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THE PEOPLE vs. HOGAN.

New York, November 23rd, 1909.

Hearing resumed before Judges Rosalsky and Swann.

Present: Mr. Moffat and Mr. McClelland

MR. MOFFAT: I understand that Mr. Prentice has seen your Honors and that we are to proceed with the case of Hogan this afternoon and that no other case will be taken up to-day. Am I correct?

MR. McCLELLAND: I didn't hear that.

JUDGE SWANN: He said he was going to continue the Hogan case here and that he would not continue the other cases here.

MR. MOFFAT: Mr. Prentice, when I last saw him, which was last evening, expected to be before your Honors this afternoon at 2 o'clock, but he has sent word to us that it would be impossible for him to be here and he requests us to request an adjournment in the other cases of two weeks.

MR. McCLELLAND: If your Honors please, I most respectfully object. With all due deference to Mr. Prentice and to my friend, I most respectfully oppose any extended adjournment of this kind.

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JUDGE ROSALSKY: We will first proceed with the Hegan case and finish it and then we will determine what course to follow in the other matters.

JENNIE MATTHIAS, recalled on behalf of the defendant, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. MOFFAT:

Q Now, Miss Matthias, you are familiar with the rooms, all the rooms on the first floor of these premises? A Yes, sir.

Q What is your answer? A Yes, sir.

Q What rooms are on that floor? A 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

Q Do you live with your husband, Mrs. Matthias?

MR. McCLELLAND: I object to that question.

MR. MOFFAT: I think we are entitled to ask that question.

THE WITNESS: I think not.

Q (Question repeated.) A No, sir.

Q You are quite a friend of Mr. Davidson, one of the defendants here? A Why, no, sir, I am no more a friend of him than of you.

Q Are you a friend of Mr. Davidson? A I am his employee.

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JUDGE ROSALSKY: You may answer that.

THE WITNESS: I am his employee.

BY MR. MOFFAT:

Q Are you a friend of Mr. Davidson? A I am his employee.

Q I ask the question again.

MR. McCLELLAND: I think that is an answer.

JUDGE ROSALSKY: She may answer the question.

BY MR. MOFFAT:

Q Are you friendly to Mr. Davidson? A No, sir, no more than an employee ought to be to a master.

Q Can you state of your own knowledge whether or not Mr. Hogan resided or slept in Room 4 on the 17th day of October, 1909? A I don't remember.

Q You don't know? A Not the dates.

Q Did he sleep there-- can you state whether or not he slept there on the 18th of October, 1909? A I don't know-- he slept there but I don't know what room.

Q How do you know that he slept there on the 18th of October? A Because I met him in the hall.

Q How do you fix that day? A I saw him around all October.

Q How do you fix the 18th of October as the date on which he slept in room 4? A I did not fix any date.

Q That was the question I asked you, it was as to the

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18th of October? A I don't know; I don't remember.

Q Do you know whether or not he slept there on the 19th of October? A I don't remember no dates.

Q Do you know about the 21st of October? A I don't remember.

THE COURT: She says she does not remember any dates that he slept there.

MR. MOFFAT: It seems to be a conclusion on the part of the witness.

MR. McCLELLAND: I object to that comment going on the record.

BY MR. MOFFAT:

Q Can you state how many years he slept there on those premises? A I didn't state any years. I know I seen him two or three times every week during October.

Q You simply saw him on the premises two or three times a week during October? A I seen him in the mornings.

BY JUDGE ROSALSKY:

Q Where did you see him in the mornings? A In the hall.

Q What floor? A Coming down from the top floor, your Honor.

Q Coming from which direction? A Downstairs.

Q Did you notice from which direction he came? A From the top floor down to the office and downstairs into the

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barbar shop.

BY MR. MOFFAT:

Q Room 4 is not on the top floor, is it? A No, sir.

Q Room 1 is not on the top floor? A No, sir.

JUDGE SWANN: Weren't you confining your questions to October when you spoke?

MR. MOFFAT: Yes, your Honor.

BY MR. McCLELLAND:

Q Now, let us see if this is about the fact: During the month of October was he in that place every day? A Yes, sir.

Q Is that right? A Yes, sir.

Q Every night? A Yes, sir.

MR. MOFFAT: I suggest to the Colonel that he refrain from framing his question so as to indicate the answer.

JUDGE ROSALSKY: Do not lead the witness.

MR. McCLELLAND: Your Honor will pardon me for this diversion. I am taking the testimony that she has already testified to.

JUDGE ROSALSKY: Now, you are not trying this case before a jury, you are trying the case before two Judges and I hope you give us credit for being able to segregate evidence from hearsay matters.

BY MR. McCLELLAND:

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Q Now, you have testified here that you were in this place every day and every night through the month of October?

A Yes, sir.

Q Now, can you say from the best of your recollection whether, during every day of that month, you found this defendant in that hotel? A Well, I won't swear to every day, but pretty near every day.

Q Pretty near every day? A Yes, sir.

Q What time of day or night, if any, did you see him there? A I seen him at all times, morning, noon and night, I have seen him around.

Q What is the name of the barber? A Trapani.

SAMUEL TRAPANI, called and sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCLELLAND:

Q Where do you live? A No. 4 Horatio Street.

Q Mr. Trapani, where do you reside? A In the Strand Hotel.

Q How long have you resided there? A Fifteen months, since it opened.

Q What, if any, is your business in connection with the hotel? A Only a barber.

Q Have you, during the time you have been there, officiated

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as barber? A Yes, sir, always.

Q That has been your business all the time? A Yes, .

Q Where is your barber shop located in that building?

A On the end of the Strand Hotel, on the same building.

Q With reference to the stairway coming down from the second floor and the top floor, how is your barber shop located with reference to observing that passageway? A From from the door, the entrance.

Q So you could see the people come downstairs? A Yes, sir.

Q Now, during the month of October do you remember seeing the defendant, Mr. Hogan, there? A Yes, sir.

Q Do you remember before that seeing him there? A Yes, sir.

Q Now, tell us when you saw him? A Well, when he came in the barber shop and got shaved.

Q Now, did you see him come down-- I will confine my examination, with your Honors' permission, to the thirty days preceding Election-- Now, during the month of October, did you see the defendant Hogam coming downstairs? A Yes, sir.

Q What time? A Sometimes at half past 7 and sometimes in the evening when he gets shaved.

Q How many times can you recall now to the best of your recollection that you saw him coming down in the morning?

A Sometimes half past 7, when he got shaved.

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Q Can you estimate as to your recollection, as to your best memory, as to how many times you have seen him coming down there during the month of October? A Two or three times every day, mostly from upstairs.

Q What did he do when he came downstairs? A I shaved him, of course.

Q These stairs that you saw him come down, were stairs that led upstairs; isn't that right? A Yes, sir, that is right in front of my door.

Q From the second and third floor? A Yes, sir.

Q You shaved him there at that time in the morning two or three times a week? A Yes, sir, two or three times a week.

Q Prior to that was it your habit to shave him prior to that? A Yes; during the month of September also.

Q During the time he has been there? A What I have been doing there?

Q During the month of September you also shaved him? A Yes, sir.

Q And August? A Yes, sir.

Q And before that? A Yes, sir; once in awhile I used to shave him. I know him since then, and sometimes he shaved and he washed his face upstairs. He used to come down and shave and didn't want to wash his face, he would go right upstairs and wash his face upstairs.

