 letter from Mr. Callaghan?

5 A Yes sir, this is the letter Mr. Callaghan sent

6 me.

7 Q I'd like to have it marked and introduced into

8 evidence.

9 COURT: Any objection?

10 CAMBLOS: No sir.

11 COURT: All right.

12

13 The letter was marked and received into evidence as

14 Plaintiff's exhibit number 6.

15

16 Q Could you tell us the date of that letter and

17 who sent it? What's the date on it, Steve?

18 A The date is November 14, 1972. It's sent from

19 Mr. Callaghan.

20 Q What did Mr. Callaghan tell you in that letter,

21 Steve?

22 A Do you want me to go ahead and read the letter?

23 Q No, when you received this letter ....

24 A He told me to....he's congratulating me for

25 getting married and after he's start to tell me to keep the place

1 clean and operate the exact hours. Mr. Archie come in my
2 office and told me you don't do that. Then keep the place
3 clean, something like that. When I get the letter from him,
4 I read it and well, I don't understand so well and I get the
5 letter so I have to call Mr. Callaghan. I call Mr. Callaghan
6 and I say, Mr. Callaghan, what's the letter about. I think
7 the place is better than at any other times and cleaner than it
8 was before. What are you sending me that letter for, and
9 he say, Steve, I'm sorry I know you are a good man, but
10 Mr. Archie's come over to my place, you know, and he's told
11 me to send you letter. I have to do that - what he's told me
12 to do I have to do. I know you keep the place clean and I
13 sent somebody to take a picture over there and it's very good,
14 but he's told me to do that, so I do it. And I'm sorry for
15 that letter. I don't think there's going to be another letter,
16 Mr. Archie's going to leave for Greece.
17 Q Now, that date's November 13, when did you next
18 see Callaghan? For the Accident?
19 A For the accident case.
20 Q So that when you saw Mr. Callaghan had you already
21 had that discussion you just told us about?
22 A Yes sir, we did.
23 Q And when you saw Mr. Callaghan for the accident
24 did he discuss with you any conflict arising out of that
25 letter?

1 A No sir, we didn't.

2 Q Did you see Mr. Callaghan any time after you

3 discussed the accident and before February 13, 1973?

4 A Yes sir, I did.

5 Q And when was that?

6 A He's advised me a couple of times in his office

7 for the automobile accident.

8 Q How many times?

9 A About two times.

10 Q Did you ever discuss your lease with Mr.

11 Callaghan on those occasions?

12 A No sir, I didn't.

13 Q Did you ever talk with him about your intentions

14 on how to operate that business and how long you were going

15 to operate that business?

16 A No sir, I didn't.

17 Q All right, prior to that February 13 date that

18 you were talking about, did you have any conversations with

19 Archie?

20 A I just have one conversation with Mr. Archie.

21 He's sitting at...

22 Q When was that, Steve?

23 A February 13, Monday morning, about 11:30, something

24 like that, when Mr. Callaghan come in...

25 Q Any time before that, from the time that Archie went

1 to Greece? Do you know when he went to Greece?

2 A I don't remember exactly.

3 Q How many weeks or days after you took over

4 the business did he go to Greece? When was that time he

5 came in with his wife and child?

6 A I think he was going about, after Christmas.

7 After New Year he was going to Greece. I don't remember very

8 well when he is going.

9 Q From the time that he left for Greece, up to the

10 time that they came to your place - Archie and Mr. Callaghan,

11 did you talk - or see Archie?

12 A Yes sir.

13 Q When?

14 A It was about February 9, Wednesday - I don't

15 remember exactly the day...

16 Q What happened on that occasion?

17 A He's come in my place and I was busy and he's

18 try to help me, you know. He's washing dishes and he's try to

19 help me. And after business slow down he's take a cup of

20 coffee and he start to drink.

21 Q Did you ask him to help you?

22 A No I didn't, sir.

23 Q Did you want him to help you?

24 A He just walk in by himself and he start to work.

25 And after the business was slowed down, you know, he's take a

1 cup of coffee and he's sitting at the counter and he's drinking
2 his coffee and he's ask me how you do, Steve, and I say,
3 all right - how's business, okay, and I'll be back tonight.
4 CAMBLOS: I'm sorry, I didn't...
5 A He say I'll be back tonight, I'll be back tonight.
6 I say, okay, Archie. He's left - I expect him tonight.
7 He doesn't show. So he's come Friday - sometime Friday.
8 He say Steve, you make me some money. I say, yes, I know that
9 Mr. Archie.
10 Q How much money did he ask you for?
11 A He's ask me for $2,000.00 for security deposit.
12 I say I know that Mr. Archie, but now I don't have that money,
13 give me some time, week time, I give it to you next Monday.
14 He say, I'm not baby to treat me that way - I need all my
15 money right now, my $2,000.00. I say I'm sorry but I don't
16 have that money.
17 Q Did you have the money to pay him?
18 A I don't have all money. I don't have the $2,000.00
19 but I have some money.
20 Q How much did you have to pay him?
21 A I had about $1,500.00.....to pay him, but he's
22 asked me for $2,000.00 - I say I no have that money. He say
23 I be back tomorrow and you give me the money, or we are going
24 to talk another way. I say, okay, Mr. Archie. He left. I
25 expect him Saturday to come over and talk about it. He's come

about Saturday, nighttime, late - 1 o'clock, 2 o'clock, I don't exactly remember the time. And he's followed by two young ladies. They sit up there and order a cup of coffee and I serve them. He start talking to me, I was here with my wife. He start talking to me and say I need my $2,000.00. I say I told you, Mr. Archie, don't be bothering me, you know, I give it to you. Just give me one week time, because I don't have all the $2,000.00 right now. I have some money saved to give it to you. He say I need it right now, if you don't give it to me - I don't know what I'm going to do Monday.

COURT: If you don't give it to me, I'll what?

A If you don't give it to me, I don't know what I'm going to do Monday. I say I can't give it to you because I don't have it, what do you want me to do now give you some of it tonight.....he start to you know, he say listen my friend, I'm going to New York tonight. I'm leaving for New York tonight, Monday I be back and I want you to sweep the floor with your tongue.

Q Say that again, Steve? What did he say?

A Listen my friend, I'm going to New York tonight but Monday I be back and I want you to sweep the floor with your tongue.

Q Is that some type of a Greek expression?

A Yes, that mean you know to clean the floor, like you clean the floor with mop - he want me to clean the floor with

1 my tongue. And he's told me some more in front of my wife,
2 and I say, why you told me that - he's talk Greek and my
3 wife - she's Greek and understand. He's told me some
4 terrible thing and I say....
5 Q What did he say, tell us?
6 A Well, I'm ashamed with my wife there and he say,
7 I'm coming back Monday - he's call me malaka - I don't know
8 what that means - how can I say...
9 Q Well, can you interrupt that into English?
10 A Yes.
11 Q What does it mean?
12 A Well, it's something - I have in my mind -
13 something bad you know, something I screw up myself, something
14 like that.
15 Q You mean like a crazy person?
16 A Yes, like - no, like I'm different sex.....I don't
17 do sex with women, something like that.
18 Q Is that critical word?
19 A It's a critical word, yes sir. It is in Greece, it
20 is.
21 Q And did he say that in front of your wife?
22 A In front of my wife. And I say, Archie, just watch
23 your language. And he say - told back to me, say, fuck your-
24 self.
25 Q He said that to you?

1 A He said that to me and my wife and I got so mad
2 I say get out.....get out of my place and I took him out and
3 he say, I'll be right back Monday.
4 Q When was the next time you saw him?
5 A The next time was about Monday, Monday morning,
6 he's come over with Mr. Callaghan and when Mr. Callaghan walked
7 in and Mr. Archie walked in and he say...
8 Q Was that February 13?
9 A February 13.
10 Q Tell us what occurred? Tell us when they came
11 over?
12 A They came about 11 o'clock, 11:15 - I don't
13 know exactly - around 11:20 A.M..
14 Q All right, were you doing business at that time?
15 A Yes sir, doing business and they came walking in,
16 Mr. Archie sit in the booth and Mr. Callaghan start to come over
17 and - start to come around my place and back to the counter and
18 back to the kitchen and he's looks like he is looking for
19 something. I say look, Mr. Callaghan, and he say, Steve,
20 listen, I have to talk to you, and I say I have business to
21 do. He say let me tell you something - he say Vickie can take
22 care of it - my wife was there, too. Vickie take care of it,
23 let me tell you something. I say what you tell me for, and he
24 say, Listen Steve you needs to go out. I say what for, he say
25 you haven't paid the $2,000.00 security deposit - Mr. Archie

1 Pallas' money - so if you don't pay that, you know, you have
2 to go out. I have to put you out today. I say you say you
3 going to take me out from my place - he say, I don't think
4 Steve, it's your place any more. Mr. Archie Pallas is there,
5 and I say to Mr. Pallas, get out of my place. And so Mr.
6 Callaghan turn to him and say, Mr. Pallas he's left out....
7 then Mr. Callaghan start to say to me, Mr. Steve, I want you
8 to be good and I want you to leave - because I have to do it
9 Steve, I represent Mr. Archie, I have to do it. I say why
10 you have to do it - he say I have to take you out. It's the
11 way he wants it, he wants to come over and take the business
12 back. I say I don't care what he wants, I pay him for it
13 and I don't say I'm not going to pay the $2,000.00 security
14 deposit - I'm going to pay it, I have that money right now,
15 but I'm going to pay it. You have to go out today. I say
16 I'm not going out and after a little while he's going some-
17 where.
18 Q Let me ask you this. You indicated the mention
19 of jail, who used the word jail?
20 A Mr. Callaghan.
21 Q And in what reference, what about jail?
22 A He's mean he's going to put me in the jail.
23 Q Did he explain why he was going to put you in
24 jail?
25 A He explained to me later on. He say you have to go

1 to the jail because you don't pay the $2,000.00.

2 Q Did Mr. Callaghan tell you that he was representing

3 you this time or representing Archie during this time?

4 A I don't understand that.

5 Q Did he ever tell you that...

6 A No, he told me he was representing Mr. Pallas.

7 Because he's told me Mr. Pallas told him to take me out.

8 And in the meantime the lock man was there outside.

9 Q The lock man? What lock man?

10 A To change the locks on the doors.

11 Q Locksmith?

12 A Locksmith.

13 Q Who called the locksmith?

14 A I don't know - I was inside and I don't know.

15 Q Did you call the locksmith?

16 A No sir, I didn't.

17 Q Did you call anyone?

18 A I called Mr. Callaghan - the locksmith was outside

19 and told him to go ahead and change the locks....

20 COURT: Who told the locksmith to change the locks?

21 A Mr. Callaghan.

22 Q Well, where was Archie at this time?

23 A He was outside, sir.

24 Q How long was Mr. Callaghan there on that occasion?

25 A About an hour....

1 Q One hour?

2 A About an hour.

3 Q From 11 to 12?

4 A Something.....he's talking too much but like

5 I say I am keeping busy so I don't give all my attention to

6 Mr. Callaghan.

7 Q Were you serving customers during that time?

8 A I do serve the customers.

9 Q Was Archie in there?

10 A No I told him to get out.

11 Q How long was Archie in there?

12 A About 15 minutes, maybe.

13 Q And then he left?

14 A He left.

15 Q And how long after that was Mr. Callaghan there?

16 A He's inside about 1 o'clock, 1:45 something like

17 that....and Mr. Callaghan called to Mr. locksmith and he say

18 come over and change the lock, and I told him if he change the

19 locks on the door, we are going to have trouble together.

20 COURT: Change the locks on the door, what?

21 A If he change - he changed my doors, we're - you're

22 going to have trouble with me right now in my place. My

23 English is not so perfect, Mr. Callaghan whatever he say I

24 don't understand very well, but I understand him. And, I

25 start to be afraid myself. So I have to get the police officer

1 to come over to take - to not change the locks from the door.
2 And, I call him and he's come right away over. And I say to
3 the police officer if you don't protect that man we're going
4 to have trouble together. He's start to change -to do some-
5 thing in my business and I want you to protect him because
6 I'm going to have troubles. He say okay, buddy, and he's
7 talk to the lockman - don't have any permit to change the locks,
8 so you don't have to change the locks. So meantime Mr. Archie
9 was there - excuse me, Mr. Callaghan, and he's told me, and I
10 say Mr. Callaghan, please I don't want to talk to you that way,
11 will you please leave me alone to do my business and get out
12 from my place. He said, Steve, listen to me, I don't want you
13 to do that way and he starts telling my wife, you know, many
14 things about - and I try to put my money in my register and he
15 say, Steve, don't put the money in the register, put it in your
16 pocket, you're going out any way.
17 Q Who told you that?
18 A Mr. Callaghan. And I say please don't come behind,
19 Mr. Callaghan - people are here, I feel ashamed of myself.
20 We have a police car outside. So many customers - I feel
21 ashamed of myself, customers that come everyday. I say go
22 out and leave me alone. He say, listen, Steve, don't give me
23 trouble any more, I want to call the justice of the peace to
24 put you in jail. I say call him, just don't make a noise in
25 here, I have customers.

1 Q What was Mr. Callaghan doing, was he seated with
2 the customers?
3 A No, he was coming around - he was behind the
4 counter - he's come behind the counter.....he's talking
5 to me.....
6 Q Did he actually come behind your counter?
7 A Oh yes, he come behind....he's come behind and he's
8 try to bring me in the kitchen - but I say Mr. Callaghan,
9 leave me alone I have business - he said my wife can take care
10 of the customers - this was about two hours. So, I have nothing
11 to do and I am standing there and he say you have no right and
12 I say, I have right, Mr. Callaghan. I have an agreement with
13 Mr. Archie. He can't kick me out just like that, because I
14 was 10 days late or five days late to pay the security deposit.
15 I'm going to make the money and pay him. He say you're going
16 to go out any way. I say I call my lawyer. And I start
17 to call my lawyer ....
18 Q What lawyer did you call?
19 A Mr. Nick Kapnistos.
20 Q All right.
21 COURT: Mr. who?
22 A Mr. Nick Kapnistos. And I talked with my lawyer...
23 Q Did you....
24 A After I hung the phone up he said don't hang the
25 phone up, give it to me, so I give it - I give the phone to Mr.

1 Callaghan. The only thing - it was all so difficult for me,
2 I don't know what was said - he said, come on Nick, tell him
3 to get out. He said take the phone back, I took the phone
4 back and I talk with my lawyer and I say, Mr. Callaghan, I'm
5 not going out.
6 Q What did your lawyer tell you when you talked to
7 him?
8 CAMBLOS: We object Your Honor.
9 Q Let me rephrase that. As a result of having
10 spoken to your lawyer, what did you tell Mr. Callaghan?
11 A I told Mr. Callaghan, after I hung the phone up,
12 I told Mr. Callaghan, I said, I'm not going out - no way to
13 take me out from this place. He say no way, I say no way.
14 He say okay.
15 Q Did...
16 A If you're so stupid and you mean it, he said,
17 I'll let you alone.
18 Q At any time did Mr. Callaghan ever discuss the
19 adding machine with you on that occasion?
20 A He does, yes sir.
21 Q What did he say?
22 A He say, asked me where's the adding machine, where is
23 the toaster machine....I say the adding machine is for repair,
24 Mr. Callaghan.
25 Q Told him what?

A Is for repair.

Q For repair?

A Yes sir.

Q Why did you tell him that?

A To leave me alone, I needed to....you know, I tell him it's for repair just to leave me alone, you know.

Q Did you feel that you had to tell him anything about that adding machine?

A I feel I have to tell him anything, you know, because...

Q Did you feel it was any of his business to know where the adding machine was?

A I think it was his business....

Q How about the toaster?

A He's ask me for the toaster, I say the toaster is here. And he say the toaster, I say it's here - the toaster up there, he say it's two toasters - I only have one toaster...

Q Did you know of any other toasters in the store?

A I didn't.

Q Did you ever use any second toaster in the store?

A No sir.

Q Did there come a time when Mr. Callaghan left?

A Well, before he left he called to justice of the peace somewhere else, I don't know where it is and he speak to someone. And I don't know who it was. He's told on the phone

1 go from this place.

2 Q Somebody told you over the phone to get out?

3 A Yes, get out of this place.

4 Q Do you know who it was?

5 A Mr. Callaghan told me it was the justice of the

6 peace.

7 Q Well, the justice of the peace's name is Mr.

8 Poole, is that name familiar to you?

9 A Yes....I don't remember the name Poole - Mr.

10 Callaghan told me it was the justice of the peace. I remember

11 that well.

12 Q And when did he call the justice of the peace?

13 A Well, he told me...

14 Q From where did he call, Steve?

15 A My place.

16 Q Did you tell him to call the justice of the peace?

17 A No, I didn't tell him anything. He picked up the

18 phone. Like I say you know, I don't pay too much attention

19 and try to serve my people, you know. And he was using the

20 phone - he's making more phones any way. And I talked to the

21 justice of the peace - he tell me - some words I understand,

22 some words I don't understand, but the words that come to me,

23 were please go out - the fellow will have to put you in the

24 jail.

25 Q Steve, let me ask you this. When you had a conversa-

1 tion with your attorney, Mr. Nick Kapnistos...

2 A Yes sir.

3 Q Did you at any time indicate to him what had

4 happened to that adding machine?

5 A Oh yes sir, I did.

6 Q What did you tell him?

7 A I told him that I had the adding machine at my

8 home.

9 Q At your home?

10 A Yes sir.

11 Q Did you ever say that you never intended to return

12 that adding machine?

13 A I didn't....

14 Q Did you ever say to Nick Kapnistos or to anybody

15 that that machine was gone and was never coming back?

16 A No sir, I never say that.

17 Q Did you ever say Archie would never get that machine

18 back?

19 A No sir.

20 Q After Mr. Callaghan left, what did you do?

21 A After Mr. Callaghan left my father-in-law was there

22 and my wife - my father-in-law had just come over - for 20

23 days - I just get married like I say, to meet me.

24 Q How long had you been married at that time?

25 A About - I was married November 12, 1972...November,

1 December, January - about three months.

2 Q This was the first occasion you had to meet your

3 wife's father?

4 A Yes.

5 Q Was he there that day?

6 A Yes sir, he was there.

7 Q Was your wife there?

8 A My wife was there, yes sir.

9 Q Why was your wife there?

10 A My wife working.

11 Q She works with you?

12 A Yes sir.

13 Q She did work for you there?

14 A Yes sir. So after everybody left I have a friend

15 of mine, a Greek boy - my father =in-law was there and my wife,

16 so about 3 o'clock, 3:30 something like that, my friend he

17 say I want Steve to take me to Waynesboro - to make it -

18 some place...

19 CAMBLOS: I don't understand...

20 A My friend told me he doesn't have a ride - will

21 you give me a ride...

22 CAMBLOS: I object to what the friend may have told

23 him, Your Honor...

24 A Mr. Paul .....

25 COURT: I sustain the objection unless you can show

1 some relevancy...

2 Q Did there come a time when you left the premises,

3 you left the store?

4 A Yes sir, I left the store.

5 Q And where did you go?

6 A I go to Waynesboro.

7 Q For what purpose?

8 A Like I say I took my friend - my friend he's

9 need a ride and he wants me to give him ride to Waynesboro.

10 Q Did you ever come back?

11 A Yes sir.

12 Q When did you come back?

13 A It was about after - about 5 o'clock, 4 o'clock.

14 Q When Mr. Callaghan left, did he say he was going

15 to come back?

16 A He's told me, yes sir.

17 Q He did?

18 A He's told me he's coming back.

19 Q Did he say when he was going to come back?

20 A No he didn't say when.

21 Q Did he say why he was going to come back?

22 A He doesn't say why. He say I come back to see

23 you.