Q You saw him and he would have no color on? A No

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celor and no coat.

Q He washed in your place? A No, sir, he went upstairs and washed his face upstairs.

Q After he shaved? A Yes, sir.

CROSS EXAMINATION BY MR. MOFFAT:

Q How long did you live in the Strand Hotel? A Fifteen months, since it opened.

Q What room is assigned to you?

THE COURT: He doesn't live in the Strand Hotel.

THE WITNESS: I live in 4 Horatio Street.

BY MR. MOFFAT:

Q How long have you been connected as a barber there?

A Fifteen months, since the hotel opened.

Q Now, the barber shop is on the ground floor, is it not?

A Yes, sir.

Q There is but one floor at that portion of the hotel; is that true? A What do you mean?

Q The barber shop is an extension of the hotel? A Right at the end of the hotel.

Q There is no upstairs to the barber shop? A No, sir, it is downstairs.

Q There is no floor above it, directly above the barber shop? A No, sir, except there is the floor-- above mine, no, sir.

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Q Are there any rooms directly over the barber shop?

A No, sir, except the office there.

Q The office is above the barber shop? A Yes, sir; you go there right upstairs and go right upstairs; there is a door in front of my barber shop.

Q You go right from your barber shop to the office?

A Yes, sir, right there upstairs.

Q Is there a stairway running from the barber shop upstairs? A No, sir, there is a door from the barber shop, it is right here.

Q You have to go out of the barber shop in order to get to the staircase which goes to the office; isn't that true?

A You have got to go through.

Q Do you have to go into the street? A No, sir.

Q You have to go through into the hall proper in order to get to the staircase which goes up to the office of the hotel; is that true? A (No answer.)

JUDGE ROSALSKY: Ask him how far from the door leading into his barber shop is the staircase.

THE WITNESS: About six feet, no more than that, no more than six feet.

Q A person passing downstairs or ascending the stairs, must pass your door? A You can see it; it is right there; the barber shop is right there and you can't help see when anybody goes up or down.

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Q Isn't there a door? A To the barber shop?

Q To the hotel proper. A Yes, sir.

Q Don't you keep that door closed? A No, sir, not through the summer time.

Q How could you see a person go down? A Because the door is open most of the time, going in and out in the summer time.

Q In the summer time? A Yes, sir.

BY JUDGE ROSALSKY:

Q What kind of a door is it? A I keep the summer doors through the summer and you can see people go up and down.

Q Is that summer door on now? A No, sir, I closed it.

Q When did you take it off? A About two weeks ago; not quite two weeks, it is a little cool you know.

Q Are you used to going upstairs and shaving the guests in this hotel? A No, sir, not to my recollection.

Q Have you ever lodged in this hotel? A No, sir, never.

Q Then you were not familiar with the rooms on the first and second floors? A No, sir, never.

Q You simply know the ground floor? A Yes, sir, the ground floor, and the guests come down and get shaved, that is all I know about it.

THOMAS DARRIGAN, a witness for the defendant,

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being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCLELLAND:

Q Where do you live? A 331 West 13th Street.

Q Mr. Darrigan, what is your business? A Watchman,  
private watchman.

Q Where do you live, Mr. Darrigan? A 331 West 13th  
Street.

Q What is your business? A Watchman.

Q Where do you watch? A West Washington Market and  
Gansevoort Market.

Q Have you been employed as such watchman in the premises  
known as the Strand Hotel? A No, sir.

Q Have you been around that hotel? A Yes, sir.

Q How frequently are you in that hotel? A Three or  
four times a night.

Q This is near where you live? A Yes, sir.

Q Do you know the defendant Hogan? A Yes, sir.

Q Have you seen him around the Strand Hotel during the  
month of October? A Yes, sir.

Q And before that? A Yes, sir.

Q How frequently did you see him there? A Three or  
four times a week.

Q What time did you usually see him, night or day?

A Probably 9 o'clock to 11 o'clock at night and 1 o'clock in  
the morning.

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Q You would visit the hotel there? A Yes, sir.

Q Is that it? A Yes, sir.

**CROSS EXAMINATION BY MR. MOFFAT:**

Q You keep rather late hours at the Strand Hotel?

A I did, yes, sir.

Q You were a night watchman? A Yes, sir, but not at the Strand.

**FRANK J. DAVIDSON**, a witness for the defendant, being duly sworn, testified as follows:

**DIRECT EXAMINATION BY MR. McCLELLAND:**

Q Mr. Davidson, where do you live? A 496 Eighth Avenue.

Q Mr. Davidson, where do you reside? A Well, at 496 Eighth Avenue and 500 West 14th Street.

Q Is that the Strand Hotel? A Yes, sir.

Q Now, I inquire, what is the character of the firm-- or how is the hotel conducted, a partnership or company? A A Corporation.

Q It is a corporation, is it? A Yes, sir.

Q And is known as what? A The Strand Hotel Company.

Q The Strand Hotel Company? A Yes, sir.

Q Now, what position do you occupy in that corporation?

A Well, I am the president.

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Q The president? A Yes, sir, and manager.

Q Did you file with the authorities at Albany-- will you kindly hand this to the witness? (Addressing an officer.)

A Yes, sir.

THE COURT: He says he is the president and manager.

BY MR. McCLELLAND:

Q Now, I hand you this paper. What is that you have got in your hand? A Tax on \$10,000.

Q That is the tax paid for that corporation? A Yes, sir.

Q Of the Strand Hotel Company? A Yes, sir.

Q Is that right? A Yes, sir.

Q Do you know Mr. Hogan? A Yes, sir.

MR. McCLELLAND: Now, I will offer this paper in evidence.

MR. MOFFAT: No objection to it.

(The paper referred to is marked Defendant's Exhibit B.)

BY MR. McCLELLAND:

Q How long has the Strand Hotel been in existence for the accommodation of guests? A About fourteen months.

Q How large a hotel is it? A It is 43 feet on 14th Street and about 113 feet in depth.

Q Describe it? It has a cafe on the ground floor?

A Cafe and restaurant.

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Q And barber shop? A Yes, sir.

Q And on the second and third floors are there rooms?

A Yes, sir.

Q How many rooms are there all told for the accommodation of guests and employees? A About twenty-six.

Q Now, do you know the defendant here, Cornelius Hogan?

A Yes, sir.

Q How long have you known him? A About fifteen years I guess.

Q Has he been an occupant of that hotel at any time?

A He has been there off and on since I had the place, about fourteen months.

Q He has been an occupant of rooms in that hotel?

A Yes, sir; off and on, yes, sir.

Q Do you know whether he voted from that hotel a year ago this Election? A Yes, sir.

Q Sir? A Yes, sir.

Q Now, do you know that he voted from that hotel or registered from that hotel at the Election just past? A Yes, sir.

Q How long had he been an occupant and guest and lodger of that hotel prior to the 1st of October, 1909? A Off and on, yes, sir.

Q What is that? A Off and on, yes, sir.

Q Now, from the 1st of October, down to the Election

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Day, do you know whether he had been an occupant of that hotel or not? A Yes, sir.

JUDGE ROSALSKY: A resident under the statute.

MR. McCLELLAND: A resident of that hotel?

THE WITNESS: Yes, sir.

Q Did he pay you rent? A Yes, sir.

Q For the use and occupation of an apartment? A Yes, sir.

Q And is he still a resident of that place? A Yes, sir.