24 Q Did he say who he was bringing back with him?

25 A No sir, he didn't.

1 Q Why did you come back?

2 A Well, I have to come back to my place to work.

3 Q And what happened when you came back?

4 A I know - my wife when I get married was only
5 six months in the United States and her language is not
6 very good, but I know like I say it was not busy and she
7 can make - understand make a pizza or a sandwich, any sandwich,
8 so I left her there and I give ride to my friend to Waynesboro,
9 So I was in Waynesboro and I call my wife and I say how's
10 everything and she say all right . I was afraid maybe they
11 come back again, and give her trouble here. And I told her
12 if anybody come back and try to get you out, don't go out,
13 just stay here and don't worry, don't be afraid. I call her
14 from Waynesboro and she say everything was okay. So I stopped
15 some other place with my friend and I say I'm going to call my
16 wife and see how she's doing again, so I call my wife.

17 Q What time was this?

18 A About 4:30, 4 o'clock, exactly I don't know the
19 correct time. I say - and she - from say hello I understand
20 something is wrong - her voice was not the regular voice I'm
21 wanted to hear. I said what's wrong honey, she said, Steve,
22 everybody is here and they change the locks and they tried to
23 take me to jail. I say to her, don't worry I'm coming. I
24 was very close, not so far. Mr. Callaghan was there, the lock
25 was changed. Mr....the policeman was there. The locksmith was

1 there.

2 Q Was Archie there?

3 A Archie was there. And everybody comes into the

4 restaurant, you know.

5 Q Were there any customers?

6 A Customers - no sir, was no customers there.

7 When I was in, there was no customers. Callaghan come over

8 to me and say, Steve, I'm sorry I have to do that. I'm sorry.

9 I say....that's all right and the policeman come over to me

10 and he read me some papers and say, Mr. Steve, I have warrants

11 for you...I'm going to read for you and I want you to hear.

12 I say I don't want to hear nothing and I put my hands - my

13 fingers in my ears. He starts to read, I say I don't want to

14 hear. He starts to read, so I try to go behind the kitchen,

15 and then Mr. Callaghan he says, he's going to run for the

16 door. He's going to do something to kill us. I hear that...

17 and Mr. Callaghan goes out ...

18 Q Let me interrupt you, Steve, for a moment, if

19 I might.

20 CAMBLOS: There are papers here that are a part of

21 that same record, I think if part of it is going in it should

22 all go in.

23 Q If he wants to introduce he can introduce when he

24 has the opportunity, Your Honor. I just want to introduce the

25 warrants at this time.

1 COURT: Is there anything that should go in other
2 than the warrants ....
3 CAMBLOS: Your Honor, there is a warrant - here's
4 something here that shouldn't go in, it's a note in my writing.
5 COURT: Well, I don't see why the warrant and the
6 order - I believe there's an order of the Court -
7 CAMBLOS: Yes sir, there's bond.....
8 COURT: I don't see any reason it would have to be
9 any more than the warrant and the order of the Court.....
10 CAMBLOS: All right, sir.
11 Q Steve I show you these two documents, can you
12 identify those?
13 COURT: I don't know that he's the one to prove those...
14 there's no dispute about those.....
15 CAMBLOS: None whatsoever, Your Honor.
16 COURT: They are just the warrants and the order
17 of the Court....
18 Q May we then have the first one for trespass marked
19 as the next exhibit and the ...
20 COURT: All right.
21 Q And the grand larceny for the following exhibit.
22 COURT: All right.
23
24 The warrant for trespass was marked and received into
25 evidence as Plaintiff's Exhibit Number 7.

The warrant for grand larceny was marked and received into evidence as Plaintiff's Exhibit Number 8.

Q These will be introduced as being these warrants that were served on the defendant, Mr. Zaharpoulos. Steve, as a result of the receipt of these warrants what occurred? Do you understand that question, Steve?

A Not very well.

Q All right. Did the policeman give you these warrants, show them to you?

A He started to read them and try to cover my head, but I still hear - I tried to go behind to the counter and the kitchen.

Q For what purpose?

A I don't want to hear any - what they say, and I was not - I had in my mind not to take me out from the place.

Q When you went back to the kitchen...

A When I went back to the kitchen I heard Mr. Callaghan say, watch him he's going to run out from the other door, and is going to take something and kill us.

Q Wait a minute, I don't understand that. How did you go back into the kitchen, did you walk, run or ...

A I just walk.

Q And what happened to Mr. Callaghan?

A He say to the policeman, watch him, he's going to

1 run through the back door and go out through the back door
2 and going to leave.
3 Q He said that to the policeman?
4 A Yes - or he's going to do something to kill us,
5 going to take something from in the kitchen to kill us.
6 Q And he said that to the policeman?
7 A Yes sir.
8 Q Mr. Callaghan?
9 A Yes sir, I hear that.
10 Q What did Mr. Callaghan do?
11 A He's going out from the door.
12 Q Which door, back door, front door?
13 A The front door.
14 Q Did anybody else run out?
15 A Everybody - Mr. Archie was out still.
16 Q They all went out?
17 A Yes, they was afraid of me. So the policeman went
18 out - in my opinion, he's run out through the other door -
19 there was two doors, one in the north side and one at the west
20 side.
21 Q Okay.
22 A So I was behind - like in the kitchen and I just
23 turn around and come back again into the place - nobody was
24 there. So the police comes in the front again. He say, Mr.
25 Poulos - I have to take you in. I say- it's by the law. I don't

1 want to, but please don't do any trouble, I have to take you
2 in. You got two - got warrant to arrest you here and I have
3 to take you in.
4 Q How many warrants did you have at that time,
5 one or two - how many did they call...
6 A One.
7 Q And do you know which one it was?
8 A I don't really know, Mr. Soutzos,.....in my
9 mind, I don't know...
10 Q Do you recall the policeman telling you whether
11 you took the adding machine and the toaster or was the police-
12 man saying you don't belong here?
13 A He's saying you don't belong here.
14 Q And that's what he arrested you for?
15 A Yes sir. I hold out my two hands to him and I say,
16 okay, by the law, go ahead and take me.
17 Q Where did he take you?
18 A He's put the hand on me here - very carefully and
19 he's took me into his car...
20 Q Did he handcuff you?
21 A Sir?
22 Q Did he put handcuffs on you?
23 A No sir, he don't.
24 Q Where did he take you then, did he take you to a
25 car? Did he.....

1 SOUTZOS: Thank you.

2 COURT: All right, the Court will overrule any

3 objections and we'll have the jury return, please...

4

5 (Jury returns to courtroom.)

6

7 Q Mr. Callaghan, I believe we had gotten to the

8 point that you had testified you had practiced for 14 years,

9 the last 12 of which were in Charlottesville. During that

10 12 years have you been with the Taylor, Michie Firm or some

11 combination of it?

12 A Yes sir.

13 Q Have you specialized in any particular field of

14 law or just a practice in general?

15 A A general practice, sir.

16 Q Is the practice of that firm general or specialized?

17 A General, sir.

18 Q Have you done a great deal or lesser amount of

19 criminal work?

20 A I would say I've done a lesser amount.

21 Q Could you characterized it beyond saying lesser?

22 A Yes sir, I ...

23 Q The amount of criminal work you've done?

24 A I would say I've done very little. I ....maybe

25 three or four cases a year.

1 Q Now, do you know the defendant in this action,
2 Archie Pallas?
3 A I do, sir.
4 Q For approximately how long have you known him?
5 A Well a long time, Mr. Camblos. I would imagine that
6 it could be 8, 9, 10 years.
7 Q Do you or have you ever represented him?
8 A Yes many times.
9 Q Do you represent him in any matter now?
10 A Uh...
11 Q Is there any active matter in which you represent
12 him?
13 A There is nothing particularly active at the
14 present time.
15 Q Do you have any reason to know whether during
16 the time you have represented him, you have represented him in
17 all his business affairs up to this case?
18 A I have, sir.
19 Q Has - have you been able to learn through your
20 representation and association with Mr. Pallas, the extent of
21 his knowledge of law?
22 A Yes sir, I believe I have.
23 Q And what - how extensive is his knowledge of law?
24 A With all respect to my friend, it's not very exten-
25 sive. He's a layman and English is not his native language.

1 Q In your representation of Mr. Pallas, have you
2 in various of his business affairs given him advice?
3 A Yes I have.
4 Q Has he generally followed that advice?
5 A He's always followed my advice.
6 Q In his business affairs have you on any occasions
7 ever virtually taken over the legal aspects of his business of
8 the moment?
9 A Yes, I would say so, Mr. Camblos. He has pointed
10 in certain directions and said do what you think is best and
11 I have done so under that general authorization.
12 Q Did you represent him in connection with the leasing
13 of his business to Mr. Zaharpoulos?
14 A Yes sir....
15 Q Mr. Poulos?
16 A Yes sir, I did.
17 Q Did you in conjunction with another attorney
18 prepare the lease that was involved?
19 A Yes, that's right.
20 Q And is now in evidence?
21 A Yes sir.
22 Q After that lease was prepared did you prior to
23 February 13, 1973, discuss anything concerning that lease with
24 Mr. Zaharpoulos?
25 A Yes, I did.

1 Q Do you know when that discussion took place?

2 A Not precisely, Mr. Camblos, I would think that it

3 was - well, I know that it was after December 5, and my

4 best estimate would be that it was 10 days, two weeks before

5 February 13.

6 Q How did that discussion come about?

7 A Mr. Poulos came to my office, he had previously

8 been involved in an automobile accident and he - and asked me

9 to represent him in that connection. I assumed that he wanted

10 to talk about that and he came to my office and said no he

11 didn't want to talk about that, that he wanted to talk about

12 this matter.

13 Q Did you on his telling you that give him any

14 precaution or ...

15 A I certainly did. He started off by saying that

16 no he didn't want to discuss the accident, but he wanted to

17 discuss his business with - and he called him as I recall,

18 Mr. Archie meaning Mr. Pallas, and I looked at him and he said,

19 he said, I paid too much, and at that point I said, Mr. Poulos,

20 I don't think I can get into this: You understand and we had

21 had a previous discussion of it, that I represented Mr. Archie

22 and I would not - I don't want to go into this in any detail.

23 Q Did he in spite of this admonition discuss the

24 matter?

25 A Yes.

1 Q Did he at that time make any statement to you as
2 to the - being in arrears?
3 A Yes, he said that he hadn't paid certain money
4 and I'm not exactly sure what he said he hadn't paid, and that
5 he wasn't going to pay any more.
6 Q He was speaking of the future?
7 A Yes sir.
8 Q And said he wasn't....did he go any further, just
9 saying, I'm not going to pay any more?
10 A Yes.
11 Q Did he go any further than that?
12 SOUTZOS: Your Honor, I'm going to object to the
13 leading question. I think its been asked and answered...
14 CQURT: What is the suggested answer?
15 SOUTZOS: The suggested answer is that he's not going
16 to pay any more.
17 COURT: Well...
18 SOUTZOS: And he answered it.
19 COURT: You can make objection if a question is leading,
20 if the question suggests the answer. I'm just wondering what
21 answer is suggested here.
22 SOUTZOS: Well, Your Honor, every answer has been
23 yes, yes, yes; I would suspect that they are suggested...
24 I think he can ask him to testify as to what occurred in the
25 conversation, that's perfectly proper, but to ask him did he say

1 this, did he say this, did he say this, is leading.

2 CAMBLOS: May it please the Court, I submit that to

3 ask him the question did he go any further does that suggest

4 that yes he did, does not suggest that no he did not.

5 COURT: I'm going to overrule ...

6 A He did go further, yes Mr. Camblos.

7 Q And what did he say in going further?

8 A Well, when he said that he wasn't going to pay any

9 more, I said Mr. Poulos this is very embarrassing, you're

10 talking as you know to Mr. Archie's lawyer, you shouldn't

11 tell me this. Now, I'm in a very uncomfortable position.

12 I said, now you ought to consult with your own lawyer about

13 this. Well, he didn't want to do that, and he said to the

14 effect that, well, I just can't pay any more, and of course,

15 I urged him to live up to his responsibilities, or if he thought

16 that he didn't have to to consult his own lawyer. I said, well

17 you know, Mr. Poulos, that Mr. Pallas when he finds out that

18 you are not paying the rent will of course have to make you

19 leave. And he said no that wasn't the problem, that he just

20 wanted to make a little bit more money and if Mr. Archie asked

21 him to leave, he would leave. Well, I went over this again

22 and again with him, because I wanted a clear understanding,

23 and I said, well, then what you are saying then is that when

24 Mr. Archie says that you'll leave, you'll leave, and he said,

25 yes. And I said, all right, I said now, let's let it rest on

1 that basis then.

2 Q Did you agree to this change of the lease on Mr.

3 Pallas's behalf?

4 A I did, sir. I thought all in all it was a reasonable

5 procedure. I knew Mr. Pallas would find out very quickly

6 that he hadn't paid. I agreed to it.

7 Q Did he question the fact that he was agreeing

8 to leave when Mr. Archie asked him to leave? Was there any

9 problem about it?

10 A No, none whatsoever. I recollect one word he

11 said that he was a big man and I think he didn't mean a big

12 man and important man, he meant that he was a growing man and

13 that was fair. He told me - I said where are you going, he

14 told me he was going to New York, and that was fine with him,

15 that he could get a little bit more money and get some traveling

16 money - though he did not use traveling money as an expression -

17 that's mine.

18 Q Did you see Mr. Poulos on any other occasion after

19 that and before February 13?

20 A No sir.

21 Q Did you see Mr. Pallas?

22 A Yes sir.

23 Q Do you remember when or approximately when you saw

24 Mr. Pallas?

25 A By knowing that this incident occurred on the 13th,

1 I can - well, it was about 4 or 5 days before - before that
2 week-end, before the 13th.
3 Q Did you at that time give Mr. Pallas any advice?
4 A Yes sir.
5 Q Did the advice you gave him have to do with
6 the agreement to leave when asked that Mr. Poulos had made
7 with you?
8 A I would say so, sir, yes.
9 Q What did you tell him that had to do with that
10 agreement?
11 A Well, Mr. Pallas told me that he hadn't been paid
12 and now what did he do, and I said, go to Mr. Poulos and tell
13 him politely that he hadn't paid - that you had talked with
14 me and request him to make arrangements to leave.
15 Q What was your next involvement in that?
16 A Mr. Pallas came back to my office on the 13th of
17 February and told me that he had been unsuccessful, that Mr.
18 Poulos was still there.
19 Q Do you know whether he came by appointment, had
20 he called or anything before or do you know?
21 A I'm not sure, Mr. Camblos.
22 Q What decision did you and/or Mr. Pallas make when
23 Mr. Pallas came to you on the 13th and told you this?
24 A I think it was my decision. I was morally certain
25 that if I went out there and sat Mr. Poulos down and reminded him

1 of our understanding, handled it in a polite, dignified manner,
2 that he would leave, and so I told Archie - I've forgotten
3 who drove, but well, we'll go out there. I was also informed
4 at that time that Mr. Pallas did not have keys to his place
5 of business, so I or Mr. Pallas, I don't remember,...suggested
6 that Mr. Brown be there sometime during that day for the purposes
7 of changing the locks - after Mr. Poulos left.
8 Q Who is Mr. Brown?
9 A Mr. Brown is a local locksmith....Stuart Brown.
10 Q Do you know whether either of you called Mr.
11 Brown before you went?
12 A Well, I'm certain that we did, because Mr. Brown
13 was there, but I don't have a recollection of who called him.
14 I don't remember, it's a long time ago. I'm sure he was
15 called.
16 Q When you got to Archie's Pizza, what occurred?
17 A I walked in the door. I believe Mr. Brown was
18 already there. Mr. Pallas was there with me and behind me.
19 I said hello to Mr. Poulos, he was very courteous to me, but
20 he was agitated, and he indicated by word or action that he
21 didn't want Mr. Pallas in his place of business. I think too
22 Mr. Brown not knowing what was happening had come in and he
23 had his toolbox and I'm sure that Mr. Poulos was objecting to
24 Mr. Brown, too. In any event I asked both Mr. Brown and Mr.
25 Pallas to step out. Shortly thereafter, Mr. Poulos said, Mr.

1 Callaghan, I think I'll call the police, and I said, very
2 well, sir, go ahead, and he did so.
3 Q At that time had you informed Mr. Poulos the
4 purpose of coming there?
5 A You mean before or after.....
6 SOUTZOS: Your Honor, I object...
7 A You mean had I informed him of the purpose before...
8 SOUTZOS: Objection, I'm going to object to these
9 leading questions, again - at that time did you inform Mr.
10 Poulos as to why you were there? - I think he can ask ...
11 COURT: Whether...
12 SOUTZOS: I think he can ask what conversation he
13 had with him, and what was discussed, the nature of this, but
14 I don't think he can direct him to this particular...
15 COURT: I'll have to overrule your objection...
16 Q I repeat the question, at the time - I'll change
17 it a little - at the time Mr. Poulos talked about calling the
18 police, had you then informed him of your purpose in coming
19 there? Or do you remember?
20 A I can't....I really don't know. I mean I thought -
21 I don't know.
22 Q Did you during the course of the morning tell him,
23 what you had come for?
24 A I certainly did, yes.
25 Q And what did you tell him?

1 A I tried to - he invited me to have a cup of
2 coffee and that was good, and I tried to go slowly. I reminded
3 him of our agreement. He didn't deny that. I asked him
4 whether or not he had made up the rent, no he hadn't, he hadn't
5 paid the payments. I asked him if he was going to make any
6 future payments and he said, no, and I said, well, Mr. Poulos,
7 can we then make arrangements for you to leave. I was mindful
8 of the fact that I think face and dignity are very important
9 to Mr. Poulos, and of course I didn't want him just to be
10 ushered out. And I kept saying, an hour or two, maybe if we
11 go away, Mr. Poulos - the only thing I recall in the early
12 hours of the discussions was that he acknowledged all of these
13 things, but said that he was going, that Mr. Pallas had
14 insulted him.....all I got out of it.
15 Q Did he make any statement as to whether he had
16 a right to be there?
17 A Oh, he....well, in the sense, Mr. Camblos, that
18 I would say, now, Steve, you do not have - and I called him,
19 Steve, you do not have a legal right to be here. He would say,
20 no, I don't have a legal right. I would say, you haven't
21 paid the rent, no I haven't paid the rent. You said, you'd
22 go, yes I said I'd go. In that sense.....he never came out
23 and said I have no legal right to be here, but he would answer
24 my questions along those lines.
25 Q Did he in fact call the police?

A Oh yes.

Q Did a policeman come?

A Yes sir.

Q Who came?

A I'm not sure if I knew his name at the time, but I know now that it was Officer Pace. At least I think it was Officer Pace.

Q Was there any other officer with him?

A No sir, not that I recall.

COURT: That was Mr. Poulos called the police?

A Yes sir, Mr. Poulos or somebody in his employment, Your Honor, placed the call. I did not do so.

Q Mr. Callaghan let me go back a minute. We have in evidence as exhibit - Plaintiff's exhibit number 6, the letter purported to have been written by you to Mr. Poulos, dated November 13, do you recall writing that letter?

A Would you mind if I just read it, Mr. Camblos?

Q Yes...

A I do recall writing it. Yes, I have a recollection.

Q Do you remember whether or not you had any conversation with Mr. Poulos concerning the letter and other matters perhaps after you had written that letter?

A A very slight exchange, yes sir. When he came to me about his automobile situation, of course, I didn't know what he wanted, and he said, you wrote me a letter and I

said yes. And he said, well, everything's better now and I said, well, that's good. And I think that was just about it or words to that effect. I don't quote them precisely - just that everything was all right now.

Q In that letter I believe you made reference to Mr. Pallas going to Greece?

A Yes.

Q Do you remember whether Mr. Pallas went to Greece and if so when?