Q Now, you made a return, I believe, to the Bureau of Elections or whatever it is, the Superintendent of Elections? A Yes, sir.

Q In which was set forth the fact that he was there thirty days a resident before Election; is that right? A Yes, sir.

Q Who made out that report, the preliminary and other report, in whose handwriting was it? A The night clerk.

Q Mr. Creighton? A Yes, sir.

Q Were you present when Mr. Creighton made that memorandum called the first report? A No, sir.

Q Now, during the month of October, and particularly I say now from the first down to Election Day, how frequently did you see Mr. Hogan in that hotel? A Well, three or four times a week in the hotel-- I seen him mostly every day in the hotel.

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Q Every day? A Yes, sir.

Q Did you see him there at night? A Yes, sir.

Q Can you say that he was constantly a resident of that hotel during the month of October? A Well, he bid me good night when I was sitting in the dining room at night, to go to bed.

Q It is customary to sit in the dining room and talk, I believe, among the guests? A Yes, sir.

Q Is that right? A Yes, sir.

Q You said you saw him there at nights? A Yes, sir.

Q How frequently did you see him there? A Well, mostly every night.

Q Every night? A Yes, sir.

Q Now, there was some talk here about some arrangement being made with reference to the Hudson and Fulton celebration, giving you an opportunity to rent the rooms that you had to your guests. Can you tell us anything about that? A Well, before that celebration came off, I told these men that they could have these rooms for \$10 a month on condition that they gave me the rooms any time I wanted them and they take any room in the house.

Q Was that accepted by them? A Sure.

Q Did they live up to that agreement and take the rooms that they found empty? A Yes, sir; if any room in the house was empty they could take it. There was no business of

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any kind.

Q Isn't it a fact that there was, during the month of October, rooms empty in the house? A Yes, sir.

Q Give us an idea of how many rooms were empty during the month of October? A Well, I couldn't say; the books show.

Q What do you think? A The books show it; some days there wasn't two rooms let out.

Q Let me ask you this question: Can you approximate in any way whether, during the thirty days preceding Election, whether ten rooms were empty at all at night? A Yes, sir.

Q So that under this arrangement any of these men could go up and take a key from the keyboard and go to a room?

A Yes, sir.

Q Did you sleep there sometimes yourself? A Yes, sir.

Q Mr. Davidson? A Yes, sir.

Q Did you ever see Mr. Hogan in the morning? A Yes, sir.

Q Tell us how you saw him and what time did you see him in the morning? A Well, when he got up early, around 7 o'clock, I would meet him.

Q You would see him then? A Yes, sir.

Q Tell the Court and jury-- they want to know-- how frequently did you see him during the month of October?

A Well, a couple of times a week.

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Q A couple of times a week? A Yes, sir.

Q What was his appearance? A Well, he looked as though he just got out of bed.

Q Tell the Court how he looked, whether he had his clothes on or how he was attired? A Well, he always looked pretty good to me.

Q Pretty good to you? A Yes, sir.

Q Did he have the appearance of a man who had been up all night or who had been to bed? A Been to bed.

Q At bedtime did you ever know him to go to bed and bid you good night? A yes, sir.

Q Anything to indicate that he had gone to bed? A Yes, sir; I said good night to him and he would go upstairs.

Q You said good night to him, was that during the month of October? A Yes, sir.

Q If you can give us an idea whether that was frequently; how often that thing happened? I mean just the best of your recollection? A Well, two or three night of the week I was there.

Q During that time, as he was going to bed, he would say good night to you? A Yes, sir.

Q Do you remember that? A yes, sir.

CROSS EXAMINATION BY MR. MOFFAT:

Q Mr. Davidson, you reside, do you not, at the Strand

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Hotel? A At times, yes, sir.

Q You did during the month of October, didn't you?

A Not all the month, no, sir.

Q Pretty sure about that? A Yes, sir.

Q How about the month of September? A The same way;  
I got three homes.

Q You have three homes? A Yes, sir.

Q Find that rather convenient, do you not? A Yes, sir.

Q Room 17 is your room at the Strand Hotel? A At times,  
yes, sir.

Q You never rented that room to anybody else, did you?

A Well, one man sleeps in it once in awhile; when I aint there,  
he sleeps in it.

Q Do you ever rent that room to anybody else? A No,  
sir, I didn't rent it. He pays me \$10 a month and goes in  
my room or any room in the house.

Q Who is that man? A Patrick O'Neil.

Q Now, is there more than one bed in that room? A No,  
sir.

Q Was there during the month of October? A No, sir.

Q Did Patrick O'Neil sleep in the bed with you? A Not  
with me, no, sir.

Q Who were your clerks, or who was your day clerk in the  
month of October? A Well, the boy, I forget his name.

MR. MOFFAT: Stand up, Albee.

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(The witness Albee stands up.)

THE WITNESS: That is him, yes, sir.

BY MR. MOFFAT:

Q Is that the boy? A Yes, sir, he was clerk and hall-boy.

Q Who was your night clerk? A Mr. Greighton.

Q Is he here in court? A Yes, sir.

Q Those clerks had charge of the hotel register during the term of their employment; is that correct? A When they were there they did, yes, sir.

Q Did you ever assign Cornelius J. Hogan to a room, Mr. Davidson? A I don't remember.

MR. McCLELLAND: What is that question?

THE COURT: He says he does not remember whether he assigned Cornelius J. Hogan to a room or not.

BY MR. MOFFAT:

Q Mr. Davidson, for what purpose was room 1 used?

A Well, a sort of a little sitting room; it had a table in there and we used to play pinochle in there or something like that. I took that out because I would not-- I would rather have had it for a room with a bed in it.

Q Do you recall when you took out this table? A No, sir, I don't remember the date.

Q Did you subsequently put a bed in there? A Yes, sir.

Q When was that? A Well, I think it was a couple of



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days during the Fulton celebration, if I ain't mistaken.

Q So there was no bed in there prior to a couple of days prior to the Fulton celebration? A Yes, sir, there was a bed.

Q Is that right? A That change was made about two months before that. To take the bed out of there?

Q Yes. Now, you have testified here on the direct examination that Creighton made out the preliminary report to the State Superintendent of Elections. I hand you the preliminary report which is already in evidence and ask you if you don't care to correct your answer?

JUDGE SWANN: Did he say the preliminary report or did he say the report? Are there two reports? Was the question "preliminary report"?

MR. MOFFAT: I think he said that.

BY MR. MOFFAT:

Q Well, aren't you sure about it? A Sure about what?

Q You have testified here that Mr. Creighton made out the preliminary report. I ask you now if you care to change your testimony in respect to that? A Well, there must have been two preliminary reports.

Q This is the preliminary report which you hold in your hand; it is already in evidence. Do you care to change your testimony or do you care to have it stand? A (No answer.)

BY JUDGE ROSALSKY:

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Q De you know the difference between a preliminary report and a regular report? A No, sir. I got one like this in my pecket made out by Mr. Creighton; I found it up at the store; I didn't know I had it; the same as this, a copy.

Q Have you that with you? A Yes, sir, two of them.

Q Whose handwriting is that? A Mr. Creighton.

MR. MOFFAT: This copy which he now produces, he wasn't questioned as to that and it is not in evidence.

THE WITNESS: Well, Mr. Creighton brought that paper in the store to me and I said, "Is that paper all right;" he says, "Yes," and I picked it up and signed it.

JUDGE ROSALSKY: They seem to be both alike.