A No, I don't, Mr. Camblos, I mean it was about - no, I'm not exactly sure when he went. He went some time between the time the lease was executed and the dateof this letter, I take it, even that's deduction.

Q Are you saying you do not know? All right...

A That I do not know what?

Q When he went?

A No I don't know precisely when he went, no. I have no direct knowledge of it. I understood that he went.

Q Do you remember how long you stayed at Archie's Pizza on the morning - when you went there on the morning of February 13?

A Not precisely, but it was some time, Mr. Camblos, an hour, two, longer. I would say it was more than an hour, I'm quite sure it was.

Q During that time did you ever tell Mr. Poulos what

1 the results might be if he continued to refuse to leave?

2 A I would say yes to that, Mr. Camblos, towards

3 the end. I mean it got progressively worse as time went on,

4 and I of course pointed out to him that Mr. Pallas had legal

5 action he could take.

6 Q Did you tell him what legal action Mr. Pallas

7 might take?

8 A I - yes, I expect I did. I mean I expect that I

9 told him that if he kept on that he could be arrested, in

10 my judgment and that was to be avoided at all costs and I

11 was using that as a way of trying to solve a problem, but that

12 was towards the end of the conversation. First there was

13 nothing like that because I always assumed, Mr. Camblos, that

14 if I could calm him down and I could - he would abide by the

15 agreement he had made.

16 Q Did you tell him whether - in speaking of arrest,

17 you were talking about one matter or more than one matter?

18 A Well, as the morning wore on, I became very con-

19 cerned about an adding machine and a toaster and this..

20 Q All right, did you tell him he might be arrested

21 in that connection?

22 A Yes sir, I think I did.

23 Q Now let's stay away from that as I requested of

24 you earlier. Did you tell him of any other ground on which he

25 might be arrested?

1 A My hesitation, Mr. Camblos, is I don't know if
2 I characterized it as criminal trespass or not. That was
3 the thrust of it, that in my judgment that having told me
4 that he would leave, having admitted that he had no right
5 to be there, that his continued presence on the premises,
6 and I didn't phrase it that way - I phrased it in a way he
7 would understand it - staying here, Steve, is going to put
8 you in a position where you could be arrested. Now whether I
9 said for criminal trespass or not, I don't know. I may have -
10 I may not have.
11 Q So far as you were able to observe from what Mr.
12 Soutzos ...
13 A I'd like to amend that answer or just elaborate
14 on it...
15 Q Go ahead.
16 A I also told him that in view of the fact that
17 his stories on where the adding machine were were contradicting
18 each other and didn't make any sense that I thought that that
19 added to the fact that his, that his occupancy was unlawful.
20 He wasn't there for a proper purpose. He was also told that
21 that came into the picture.
22 Q Now in so far as you were able to observe from Mr.
23 Poulos' actions and words, did you make any progress in trying
24 to persuade him to leave?
25 A Well, using hindsight, of course, I didn't, Mr.

1 Camblos, I thought from time to time that I was making some
2 progress. He was very polite to me and - but I suppose essen-
3 tially no, it was just I was confusing politeness to me with
4 progress. I suppose I didn't make any progress at all.
5 Q I believe I previously asked you, do you know
6 how long you stayed on that first occasion?
7 A My answer sir is that it was a long time, that
8 isn't very helpful - an hour or two, but I think it was more
9 than an hour. I'm quite sure of that.
10 Q Did you then leave?
11 A Yes sir.
12 Q Do you know whether you left alone or with someone?
13 A I'm morally certain that I left with Mr. Pallas.
14 I think we only took one car.
15 Q Do you know where you went?
16 A Back down to my office.
17 Q Did you contact any person outside of this
18 controversy?
19 A Yes sir. At some time after leaving I contacted
20 Mr. John Dezio, who was assistant Commonwealth's Attorney for
21 the City of Charlottesville at that time. And I also contacted
22 Mr. Poole, who was Justice of the Peace.
23 Q Well, did you go to see Mr. Dezio or did you con-
24 tact him other than...
25 A No sir, I previously talked with Mr. Poole on the

1 telephone from Archie's Pizza. I then at some time in that
2 afternoon went to Mr. Poole's office in the Police Department,
3 and Mr. Dezio to my recollection was called by us - we both
4 talked to him, from Mr. Poole's office.
5 Q For what purpose did you call Mr. Dezio?
6 A Well, my purpose was that since I had represented
7 however casually in an isolated manner, Mr. Poulos, I did
8 not want the responsibility on my shoulders alone of authoriz-
9 ing criminal warrants. Arresting one's own clients is somewhat an
10 unpleasant affair. So I wanted Mr. Dezio to hear the facts and
11 give me his judgment as to what was appropriate.
12 Q Now as to the trespass warrant which you subsequent-
13 ly obtained, were you so far as you knew, in possession of
14 all of the facts, the pertinent facts concerning that?
15 A As far as I knew, yes sir.
16 Q Did you pass on to Mr. Dezio all of the pertinent
17 facts so far as you knew them?
18 A Yes sir, in some detail. I talked about the lease,
19 I talked about the lease not having an automatic eviction
20 notice. I told Mr. Dezio of my prior discussions with Mr.
21 Poulos, some ten days before the 13th, I told him of my
22 discussions with Mr. Poulos on that day. I told him about the
23 toaster and the adding machine, and I may have answered several
24 questions that he posed, which I do not remember. I think I
25 told him everything, sir. I tried to.

Q So far as you were aware did Mr. Pallas know anything having to do with the trespass that you didn't know?

A No sir, and he sat there as I recited the facts and I think I had all the facts, Mr. Camblos. I think so today.

Q After you gave Mr. Dezio what you considered to be the pertinent facts, did he give you any opinion as to whether a trespass warrant would be proper?

SOUTZOS: I'm going to object to that, Your Honor, that would be strictly hearsay. Mr. Dezio has been subpoenaed he can testify as to that. This is hearsay, no matter what the answer is, it's hearsay....either directly as to what Dezio said or in the back door as to what he gathered after talking to Dezio. Let Dezio said what he said.

CAMBLOS: May it please the Court, the question asked whether or not Mr. Dezio gave him an opinion. I am not offering this as proof of the truth of any opinion, I'm merely offering it for the fact of its being given. And in that event hearsay rule does not apply.

SOUTZOS: I have no objection to his saying that an opinion was given, but I will object as to what that opinion was.

COURT: Well...

CAMBLOS: I haven't asked what it was Your Honor. I don't intend to.

1 COURT: Well, as I understand it the question
2 doesn't go that far.
3 SOUTZOS: Then I have no objection.
4 COURT: All right.
5 Q Did he give you an opinion as to whether he felt
6 that a trespass warrant would lie?
7 A He did, sir.
8 Q Did you act on that opinion?
9 A I did, sir.
10 Q Due to your actions on that opinion was the
11 trespass warrant sworn out?
12 A Yes sir.
13 Q And did you advise Mr. Pallas and the Justice of
14 the Peace, as to whether it should be sworn out? The trespass
15 warrant?
16 A Did I advise Mr. Pallas and the Justice of the
17 Peace?
18 Q Yes.
19 A Yes, I did.
20 Q Was Mr. Pallas there at all times that you were
21 at the Justice of the Peace's office?
22 A I wasn't in his office - but, yes, yes, I thought
23 you meant the Commonwealth's Attorney - yes, he was, sir.
24 Q Did Mr. Pallas make oath in obtaining the trespass
25 warrant?

A I'm certain that he did, yes.

Q Did you obtain the one warrant at that time and the other at a later time, or did you obtain both warrants at the same time?

A I'm not sure, Mr. Camblos. I'm just not sure, I've racked my memory on this. I know what Mr. Dezio advised me as to the three warrants, I won't say what that was, and...

Q Three warrants?

A I'm sorry, sir. I tend to combine the toaster and the adding machine into separate warrants. They're not, they're one. I know what Mr. Dezio advised me and some time during that day both warrants were issued, but I am confused now as to the exact timing.

Q After obtaining the trespass warrant what action did you and Mr. Pallas take?

A Returned to Archie's Pizza.

Q Was Mr. Poulos there at that time?

A No sir, he was not.

Q Did he later return?

A Yes sir, he did.

Q Was he arrested on that trespass warrant?

A Yes sir, he was.

Q Do you know - do you remember whether or not the other warrant was then outstanding?

A I don't know whether it was outstanding or not, sir.

I mean it was very shortly thereafter if it wasn't then.

Q Did you or Mr. Pallas so far as you observed take any part in telling or instructing an officer how to execute that trespass warrant of arrest?

A No sir, we may have told him where he could expect to find Mr. Poulos, but I don't think we even did that. We certainly didn't talk to .....no, I would say, no sir, we did not.

Q Did you or Mr. Pallas so far as you observed take any part in what the officer did after he arrested Mr. Poulos?

A No, absolutely not.

Q Did you or Mr. Pallas make any effort to be of any assistance to Mr. Poulos after he was arrested?

SOUTZOS: Your Honor, I'm going to object...

A Yes sir.

SOUTZOS: I'm going to object to his question - did you and Mr. Pallas. I don't think he can testify as to what Mr. Pallas did - unless they did it in unison, and I don't know that he can say that. I think he can testify as to what he did and not as to what Mr. Pallas did.

Q The question was Your Honor, did you or Mr. Pallas so far as you could observe - was the question.

COURT: He can testify as to what he observed...

Q Did you or Mr. Pallas, so far as you could observe,

1 do anything to try to help Mr. Poulos after he was arrested?

2 A Yes sir, I would think that that could be said,

3 yes.

4 Q What did you do?

5 A I received an inquiry from the Justice of the

6 Peace with respect to bail and he said that he had somebody

7 who wanted to post bail that he didn't know -- what did I know

8 about it. I said well, that I didn't know the man either,

9 but that was - as far as I had anything to do with it, that

10 would be perfectly fine to let this gentleman post the bail

11 so that Mr. Poulos would not be held.

12 Q Now did you continue to represent Mr. Pallas

13 in this connection after Mr. Poulos had been arrested and

14 admitted bail?

15 A I think the answer to that is yes. It was my

16 responsibility - at least I deemed it so, to try and regain

17 possession of this adding machine and toaster. I thought it

18 was my obligation to cooperate with the Commonwealth's Attorney's

19 office in so far as presenting the witnesses for trial.

20 Q On your second visit on the 13th, to Archie's

21 Pizza, was Mr. Brown then called?

22 A Yes sir, I think so.

23 Q Did he come there?

24 A Yes sir.

25 Q Do you know whether or not Mr. Brown coming there the

1 second time did in fact change the locks?

2 A Yes, I know that he did. I saw him do it.

3 After Mr. Poulos had left.

4 Q Are you certain it was after Mr. Poulos left?

5 SOUTZOS: He answered the question, Your Honor.

6 Q All right, I'll take it for certain...

7 A Yes sir.

8 Q Did anyone in your presence on that second visit

9 to Archie's Pizza look in the cash register?

10 A Yes sir.

11 Q Did you?

12 A Yes sir.

13 Q Do you remember when you first saw in the cash

14 register that day?

15 A I think Mr. Camblos that I was aware of the cash

16 register in the morning session also.

17 Q Did you observe in general terms or specifically

18 the amount of money in it?

19 A On which occasion sir?

20 Q On either occasion? Or both occasions, if you

21 observed it both?

22 A When I first looked there was money in the cash

23 register. In the afternoon session there was - if there was

24 money it was very little....a few pennies, less than a dollar.

25 Q Was the safe on the premises opened at any time

while you were there on either occasion?

A It was sir.

Q On which occasion?

A The second occasion, sir.

Q At what point on the second occasion was the safe opened?

A After Mr. Poulos - Zaharpoulos - drove off under arrest by Officer Mann, Mr. Brown was there, I was there, Mr. Pallas was there.....there was some brief search for the adding machine and the toaster and then everybody's attention was drawn to the safe. We all went over to the safe and either Mr. Brown or Mr. Pallas opened it. We all peered in the safe.

Q What was in it?

A There was no money in the safe, Mr. Camblos. There may have been an old glove or something of that nature, but there was no money, sir.

Q Did you make any observation concerning the amount of stock on hand, food and other supplies?

A Yes sir.

Q What was that observation?

A Well, as a non-restaurant man, it looked very little. Of course, I'm not a restaurant man and it looked like it was bare or relatively bare.

Q During the day did you ever see anything removed

from the premises on either the first or second visit?

A I saw Mr. Zaharpoulos go out to his car on at least two occasions and he took something with him, but I don't of course know what it was.

Q During this entire day, were you representing Mr. Pallas?

A Yes sir.

Q Were you acting for him when you acted?

A Yes sir.

Q Did Mr. Pallas or-as you observed-do anything during that day, take any action other than on your advice or with your assistance?

A No sir, he did exactly everything I suggested. The only time he became his own man again was once he regained possession of the restaurant, then he took over.

Q So far as you know, was Mr. Pallas at any time prior to Mr. Poulos' arrest in the restaurant - the Archie's Pizza premises? When you were not there?

A No he was never in the restaurant except in my presence.

Q Did you ever see him open the safe?

A Prior to the occasion I have described, the three of us....

Q Prior to that occasion, the three of you?

A No - no sir.

Q Did you ever see him open the cash register?

A No sir.

Q Did you on the second occasion of going to Archie's Pizza that day, talk to Mrs. Poulos?

A Yes sir, very briefly.

Q Did you make any threats?

A No sir, not that I recall, sir.

Q Was there ever any suggestion on anyone's part that Mrs. Poulos might be taken to jail?

A Absolutely not, sir.

COURT: We'll take a five minute recess.... Jury retire to your room, please.

(Jury retires to jury room.)

(Recess.)

(Jury returns to the Courtroom.)

CROSS EXAMINATION

BY: Mr. Soutzos

Q Mr. Callaghan, you indicated you knew Archie Pallas how long sir?

A A number of years, I think I said eight - I could be off a year or two one way or the other - a long time.

Q You've been practicing in Charlottesville for 10 - 12...

1 A No sir - yes, about 12 years.

2 Q So you've known him almost the full time - the

3 full time you've been here in Charlottesville?

4 A As long as I can remember, sir....yes.

5 Q In fact weren't you partners in a restaurant

6 one time?

7 A Yes, Mr. Pallas and I and Mr. Rotgin had a brief

8 joint ownership of a restaurant in Charlottesville, known as

9 the Tavern.

10 Q So you were more than just client-attorney relation-

11 ship - you were business associates and you may even well have

12 been social friends?

13 A Taking one at a time, Mr. Soutzos, we were business

14 associates in a loose sense for about two months - I guess

15 about five or six years ago.In a social sense, no we haven't

16 seen each other socially - we are friends.

17 Q You say in a loose sense, didn't you contribute

18 over a thousand dollars - maybe 12 - 15 hundred dollars to

19 this restaurant?

20 A I don't recall that I put that much in. I think

21 it was closer to 6 hundred dollars, sir. Well, I mean in a

22 loose sense that Mr. Pallas ran the restaurant and I put six

23 hundred dollars in or whatever I did in the restaurant.

24 Q Did you get back 12 hundred dollars out of the

25 restaurant?

1 A Yes - yes, it made a profit.

2 Q Now you indicated that you had a conversation

3 with Steve some time prior to February 13, '73 and some time

4 after his coming to you with an accident?

5 A That's right, sir.

6 Q And that conversation did not deal with the

7 accident case at all, did it?

8 A No sir.

9 Q He didn't discuss it with you at all?

10 A I said, I suppose Mr. Poulos you want to know

11 how your accident case is coming along and I started to launch

12 into an explanation how he couldn't settle it immediately

13 and he said he didn't want to talk to me about that.

14 Q And then he discussed with you the business, and

15 you indicated he said to you that he paid too much for it?

16 Is that what you said?

17 A Yes sir.

18 Q What did he mean by that, do you know, did you

19 inquire as to what he meant?

20 A No.

21 Q That he paid too much for it.....

22 A I didn't inquire - I mean I guess he figured the

23 rent was too much. I don't know, Mr. Soutzos, I didn't want

24 to hear it. That was an awkward position to be in.

25 Q It was awkward for you?

1 A Yes sir.

2 Q You said don't tell me, because I represent Archie?

3 A Yes sir, particularly as I had that automobile

4 case and I had told him before that I had to - it was a very

5 ticklish spot and I represent him on the automobile case and

6 the automobile case only. And if there was any conflict

7 with Archie, he had to understand that I was Archie's attorney

8 and any kind of a discussion on that subject bothered me,

9 particularly too - it just bothered me...

10 Q Well, why didn't you cut that discussion off

11 immediately at that point and not accept any more information

12 from him?

13 A He said he had paid too much and he wanted to tell

14 me something and I don't know why I didn't - but I listened.

15 Q In other words you told him I can't talk to you,

16 Steve, I represent Archie, and there may be a conflict, but

17 go ahead and say what you said?

18 A No, I wouldn't characterize it like that, Mr.

19 Soutzos. I stopped him particularly on the fact that he had

20 paid too much, because that was getting into something else.

21 He then - I told you what was said and he said that he wasn't

22 going to pay any more, that he hadn't paid something in the

23 past, and that he wanted to make a little bit more money and

24 go. Now, I don't mind discussing that part with him - there

25 was nothing wrong with that as long as he understood that I was

1 Mr. Pallas' attorney. I'm perfectly willing to discuss that
2 with him.
3 Q In other words, after you told him that if there
4 was going to be a conflict you would have to represent Archie
5 and not him?
6 A Yes.
7 Q And then when he came in and told you of a conflict
8 and you told him don't tell me any more, because I'm Archie's
9 attorney...
10 A No sir....now wait ....now, Mr. Soutzos, I
11 was representing Archie when I was talking to him, there was
12 nothing wrong with that. I didn't want to hear a story
13 at first about the fact that he thought he had paid too
14 ...was paying too much, because I was afraid he was asking me
15 for a favor, and that he was saying, Mr. Callaghan, help me.
16 I was afraid that that might be what he was saying.
17 Q Why were you afraid of that, you were his attorney?
18 A Whose attorney?
19 Q Steve's?
20 A On an automobile case, not on this case. That's
21 exactly what I didn't want him to think. And I wanted to say
22 something to explain to him - now, this is something else, and
23 then when he got into the subject about paying Mr. Pallas - I
24 was Mr. Pallas' attorney and Mr. Poulos understood it.
25 Q Are you sure he understood it?

1 A Well, of course, one's never sure what somebody
2 else understood - he appeared to understand.
3 Q Did you tell him on that occasion that you were
4 Archie's attorney?
5 A I certainly did.
6 Q You did?
7 A Sure.
8 Q And after telling him that, that you were Archie's
9 attorney and after you thinking he understood it, you then
10 still accepted testimony or words from him as to the conflict
11 that they had?
12 A Mr. Soutzos, you and I must practice differently.
13 I....I will talk to a man that is on the other side of the
14 case, if he doesn't have his own lawyer, and he wants to tell
15 me something. I do that all the time. I deal with somebody
16 who has an interest contrary to my attorney - there's nothing -
17 contrary to my client, there's nothing wrong with that that I've
18 ever heard of.
19 Q Oh, you acknowledge that what he was saying was
20 contrary to your client? Archie?
21 A He was certainly in a position adverse to my
22 client when he said he wasn't going to pay any more rent,
23 yes.
24 Q And you went into that, did you not - didn't
25 you say that Steve, if you don't pay the rent, you'll have to

1 go out? You're going to have to leave.

2 A I'm sure I said something to that effect, that

3 if you don't pay the rent, you're going to have to leave

4 when Archie asks you to leave....is the way it worked out.

5 Q And you were representing Archie when you told

6 Steve that?

7 A Yes sir.

8 Q And then you say that Steve said, I'm going to

9 leave?

10 A I'm going to leave when Mr. Archie asks me to

11 leave.

12 Q Steve said I'm going to leave when Mr. Archie

13 asks me for it, for the place?

14 A Not only said it once, Mr. Soutzos, it must have

15 come up about four times, because I kept repeating it to make

16 sure that we understood each other. And when Mr. Archie

17 says that you'll have to leave, you'll leave, yes, go, no

18 problem...words to this effect.

19 Q Now did he say yes, go, or did he say the words

20 you've just said, I'm going to leave when Mr. Archie asks me

21 to leave? Or was it in response to what you were saying when

22 Mr. Archie asks you to leave, you're going to leave?

23 What did he say, yes , I'll go or did he actually say those

24 words?

25 A Mr. Soutzos, I of course do not remember word for

1 word....he made abundantly clear that...

2 Q Well, if you...

3 COURT: Let him finish - let him finish the sentence.

4 A He made it abundantly clear to me that he

5 would leave when Mr. Pallas asked him to leave on a number

6 of occasions. I do not remember his exact words, sir.

7 Q Now, how long did this conversation take place

8 and where did it take place?

9 A In my office, sir.

10 Q And how long?

11 A How long was the conversation?

12 Q From beginning to end?

13 A Well, I would estimate 10 minutes, 15 minutes,

14 maybe less, maybe slightly more.

15 Q And you told Steve that you would tell Archie

16 this? If he didn't pay that he would leave?

17 A No, I didn't tell him what I would tell Mr.

18 Archie. As far as I knew Mr. Pallas was in Greece, I'm sure

19 that I gave him the impression that that was acceptable to

20 me, that when he was asked to leave, he would leave, and that

21 he could judge his own conduct in the meantime. Of course,

22 I urged him to make up the payments, which would solve the

23 problem.

24 Q Didn't you tell Steve, I'm not going to tell Archie

25 about this conversation?

1 A No sir, I don't remember saying that.

2 Q You don't remember saying that?

3 A No sir.

4 Q Think carefully...do you remember saying that?

5 A I beg your pardon, sir?

6 Q Think carefully if you would on that point.

7 A Did I say I will not tell Mr. Archie of our

8 discussion?

9 Q Yes.

10 A I don't recall saying that, Mr. Soutzos, after

11 having thought carefully. I'm inclined to think that I did

12 not say it.

13 Q Did Steve tell you to tell Archie this?

14 A No sir.

15 Q Did you ever tell Archie about this conversation

16 that you had with Steve, that he would leave?

17 A Not in any detail, Mr. Soutzos, I told him that

18 I had reason to believe that Mr. Poulos would leave promptly

19 if he was informed that Archie wanted him to leave.

20 Q When did you tell him that?

21 A I told him that the meeting I had with Mr. Pallas

22 before the 13th, when I sent him out to tell him, and I probably,

23 though I have no complete recollection of it, told him again -

24 when I said let's the two of us go out, he will leave. I

25 told him that I had every reason to believe that he would leave.

1 Now, I believe that Mr. Pallas was told the exact story,
2 very, very recently - in the last couple of months.
3 Q So that you never did really tell Mr. Archie
4 that, Archie, Steve came to me a couple of weeks ago while
5 you were in Greece, and that we had a conversation about the
6 rent - he was paying too much and he told me that he was
7 going to leave if he didn't pay and you asked him to leave?
8 You never did tell him about this?
9 A I don't recall telling him that. It's just not...
10 Mr. Pallas said he hadn't paid and what will we do and I
11 told him what we would do. I don't recall telling him that.
12 Q Well, ultimately it came upon Mr. Pallas to swear
13 out certain warrants for the arrest of Steve, did it not?
14 A Yes sir.
15 Q And shouldn't he have known the full facts before
16 having those warrants sworn out?
17 A Mr. Soutzos, you've provoked my memory. Since
18 Mr. Pallas was sitting in the office when I was talking to
19 Mr. Dezio he heard these full facts. He knew them before he
20 swore them out, because at that time he must have heard exactly
21 what I told Mr. Dezio.
22 Q But ...
23 A So he had the full facts.
24 Q But up to that point, you never told Archie about
25 that conversation with Steve?

A Not in so many words, no. That's correct.

Q Didn't you think it was your duty to tell him as his attorney?

A I obviously did not, Mr. Soutzos.

Q Don't you think that's withholding information for you to make a complete decision as to this swearing out the warrants...

CAMBLOS: I object to that Your Honor. I think perhaps the jury should be asked to...

COURT: Members of the jury retire to your room.

(Jury retires to the jury room.)

CAMBLOS: May it please the Court, while I think that cases on the point of advice of counsel all make it perfectly clear that advice must be on the basis of full disclosure by the client - cases nowhere state to the contrary that I know of. This line of questioning is what Mr. Callaghan should make certain Mr. Pallas knows before swearing out the warrants. I think it is irrelevant. ...I think to ask Mr. Callaghan as to what he thought his duty was and what he should tell Mr. Pallas before advising Mr. Pallas to swear out the warrants is completely immaterial to any issue in this case, and I would object to any further questioning along these lines.

COURT: Well, I think the last question was right after

1 Mr. Callaghan said that his memory had been refreshed and
2 Mr. Pallas did know all the facts.
3 CAMBLOS: Yes sir, at that time.
4 COURT: So, but I agree that the purpose of divulging
5 all the facts to the attorney is so that the attorney can make
6 a proper decision in advising the client. Now whether or
7 not there was a duty on him to tell Mr. Pallas - the question
8 here is whether or not the attorney had the facts with which
9 to advise Mr. Pallas and if he knew something that Mr. Pallas
10 didn't know well it doesn't put him in any worse position to
11 advise Mr. Pallas. Now, it seems to me that he has testified
12 that Mr. Pallas did know. I don't ....how much more do you
13 want to go into this, Mr. Soutzos, because I don't see the
14 relevancy of it?
15 SOUTZOS: I do want to go into this Your Honor and
16 I want to make a point. If I understand Mr. Camblos he's
17 saying that it is - the law says that - the cases cited that the
18 client has to reveal to the attorney the full...
19 COURT: When the attorney doesn't already know it.
20 SOUTZOS: Fully.....and on the basis of what he
21 reveals, the advice he gets from the attorney - now, the ques-
22 tion I raised and the question I raised before, before we even
23 got to Mr. Callaghan, this morning, is which attorney are we
24 talking about - there are two attorneys here. There's Mr.
25 Callaghan and Mr. Dezio. If the defendant is going to rely on

1 the advice of Mr. Dezio - and I think this is pertinent -
2 If he's going - if his defense is based on the advice of
3 Mr. Callaghan then that's another issue, but the issue is
4 who are they going to claim is the attorney who advised him
5 wholly and therefore his defense lies, Mr. Callaghan or
6 Mr. Dezio?
7 COURT: Well, at this point, the only evidence we
8 have is Mr. Callaghan advised him...
9 SOUTZOS: On the contrary, at this point we say that
10 from the - on the information obtained on talking to the
11 Commonwealth's Attorney, he was told to do so and so or the
12 Commonwealth Attorney told him to do so and so.
13 COURT: No, it's my understanding of the evidence
14 that Mr. Callaghan advised him to swear out warrants.
15 SOUTZOS: So they're talking about Mr. Callaghan,
16 who they are relying on as the attorney for the defense...
17 COURT: I don't know who they are relying on, but
18 I don't think the law says they can't have more than one.
19 SOUTZOS: Well, in the event it isn't Mr. Callaghan -
20 in the event it's Mr. Dezio, then I think this is proper
21 that we go into it at this point.
22 CAMBLOS: May it please the Court, the Court may
23 remember that as to what Mr. Dezio advised counsel for the
24 plaintiff objected and what he advised was never revealed in
25 evidence because of his objection.

1 COURT: At this time...

2 SOUTZOS: That's correct.

3 COURT: At this time the only evidence we have is
4 that Mr. Callaghan advised Mr. Pallas to get the warrant,
5 and that occurred after he had consulted with Mr. Dezio, and
6 Mr. Dezio gave an opinion - we don't know what the opinion was,
7 and it was at this time when Mr. Callaghan testifies that
8 Mr. Pallas was present when he disclosed the facts to Mr.
9 Dezio.

10 SOUTZOS: That's certainly true, and what I'm
11 trying to develop is that it was Mr. Dezio's advice. Mr.
12 Callaghan...

13 COURT: Well, not at this point - not at this point.

14 SOUTZOS: Well, I can develop this at this point.
15 Its been opened up to the point that he had discussion with
16 Mr. Dezio.

17 COURT: Yes, but you can't at this point consistently
18 find out what Mr. Dezio ...

19 SOUTZOS: I'm not going to ask that - what Mr. Dezio's
20 advice was, I'm going to ask what his advice was - Mr. Callaghan's
21 advice was to his client.

22 COURT: All right, you can go into that.

23 CAMBLOS: The matter objected to Your Honor, was
24 objection to going any further with what Mr. Callaghan's duty
25 as to telling him about this conversation may have been....

1 SOUTZOS: I think this is the matter of his advising
2 his client.
3 COURT: Well..
4 SOUTZOS: This is obviously - he advised his client
5 that what he says is - he advised his client that or the defense
6 is that he had - he could do this because Mr. ....Steve did
7 this, this and this. If he didn't advise him then how is
8 this man going to have - how is this man going to have an
9 opinion as to what happened?
10 CAMBLOS: He doesn't need an opinion under the law,
11 Your Honor. If he acts on advice of counsel, which counsel
12 has all the pertinent facts that's all that's necessary -
13 whether he knows anything about it is immaterial.
14 COURT: I don't really know what we are going into -
15 what the problem is, because on the evidence at this stage,
16 he says that Mr. Pallas was advised of these facts, Mr.
17 Dezio was advised of these facts, and he advised Mr. Pallas.
18 SOUTZOS: It's a matter of when they were advised...
19 if the only advice he got....
20 COURT: The only evidence we have - it was before
21 he advised Mr. Pallas and that is in time....let the jury come
22 back....I don't see any point in going any further into this,
23 into whether or not he complied with his duty as far as Mr.
24 Pallas is concerned, because I think it's irrelevant.
25 SOUTZOS: Well, I'd like to go into that point to im-

1 peach his testimony.

2 COURT: Impeach whose testimony?

3 SOUTZOS: Mr. Callaghan's.

4 COURT: Go into which point?

5 SOUTZOS: The point that he said he never told

6 Archie....that he said he would not tell Steve this matter...

7 a contrary statement he made in that position.

8 COURT: All right...all right, ask the jury to come

9 back please.

10

11 (Jury returns to courtroom.)

12

13 Q Mr. Callaghan, do you recall having written

14 testimony in this case through depositions some time earlier

15 this year?

16 A I do, indeed sir.

17 Q Do you recall my question....

18 COURT: What page?

19 Q Page 31, Your Honor, going on to page 32.

20 Do you recall my question being read to you or asked of you

21 by me, "Why did you say that Mr. Pallas would ask him to leave.?"

22 A I don't remember the question.

23 Q Do you recall your answer being, "I said if and

24 when Mr. Pallas asks you to leave. I made an assumption, sir,

25 if Pallas wasn't paid sooner or later he would have asked Mr.

1 Poulos to leave."

2 A I remember the answer, I don't remember the

3 question and I don't understand the question, but I remember

4 the answer.

5 Q Reading further, "Is that what you based your

6 opinion on?" And Your answer was - "Certainly, I had some

7 common sense - if he wasn't being paid". Question - "You

8 indicated to Steve that you would not tell the nature of

9 the conversation that you had with him to Mr. Pallas." Answer -

10 "That I would not inform Mr. Pallas that he did not intend

11 to pay him any more. In fact I did not do so until yesterday

12 or the day before." That would be yesterday or the day before

13 these depositions, which was some time in March.

14 A That is correct, sir.

15 Q Of this year?

16 A That is correct, sir. That's what I said, and

17 I realize now that this is not right, because when I told

18 Mr. Dezio all the facts, Mr. Pallas was sitting there. That

19 simply escaped my memory until this very moment, that obviously

20 Mr. Pallas knew, because I had just got finished telling Mr.

21 Dezio the situation. It's not dreadfully significant to me

22 one way or the other, I don't understand the point.

23 Q Well, the point being you had testified on

24 testimony on the witness stand here that you told Steve-you

25 never discussed telling Mr. Pallas this?

1 A Now you're confusing me, I don't understand the
2 question.
3 Q When was the first time you told Mr. Pallas this?
4 CAMBLOS: Excuse me, Your Honor, I don't understand
5 the question - what do you mean by this?
6 Q When was the first time you discussed the conversa-
7 tion you had with Steve with Mr. Pallas?
8 A Well, first of all, Mr. Soutzos, I am not absolutely
9 certain. I may have said to Mr. Pallas, I talked to Mr.
10 Poulos - I don't know. You are talking about when is the
11 first time that I gave Mr. Pallas substantial detail as to
12 my discussion with Mr. Poulos prior to February 13, my answer
13 now is to the best of my recollection it must have been when
14 I was explaining the facts to Mr. Dezio before these warrants
15 were sworn out and Mr. Pallas was in my presence.
16 Q Well, why in your deposition did you say that -
17 "In fact I did not do so until yesterday or the day before."
18 ...some time in March of this year?
19 A The reason is I was simply mistaken about it.
20 Honestly mistaken.
21 Q Now you indicated that Steve told you in that
22 conversation, I just can't pay any more....aren't they your
23 exact words?
24 A That was what he said, or the thrust of what he
25 said, yes.

1 Q Well, that isn't saying I won't pay any more?

2 A Oh he said that, too, sir.

3 Q He said that too?

4 A Yes sir.

5 Q Now you said Mr. Callaghan that it was our

6 agreement, that if Archie asked him to pay he would leave, did

7 you not?

8 A Our agreement in the sense that it was the

9 understanding between Mr. Zaharpoulos and me, yes sir.

10 Q But that wasn't the understanding between Mr.

11 Steve Zaharpoulos and Mr. Pallas - it was the understanding

12 between you and Steve?

13 A Mr. Pallas was not there, that's right. It was

14 my agreement acting as Mr. Pallas' attorney.

15 Q So the agreement to leave was made with you not

16 with the defendant, the party to this action?

17 A I don't want to get into an agency debate with

18 you. It was made with me as Mr. Pallas' attorney.

19 Q I show you a copy of this lease agreement, are

20 you a party to this agreement?

21 A I am not.

22 Q ...the lease?

23 A No sir, except in so far as I represent one of

24 the parties.

25 Q But you are not one of the parties, you are neither

1 landlord or the tenant?

2 A I'm neither the landlord nor the tenant, true.

3 Q So therefore any agreement with you could not

4 vary this agreement, could it?

5 CAMBLOS: Your Honor, counsel is stating an incorrect

6 proposition of law.

7 COURT: Objection sustained.

8 Q Could an agreement between you and Steve Poulos

9 serve to amend an existing lease between Archie Pallas and

10 Steve Zaharpoulos?

11 A Under certain circumstances I think it could, yes.

12 COURT: Now let's see - you objected to his

13 testifying as an expert, are you now reversing that position?

14 Q No sir, I'm not objecting to...

15 COURT: Are you asking his opinion as an expert?

16 Q I'm asking his opinion as the party who drafted

17 this lease.

18 CAMBLOS: I object Your Honor, counsel can't have it

19 both ways. If he wants to ask him a legal opinion, he's going

20 to have to ask him as an expert - that's what he has just

21 asked. I think he's making him an expert for that purpose

22 and is bound by his answer.

23 COURT: All right, I so rule.

24 Q So rule what?

25 COURT: Rule that you will be bound by his answer be-

1 cause you asked him a legal opinion. And you can't do it
2 unless he's an expert.....and you are waiving any questions
3 as to his qualifications...
4 Q Well, I don't waive his qualifications as an expert...
5 he hasn't been admitted as an expert.
6 COURT: Sir?
7 Q He hasn't been admitted as an expert.
8 COURT: That's the ruling of the Court now....
9 Q Well, wait a minute the ruling of the Court
10 is if I ask him the question he will be answering as an expert?
11 Correct?
12 COURT: That is correct.
13 Q And the prior ruling of the Court is that he
14 is not an expert at this time?
15 COURT: Over your objections, the Court - he has not
16 been qualified as an expert.
17 Q Fine.
18 COURT: He may well be an expert - he hasn't been
19 qualified...
20 Q Let's leave it at that.
21 CAMBLOS: May it please the Court, he has already asked
22 the question and he has already received an answer. I think it's
23 in evidence before the jury and I think it should stay in
24 evidence and I think he's bound by it.
25 COURT: Well, now you are withdrawing your objection?

1 CAMBLOS: I'm only objecting Your Honor on the basis
2 that he misstated a legal proposition. I did not object to
3 this....unless he's willing to be bound by it.
4 COURT: I misunderstood you. I thought you - you
5 first objected on the - whether or not it was a correct
6 statement of law and now I thought you were objecting to
7 his answer.
8 CAMBLOS: No sir, I merely wanted to point out
9 that if he goes into it he is bound by it and I think he
10 has gone into it.
11 COURT: All right, I thought there was an objection.
12 If there's no objection, go ahead.
13 Q Tell me Mr. Callaghan are you certain that everything
14 that was revealed to you by Archie Pallas as to the relation-
15 ship that existed between Archie Pallas and Steve Poulos
16 was told to you?
17 A Was told to me?
18 Q To you?
19 A I was certain in my own mind that I had all the
20 facts. Now certain is a very strong word. I'm certain that
21 2 and 2 is 4. I'm not certain of many other things, but I
22 had every reason to believe I had all the facts....yes.....
23 Q Were you told...
24 A Beyond a reasonable doubt.
25 Q Were you told by Archie Pallas that he was having

1 money difficulties and he wanted the business back?

2 A I was certainly not told that.

3 Q You weren't told that?

4 A That he was having money difficulties and he

5 wanted the business back?

6 Q Yes.

7 A Not in that way. I mean, he wanted his business

8 back, yes - let's take one at a time....that he was having

9 money difficulties, I don't recall him saying that, no.

10 Q Were you told by Archie Pallas that there was

11 personal conflict between he and Steve Zaharpoulos? That

12 they had words and that they had words just a couple of days

13 before he saw you?

14 A On which occasion?

15 Q On the occasion that you spoke to Archie prior

16 to going on the February 13th date?

17 A That he had had words? I don't recall one way

18 or the other. There was nothing that was very significant to

19 me.

20 Q Were you ever told by Archie Pallas that he prior

21 to his going to Greece, actually tried to get the place back

22 himself by changing the locks on the door?

23 A No I was not told that....if that happened.

24 Q Were you told by Archie Pallas that anybody in his

25 store would be arrested if he couldn't change the locks?

1 A I was never told that, if that's what he said.

2 Q Mr. Callaghan, you've told us that you were morally

3 certain that on February 13, 1973, that if you and Archie went

4 down to Archie's Pizza that you could convince or get Steve

5 to leave, were those your words?

6 A Yes sir.

7 Q At the time that you were morally certain were

8 you legally certain?

9 A In my mind I was.....

10 (Inaudible.)

11 (Recess.)

12 Q I asked you Mr. Callaghan whether you were legally

13 certain as you were morally certain that you could get

14 Steve to leave the premises on the 13th of February?

15 A Well, that's a very complicated question. I was

16 morally certain and I was wrong that I could persuade him.

17 Now was I legally certain - I don't really know what that

18 means. Everything I did I was positive was legally correct.

19 I knew that Mr. Pallas could regain his possession of his

20 business when the man wasn't paying him if that's what you are

21 asking....

22 Q Can you tell us how you thought he could gain his

23 possession without going to court?