MR. MOFFAT: They are not in the same handwriting.

JUDGE ROSALSKY: This report is in the handwriting of Mr. Creighton. The difficulty with your question, Mr. Moffat, is this: you asked him who prepared the preliminary report. He testified that Mr. Creighton did.

MR. MOFFAT: That was asked on the direct examination.

JUDGE ROSALSKY: Now, in order to hold the witness down as to whether he meant by that that the report in evidence was a report prepared by Mr. Creighton, the witness should have been shown the copy of the report, because it appears from the evidence now that Mr. Creighton never prepared the preliminary report.

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MR. MOFFAT: It appears that he prepared something. Mr. Davidson now takes out of his pocket a paper and says it is a copy of the report.

JUDGE ROSALSKY: Is there any dispute that this is the preliminary report?

MR. MOFFAT: I have not seen that before and I know nothing about it. I know this is in Mr. Creighton's handwriting.

MR. McCLELLAND: Is there any dispute that they are alike?

MR. MOFFAT: Now, I would like a ruling on my question, or, rather, I would like an answer from this witness on this report which is in evidence. He has testified that this report is in the handwriting of Mr. Creighton.

JUDGE ROSALSKY: There is no such evidence.

MR. MOFFAT: I understand that the Colonel asked him and spoke about it being a preliminary report.

JUDGE ROSALSKY: There is great difficulty in propounding questions without placing before the witness the particular report concerning which the witness is interrogated. proceed with the next question.

BY JUDGE ROSALSKY:

Q In whose handwriting is the report marked People's Exhibit 4 now handed to you by the Attorney-General, if you

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know? A Well, that is my signature there.

Q Now, about the contents, the body of it? A That is done by all the men, all the guests.

Q All the men whose names appear there? A Yes, sir. Mr. Creighton signed this, all the names here; this is his writing.

Q And the words "Yes" opposite the name of each man, with the details in regard to each man, is in the handwriting of Mr. Creighton? A Yes, sir.

Q Under the headnote "Does he claim this address as his voting residence? Answer yes or no"? A Yes, sir.

BY JUDGE SWANN:

Q Mr. Creighton has written in the word? A Yes, sir.

BY MR. MOFFAT:

Q Now, you say this is your signature in the body of the oath, Mr. Davidson? A Yes, sir.

Q Now, Mr. Davidson, I show you People's Exhibit 5 and I ask you if you recognize your signature at the bottom there, the bottom of the oath? A Yes, sir.

Q Did you swear to this statement on the 4th day of October, 1909, before Nathaniel Mills, Jr., notary public? A Yes, sir.

Q Then you have testified on the direct examination that the Strand Hotel is owned by the Strand Hotel Company; is that correct? A Yes, sir.

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Q Then you were not the owner of the Strand Hotel, Mr. Davidson? A I am president and manager of it.

Q You are not the owner?

JUDGE SWANN: Well, that is a conclusion, a legal conclusion. He was the president and manager of the corporation that owned it. He would then be required under the law to file a report. Could the corporation sign it? Or could the corporation act except through agents or officers?

MR. MOFFAT: Under the law he has to file it personally by registered mail. A corporation acts through its agents, of course, but in the body of the oath he swears that he is the owner of the hotel. That is why I asked him that question and I think the question is pertinent.

JUDGE ROSALSKY: The People against Eaton passed on that point, that a corporation acts through its agents.

MR. MOFFAT: No question about that, your Honor.

MR. McCLELLAND: He is the president of the company.

BY MR. MOFFAT:

Q Did you see Cornelius J. Hogan sign in the 18th column in the fifth line thereof--

MR. McCLELLAND: What is that you are handing the witness?

MR. MOFFAT: People's Exhibit 5. This is the

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report made by the Strand Hotel Company to the State Superintendent of Elections.

THE WITNESS: Yes, sir.

Q Did you question him in respect to the room he was occupying at the time he signed this report? A I don't remember that.

Q Did you ever assign Mr. Hogan to a room in this hotel?

A Well, he started with No. 1 some time ago.

Q Answer the question. Did you ever assign him to a room? Did you ever assign Mr. Hogan to a room in this hotel?

A No, sir.

Q Mr. Davidson, I show you People's Exhibit 3, the hotel register, from August 17th, 1909 to October 31st, 1909, and point to what appears to be the name of Cornelius J. Hogan, New York City, under date of August 29th, 1909, and ask you if that was signed in your presence? A I don't remember.

Q Now, Mr. Davidson, don't you remember sending Albee, your clerk Albee, to get the hotel register for 1908 and the present register, I believe, the present register for 1909 and asking him to make a search and see if the name of Cornelius J. Hogan appeared anywhere in the registers of the hotel?

A No, sir.

Q You have absolutely no recollection as to that?

A No, sir.

Q Don't you remember that Albee brought you the regist-

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are in the clerk's office and that the name Cornelius J. Hogan was written in there at that time? A No, sir, I don't know, sir.

Q You don't recollect that? A No, sir.

Q I call your attention to the fact that this register says that Cornelius J. Hogan was taking a room on August 29th, 1909; do you notice that? A Yes, sir, I notice it.

Q You did not assign him, you say, to room one? A No, sir.

JUDGE SWANN: Didn't Creighton testify that he assigned him to room No.1?

MR. MOFFAT: Room one we have shown was a card room.

JUDGE SWANN: Didn't Creighton testify that he assigned the defendant on August 29th to a room?

MR. MOFFAT: He testified, as I recollect it, that he assigned him to a room on two different occasions, once when he was accompanied by a woman and another time when he was alone, and that he does not or did not recollect just that time.

MR. McCLELLAND: My friend is in error. Creighton testified that he did.

MR. MOFFAT: I may be mistaken in that; I think Creighton was recalled on that question and I think we had it up once before.

JUDGE ROSALSKY: The record is the best evidence.

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here shows.

MR. MOFFAT: We recalled him, your Honor, and he corrected that.

MR. McCLELLAND: I think we did, and your Honor will recall Creighton pretty well.

JUDGE ROSALSKY: I am reading from the time he was recalled.

MR. MOFFAT: What page is that, your Honor?

JUDGE ROSALSKY: He was recalled on page 55.

MR. MOFFAT: He says on page 58, "In what part of the hotel during the month of October had you seen Hogan?"  
A I seen him in the restaurant quite often also in the barroom, and as I said before, I assigned him-- remember assigning him to a room but once during my time as clerk there under the name of Hogan. Q Now, did you assign him to a room under any other name? A I think I did, but I can't remember the name. Q How many occasions? A Possibly on two occasions prior to that. Q Prior to what? A To the time he registered under Hogan and was assigned to a room as Hogan. I can take him up on rebuttal on this point. I think that would be the best way. Now, will you give me the last question?

(The stenographer repeats the last question as follows: Q Did you ever say to your clerk Albee, "Now, Albee, in case the police or the State Superintendent of

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MR. McCLELLAND: In this connection, your Honor, there doesn't seem to be any question in this case but that Hogan has been a resident of this state for one year and a resident of this county for four months.

MR. MOFFAT: Let us save that until later, until we finish with this witness.

MR. McCLELLAND: That would narrow the question down as to residence for thirty days for voting purposes.

BY MR. MOFFAT:

Q Did you ever say to your clerk Albee, "Now, Albee, in case the police or the State Superintendent of Elections come here or send anyone here and ask you if Patrick O'Neil, Henry Griffin Rehill, Joseph L. Brookman, John M. Creagh, Cornelius J. Hogan, Patrick H. Matthews or William Ackermann live here, you are to say yes and that they have room so, and so as appears by the cards under the keyboard there"? A No, sir, I didn't mention it in that way at all.

JUDGE ROSALSKY (Reading): On page 58 is this:

"Q Did you assign him to a room under any other name?

A I think I did, I can't remember the occasion. Q How many occasions? A Possibly on two occasions prior to that. Q Prior to what? A To the time that he registered as Hogan and was assigned to a room as Hogan.

Q Did you assign him to any room subsequent to that time?

A No, sir." My recollection is just as the evidence

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Elections come here or send anyone here and ask you if Patrick O'Neil, Henry Griffin Rehill, Joseph L. Breakman, John M. Creagh, Cornelius J. Hogan, Patrick H. Matthews or William Ackermann live here, you are to say yes and that they have room so-and-so as appears by the cards under the keyboard there."

THE WITNESS: I seen a card there written by Mr. Creighton-- Mr. Creighton wrote a card and on one side of the card he had four of the help and on the other side of the card four monthly guests of mine, and I might have said to this boy, "If anybody comes, there is the names here of the monthly tenants," because the monthly tenants had nothing to do with the clerk upstairs at all. They didn't get a cent from the monthly tenants.

Q Who got the monthly tenants' pay? A They paid me at the rate of \$10 a month; upstairs they were getting a dollar a day for the transient people.

Q You are positive you didn't say anything to Albee about in case the police or the State Superintendent of Elections came? A No, sir; never gave them a thought.

RE DIRECT EXAMINATION BY MR. McCLELLAND:

Q When did you first form the acquaintance of Albee?

A In September.

Q What part of September? A Well, a couple of nights

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I guess before the Fulton celebration.

Q Just before the Fulton and Hudson celebration? A Yes, sir.

Q That was some time about the middle of September, was it? A Yes, sir.

Q Who introduced you to him? A Mr. Leighton.

Q Was it Leighton or Mr. Creighton? A It was Leighton.

Q Is that the gentleman known by the name of Leroy Leighton? A Yes, sir.

Q Did you employ Albee after that? A Yes, sir.

Q In consequence of what Mr. Leighton said to you? A Yes, sir.

Q How long did he work for you? A Five or six weeks I guess.

Q Five or six weeks? A Yes, sir.

Q Did Leighton occupy a room with Albee? A Mr. Leighton did.

Q How long did Leighton and Albee occupy a room in your hotel? A Two weeks.

Q When did Mr. Albee terminate his connection with your hotel; about what time? A Well, the latter part of October.

Q The latter part of October? A Yes, sir.

Q How did he terminate his employment or whatever it was, his relationship with you? A Well, Mr. Leighton and Albee claimed to lose some clothes there, and I says, "Wait a couple

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of days. There is nothing doing," and I says, "I will find out if I can get them back for you and say something about the clothes."

Q Mr. Leighton did? A Yes, sir. So I waited-- they waited a couple of days and they sent me a letter.

MR. MOFFAT: I object to this; it all seems to bear upon Leighton and there is nothing about Leighton in this case.

JUDGE ROSALSKY: What difference does that make?

Q Now, one moment, let me ask you this question: When did Leighton leave you? You say about the end of October; is that right? A The latter part of October.

Q Tell us how he came to leave you? A Well, he claimed he was going south.

MR. MOFFAT: I object to that.

THE WITNESS: His brother had a position for him there and he wanted to go away that afternoon.

Q What did he do in that connection? A Well, I told him to go downstairs and get his money, and he would not give me a receipt in full but put in a bill for \$28.

Q For what? A For clothes lost.

Q What became of Leighton in the meantime? A Well, I got a subpoena for him twice and he never answered the subpoena.

Q What became of Leighton?

JUDGE ROSALSKY: What Leighton did is immaterial.

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MR. McCLELLAND: I propose, if your Honors please, to show the entire motive.

JUDGE ROSALSKY: You can show what motive, if any, Albee had.

MR. McCLELLAND: With Leighton, together, they were acting in concert.

MR. MOFFAT: No, you can't do anything of the kind.

MR. McCLELLAND: I am addressing myself to the Court. I propose to show that these two men entered into a combination to blackmail this man under a threat of a prosecution.

JUDGE ROSALSKY: But Leighton has not figured in this case.

MR. McCLELLAND: He has figured through Albee.

JUDGE ROSALSKY: If you can show that Leighton and Albee at some time appeared at Mr. Davidson's place of business and made demands upon him that evidence would be admissible.

JUDGE SWANN: Are Leighton and Creighton different people?

MR. MOFFAT: Yes, sir.

BY MR. McCLELLAND:

Q Now, wait a moment, you were introduced, were you not, to Albee by Mr. Leighton? A Yes, sir.

Q Were you not? A Yes, sir.

Q Is that a fact? A Yes, sir.

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Q As a matter of fact? A Yes, sir.

Q I will ask you this question: By whom were you introduced to Albee? A Mr. Leighton.

Q Now, isn't it a fact that you both left your hotel at the same time? A Yes, sir.

Q Is it a fact that you both presented a claim for clothes that you claimed to have lost there? A Yes, sir.

JUDGE ROSALSKY: Did they do that at the same time?

THE WITNESS: About the same time. Both bills about the same time.

MR. MOFFAT: I ask that the answer be stricken out.

THE COURT: Strike it out. You have got to show that they were both present.

MR. MOFFAT: Now, this was produced, your Honors, in this case and is in the case already. This very thing is now in evidence.

Q A demand was made for money? A Yes, sir.

THE WITNESS: It took two days to get it receipted.

Q What is that you have got in your hand? A That is a bill for clothes.

Q It is a claim? A \$24 for clothes and \$2 I allowed him for a room he had in 14th Street.

Q In this connection I will ask you this question: Is it a fact that in order to supply the demand for rooms by guests that came in-- did Albee sleep in that house every night?

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A No, sir.

Q On that bill what is that memorandum about \$2?

A Well, he didn't come into my house during the celebration because I thought I would get more money for the room.

Q You paid his lodging elsewhere for that purpose? A Yes, sir, \$2.

Q The demand was for \$24, was it not? A A suit of clothes, a pair of pants, a razor and a ring.

Q Did you receive a similar bill for \$34 from Leighton?

A \$33.85.

Q Did you pay it? A No, sir.

Q Did you receive a letter from Leighton? A Yes, sir.

Objected to. Objection sustained.

Q Did you receive a letter from Leighton in which he demanded from you the sum of--

Objected to.

Q Isn't it a fact that Leighton sent you a letter demanding the sum of \$34 and unless you paid that he would make a complaint against you with Albee before the Superintendent of Elections? A Yes, sir.

Objected to.

JUDGE ROSALSKY: Objection sustained. Strike out the answer.

MR. McCLELLAND: I am not confining any criticism or comment to the Superintendent of Elections.

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JUDGE ROSALSKY: That evidence is incompetent and the Attorney-General has a right to object. Leighton is not in this case. I have allowed you to show that Albee made a demand upon Mr. Davidson.

MR. MOFFAT: I would like to have your Honors look at this exhibit which my friend calls a demand.

BY MR. McCLELLAND:

Q Now, during the month of October how did Creighton conduct himself there as an employee of yours? A Intoxicated most of the time.