24 A Yes sir. Now, if there hadn't been any understand-

25 ing to the contrary and if he hadn't taken the man's adding

1 machine and done something else with his toaster and done
2 various - did the various things he did, the thing to do would
3 have been to have gone into court on some type of a five day
4 or 30 day eviction. But he did these other things. And in
5 doing so he committed crimes and the Commonwealth's Attorney-
6 whose advice was sought, and on that basis it is a fact and
7 I can't help it that Mr. Poulos left the premises. If you are
8 asking me whether I got him out by trying to arrest him, the
9 answer is no, he was arrested because I felt in my judgment
10 and I was substantiated by the Commonwealth's Attorney that he
11 had committed crimes.
12 Q But you were so certain that he was going to be
13 out that you had already called a locksmith before you even
14 left your office?
15 A As I told you sir, I was morally certain. I had
16 a high opinion of Steve Poulos and he had told me he would
17 do something and I categorically and wrongfully assumed that
18 he would live up to his agreement with me. I was wrong sir.
19 Q What you're telling us now is that Steve had a
20 right to go right back to those premises after he was arrested?
21 A I'm not telling you any such thing, Mr. Soutzos.
22 CAMBLOS: May It please the Court, counsel is con-
23 tinuing to ask for legal opinion, and I think the Court's
24 prior ruling should apply. I just don't want him to do it
25 be-knowst to himself.

1 Q I'm just trying to clarify what he said. He said
2 that the man was arrested and that he left because of that.
3 One can live in a house and be arrested and can go back to
4 that house. One can have an apartment...
5 CAMBLOS: May it please the Court, I....objection....
6 COURT: I don't see the relevance of that.
7 Q It's not the issue that's being tried today,
8 but that's the statement he made and this is cross examination.
9 I can go into cross examination in a wide degree.
10 CAMBLOS: Well, he asked...counsel asked the witness
11 for a legal opinion, Your Honor. He made an expert of him.
12 He's bound by his answers under a Court's prior ruling. I
13 merely wanted to point out that this question did call for
14 legal opinion.
15 COURT: Well, I don't see ...I don't see the relevancy
16 of whether or not he could have gone back there.
17 Q The relevancy is to damages, the relevancy is
18 to the testimony was that they locked the door, they took the
19 key...there's plenty of relevancy in this.
20 COURT: That would be after the fact, that has nothing
21 to do with whether or not there was malicious prosecution.
22 Q The relevancy is they were so certain that after
23 they had him out and they locked - placed the customers out,
24 and then gave the place to Archie and Archie has been handling
25 it ever since, they were so certain.....

1 COURT: I'm not going to argue the case here with
2 you. I don't see the relevance and unless you want to be
3 heard out of the presence of the jury, why I'll have to ask
4 you to pass on to some other question.
5 Q Maybe we can take this up the next time the
6 jury is out, Your Honor?
7 COURT: All right.
8 Q On that occasion that you went there, the 13th,
9 were there customers in the store?
10 A When I first arrived there were people who were
11 eating and I assumed they were customers.
12 Q And on that occasion you went in with Archie, did
13 you not?
14 A Mr. Pallas was right behind me. I don't think
15 he probably got very far into the restaurant, if at all.
16 Q And what occurred to stop him?
17 A Mr. Poulos seemed to me to indicate that Mr.
18 Pallas was not welcome. The last thing I wanted was a distur-
19 bance or any confrontation. It is my belief that I stopped him
20 by saying, go out into the parking lot, Mr. Pallas, or words
21 to that effect. Again, Mr. Soutzos, I'm not submitting that's
22 exactly what I said, but that is the thrust of it.
23 Q Do you know why he wasn't welcomed?
24 A No sir, except what I could guess.
25 Q You weren't told by Archie why he wasn't welcome?

1 A I don't understand the question. I was told
2 nothing particularly, I know that Mr. Poulos said he wouldn't
3 go because Mr. Pallas told me that. As to what extent-I don't
4 know anything else,Mr. Soutzos. There was nothing concrete
5 told me, no.
6 Q And then for the next hour, hour and a half, or
7 two hours, you sat there and tried to convince Steve to leave,
8 did you not?
9 A Yes, but some of the time was spent not doing
10 anything, giving Mr. Poulos enough time to be alone. Some of
11 the time was spent getting Mr. Poulos' lawyer on the phone.
12 Some of the time was spent with the police officer - maybe
13 talking to him. It wasn't two hours of continuous please leave
14 Mr. Poulos. And then some of the time was spent saying, maybe
15 if we just back away he will leave. And so I was not constant-
16 ly in his company for two solid hours, discussing it with him.
17 Q But you were in pursuit in one form or another
18 to get him out, for approximately two hours on that first
19 occasion?
20 A If you want to phrase it that way, the answer is
21 yes.
22 Q And you called his attorney or spoke with his
23 attorney, right?
24 A That's correct, but I mainly wanted him to speak
25 to his attorney which he did.

1 Q He did?

2 A Well, he seemed to be talking to his attorney.

3 Q And on that occasion he spoke to his attorney did

4 you hear any of the conversation between his attorney and him?

5 A I heard the words spoken on Mr. Poulos' end, but

6 I hasten to add, sir, that it was in a foreign language, which

7 I assume to have been Greek.

8 Q Did you ever find out what those words were?

9 A I was told what was said, yes.

10 Q By whom?

11 A By Mr. Pallas.

12 Q Mr. Pallas wasn't in there?

13 A Yes he was, sir. He was at that time. I told you

14 that when we first went in that morning I motioned him out,

15 he must have come back in for that conversation. Some time

16 during the two hours.

17 Q In the morning session Mr. Pallas was in there

18 then, other than when he first walked in?

19 A That's correct, for a brief period.

20 Q On two occasions at least that you know of?

21 When he first walked in and when the conversation was going on?

22 A And he was eventually in there.

23 Q And how long was he in there during the course of

24 that conversation?

25 A I don't know sir, ten, fifteen minutes, I don't know.

1 Q What was he doing when you were on the phone
2 with the attorney for Steve?
3 A He was some place, standing there.
4 Q And what did Archie tell you the conversation
5 was between Steve and his attorney, at least what he heard?
6 A After I turned the phone over to Mr. Poulos,
7 saying the lawyer wants to speak - they talked. Now, Mr.
8 Pallas - what I recollect, specifically, is that Mr. Pallas is -
9 that Mr. Pallas told me that Mr. Poulos had said words to
10 this effect, yes I have the adding machine, they will not get
11 it back, and they cannot prove that it has been taken, because
12 it is not on the list, which I understood.
13 Q To the best of your recollection is that what
14 Archie Pallas told you?
15 A That is to the very best of my recollection, sir,
16 the exact substance of what he told me, yes, and he may have
17 told me something else, but he told me that - those three
18 facts - that is not the exact words that Mr. Pallas used.
19 Q That is the conversation disclosed to you by your
20 client?
21 A That was disclosed to me, yes sir.
22 Q If I were to tell you that Mr. Kapnistos was here
23 yesterday and denied ever having that conversation with ...
24 CAMBLOS: Object, Your Honor....
25 COURT: Objection sustained.

1 Q Did you speak with Mr. Kapnistos then that day?

2 A I spoke to a man who represented himself to be

3 Mr. Kapnistos, yes sir.

4 Q What was the nature of your conversation?

5 A I told him the problem and asked if he could

6 reason with his client, he said, let me speak with him.

7 Q Did you speak with him again after that?

8 A No, I did not, because Steve hung up, put the

9 phone down - don't let me use that expression, he put the

10 phone down.....hung up in the sense that he did the final

11 thing.

12 Q Did you ever tell Mr. Kapnistos that if his

13 client didn't leave you were going to have him arrested?

14 A I don't recall. I might very well have indicated

15 that that was the way things were going, yes.

16 Q Did you tell Mr. Kapnistos that Steve didn't

17 have a right to be there?

18 A I'm sure I told him that, yes.

19 Q Did Mr. Kapnistos respond to that?

20 A He did not deny it...he didn't say anything except

21 well, I see, yes, well, let me speak to....let me speak with

22 him.

23 Q Mr. Kapnistos never advised you that he advised

24 his client that he had a perfect right to stay there and not

25 to budge from there?

1 A Absolutely not.

2 Q Absolutely not?

3 A That's right, sir.

4 Q Do you know of any agreement made between Steve
5 Pallas and Archie Poulos varying that lease agreement that
6 they had either oral or written?

7 A You don't mean Archie Poulos, you mean Steve
8 Poulos?

9 Q Steve Poulos and Archie Pallas.

10 A Do I know of any agreement...

11 Q Oral or written to vary that written lease, they
12 had?

13 A No, there may have been something about food or
14 something or other. It may have been oral, I just have some
15 vague recollection. The only other amendment, if it is an
16 amendment, is my understanding with Mr. Poulos. I don't
17 know...

18 Q But not one with Archie and Steve?

19 A No.

20 Q In that conversation you had with Archie before
21 you went to the restaurant, Archie's Pizza, on the 13th,
22 didn't you and Archie sit there and say, look, we're going to
23 try to give Steve an opportunity, we're going to talk to him,
24 and if he doesn't leave, then we're going to have him arrested,
25 and he's going to go - we're going to get you your place back

one way or the other - Archie, wasn't that the nature of your conversation?

A No sir.

Q Didn't you really come back after lunch and say, all right, we gave him an opportunity, we did everything we could, and he isn't willing to leave, so let's put the strong arm on him. Let's have him arrested and get him out and get your place back?

A I really don't talk like that - you make me sound like a tough guy. The situation had hardened and it appeared that Mr. Pallas was losing his equipment. He was being told incredible stories as to where it was and it was perfectly obvious that he wasn't leaving. We were certainly a lot more unsure as to what in the world we were going to do at that point than we were in the morning. If I wanted to have him arrested all I had to do was walk across the street. I wouldn't have gone out there and wasted two hours of my time. Towards the afternoon, yes - now, the thing is Mr. Soutzos you've got to keep them separate. I mean one thing is Mr. Pallas had a lawful right to get his premises back...

Q The court didn't think he had a lawful right to get his premises back...

CAMBLOS: Object, Your Honor.

Q The court threw it out.

A That's not...

CAMBLOS: The Court hasn't made any decision to that effect.

COURT: Objection sustained.

Q Well, Your Honor, the Court did make a decision to that effect, that's why we are here today.

CAMBLOS: Object Your Honor.

Q The Court on the initial.....

CAMBLOS: May it please the Court I made an objection and the Court's ruled on it. I object to any further...

Q The Court hasn't...

CAMBLOS: Yes he has...

Q Can I argue my side to the Judge.....

COURT: Members of the jury retire to the jury room, please.

(Jury retires to jury room.)

COURT: You all are here to ask questions not to make statements...you are entitled to ask questions, but not to make statements, and I hope you will bear that in mind.

Q Was that the nature of the objection, Your Honor? I didn't hear it. All I heard was objection sustained, I didn't hear a word - what the basis of the objection was; I didn't have an opportunity to respond to that objection...

COURT: I'm giving you an opportunity now.

1 Q I don't know what the objection is yet...

2 CAMBLOS: Counsel is trying to get evidence before

3 this jury - not only the fact of his giving evidence or trying

4 to, but it is improper and incorrect evidence.

5 Q Well, Your Honor, my question was the court threw

6 that out did it not....that's the nature of a question...it

7 ends in a question mark. Now I don't have to say, did not

8 the jury throw it out - I can say the Court threw it out, did

9 it not.....that's the way I phrase questions. Can I phrase

10 questions the way I want to do it or do I have to phrase

11 them the way Mr. Camblos wants me to do it? I have my style

12 and he has his.

13 COURT: Let's have - if there's a misunderstanding -

14 what is the - the only thing in evidence is the finding of

15 not guilty on a charge of trespass. Now, I didn't understand

16 you to say that exactly - the only thing that is in evidence...

17 Q I said the court threw the - witness was discussing

18 that he had a legal right to get the premises back and I asked

19 him a question in the nature of - did not the court throw that

20 out - that issue out..

21 COURT: I didn't hear the did not...we'll play it

22 back if you want.

23 Q Maybe I can just rephrase it in that sense?

24 CAMBLOS: No, Your Honor, I would still object even

25 if it's a question. What the court did in connection with these

criminal warrants....

Q We're not talking about the criminal warrants... We're talking about his....he had a legal right to possession of the premises, that's not in the criminal warrants, that's trespass.

CAMBLOS: I ask that Your Honor....

COURT: Isn't that a criminal warrant?

Q Pardon?

COURT: Isn't the charge of trespass a criminal warrant?

Q Correct, for trespass, but not for possession of the ....larceny charges....

COURT: I don't know where we are...but I made the ruling....but if you want to open the door and go into it, I'm not trying to cut you off....but I don't think that that was the question - you made the statement and you've got to ask questions in the first place. In the second place you've got - the only evidence with respect to the warrants ....and I think you are just arguing with the witness, when you - you asked his opinion and he's given it. Now, whether or not you want to criticize the court, I don't.....

Q No, I don't wish that....my purpose is not to criticize the Court, Your Honor, please don't misunderstand me. It's just that we all have a different style of asking questions.

1 COURT: All right.

2 Q I don't intend to argue with the witness, that's
3 not my purpose here. My purpose here is to get across in the
4 best method I can for my client what this case is in the
5 best light for my client....that's what I'm pursuing.

6 COURT: Well, I ruled that that was an improper
7 question. It was not a question it was a statement and
8 when you make a statement you are arguing.

9 Q So long as I make it a question - I'll bear it
10 in question marks...

11 CAMBLOS: May it please the Court, I further object
12 to any question phrased on the theory of some court making a
13 determination as to whether or not Archie Pallas had a right
14 to regain possession of the premises on the occasion of
15 February 13, 1973, because no court has granted any decision
16 bearing on that question.

17 COURT: On this question, issue, I'm going to
18 sustain the objection, regardless of form of question because
19 all we have here is the ruling of the court that that warrant
20 is dismissed. What the evidence was, whether there was any
21 evidence, all that, that is not before the Court, and I'll have
22 to sustain the objection and rule out any questions...

23 Q Note my exceptions.

24 COURT: ...in that form. All right, ask the jury to
25 come back please.

(Jury returns to courtroom.)

Q Mr. Callaghan in this two hour session in the morning are you certain that Nick Kapnistos was called in the morning session or the afternoon session?

A First of all, now, I'm not certain it was two hours - it was about two hours. Certain is a strong word, I know he was called, I know I talked with him, but exactly when I don't know. I would have thought that it was the morning session, yes. But it could - it's possible that it wasn't.....I don't remember. It's a year - I mean the time these things happened doesn't seem - it just didn't have that significance. He was called some time, sir. It may not have been in the morning.

Q In that morning session do you remember ever going behind the counter in that restaurant?

A I very well may have. Steve was very gracious to me. There was never any objection raised at any time to my presence. I don't know if you've been in the restaurant, but it's very easy to walk around. It's the only way to get into the back. I might have gone past. I wouldn't have done it in such a way as to embarrass his customers, though.

Q Why would you want to go in the back?

A Because my client's adding machine was gone. There was a toaster that had disappeared and Mr. Poulos assured me

that there never was a toaster, promised me that there was never a toaster. I thought - I was beginning to think as the day wore on that by the time Mr. Poulos got those premises back, he might not have anything left.

Q Did you ask Steve Poulos whether you could go behind the counter to look for these items? And why you were looking for these items?

A I don't recall doing that, counsellor, but his whole attitude was one of utter - be my guest, Mr. Callaghan. There was no - I mean if he had shown any resistance to it, I might very well not have done it.

Q You certainly took advantage of it, did you not?

CAMBLOS: Object Your Honor.

COURT: Objection sustained.

Q I said, did you not....

COURT: No, you said, you certainly took advantage and I've told you - cautioned you once, not to make statements. You must ask questions and not make statements.....

Q Your Honor, could we read that back?

(Question is played back.)

Q Did you have any occasion to look in the cash register on that morning session?

A You use the word occasion, do you mean opportunity or did I do it or what?

Q Did you do it?

1 A I've told you that I'm sure I looked in the
2 afternoon, my prior testimony, and I stand by it, was that
3 I think I saw the cash register in the morning yes.
4 Q Did you ask Steve whether you could look in his
5 cash register?
6 A I don't recall. I mean, he accepted my presence.
7 We would have cordial discussions. I mean I didn't force
8 my way in or grab his cash register or in any way act hostile.
9 He never resisted anything I did. He treated me as if I had
10 a right to be there, which I think I did.
11 Q But wasn't your purpose of absorbing what was in
12 the back, looking for these items of equipment and looking
13 into his cash register, a purpose for your client, Mr. Archie
14 Pallas?
15 A Yes, I was not independently curious. My client -
16 it appeared that my client's property was disappearing, I wanted
17 to ascertain since my client wasn't welcome in his premises,
18 even though I think he had a right to inspect - since he wasn't
19 welcome in there I wanted to ascertain whether these things
20 had been taken. And if I found that they had been taken and
21 that there was no justification or excuse for taking, I would
22 have called it to the Commonwealth's Attorney's attention,
23 which I did and advised my client to swear out warrants, which
24 he did.
25 Q So then weren't you taking advantage of Steve

1 Poulos?

2 A I don't...

3 Q Weren't you taking advantage of his cordiality

4 and his politeness to you, by walking in there without asking

5 him for what purpose you were looking there?

6 A I don't believe sir, I was taking advantage of

7 him. I interrogated a man who committed a crime one time,

8 he was very polite to me. He answered my questions and in

9 doing so he compromised his position. I wasn't taking advan-

10 tage of him, I was doing my lawful right. If he choose to

11 be polite to me, that's his business.

12 Q Do you recognize now that he was compromising his

13 lawful position when he allowed you to do this?

14 A No sir, I don't, because I believe that - I believe

15 that I had a right as Archie Pallas' agent to inspect those

16 premises. I had a right to ask Mr. Poulos to leave. I believe

17 I had a right to look for my client's property. Whether he

18 choose to let me do it or not, it happens that he did. Now

19 as a practical matter if he had resisted it, I would not have

20 been involved in a breach of the peace and so I wouldn't have

21 done it. That's just because I abhor all violence.

22 Q Is your right that you say to examine these

23 premises, that right which the landlord has under a lease

24 agreement?

25 A Well, it's probably a double-barreled right, Mr.

1 Soutzos. My position was that Steve Poulos had abandoned
2 the property when he failed to pay rent, in the light of our
3 prior agreement. And Mr. Pallas had asked him to leave.
4 So as far as I was concerned the minute I stepped in there,
5 it was actually Mr. Pallas' premises, that was my legal
6 opinion. Mr. Poulos was there, as a practical matter, and
7 I had to deal with that reality. Now, even if I didn't
8 have a right to be there on that basis, which I think I did,
9 I would submit to you that I incidentally had a right to in-
10 spect the premises. That was, as I recall, and I may be
11 mistaken, a term of the lease. And it might be - it certainly
12 was not phrased that Mr. Callaghan has a right to inspect.
13 I'm sure that it must have been phrased that the tenant had
14 a right to inspect, and Mr. Poulos knew that I was Mr. Pallas'
15 attorney.
16 Q So then if I understand you correctly then -
17 your right was two-fold. Number 1, the right under the lease,
18 and again the second right was what?
19 A The second one - one is the right to inspect and
20 one is the right that the lease had been abandoned and it was
21 no longer in affect, because it was Mr. Pallas' premises any
22 way.
23 Q For not paying the rent?
24 A For not paying rent, for having stated that he wasn't
25 going to pay any more rent, or having stated....

CAMBLOS: Objection, Your Honor....

COURT: Objection sustained...let him finish his answer.

A For all the reasons I've stated before, Mr. Soutzos. I don't think it bears going into again.

Q Well, wasn't the rent paid to date when you went there?

A It was my understanding that he was in default on various payments under the lease. I am unable to differentiate between rent and security payments, but I was informed that he had not paid something, and Mr. Poulos admitted that he had not paid something. And he further more had told me before he was in default himself on that prior occasion and that he never intended to pay in the future. So none of this surprised me or seemed to be in issue.

Q Who told you he was in default for rent?

A Well, indirectly Mr. Poulos, and Mr. Pallas.

Q What did Mr. Pallas tell you?

A That he hadn't paid.

Q Hadn't paid what?

A I don't recall exactly - I don't know whether he said he hadn't paid the February rent or he hasn't paid the security deposit, or he had stopped checks.

Q Did he say one or the other - did he say one or the other, or did he say he hadn't paid?

A Well, now, I think I'm answering the same question. I don't of course remember exactly what it was, but some lawful payment to which he was entitled under the lease, had not been made and I would expect that I knew at that time what that payment was and verified it. I just don't remember what it was now. I couldn't for the life of me say whether it was February's rent or something else.

Q Did you know when you went into the premises?

A Oh, I'm sure I did. I would have - that's the type of thing I would want to know.

Q Why is it you don't know now, sir?

A I'm sorry Mr. Soutzos, it just doesn't seem terribly - it's just the kind of thing I just didn't remember for 14 months. I mean it just doesn't ....I mean I never questioned the fact that the man hadn't paid what he was supposed to pay. It just didn't seem significant to me, until you've raised it now.

Q But if I understand you correctly did you know at the time you went in the premises on February 13, what it was he hadn't paid?

A Well, I'm sure I did. But I mean I don't recollect. If I could recollect recollecting it I would certainly know your answer today, sir, you see....that little problem...

Q And if I understand you correctly, is it not the second premise of your justification for inspection the lease?

A I'm not sure that I like all your characterizations, but I think the answer is essentially yes.

Q Read paragraph 8 please?

A Yes sir. Since you're going to take it away from me, let me just look at one more sentence.

Q Well, I don't wish to take it away from you...

A Yes.

Q This is a copy....

A That's all right, I remember it.

Q Were you inspecting the building or the contents?

A Both.

Q What inspection were you doing on the building?

COURT: I don't know that the recorder picked that up.

Q What inspection were you doing on the building?

A None - I amend that answer. I was looking at the building. I am not submitting, Mr. Soutzos, that I was in there as building inspector, looking for cracks - I simply said that as I recall under the lease I had the right, Mr. Pallas had the right to inspect and that is justification for going in. And reading paragraph 8 convinces me that that's exactly,what I said was exactly right.

Q Were you not, Mr. Callaghan, going in there specifically looking for items that may not be there?

A All right, sir, Mr. Pallas told me that Mr. Poulos

had told him that the adding machine was in for repairs. I accepted that, but as the day went on it became somewhat inconceivable - Mr. Poulos had forgotten where he had put it in for repairs. He had forgotten when. He had told me not to worry about it. He told me all sorts of inconsistent stories about this adding machine and then eventually he had this conversation which was reported to me with his own lawyer. At about that time I was certainly looking for the adding machine, which I knew was gone, I was looking for the toaster - to tell you the truth.

CAMBLOS: May it please the Court, last night in connection with the motion I made and the Court sustained, counsel asked that this business about the larceny be kept out of evidence. I asked my witnesses this morning not to go into that aspect any more than necessary. Counsel is now just dwelling upon this. I think that the matter of the adding machine is no longer material except that the one warrant bears on the other, but I would object to further dwelling upon it at this time in view of counsel's prior position, and my actions in response to it.

SOUTZOS: Your Honor, if I understood you correctly when you allowed that motion to strike, that you indicated that testimony would come up on this and that we would have the opportunity to examine that testimony and go into it....and not be limited from that.

1 COURT: That's correct. I said that it was impossi-
2 ble to keep all of the testimony out. However, that is not
3 an issue before the jury any more, and therefore I don't
4 think that that's...
5 SOUTZOS: It isn't....
6 COURT: I don't think that we should dwell too long
7 on something that's not an issue before the jury.
8 SOUTZOS: The question isn't whether these items
9 were taken or whether there was justification for a malicious
10 prosecution because these items were or were not taken. The
11 question is what was the state of mind of this witness, what
12 was his conduct in the premises, what was his relationship
13 with the plaintiff in this matter, how did it bear on what he
14 did subsequently. It's not to prove these things were taken,
15 I don't want to go into that.
16 COURT: Well, I will allow you certain leeway. I
17 think Mr. Camblos has made a point - I just don't know...we
18 are getting along in time and I just don't see any point in
19 dwelling too long on issues not before the jury.
20 Q I show you this lease again, could you read para-
21 graph 1, I really wish to draw your attention to this second
22 sentence in paragraph 1, but if you would read the entire
23 paragraph.
24 A Thank you.
25 Q Am I correct in saying, Mr. Callaghan, that the

1 sentence that you've just read, gives the tenant the use of
2 all of the equipment, as well as the business name of
3 Archie's Pizza, the telephone, trade names, all the furniture,
4 fixtures, equipment, chinaware, glassware, on and on, on the
5 premises?
6 A He had the right to use them on the business
7 premises, yes.
8 Q He had what?
9 A The right to use them in the business, yes.
10 Q To use them in the business? Does this paragraph
11 in any way say that he had -- he was - he did not have the
12 right to use them in any fashion he wished?
13 A No, it doesn't address itself... it's my opinion
14 he can't do that...
15 CAMBLOS: I would ask counsel not to stand between
16 me and the witness, Your Honor. I don't mind him walking....
17 Q I....
18 CAMBLOS: I like to observe the witness Your Honor
19 in his testimony.
20 Q I'm sorry. I didn't catch your answer , Mr.
21 Callaghan.
22 A My answer is that if you are asking and I can only
23 give my legal opinion - I'm a lawyer, that he did not have
24 the right for example to take the business equipment back to
25 Greece. That there is an implied condition that he will use it

in the restaurant - any more than you could rent Holiday Inn room and take the T.V. set to your mother-in-law's without getting arrested.

Q What is an implied condition?

A My interpretation is that certain - implied condition, the law implies certain reasonable things and ... if it's....an example of that, Mr. Soutzos, if I agree to pay you $100.00 period, the law will come along and imply that I agreed to pay you $100.00 within a reasonable time....even though it doesn't say anything about time.

Q So you are talking about reasonable?

A Yes sir, I would say that he had the reasonable use of that equipment, and that is a matter of debate as to what's reasonable and what's not.

Q Would you consider the use of an adding machine at home at night, 2, 3, 4 o'clock in the morning, after business hours, a reasonable use of equipment?

A I would have to have more facts - where is home?

Q In a two - three mile radius of your business?

A With no intention of keeping it and no lying to the owner?

Q I'll repeat the question. Would you consider it reasonable that a businessman who closes his business at 2,3,4 o'clock in the morning, and has to do his books, and lives within a short radius of that business to take that equipment

1 home and do his books at home?

2 A Based on those facts alone, it might very well be

3 reasonable, yes, if you don't consider any other facts.

4 Q Who called a locksmith, you or Mr. Pallas?

5 A I...

6 Q On the first occasion?

7 A There's another variation of this, it may have

8 been a secretary in my office. I don't know. I just don't

9 remember in other words.

10 Q You subsequently left Archie's Pizza did you not?

11 A Well, sir, what...

12 Q On the first occasion?

13 A Certainly sir.

14 Q And approximately what time did you leave?

15 A I don't know.

16 Q Did you have an opportunity to eat lunch between

17 the first time you were there and the second time you were

18 there?

19 A An opportunity in the sense you mean that could I

20 physically eat...

21 Q Did you eat lunch between time?

22 A I don't recall - it was one of my fat periods

23 and I might not have, sometimes I skip lunch.

24 Q Were you in the presence of your client, Archie,

25 during that period that you were away?

1 A I'm almost positive, Mr. Soutzos, that there was
2 some period of time during that luncheon break - if we can
3 call it that, which I was not in his presence for a short
4 period, because I'm sure I went and answered my telephone
5 calls and attended to other matters.
6 Q Did you subsequently meet with him somewhere?
7 A Yes.
8 Q Where?
9 A It may have been at my office, it may have been
10 at the Justice of the Peace's office. And then of course
11 eventually we went out to the premises, but this is the type
12 of thing that I just can't remember - where I met people and
13 what time things happened.
14 Q Did there come a time when you and Archie were
15 at the Justice of the Peace's?
16 A Yes, I remember that distinctly.
17 Q Was this before or after you had spoken to Mr.
18 Dezio?
19 A Well, I spoke to Mr. Dezio from the Justice of
20 the Peace's office.
21 Q So it would be before?
22 A Be before?
23 Q Before you spoke to Mr. Dezio? You...
24 A Yes. In the sense that we were in the office
25 and then we talked to Mr. Dezio.

1 Q What was your purpose of going to the Justice of
2 the Peace's?
3 A To see what warrants might be appropriate.
4 And I remind you, sir, that there were also civil warrants
5 that could have been issued by that Justice of the Peace,
6 but I undoubtedly had criminal trespass and larceny in mind
7 and I make no bones about it.
8 Q Is there a civil trespass?
9 A No, but there are civil ways of evicting a man
10 who hasn't paid his rent. There may be civil trespass for
11 all I know, sir. I'm just not knowledgeable in that area.
12 Q Could you tell us why you decided on a criminal
13 rather than a civil course of action here?
14 A Yes, very simply because in my judgment and the
15 judgment of the Commonwealth's Attorney, he had committed
16 crimes. And I think it's a citizen's duty and an officer
17 of the Court to bring criminal warrants in this case.
18 Q And was it your purpose to see justice done in
19 this case or to have the premises back to your client?
20 A Are they mutually exclusive? In other words,
21 Mr. Soutzos and I wouldn't adopt such a pompous attitude that
22 I'm unilaterally trying to see that justice is done. I mean,
23 I don't go off on gold - on a white horse. I thought it was
24 my duty if a crime had been committed because it's not just
25 against Mr. Pallas - I mean, if as in my judgment, Mr. Poulos

1 stole something, he's committed this crime against this
2 Commonwealth. And I had a duty there, and yes, I had a duty
3 to my client to regain the lawful use of his premises and I
4 don't think I have to elect one or the other, sir. I think I
5 could do both and I think I did.
6 Q But it would have been - would it have been more
7 effective as far as the time standpoint to have had him arrest-
8 ed for a criminal charge as opposed to a civil one?
9 A Yes, I must concede that you are right, in the
10 sense that he could stay on there and if he was, as was
11 found, stealing things, it would have given him more time.
12 And it's much more effective to get him out there fast. I con-
13 cede that that's true, that was not the purpose. I didn't
14 have him arrested because I simply wanted, you know, to get
15 my premises back....it had that effect, I concede that.
16 Q Where did they find the toaster?
17 A I was informed - you want hearsay?
18 Q Certainly.
19 A I was informed that it was concealed, that it
20 was under some kind of rag or something. This is the toaster
21 that Mr. Poulos denied that he ever had.
22 Q Where was it found?
23 A I got the impression that it was found some place
24 on the premises.
25 Q What premises?

A Archie's Pizza....but I have no direct knowledge.

Q And where was the adding machine?

A Some place - well, of course, here again it's hearsay...

COURT: Mr. Soutzos - is it...I don't see any point in going into ...

Q I'll withdraw that question. Mr. Callaghan, describe for us what your conversation was with the Justice of the Peace?

A At first I wanted to know where the Justice of the Peace was located - Mr. Soutzos, there's no way you can know these things but-we haven't got a man who sits in an office all day long - so it's always a problem of knowing where he is when you need a warrant. At a later time, you have to remember the Justice of the Peace is not a lawyer, so I did not consult with him in any great detail on the legal...

Q I didn't ask you that....I asked you what the nature of your conversation was with the Justice of the Peace, whether he's a lawyer, and where he was...

A I'm sorry sir, the question is too vague...what, I mean can you spell it out a little bit more...the nature was that during the day the writing of warrants. That's the most general characterization I can think of.

Q Did you tell him the basis for which you thought a warrant should be issued?

1 A He heard my discussion with Dezio yes....I think
2 so. You must understand that ultimately the Commonwealth's
3 Attorney authorized all of these warrants and that is what
4 the actual decision was based on.
5 Q If I understand you correctly was it you who
6 described the events leading up to this warrant or was it
7 Mr. Dezio who described the events leading up to this warrant, for
8 the Justice of the Peace to make this decision?
9 A I described the events to Mr. Poole. We both
10 agreed for different reasons that we wanted to consult
11 with Mr. Dezio. Mr. Dezio was called and indicated his authorize-
12 tion of the warrants. Mr. Poole had knowledge of what happened,
13 I had knowledge of what happened, and Mr. Dezio through me
14 had knowledge of what happened.
15 Q What did you tell Justice Poole as to the events
16 leading up to this warrant?
17 A The same thing I told Mr. Dezio, probably in diff-
18 erent words.
19 Q Tell me what you said to Mr. Poole?
20 A Mr. Poole, of course, did not get any kind of
21 legal explanation from me - that Mr. Poulos denied that he
22 had any rights to be there, that there was a lease, that Mr.
23 Poulos had not paid the rent and said he would leave - that's
24 what he was told about the criminal trespass. Being there when
25 you are asked to leave and you have no right to be there, it was

1 my view that that was criminal trespass. I didn't know the
2 section number, probably - he probably was asked by me to find
3 it. I don't know if we want to go into the larceny, but that's -
4 I'll go into that if you want me to.
5 Q No, I don't care to go into that.
6 A All right. Of course that was more simple.
7 Q As a result of the conversation you had with
8 Mr. Poole, Justice Poole, was there a subsequent conversation
9 with Commonwealth Attorney Dezio?
10 A Yes. I told you that, Mr. Soutzos.
11 Q And how long was it after your conversation with
12 Mr. Poole?
13 A All right, now, I first have recollection of calling
14 Mr. Poole early in the morning and then I have a recollection
15 of being with Mr. Poole at the time I called Mr. Dezio - I may
16 have seen Mr. Poole as many as three times during that day.
17 Your question now is how long after I talked to Mr. Poole - on
18 the occasion that I called Mr. Dezio, I would imagine I was in
19 Mr. Poole's presence with Mr. Pallas for a very short time.
20 I would imagine two minutes, when Mr. Dezio was reached at his
21 office. At least I assume he was at his office.
22 Q What was the nature of your conversation early in
23 the morning?
24 A Well, as I told you the very first time I called
25 was to find out whether or not he was there, for the purposes of

1 writing warrants, and incidently this seemed to upset Mr.
2 Poulos and Mr. Poulos actually talked to the Justice of the
3 Peace. I didn't want anything happening that he didn't know
4 about, so he talked to the Justice of the Peace. I don't
5 know what was said.
6 Q And what time was it that you called him? In the
7 early morning?
8 A I could venture a guess - but I mean, 11 o'clock.
9 I could be awfully wrong.
10 Q Before or after you talked to Nick Kapnistos?
11 A The first call was before I talked to Nick Kapnistos.
12 Q You subsequently - did you subsequently have a
13 conversation with Mr. Dezio?
14 A Yes.
15 Q And what did you tell - this is important - what
16 did you tell Mr. Dezio?
17 A I described the parties, Mr. Pallas, who he was,
18 what his business was. I described Mr. Poulos, who he was,
19 what he was doing. I then described the general business re-
20 lationship between them, with particular reference to the
21 contract between them. I told Mr. Dezio that there was no
22 automatic eviction clause, in other words no clause that he
23 could immediately be ejected from the premises if he didn't
24 pay. I told Mr. Dezio of my conference with him some 10 - 15
25 days before. I told Mr. Dezio of my discussions with him at the

1 scene of the restaurant on the 13th. I told Mr. Dezio about
2 the adding machine and the conference that - and the telephone
3 conversation that Mr. Pallas translated for me. I told Mr.
4 Dezio about the toaster that not only was the toaster gone
5 but that Mr. Poulos on a number of occasions indicated that
6 it never existed. And I may have told him other facts that I
7 can't now recollect.
8 Q Why can't you recollect?
9 A Well, Mr. Soutzos, I can't answer a question like
10 that, because my memory is just not that good.
11 Q Why is it that you can recollect what you did
12 recollect and not what you can't?
13 A I...
14 CAMBLOS: Object, Your Honor, the question is absolute-
15 ly unanswerable. Of course you can only recollect what you do
16 recollect, and you can't recollect what you don't recollect.
17 COURT: I don't think that question is proper.
18 Q Mr. Callaghan, did you have a conversation with
19 Mr. Dezio prior to this trial?
20 A Today?
21 Q This trial, today?
22 A Oh yes sir.
23 Q When was the last time you spoke to him?
24 A Did I see him this morning? I may have said hello
25 to him this morning.

1 Q When is the last time you had a conversation
2 with him concerning what you told him on that day?
3 A The first time that I - I don't know, Mr. Soutzos,
4 I can remember -- it may have been discussed when your client
5 was tried...though I doubt it. I know that right before
6 those two day depositions that you took, Mr. Camblos as is
7 customary asked various people to come together where he could
8 find the facts - I heard what Mr. Dezio recollected and he
9 heard what I recollected. I mean there was no comparing of
10 notes, we just said what we recollected.
11 Q Who was at that meeting?
12 A People that have been witnesses for this trial.
13 I remember Mr. Pallas...
14 Q Who was...
15 A ...being there, I remember the accountant, Mrs.
16 Kobri, I think. I remember Mr. Camblos- I remember his secre-
17 tary. I remember John Dezio. It was ...
18 Q Was anybody else there?
19 A Not that I recall, but there may very well have
20 been.
21 Q Was it immediately prior to the depositions that
22 were taken?
23 A Yes sir.
24 Q Did you have a similar type meeting with Mr.
25 Camblos and Mr. Dezio and Mr. Pallas, Mrs. Kobri, before this

1 trial?

2 A No, it was a lot more informal. I think Mr.
3 Camblos had one or two questions he wanted to ask me about
4 facts, things that he didn't know, and I think it was at this
5 time I met very, very briefly with Mr. Camblos and Mr. Pallas.
6 He was satisfied as to the other witnesses.

7 Q Uh-huh. Did that help you refresh your memory
8 as to those items that you've just testified to in your
9 conversation with Dezio?

10 A No, apparently not. I don't recall that it did,
11 Mr. Soutzos. I know Mr. Dezio and I had some conflict on the
12 time of the call, but that's just the way it is. We just
13 remember the time of the call differently. Mr. Dezio also
14 thinks that I called from Archie's Pizza and I remember it
15 differently, which we are just calling it as we see it.

16 Q What was your intention calling Mr. Dezio?

17 A All right, sir, now in the first place, I think
18 I've answered that. Unfortunately I took a limited case from
19 Mr. Poulos, a whiplash injury. After having carefully explained
20 to him that there could be a possible conflict here, but I
21 was representing this man on an accident case, even though it
22 seemed very cut and dried. It just didn't seem - I think I
23 had the authority to say Mr. Justice of the Peace, would you
24 please issue warrants because in my judgment they are valid,
25 and Mr. Pallas is here and he knows the facts and he wishes to

have them sworn out. In view of the fact that I was a witness, A - and the fact that I represent Mr. Poulos, and in view of the fact and I must say this that I rather liked Mr. Poulos, and - up until a certain point....I didn't want the responsibility. Now there's one additional fact, I also believe that Mr. Poulos - that Mr. Poole wanted Mr. Dezio because it might well be that the larceny warrant was a felony and I believe I learned this subsequently that it is the rule of the Commonwealth's Attorney, that a felony warrant should be approved in any event by the Commonwealth's Attorney's Office.

Q Was it your intention then, Mr. Callaghan, to stay away from actually having the warrants issued at your advice but at the advice of the Commonwealth Attorney?