Q It was in consequence of his intoxication that you discharged him? A Discharged him.

MR. MOFFAT: I object to that.

BY JUDGE ROSALSKY:

Q You discharged him? A Yes, sir.

Q When did you discharge Creighton? A Two or three times.

Q How did you come to take him back? A Well, I liked the man, I thought he was a good man and I tried to give him another chance.

BY MR. MOFFAT:

Q Do you know, Mr. Davidson, as to the frequency of Creighton's absences from the office there in the night time, during the month of October? A Very often.

Q Where was he during that time? A We could not find

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him; I suppose the man couldn't tell where he was.

Q If you knew? A At times the day clerk would find him up in his room with all his clothes on drunk in bed.

Objected to.

Q Do you know that of your own knowledge? A Yes, sir.

MR. MOFFAT: I move that the answer be stricken out.

JUDGE ROSALSKY: He says he knows it of his own knowledge.

Q How frequently was your attention called to that condition during the month of October?

Objected to. Objection sustained.

MR. MOFFAT: Now, is there any question about writing Creighton in these words "Yes" after the name of each guest?

MR. McCLELLAND: I think not.

MR. MOFFAT: He says that it is in his handwriting.

Let that go on the record, he says it is in his handwriting.

BY MR. MOFFAT:

Q When did you discharge Creighton? A About, I think, three times before October.

Q Can you remember any date? A I don't remember the dates.

Q You have absolutely no recollection as to dates?

A No, sir.

Q He continued to live in room 18 even though you had

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discharged him, did he not? A Well, he did come back a couple of times; I knew he was up in that room.

Q He continued to live in room 18 even though he was discharged? A No, sir, that ain't correct, he did not continue living there at all.

Q When did he move out of room 18? A I put him out.

Q When? A Well--

MR. McCLELLAND: If the witness remembers.

MR. MOFFAT: Of course, he knows that.

MR. McCLELLAND: I don't know whether he does or not.

MR. MOFFAT: He is an intelligent man, I guess.

THE WITNESS: Well, I will answer the question what I know-- that is all I know about it.

Q He continued to live in room 18 even though discharged?

A I put him out of that room the Friday before Election.

Q Did he come back again? A Yes, sir.

Q When? A Sunday morning.

Q So that you put him out the Friday before Election?

A Yes, sir.

Q Now, didn't you know, as a matter of fact, that he was subpoenaed the Friday before Election, the same day that you were subpoenaed to go to Mr. Leary's office? A Yes, sir, or a Saturday.

JUDGE SWANN: Wasn't it the Wednesday before Election?

(No answer.)

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BY MR. MOTTAT:

Q He was working with you Saturday, the day you were subpoenaed to Mr. Leary's office? A No, sir.

Q He was not? A No, sir.

Q Positive? A Yes, sir.

JUDGE ROSALSKY: Mr. Albee, step forward.

A L B E E , a witness for the People, recalled.

BY JUDGE ROSALSKY:

Q Did you have anything to do with the preparation of any of the reports? A No, sir.

Q When did you leave this hotel? A October 27th.

Q Do you remember what day of the week that was? A The best of my knowledge it was on a Wednesday.

Q On Wednesday? A Yes, sir, I can't say positively.

Q Your hours were from 7 a. m. to 7 p. m.? A Yes, sir.

BY JUDGE SWANN:

Q On October 27th, the day you left, was that the day you presented this bill against the hotel? A Can I tell the reason why I gave this to him?

Q It is dated the 27th. Now, is that the date on which you delivered it to him, the day you left? A I can't say positively, but to the best of my knowledge it was.

Q To the best of your knowledge it was? A Yes, sir.

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BY MR. MOFFAT:

Q Albee, did you hear what Mr. Davidson testified to in respect to the instructions received by you from him concerning the names of those various defendants and what was said, if anything, in regard to the police of the State Superintendent of Elections?

JUDGE ROSALSKY: If you put those questions to the witness you are going to make him an accomplice.

MR. MOFFAT: That question? I can't see how it would make him an accomplice.

JUDGE ROSALSKY: Read the case of The People against O'Farrell.

MR. MOFFAT: This is simply a direction which he receives.

JUDGE ROSALSKY: The moment he does something in connection with an illegal act he becomes an accomplice.

MR. MOFFAT: But he didn't do it, your Honor, he simply received directions that in case the police or the Superintendent of Elections called and inquired, to say so-and-so.

JUDGE ROSALSKY: I understood you to have said that Mr. Davidson directed him to select from the book some date in August.

MR. MOFFAT: I am asking him now in respect to the directions given him by Mr. Davidson as to those various

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defendants.

BY MR. MOFFAT:

Q Relate to the Court the directions, if any, given you by Mr. Davidson in respect to this defendant Hogan and the other defendants?

MR. McCLELLAND: I object to the others.

Q Well, as to the defendant Hogan, in case the police or the State Superintendent of Elections should call and inquire as to whether or not he lived at those premises. A Well, Mr. Davidson did not mention any particular name. When he gave me directions he simply spoke of them as-- pointing to those cards.

Q Was the name of Hogan on those cards? A Yes, sir.

Q Well, what was the conversation? A Well, he told me that if any officer came there to find out what rooms these men occupied, to show them these cards. There was two of them tacked on the bell register.

Q You did have such a conversation with Mr. Davidson?

A Yes, sir.

JUDGE SWANN: The witness probably does not understand your question. To your first question he gave a reply which gave an entirely different meaning and then you turn around and you say, "Then you did have such a conversation," and that on the record would make it appear that your first question was answered in the affirmative.

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BY MR. MOFFAT:

Q State what conversation Mr. Davidson had with you, if any, in regard to these keys that had tags upon with or cards?

A Well, he told me that if an officer came in to find out what rooms these men occupied to show them these cards, and the cards had their names and the rooms that they had assigned to them, and he said that would save them from looking over the register.

BY JUDGE SWANN:

Q Now, did he say anything in regard to that, did he say anything else in connection with those cards? A I can't remember anything else.

Q Tax your memory and see if you can recall without any suggestion from anybody. A No, sir, I can't remember anything else about those cards.

BY MR. MOFFAT:

Q Have you ever been in room 1? A Yes, sir.

Q Have you been in that room many times? A Yes, sir.

Q Can you state of your own knowledge as to what that room was used for during the month of September? A (No answer.)

BY JUDGE ROSALSKY:

Q What did you say to Davidson when he told you that if the police came in or the Superintendent of Elections man, to show these cards upon which these names appeared? What did you say to him? A What did I say? You mean my answer? I can't recollect what my answer was.

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Q Did you tell Davidson that you would not do it?

A I don't remember what I said to him; I don't remember whether I said now I would or would not; I can't say.

Q Did you refuse to do it? A I don't remember.

Q Did you say you would do it? A I don't remember what I said to him.

Q Did you say all right? A No, sir.

Q Now, you have no recollection of what you replied to Mr. Davidson? A No, sir, I have no recollection of it.

Q Had you known Hogan? A No, sir, I didn't know him.

Q Did you ever see him in the place? A I might have seen him but I didn't know who he was, didn't pay particular attention to him.

Q Your duties were in the day time, from 7 a.m. to 7 p.m.?

A Yes, sir.

BY JUDGE SWANN:

Q You had no night duties at all? A No, sir, not after 7 p. m.

Q You went there about September what? A September 20th; about September 19th.

Q You began September 19th? A Yes, sir.