A No, I wouldn't go that far, Mr. Soutzos. I think I'm human, if I could get the Commonwealth's Attorney to do it that would take the burden off my shoulders. Of course if the Commonwealth's Attorney told me that the warrants were unjustified, I wouldn't do it any way. It was - it may have had some buck passing on my part - I passed the buck...

Q You passed the buck?

A Yes, in part - yes.

Q Did you do it then because of this possible conflict that you had with...

A It was partially...Mr. Soutzos, if I couldn't have

reached Mr. Dezio, these warrants might have been sworn out any way, because I felt - you know, I felt in my own mind that they were justified, no matter what Mr. Dezio said.

Q Mr. Callaghan was it your advice to Mr. Pallas, Archie Pallas, I - your counsel, am advising you ...

A Yes, I can answer that...

Q Let me finish...

A I can answer that. My advice...

Q I haven't finished my question.

A I beg your pardon.

Q Was it your advice to Archie Pallas, that you as his client were advising him to issue these warrants or were you stating what the Commonwealth Attorney had told you, that they were issued - there was cause for this warrant and you were just relating to your client what the Commonwealth Attorney said?

A Question mark.....both, I turned to Mr. Pallas and said, in effect, as you know I believe that these warrants are justified. I think that you understand - and I explained the law to you, and Mr. Dezio has now authorized,authorized, words to this effect, acknowledged the validity of these warrants. And I think on that basis, Archie, that that is what we should do, and it's what you should do. And if you are of the same mind, that would be my advice to you - well, then swear them out. And he did. He may have sworn them out at

1 different times I'm beginning to think, but they were sworn
2 out eventually any way.
3 Q On the basis of the information you had and on
4 the basis of the information you gave Dezio, and on the basis
5 of the information you got back, and on the basis of what you
6 told Archie, that trespass warrant was issued?
7 A I think the answer is yes, but it's a long question,
8 I hope I haven't missed some part of it. Would you - would
9 you give it to me again?
10 Q On the basis of what you - the information you
11 got from Archie?
12 A Yes.
13 Q On the basis of the information you had yourself,
14 on the basis...
15 A Yes.
16 Q ...of what you gave Dezio, and on the basis of
17 the information Dezio gave you and you related to Archie,
18 the trespass warrant was issued, was it not?
19 A Well, there are a number of things here. Certainly
20 on the basis of what I knew myself it was issued. Certainly
21 on the basis of what Mr. Pallas knew and told me - that was
22 very little, it was issued on that basis. And Mr. Dezio at
23 some time during that day - it wasn't what he told me, it was
24 the fact that he authorized it - thought it was all right.
25 Those three things came together and Mr. Poulos was tried for

criminal trespass. I'm not sure of the timing of that, Mr. Soutzos. I'm not sure of the timing - it might very well have been that it was issued in the sense that the warrant on criminal trespass was actually sworn before Mr. Dezio was even in touch - that's entirely possible. I know that you have that in the back of your mind and I just don't know. I do know that some time during the day .....

(Inaudible.)

(Lunch Recess.)

CAMBLOS: We have a stipulation that counsel has agreed to....

COURT: That is with respect to Mr. Callaghan...

CAMBLOS: Callaghan.

COURT: Callaghan, on the part of the President of the Bar Association?

CAMBLOS: Well, as I understand it the stipulation is that Mr. Callaghan is a reputable attorney.

SOUTZOS: Your Honor, I would prefer that this be done with the instructions of the Court - the Court's instructions to the jury, that I - that it's instructed that the defense is so and so and so and so from a reputable attorney that you can then instruct them that it is stipulated by counsel that this is a reputable attorney.

CAMBLOS: If it's to be my stipulation, Your Honor, I'm going to do it now.

COURT: All right.

CAMBLOS: Because it is part of my case in chief. If counsel has objection I'll call Mr. Dent.

SOUTZOS: No, I don't.

(Jury returns to the Courtroom.)

CAMBLOS: May it please the Court, ladies and gentlemen of the jury, counsel for the defendant has agreed with me to stipulate...

COURT: Counsel for the plaintiff..

CAMBLOS: I mean plaintiff, excuse me, has agreed to ...with me to stipulate for you that Mr. Callaghan, the last witness who testified, is a reputable attorney.

COURT: All right, call your next witness, please.

CAMBLOS: Mr. Brown.

STEWART BROWN, Having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Camblos

Q What is your name please sir?

A Stewart Brown.

Q And where do you live?

A 1413 Cherry Avenue, Charlottesville.

Q What is your business?

A No sir.

Q All right, no further questions.

COURT: All right, thank you very much. You are excused and you are free to leave.

A Thank you, Your Honor.

CAMBLOS: Mr. Dezio. He may be in his office, Your Honor.....

(Recess.)

JOHN A DEZIO, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Camblos

Q What is your name please sir?

A John A.Dezio....D-e-z-i-o.

Q And what is your profession?

A Attorney at law.

Q Where do you practice?

A Mainly in the City of Charlottesville, my office is in Charlottesville, but in this Central Virginia area.

Q Mr. Dezio have you in the past been Assistant Commonwealth Attorney?

A Yes sir....for four years, from January 13, 1970 through December 31, 1973.

1 Q In that capacity did you receive a phone call
2 from Richard Callaghan on February 13, 1973?
3 A Yes sir, I did.
4 Q Do you remember when you received that call?
5 A It was some time before lunch - I was about to
6 go out of the office for lunch, when Rick called. The time
7 would have been at that time of the year somewhere after 1
8 o'clock. I didn't go to lunch before 1 o'clock at that
9 time, it would have been between 1 and 3. Those were the times
10 I usually went to lunch.
11 Q Between 1 and 3?
12 A Yes sir.
13 Q What was the subject of the conversation with
14 Mr. Callaghan?
15 A Well, when Mr. Callaghan called, the first thing
16 he said was, of course, you know, this is Rick, I want to talk
17 with you in your capacity as assistant Commonwealth's Attorney.
18 I said fine, I sat down at the desk and he said to me, first
19 that he was representing Mr. Pallas, and that a conflict had
20 come up and he wanted to ask my advice, as I said, in my capacity
21 as assistant Commonwealth's Attorney. He proceeded to tell me
22 first of all, that before Mr. Pallas had gone to Greece - I
23 think he prefaced it by saying Mr. Pallas was getting ready to
24 go to Greece and he went to Greece and is now back in the
25 United States and before he went to Greece, Mr. Callaghan had made

1 arrangements for Mr. Pallas and Mr. Poulos to enter into some
2 sort of agreement for the operation of Archie's Restaurant
3 in Charlottesville.
4 Q Did he undertake to give you the details of the
5 lease agreement they had made?
6 A He gave me the general details. For instance,
7 he didn't tell me what the monthly rental was, or anything like
8 that, or what was included. He pretty much told me that Mr.
9 Poulos would be operating the restaurant, he would be paying
10 Mr. Pallas so much per month - I believe he did tell me the
11 amount. He also told me that there was an initial down payment
12 in the form of a check or maybe in the form of two checks,
13 one of which was payable at closing, one of which may have been
14 payable some time later. I recall his saying that one of these
15 checks had been returned for insufficient funds or something
16 to that effect. He told me generally that they had an agree-
17 ment for the operation of the restaurant and that there were
18 financial terms involved. And told me some of the financial
19 terms, all of which I can't recall.
20 Q Did he tell you whether or not Mr. Poulos was in
21 default as to some of those financial terms?
22 A Yes sir, I recall that one check and I don't know
23 if it was one of his initial checks or one of the monthly
24 rental checks, or what it was, but at least one check had been
25 returned for insufficient funds or stop payment or something.

1 Something about a check, and also that whatever the arrangements
2 were as to monthly payments, there was a default in the pay-
3 ment of those.
4 Q Did he tell you whether or not Mr. Poulos advised
5 him of his attention in the future as to paying the rent?
6 A Yes sir, I think he did. This came up very early
7 in the conversation, because we were talking about really two
8 different matters. We were talking about the possession of
9 the property and I can't recall what he told me - the exact
10 language, but the effect of it was that Mr. Poulos wasn't
11 going to pay any more.
12 Q Did he tell you whether or not Mr. Poulos had
13 agreed what he would do when asked to leave?
14 A I'm not sure if this is going to be responsive
15 to your question - I think your question is maybe what he
16 disagreed to do....Mr. Callaghan had been telling me that he
17 was talking with Mr. Poulos at the restaurant and that during
18 the conversation Mr. Callaghan was asking Mr. Poulos to leave,
19 and Mr. Callaghan was receiving answers to the effect that -
20 I'm sure he was asking questions - about what are, you know,
21 going to do about leaving, but the answers were to the effect
22 I'm not going to leave. I don't have any right to be here,
23 but I'm not going to leave any how.....talking about leaving
24 the restaurant.
25 Q Did Mr. Callaghan ultimately ask your advice as to

1 whether the information he gave you would constitute the
2 basis for a criminal trespass charge?
3 A Yes sir, he did.
4 Q And what did you advise him?
5 A At first he was really not even talking about
6 a criminal trespass charge he was talking about another charge,
7 involving personal property. And as we were talking I was
8 reviewing and making notes, probably in my head or even on a
9 pad, about the different possible questions that were coming
10 up. What I told Mr. Callaghan was that, initially it sounds as
11 if you have a civil matter here with the lease, but as you
12 go further, Mr. Poulos is saying I don't have any - in effect
13 I don't have any right to be here. He's not claiming any rights
14 under this lease. He's just saying I'm here, I don't have any
15 rights to be here, and I'm not going to leave, but I advised
16 Mr. Callaghan that I thought this was criminal trespass. I -
17 actually I think I'm the one who brought that up, because he
18 was talking more about personal property.
19 Q Do you know where Mr. Callaghan was when he called
20 you?
21 A I had the impression that he was at the restaurant,
22 but he may ....he told me where he was - let me step back a sec-
23 ond - I can't remember that he told me where he was, but I
24 think he told me he was some place. It's my recollection now
25 that he was at the restaurant, but I may be wrong. He - I was in

1 my office - he was at the other end of the phone, where ever
2 that was. I just - my thought was that he was at the restaurant.
3 Q Do you remember whether you talked to anyone else
4 who was there with Mr. Callaghan? In the same phone conversa-
5 tion?
6 A Later, I don't remember if it was the same conversa-
7 tion or later - maybe like 15 minutes later, or five minutes
8 later, I talked to Justice of the Peace Robert Poole. I
9 don't know - because again in my capacity as Assistant Common-
10 wealth's Attorney I received many phone calls like this. The
11 nature of the case was not such that it would cause any real
12 recollection in my mind or cause me to pay a whole lot of
13 remembrance to all the details - it was just sort of a run of
14 the mill type of question, but I did talk to Bob Poole later,
15 whether it was in the same conversation or the same phone call
16 or a few minutes later I don't know. I do know that when I talked
17 to Bob he had already talked to Rick Callaghan, and he was aware
18 of what Rick and I talked about.
19 Q What did you - did you give Mr. Poole, the Justice
20 of the Peace, any advice?
21 A Yes sir, I told Mr. Poole that I would recommend
22 and authorize the issuance of a warrant - misdemeanor for
23 criminal trespass, and also a warrant for larceny. He asked me
24 was it petty larceny or grand larceny and I said I don't know
25 the value of the items. Whatever the value is, if it's less than

$100.00 petty larceny....I think he probably - it would have been normal to ask me about a bond, and I think I probably suggested to him a bond.

Q Witness with you, sir.

CROSS EXAMINATION

BY: Mr. Soutzos

Q Mr. Dezio, how long have you been in practice?

A I finished law school in 1967 and practiced part-time for two years and full-time - 5 years.

Q You practiced part-time first before you practiced full-time?

A Yes sir.

Q Why is it you practiced part-time? Where else were you employed?

A When I finished law school I wanted to coach track and coach football, and I coached football and track in Madison and taught in the public schools then for two years. Actually I wanted to do that and I was waiting for Mr. Hendricks the clerk of this Court or Mr. Gilmer to retire. They had told me when I finished law school that as soon as one of them retired they'd have a place for me.

Q You subsequently became Commonwealth Attorney - Assistant Commonwealth Attorney?

A Yes sir.

1 case. It's not unusual for an attorney to call me and ask
2 this kind of question.
3 Q I'm only asking you do your best.
4 A Mr. Callaghan called some time as I was going to
5 lunch, some time after - certainly after 12, probably closer
6 to 1, 1:30, 2 o'clock. It could be as late as 3 because my
7 lunch hour fluctuates. He told me that he was representing
8 Mr. Pallas and that he had a problem. He then said that Mr.
9 Pallas prior to going to Greece or , as I recall something
10 about Mr. Pallas' going to Greece temporarily on a trip but
11 maybe permanently if it worked out - made some arrangements
12 with Mr. Poulos to operate his business. He didn't go into all
13 of the details of what the arrangement was, except to say that
14 there was as I recall - and again a lot of this is - could be
15 wrong, I'm just giving you what I think now was said, that
16 there was some sort of a down payment made and then there was
17 a deferred down payment for some time maybe like December and
18 I got the impression that this took place like October - Septem-
19 ber, November, some time in the fall. And then while Mr.
20 Pallas was in Greece some problems arose on this deferred check
21 or on a check for rent - some problem arose, but any how Mr.
22 Pallas had to come back here to get some things straightened
23 out, because he wasn't receiving whatever he was entitled to
24 under this agreement. He came back and I think Rick told me
25 that he - he being Mr. Pallas, went to see Mr. Poulos and things

1 didn't work out. Mr. Pallas that morning had come to see
2 Mr. Callaghan and prior to that time I didn't even know that
3 Mr. Callaghan represented Mr. Pallas. The next thing that
4 Mr. Callaghan and Mr. Pallas did - they had some sort of meeting
5 in the office and went out to Archie's Restaurant and Mr.
6 Callaghan and Mr. Pallas and Mr. Poulos met. Now as I remember,
7 Mr. Pallas from what Mr. Callaghan said didn't stay in the
8 restaurant very long. He went out and Mr. Callaghan had an
9 extended conversation with Mr. Poulos. The conversation was
10 pretty much a doubleheaded conversation - part of the conversa-
11 tion was about Mr. Poulos' leaving the restaurant, just
12 abandoning the restaurant and letting Mr. Pallas renew his
13 business and have Mr. Poulos remove whatever belongings he had
14 in the restaurant, anything that was entitled to him. And,
15 Mr. Callaghan saying something that brought a response to the
16 effect - from Mr. Poulos, I know I don't have any right to be
17 here, but you're not going to make me leave. This, according
18 to what Mr. Callaghan said, was repeated many times, that Mr.
19 Poulos kept saying I don't have any right to be here, but I'm
20 not going to leave any how. Then the second part of the
21 conversation was something about an adding machine and a toaster.
22 And apparently before Mr. Pallas went outside he had gone
23 through the restaurant, taking some sort of an inventory and
24 reported to Mr. Callaghan that a toaster was missing and the
25 adding machine. And Mr. Callaghan talked with Mr. Poulos about

1 that, I don't know if that was in Mr. Pallas' presence, but
2 he talked with him about that and the gist of the answers from
3 Mr. Poulos, according to what Mr. Callaghan said, was that
4 the adding machine was some place for repairs, but Mr. Poulos
5 wouldn't say where. Then this conversation somewhere came to
6 a dead end and Mr. Callaghan left and later, as I recall, Mr.
7 Callaghan and Mr. Pallas returned again - this was of course
8 before they called me and at that - during that period of time
9 Mr. Poulos called an attorney in Northern Virginia, whose
10 name was told me but I don't recall, and in the presence of
11 Mr. Callaghan and Mr. Pallas, the conversation was in Greek, so
12 Mr. Callaghan didn't know what was being said. Mr. Pallas
13 reported to Mr. Callaghan and Mr. Callaghan in turn to me
14 that Mr. Poulos told his attorney that he knew where the
15 adding machine was but they weren't going to get it back, that
16 he was going to keep it. Then Mr. Callaghan told me a lot of
17 things that I don't recall about - I think it was at this time
18 although I talked with him prior to court, something about
19 police officers being called or somebody threatening to call
20 the police or something like that. He was only telling me
21 things that didn't really have anything to do with whether
22 I would authorize the issuance of any warrants, that was some
23 time later. The main things that he told me that I can recall
24 are what I've just related.
25 Q And those things you've just related are these the

ARCHIE PALLAS, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Camblos

Q All right, what is your name please sir?

A Archie Pallas.

Q And what is your residence address?

A 105 Piedmont Avenue.

Q Do you operate a business in the City of Charlottesville?

A Yes sir, Archie's Pizza Restaurant.

Q And where is that?

A 2508 Fontaine Avenue.

Q How long have you operated that business?

A For 12 years.

Q How long have you been in this Country, Mr. Pallas?

A 14 years.

Q The last few years have you from time to time had the need of the services of an attorney?

A Yes sir.

Q Up until the event of this case who had been your attorney for the last few years?

A Mr. Richard Callaghan.

1 Q Now, did you some time after that decide to come
2 back to this Country? Did you decide some time after that -
3 after you had called her on - after the 15th...
4 A Well, I was supposed to come back - I had a two
5 ways ticket to come back in April. After she told me that
6 Mr. Zaharpoulos didn't pay the $2,000.00 and even didn't make
7 the first check good, I called Mr. Zaharpoulos and I asked him,
8 I begged him to put at least $2,000.00 - $2,000.00 check in
9 the bank because in the meantime I had write some checks in
10 Greece, and there was not money here in bank. And he promised
11 that he's going to do that the first Monday - I called him
12 about Thursday or Friday and he say that after this week-end,
13 anything that I collect in the restaurant, I'm going to put
14 $1,000.00 for you in the bank, that was he didn't.
15 Q Well, did you then make a decision as to...
16 A After that I make decision and come right back.
17 Q Do you remember when you came back?
18 A It was February 3.
19 Q February 3?
20 A 3rd.
21 Q After you got back did you go see Mr. Poulos?
22 A I did go see Mr. Poulos by myself before I see
23 anybody else, and asked him please to give me $1,000.00 that he
24 promised by telephone - he say he didn't have the money. So
25 I told Steve I cannot wait because I don't have the money either,

you know, that was the only money that I had for living and family in Greece and I had to support myself over here too. And believe it or not when I came back I didn't have money to pay my tax - I went by my sister's house, 4 o'clock in the morning and I borrow money to pay the tax and I slept at her house. Well, any way this is beside the point...and he say that he's not going to pay me. So I decided to go to Mr. Callaghan and ask him to take a position. Mr. Callaghan sent me back to Steve, that happened probably Wednesday morning and told me - he advised me to give him time after Monday morning that was February 12, that I did. So I went Monday morning to Mr....to the restaurant, I talked to Mr. Zaharpoulos, he still tell me that he don't have the money and I told him I'm sorry, Steve, but I have to go back to Mr. Callaghan and ask him what I'm going to do with you.

Q Did you go back to Mr. Callaghan?

A Yes sir.

Q When did you go back to him?

A I did go the same day or I called him the same day, I don't remember, but he gave me an appointment for the next day, Tuesday, at 10 o'clock in the morning, February 13, in his office.

Q Did you go to Mr. Callaghan's office at the appointed time?

A Yes sir.

Q What did you and Mr. Callaghan do?

A Well, I just told Mr. Callaghan that if Steve pay me, it will be all right - I don't have any objection to stay over there and run the - to have his business, because it was his business.....I say if he pay me at least $1,000.00 and give his word that he's going to give me the other $1,000.00 in two weeks time, I still have - leave him inside, but if he denied to pay I want the business back, because I have to work.

Q Did Mr. Callaghan tell you whether or not he thought Steve would give you the business back?

A Mr. Callaghan thought that it was just enough for him to go to the restaurant and talk with Steve and Steve - either he was going to pay me or to give me the business back.

Q Did you and Mr. Callaghan go to the business?