Q Did any officer or Superintendent of Elections or men from the Superintendent of Elections office, to your knowledge, go into the Strand Hotel and ask about any of these men?

A No, sir, not to my knowledge.



Q Did you do anything with reference to these cards?

A No, sir.

CHARLES A. CREIGHTON, a witness for the  
People, recalled.

BY JUDGE ROSALSKY:

Q I show you People's Exhibit 4, Mr. Creighton, and ask  
you why did you enter opposite the names contained on Exhibit  
4 the words "Yes"? A Well, because I supposed that that would  
complete the document.

Q Why did you enter the word "Yes"? A Well, I was  
trying to make a copy of this and to make a copy at once.

Q A copy of what? A Of this, sir, of this report.

Q Is this report a copy of another report? A No, sir,  
this was the original as I understood it.

Q Did all of the men sign their names, addresses, business,  
age and how long they lived in the hotel? A Yes, sir.

Q Why did you put the word "Yes" there? A Well, for the  
same reason that I filled in this, sir, to make that ~~ix~~ more  
complete.

Q Did you read the headnote? "Does he claim this address  
as a voting residence? Answer, yes or no?" A Yes, sir, I did.

Q How did you know these men claimed that as a voting  
residence? A Because I supposed they would not sign their

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names here unless they did.

Q You say each entry is in the handwriting of the men who lived at the hotel? A I presume they are, yes, sir.

Q But the entry "Does he claim this as a voting residence" is in your handwriting? A Yes, sir, I acknowledge that.

Q How did you come to make that entry? A Well, for the same reason that I made this entry there; this is in my handwriting and also this (indicating).

Q I know, that refers to the three story brick hotel, that is a description of the hotel. Why did you put in the word "Yes" in the column, "Does he claim this as his voting residence;" how did you know that? A Well, I took it for granted on account of their names being there, sir, seeing this column blank and being clerk I thought it was necessary to fill that in to make it complete.

Q For example, you put down Charles A. Greighton?

A Yes, sir.

Q Did you claim that as your voting residence? A Yes, sir.

Q Why didn't you tell the other gentlemen who signed this to put down the word "Yes" if they intended to claim this as a voting residence? A I didn't think it was necessary.

Q You had experience as a hotel clerk? A Yes, sir.

Q Had you ever made out reports which were to be filed with the Superintendent of Elections before you came to the

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Strand Hotel? A Never in my life before.

Q Had you ever voted in this state? A Yes, sir.

Q Did you know that it was necessary for a man to live thirty days in the election district before he could vote?

A I suppose so.

Q You knew that, didn't you? A Well, there was a question about that brought up at the Strand Hotel by Mr. Davidson himself. It appears that he was given to understand that that did not constitute a residence.

Q It did not? A That a person would have to live there thirty consecutive days prior to election.

Q That did constitute? A Yes, sir, that did constitute a residence.

Q Now, if you knew that Cornelius J. Hogan--

THE WITNESS: Now, one moment, please, excuse me.

I have expressed myself wrong there. Mr. Hogan was given the impression by counsel as he came to understand it that it was not necessary for a person to reside in the hotel thirty consecutive days prior to election.

MR. McCLELLAND: Physically?

THE WITNESS: Yes, sir. If he claimed his--

BY JUDGE ROSALSKY:

Q You mean he didn't have to sleep there? A His counsel claimed it was not necessary to sleep there thirty consecutive days, which misled me in my belief. I was under

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the impression that a person would have to live there thirty consecutive days prior to election. It was a legal question over there that I was not capable of answering.

Q That is what I want to know, why you happened to sign this-- I didn't notice this the other day. Did you read this report Judge Swann wants to know? A No, sir, I did not, sir, only all the names which I was told to--

Q "Failure to furnish a true report is a crime," did you read that? A No, sir.

JUDGE SWANN: That is in italics.

THE WITNESS: I did not read that report carefully.  
BY JUDGE SWANN:

Q That failure to supply a true report is a crime?

A I was told to make a copy of that and I did not make that-- I did not fill in the body of that, sir.

Q No, but we are not asking you about that. A I did not read the heading.

Q In the last column, the word "Yes" in every line is written in your handwriting? A Yes, I read them all but not the body or head of the report.

BY JUDGE ROSALSKY:

Q The point is this: How did you know that Hogan was going to claim this place as his residence? A Because Mr. Hogan handed me this paper downstairs in the barroom.

Q Why didn't you have him enter the word "Yes"? A Because I didn't do this work downstairs, I took it upstairs to

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the office when I was told to make a copy of it by Mr. Davidson, that Mr. Davidson wanted to take this up to 42nd street Monday, I think it was, and to have it ready for him Monday morning and of course I very seldom was in the barroom unless I had to go there on business or to get drinks and I filled that in, thinking it would complete the report.

BY JUDGE SWANN:

Q You say you didn't know or hadn't read this preliminary report prepared for the State Superintendent of Elections; is that right? A Not carefully, no, sir, not carefully through.

Q But did you read it at all? A Yes, sir, I think I read this heading here.

Q You didn't read that part? A Right in here. (Indicating).

Q You did not read that part which states in italics that failure to furnish a true report is a crime? A No, sir.

Q Didn't you copy that report, word for word, in your own handwriting twice? A No, sir, there was two sheets.

Q Now, look at this and see if you did not make that? A Yes, sir; that is a copy of this.

Q You copied every word of it in your own handwriting? A There were two of those sent in.

Q You copied every word of it in your own handwriting? A Yes, sir.

Q Now, I am showing you another copy which apparently

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is in your handwriting, and I ask you if you did not all over again in your own handwriting? A Yes, sir.

Q Well, you didn't read that it was a crime to make a false statement of fact in there? A I didn't suppose I was making any false statement because I was guided by this preliminary report.

Q You testified here that you knew that Hogan did not live there, didn't you? A Sir?

Q Haven't you testified here that you knew of your own knowledge that Hogan did not live there? A I testified his face was very familiar to me. He lived there for a long time.

Q Doesn't that report state he has been living there? A But I didn't know his name up to that time.

Q What do you mean by "He lived there a long time"? A In the living part-- I mean in the restaurant, he was seen in the hotel very very often.

Q But look at the heading, "Date when the lodging began;" you put that down and copied it twice according to your testimony to-day, twice you copied that he began his lodging there on August 29th, 1909. A Not in my handwriting, sir.

Q Isn't that your handwriting twice? A This is merely a copy of that.

Q That is what I am asking you: Didn't you copy it off word for word in your own handwriting twice? A Yes, sir-- not twice.

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Q Now, that was before the original report was sent in, wasn't it, which you-- you copied it off twice? A The night before this report?

Q That was before the preliminary report was sent in by the State Superintendent of Elections, you, in your own handwriting, copied off word for word that report twice?

A As I was told to do.

Q Never mind who told you or anything about that, you actually did, didn't you? A Yes, sir.

Q You knew the contents, didn't you? A No, sir, not altogether, I did not read that heading.

Q Were you sober when you copied that off twice in your own handwriting? A I think I was.

Q Did you read it when you copied it off twice in your own handwriting? A No, sir, I did not read it.

Q How did you copy it without reading it? A I read here the written portion, the portion I copied.

Q That is what I am talking about. A The written portion.

Q You were the night clerk there? A Yes, sir, I was.