A We did.

Q Do you remember how you got there?

A It was before noon-time, but as soon as he's - Mr. Callaghan starts to talk to Steve, Mr. Zaharpoulos, he told me to go out.

COURT: He did what?

A He told me that he didn't like me to stay in the restaurant so I went out.

Q Did Mr. Callaghan stay inside?

A A long time.

Q Do you remember whether or not during the morning you ever went back inside?

A I been a couple of times inside, no question about it, but that happened maybe because Mr. Callaghan wants something maybe explained to him or he wants to ask me something in front of Mr. Steve Poulos.

Q You say you were in there..

A Yes, just to go in - they asked me something, so I walked out again.

Q Do you remember whether a policeman ever came during the first time you were there that morning?

A I don't remember that the police was there the first time or the second time. I do remember that Mr. Zaharpoulos say that he called the police to come over, and Mr. Callaghan came out and he say that Mr. Zaharpoulos say that he called the police to come here, but nobody show up for 15 - 20 minutes. So Mr. Callaghan went again back and what they say, what they discussed - I don't know that but .....

Q Was Mr. Callaghan ever able that morning to get Mr. Poulos to leave?

A If he was able to get Mr. Poulos...

Q Did Mr. Poulos ever agree to leave that morning? To leave the restaurant?

A I think he asked him that, I don't know - I mean I

1 don't understand.....could you repeat your question please?

2 Q When you and Mr. Callaghan left there that day

3 was Steve still there, Mr. Poulos still there?

4 A Still there.

5 Q Do you remember when you and Mr. Callaghan left,

6 after that first visit in the morning?

7 A It was after 1 - the last time after 1, 1:30 -

8 2 , maybe....

9 Q Do you remember where you went?

10 A I know - I'm sure - Mr. Callaghan stayed inside

11 over two hours by explaining to Mr. Zaharpoulos what it was...

12 Q Do you remember where you and Mr. Callaghan

13 went when you left there?

14 A Back to his office.

15 Q Do you remember what you did at his office?

16 A Well, I think he make a couple of phone calls for

17 there...I don't know if at that time called Mr. Dezio or Mr.

18 Poole, but he did call people - Mr. Poole and Mr. Dezio and

19 he decide to make some warrants for Mr. Steve Zaharpoulos -

20 it was the only way, according to Mr. Callaghan, for Mr.

21 Zaharpoulos to be out of the restaurant and take over again.

22 Q Did you and Mr. Callaghan ever go to Mr. Poole's

23 office?

24 A Yes.

25 Q Do you remember whether or not Mr. Callaghan phoned

1 anybody from there?

2 A I think he phoned Mr. Dezio from there.

3 Q Did you hear a conversation - a phone conversation

4 between - or Mr. Callaghan's end of the phone conversation?

5 A Yes.

6 Q Did Mr. Callaghan in that phone conversation so far

7 as you could determine give Mr. Dezio the correct facts as you

8 knew them?

9 A Yes sir.

10 Q Did you have an opinion or belief as to whether

11 or not Mr. Callaghan knew all the facts that were pertinent?

12 A Yes he did.

13 Q After talking to Mr. Dezio....

14 SOUTZOS: I'm going .....

15 Q ...did Mr. Callaghan give you any advice as to

16 criminal warrants?

17 A Yes sir.

18 Q What did he advise you to do?

19 A Just swear them out, take warrants against Mr.

20 Zaharpoulos.

21 Q Did you follow that advice?

22 A Yes sir.

23 Q Did you trust in that advice as being sound legal

24 advice?

25 A Yes sir.

Q Did you have any reason to doubt that that was good advice?

A No sir.

Q After swearing out these warrants did you and Mr. Callaghan return to your place of business?

A Right, yes sir.

Q Was Mr. Zaharpoulos there?

A No he was not there when we arrived there.

Q Did he come there later?

A He did come later, yes sir.

Q Was he arrested on one of these warrants?

A Yes sir.

Q Some time after he came there?

A Yes sir.

Q After he was arrested did you go into the restaurant?

A Yes sir.

Q When you went in was Mr. Brown the locksmith there?

A Mr. Brown and Mr. Callaghan and myself.

Q Did the three of you after Mr. Zaharpoulos had been arrested open the safe?

A Mr. Brown opened the safe, yes sir.

Q Were you present and watching him?

A Yes sir, I was present ....yes sir.

1 Q Did you have an occasion to have a more complete
2 inventory before you drew up these warrants?
3 A I don't know what you mean sir, but I do nothing
4 by myself, anything I did I did under the advice of my lawyer.
5 I think that Mr. Callaghan is one of the best lawyers in town
6 and I did exactly what he told me. I was like a dog after
7 his master. He been going and I been doing what he told me
8 to do.
9 Q Who took the inventory of all the items in the
10 restaurant?
11 A The first time that I gave the restaurant to Mr.
12 Zaharpoulos?
13 Q No, on the day that he was arrested.
14 A I did.
15 Q You did?
16 A Yes, Mr. Callaghan was there and Mr. Brown was
17 there and I remember I told them it's not even two hundred
18 dollars items in the restaurant.
19 Q How complete was your inventory, did you take a long
20 time or did you just go through and see what was there and then
21 tell everybody?
22 A If you work in this place you can see in five minutes
23 that it's about 10 booths over here and about 5 chairs, that's
24 all I need. That's how much I need for me to find in my own
25 restaurant how many goods is inside in the kitchen....my kitchen

Date Filed:
3/21/77

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

STAVROS ZAHAROPOULOS,
Plaintiff

v.

NOTICE OF APPEAL
992

ARCHIE PALLAS,
Defendant

This is to give notice that the Defendant, Archie Pallas, intends to appeal from the Final Judgment Order of the Court entered herein on February 18, 1977.

No transcript or statement of facts, testimony or other incidents of the case is to be hereafter filed, a transcript of the evidence and incidents of trial having been heretofore made a part of the record by the aforementioned Final Judgment Order of the Court.

ARCHIE PALLAS

By Counsel

/s/ J. T. Camblos
J. T. Camblos
414 E. Jefferson Street
Charlottesville, Virginia

Counsel for Defendant

I hereby certify that I mailed a copy hereof to A. C. Soutzos and Douglas Leigh Pierson, Attorneys for Plaintiff, at their office at Suite 8, Section 4, 301 Maple Avenue West, Vienna, Virginia 22180, this 21st day of March, 1977.

/s/ J. T. Camblos

ASSIGNMENTS OF ERROR

1. The court erred in refusing to strike the Plaintiff's evidence and enter judgment for Defendant at the conclusion of Plaintiff's evidence for the reason that Plaintiff's evidence showed there was probable cause for the swearing out of the warrants upon which the motion for judgment was based.

2. The court erred in failing to strike the Plaintiff's evidence and enter judgment for Defendant at the conclusion of Plaintiff's evidence for the reason that having struck the Plaintiff's evidence as to the larceny warrant it became impossible for the jury to determine from the Plaintiff's evidence the damages as to the trespass warrant.

3. The court erred in refusing to strike the evidence and enter judgment for the Defendant at the conclusion of all of the evidence for the reason that there was no conflict in the evidence as to the existence of probable cause for swearing out the warrants and all of the evidence conclusively showed that such probable cause existed.

NOTE: Only Number 3 is pertinent to the limited appeal granted.

VIRGINIA
FEB 1978

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 770822

ARCHIE PALLAS,

.....Appellant

v.

STAVROS ZAHAROPOULOS,

.....Appellee

APPENDIX OF APPELLEE

SOUTZOS & PIERSON
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Counsel for Appellee

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Q Steve bought Archie's Pizza?

A Yes sir.

Q He leased it did he?

A Yes sir.

Q Did you ever help Steve after that?

A Yes, I help sometimes week-ends.

Q Did Steve ever leave you there without his being there?

A I don't understand, what you say?

Q Was there ever any time that you worked Archie's Pizza for Steve when Steve wasn't there?

A Steve, yes, but one time Steve is not here, I work for myself.

Q I worked the business.....

A Long time...

Q Do you remember when that was?

A I think after 1 - 1½ month after Steve buy this business.

Q And why did - do you remember why Steve asked you to work it for him?

A Yes, because Steve is - after a couple of days he go to marry and he told me, I go for my wife to Maryland, to buy something - to shopping.....for ....to marry, and I work one day for Steve.

Q How long did you work on that day?

A Well, after I finish my job in Culpeper, after 4:30 - 5 o'clock, I come to Charlottesville 5:30 - 6 o'clock, I don't remember the time exactly - Charlottesville, and Steve say I'm leaving for this place 5:30 - 6 o'clock, after I come.

Q How long did you work? That time?

A I worked 'til 3 o'clock tonight.

Q Now it's important that we have the day when this happened, when was this? Can you give us the exact date or a close approximation, when this was?

A Yes sir.

Q When was it?

A After Steve's leaving, I work for myself and another guy work myself - helped me, Greek fellow too, and I don't know time exactly.....

Q No, the day, when was this, what day was this? Was it in November or December?

A No, Steve's buy this business in October - I think around the first or second week in November....about first or about the second. I don't remember exactly.

CAMBLOS: I didn't understand the answer...

COURT: The first or second week in November?

A I think, I'm not sure, Your Honor - first or about second week-end in November.

Q First or second week-end in November?

A Yes sir.

1 Q And did Archie come into the store then?

2 A Yes sir.

3 Q About what time did he come in?

4 A He's come in the nighttime, after 9 - 9:30 tonight.

5 Q And what did he say to you when he came in?

6 A He's come inside, he's told me, where's Steve.

7 I say Steve's not here. I say he go to Maryland, to shopping.

8 I say you - he told me you not exper-/to take care of this

9 business....

10 Q He told you you're not experienced to take care of

11 this business?

12 A Yes sir.

13 Q Didn't you work for him before that?

14 A I helped before, yes.

15 Q Go ahead, what else did he say?

16 A And he's come inside, he go in the back to counter

17 and open the register, open the safety box and he go into

18 the kitchen and look all over this place and take out telephone

19 from the front, because it have a hook and hook up in the back

20 in kitchen and call somebody but I don't know who's he call.

21 And, after a couple of minutes he told me, you go out from this

22 business because I buy this business now, because Steve is leav-

23 ing from here - not take care of business and I don't like

24 broke my business.....and after a few minutes this lock man come

25 in, and change lock and he's - the lock man come after about

30 - 35 minutes, I don't know exactly, and change the locks, both them, in the front, and Archie told me you go out from this place. I say Archie...

Q Archie told you to leave the place?

A Yes sir. And I told him, Mr. Archie, Archie, I'm not leaving for this place, because Steve is leaving and Steve is told me to take care of this business - I'm not leaving, because this is Steve's business. It's not your business now And Archie told me it's my business, you go out, because I call police, I say, well, go ahead, call the police.

Q He threatened to call the police?

A No he's not call the police. He's no call the police, but he's told me you go out before I'm call the police. I say, Archie, Mr. Archie, I'm no go out....after Steve's come here and Steve's told me you go out, I'll go out, because it is Steve's business. It's not yours, and it's lock man change lock - Archie go second time in the back to kitchen... he call for somebody else, and after man change lock, I say Archie, you give my keys, and after a couple of minutes - Archie finish telephoning in back and give my keys....and still Archie stay inside, same place. And I call to Steve's brother - and I say where's Steve - I say I found out, and about 12:30 - 1 o'clock, Steve's come back in Charlottesville, and still Archie stay inside in the restaurant and Steve after a couple of minutes he told to Archie, you go out from

1 my business.

2 Q So that there was a discussion between Archie

3 and Steve?

4 CAMBLOS: Your Honor, I don't think counsel needs to

5 repeat the evidence.

6 Q I'm not sure that's what he said, Your Honor, and..

7 CAMBLOS: Well, ask him what he said, then...

8 Q What was the last thing you said, George, about

9 Steve and Archie?

10 A What you say?

11 Q Did there come a time when Steve came back to

12 the store?

13 A Yes.

14 Q Was Archie there?

15 A Archie there, yes.

16 Q Did they have a conversation?

17 A No, they don't have no fuss - Archie and Steve

18 because Steve he told to Archie, what's happening there...and

19 I say, Steve, Archie he's call a lock man to change locks and

20 I don't know he's say to Steve, because I work in the back and

21 customers inside and after a couple of minutes - I see, Archie,

22 you leave for this place...

23 Q Who told him to leave?

24 A Steve.

25 Q No further questions.

1 Q Do you practice in the Northern Virginia area?

2 A I do, sir.

3 Q Did there come a time when you represented

4 Mr. Zaharpoulos, Steve Zaharpoulos?

5 A Yes I did, sir.

6 Q And did you represent him with regards to an

7 arrest or any time prior to an arrest that he was involved in

8 prior to the 13th of February, 1973?

9 A Yes I did.

10 Q Would you tell us what your first involvement was

11 in the matter?

12 A On the arrest?

13 Q On the day of the arrest?

14 A On the day of arrest, Mr. Zaharpoulos called me

15 long distance from Charlottesville, Virginia, and he said that

16 he was in his restaurant - they called it Archie's Pizza, I

17 believe, and he said in the restaurant was Mr. Pallas, Mr.

18 Pallas was there with his attorney - Mr. Callaghan. He said

19 there was two police officers there and he said there was some-

20 body there changing locks. Mr. Zaharpoulos said he had been

21 asked to leave by Mr. Pallas and his attorney and if he didn't

22 leave they were going to have him arrested. And I told Mr.

23 Zaharpoulos to stay right there, because I couldn't see where he

24 had done anything wrong.

25 Q Are you familiar with that business organization -

1 Archie's Pizza? Did you have any involvement in creating
2 that lease?
3 A Yes, in October 1972, I negotiated the lease of
4 the premises and the business for Mr. Zaharpoulos and my
5 discussions were primarily with an attorney by the name of
6 Mr. Callaghan.
7 Q I show you a copy of this lease, is this the
8 lease that you just spoke of?
9 A Yes this is it.
10 Q When was the last time that you saw this, Mr.
11 Kapnistos, has it been some time?
12 A The lease?
13 Q Yes.
14 A I have a copy of it, I refreshed my memory before
15 I came down here today - yes sir.
16 Q Could you from your memory or from the notes or
17 from the lease itself, tell us what default conditions if any
18 that lease contained?
19 A There's none in the lease, Mr. Soutzos.
20 Q So in the event the tenant, Mr. Zaharpoulos, was
21 in default for rent,or the security deposit, what course of
22 action would have to be taken to...
23 CAMBLOS: Objection Your Honor.
24 COURT: On what grounds?
25 CAMBLOS: Sir?

1 asks the court to have the party removed from the premises,
2 plus asking to be compensated for the breach.
3 Q Now, short of the statutory provision are there
4 any common law provisions that the landlord has available
5 to him? In a case of this nature.
6 A Yes, sort of like I said before he can sue for
7 the damage - for the amount owing or he can sue to have the
8 whole lease rescinded and have the party evicted.
9 Q But this has to be done in a suit, does it not?
10 A Oh yes, as a matter of practice.
11 Q Are there any provisions, either in common law
12 or in statute whereby a landlord can have immediate possession?
13 A None.
14 Q In your conversation with Steve Zaharpoulos
15 on that day was there any mention of an adding machine or toaster?
16 A Yes. Mr. Zaharpoulos said he had been accused of
17 removing an adding machine and he told me that he had used -
18 had taken the machine home for - to work on the books of his
19 restaurant.
20 Q Was there any conversation admitted to you by Steve
21 that he had that adding machine and wasn't going to bring it
22 back?
23 A No.
24 Q And they could never prove where it was?
25 A No, no - he said he had it at home, that was his

1 conversation with me on that day.

2 Q Were there any conversations between you and him

3 concerning a toaster on that day?

4 A Yes, he said there was a toaster - complaint about

5 a toaster missing. In fact as I recall his conversation

6 the toaster was out for repairs, the toaster was defective.

7 But he said he had not removed it or hidden the toaster.

8 Q Now, let me ask you this. Did you have any con-

9 versation with Mr. Zaharpoulos that day - I mean with Mr.

10 Callaghan?

11 A Yes, I did.

12 Q What was the nature of your conversation with him?

13 A Mr. Callaghan - as I recall, said why don't you

14 ask your man to leave. He says, if he doesn't leave I'm going

15 to have him arrested. And I told him let me talk to Mr.

16 Zaharpoulos. And I told Mr. Zaharpoulos - said you stay right

17 there, said don't you leave, you've done nothing wrong.

18 Q So you advised your client not to leave?

19 A Exactly, he had done nothing wrong.

20 Q In response did you subsequently see Steve in your

21 offices concerning this matter?

22 A Yes, I think I saw him on the 14th or 15th. I think

23 it was on the 14th.....of February, this is the day after the

24 conversation.

25 Q And in response to this did you write a letter to

about February 13, I had a long distance call from Mr. Zaharpoulos and he told me that he was calling from the restaurant - it was about the middle of the day, I can't remember the exact time. And he said that Mr. Pallas was in the restaurant with his lawyer - there were, I think he said, two police officers, and there was a man changing the locks and they wanted him to leave.

Q What time of day was this?

A I'm trying to remember, I think it was close to mid-day if I remember. I don't recall exactly.

Q He told you a man was changing the locks?

A That's correct.....at the request - let me finish this, if I recall, he said the locks were being changed at the direction of Mr. Pallas.

Q And he said there were two police officers there?

A I believe he said that, right.

Q You do remember what he said, don't you?

A I tell you why I remember because this was such an unusual circumstance. Here's a man being evicted from a restaurant without notices, without anything, without pleadings being sought in court, but this is an odd way to do business, people walk in and throw him out without following the procedure required...

Q Did he tell you he hadn't had any notice?

A That's correct.

1 Q What else did he tell you?

2 A If I remember that was the gist of my conversa-
3 tion with him, then I had a conversation with Mr. Callaghan.

4 Q Now on the basis of this - well, what did Mr.
5 Callaghan tell you?

6 A Mr. Callaghan says, why don't you tell your man
7 to leave or else we'll have him arrested.

8 Q Is this all he said?

9 A I'm trying to vaguely recall, I think the - I
10 think the reason for them going into the restaurant, they
11 claimed that it was two pieces of equipment missing, if I
12 recall.

13 Q Is this all - I'd like the entire conversation?

14 A I'm trying to recall, but like I say - like I
15 said previously that the obnoxious thing about this whole
16 thing was the fact that here's this group of men trying to
17 evict this man without proper procedure. That's what I recall
18 vividly.

19 Q Well, now just what all detail did you get to
20 determine that it wasn't proper procedure?

21 A Well, the man had never been sued. They walked
22 in, changed the locks and orally asked him to leave. That's
23 what was told to me by Mr. Zaharpoulos and I think that was
24 confirmed by Mr. Callaghan.

25 Q Now, did you get out the lease? While you were

1 ment home?

2 A No. It isn't anything.

3 Q Could you tell us when you took that machine

4 home whether you thought you were depriving Mr. Archie Pallas

5 of the use of that machine? Do you understand that question,

6 Steve?

7 A Not really.

8 Q When you took that adding machine home, did -

9 what was your intent, why did you intend to take it home?

10 Was it so that Archie could never get it back?

11 A No sir, I never had that in mind. I never think

12 something like that. I just take it home because I need to do

13 the job, like I say. I was tired - sometimes you know I was

14 afraid. It's too south that place and it's too dangerous

15 nighttime, you know. People, drunks up and down. I was afraid

16 and so I take it home. I make it my job at home, you know,

17 nighttime.

18 Q Now Steve, did you pay the rent for October?

19 A Yes sir.

20 Q Did you pay the rent for November?

21 A Yes sir.

22 Q Did you pay the rent for December?

23 A Yes sir.

24 Q Did you pay the rent for January?

25 A Yes sir.