Q Did you demur at all in any way about sending this statement in which has your statement on it of "Yes, yes" on several occasions, in fact on every line, when you knew that these people did not live in the hotel? A I did not know the requirements of the election law. I did not go into that

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investigation at the time; I didn't know but what these people had lived there prior to my taking a position there as clerk. Part of the time we had lodgers in that house and part of the time they would be away for quite awhile.

Q Is that the best explanation you can make of your part in the signing of that statement? A As a clerk to Mr. Davidson and being instructed by him to make a copy of this original, that prompted me to make the copy as it is shown here.

BY JUDGE ROSALSKY:

Q Do I understand you to say to one of the questions that Cornelius J. Hogan signed his name to People's Exhibit 4 in your presence? A Is this People's Exhibit 4?

Q Don't answer the question unless you understand it.

A No, sir, I don't think that he signed it in my presence.

Q Didn't you just say he signed it in your presence and handed it to you? A No, sir, I didn't say he signed it in my presence; he handed me this.

Q When you say "he", whom do you mean? A Mr. Hogan handed me this sheet in the barroom, and Mr. Davidson told me to go upstairs and make a copy of this, that he would have to take that up to 42nd street Monday morning. That was Sunday night. The way they came in from this office uptown, these two sheets, I suppose, are for a large hotel, and, knowing that they wouldn't have to use that sheet, I thought it would be easy to copy that off on that sheet. That is the reason it

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appears on that sheet, because there is no use sending in both. Guests of the hotel didn't warrant for the use of the two sheets.

Q Didn't it strike you that if the men signed their names and all the other data that they should have also signed or made the entry "Yes" instead of your having made this entry?

A No, sir, it didn't strike me that way at the time.

Q The point I want to get at is this: Why did you make the entry "Yes" in the column, "Does he claim this address as his voting residence." Where did you get your information?

A For the reason that Mr. Davidson told me that it was very important that he should take this up to 42nd street on Monday, and before he went off duty that morning he impressed me upon the date.

BY JUDGE SWANN:

Q Couldn't you have taken the word "No" and written it right after it? Why did you add on "Yes" instead of no?

A Simply because I thought these people would not sign that paper unless they agreed to the word used there; that completed the document just the same way as it was me describing that building as a three story brick building; that is in my handwriting.

Q You didn't get any information from either of the signers that they intended to make that a voting residence?

A Not at all at that time, no, sir; they didn't intimate to me; I took it for granted that they did.

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Q When did you first discover that these men in your judgment were not entitled to vote from the Strand Hotel?

A Well, when I was taken up to the 42nd street office on Saturday night the law was explained to me there and then I had heard you express yourself right in this room.

Q That was the first time? A Yes, sir, the first intimation I knew of, always supposed it was that way but never was assured of it-- as to what constituted a residence.

Q What did you suppose? A I supposed a person would have to live in the place thirty days, having all his apparel there and everything to be entitled to a vote.

Q That was your opinion when you signed the word "Yes" there? A No, sir, it was not my decided opinion, because I was told that Mr. Davidson had been advised that that did not constitute a residence. I was merely in the employ of Mr. Davidson and he instructed me to make a copy of this.

Q Didn't you know that the most material part of that report was that word "Yes"? A No, sir, I did not.

Q That they proposed to claim that place as their voting residence? A No, sir, I didn't realize that.

Q And that hotel report was gotten up for the very purpose of answering that question, yes or no? A No, sir, I think more than that.

Q What did you suppose the Superintendent of Elections wanted the record for if he didn't want to use it? A I want

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to ask you this question: Would the Superintendent of Elections or whatever they are called, when he received from his clerk these papers to file put in that word "Yes" there and make out the report? I was not the proprietor of the place, I was merely a clerk acting under instructions the same as I would be to write out a receipt or make an entry in the ledger.

JUDGE ROSALSKY: There is no provision of law which required the lodger in a hotel to sign the preliminary report. That duty is devolved upon the owner or lessee, isn't that right?

MR. MOFFAT: Yes, sir. It is supposed to be filled in by the person who naturally makes the affidavit and return to the State Superintendent of Elections. Now, as I have understood always up until this discussion arose to-day, this man Creighton on the stand was following the directions of his employer, Mr. Davidson, when he wrote the word "Yes" in there.

JUDGE ROSALSKY: But Davidson gave him no such instructions.

BY MR. MOFFAT:

Q Did Mr. Davidson instruct you in regard to filling in this last column here? A He did not positively tell me to put that word "Yes" in there, but I took it for granted he wanted that piece of paper complete so he could take it up the first thing Monday morning.

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Q Let me ask you one or two further questions. What was said to you, if anything, by Mr. Davidson in reference to what was necessary to constitute a voting residence? A Well, it was not a personal talk to me or by Mr. Davidson to me direct, but it was a general argument among the people that resided there or lived there what constituted a home or a place of election.

Q What was said? A Some took one side and some the other.

Q What was said about Mr. Davidson's attorney advising him? A Yes, sir, but that wasn't given direct to me, it was given to a few others that were standing there.

Q Who told you? A Why, Mr. Davidson said that he was advised that that did not really constitute a legal right for voting.

BY MR. McCLELLAND:

Q You had frequent discussions as to the subject of a voting residence before that paper was signed, isn't that it?

A Not before that paper was signed, no, sir; it was after that paper was signed.

Q After? A Yes, sir.

BY JUDGE SWANN:

Q Was that paper signed before you had written in the word "Yes"? A Yes, sir.

Q When, before you put in the word? A Yes, sir.

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Q Sure of that? A Positive; I took it from below, downstairs.

Q Already signed and sworn to? A Yes, sir.

Q You wrote in the word "Yes" after it was signed and sworn to? A It wasn't sworn to, no, sir.

Q That is what I am asking you? A No, sir, you said was it signed and by that I meant the other part of the paper from the original. I mean that these signatures here were put in; that signature never was put in; it was not attested until the following morning, Monday, up in 42nd street, attested by Mr. Davidson; that was not on there when I made it out.

BY MR. MOFFAT:

Q In other words, Mr. Davidson did not sign that report at the time you put in the word "Yes"? A No, sir; I think it was signed uptown.

JUDGE SWANN: This man's testimony is so contradictory that it is utterly impossible to believe him. To my question he distinctly said that this paper was signed when he put in the word and then he put in the word "Yes". Now, he just says that it was not sworn to but it was signed. I would not believe this witness under any circumstances.

MR. MOFFAT: I beg your Honor's pardon?

JUDGE SWANN: It is simply incredible, to believe a witness of this kind.

MR. MOFFAT: He said in reply to your Honor's question

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that it was signed-- it was signed by these various people Hogan and others but that it was not signed and sworn to at the time by Mr. Davidson.

JUDGE SWANN (Addressing the stenographer): Read my questions.

(The stenographer complies.)

JUDGE ROSALSKY: Any other witnesses?

BY MR. MOFFAT:

Q What did you mean when you wrote in the word "Yes"; had this paper been signed by Mr. Davidson? A No, sir, it was attested to; it was signed by other people but not attested to by Mr. Davidson.

Q Was it signed by Davidson? A No, sir.

Q Do you know positively it was not signed by Mr. Davidson? A Yes, sir, it was no signature there at all.

Q Now, what date was it that you put in the word "Yes"? A It was Sunday evening, I think.

Q Sunday evening? A Yes, sir.

Q And the following day it was to be-- A Filed and attested before a notary I think.

MR. MOFFAT: And it bears the notary's signature on the 27th day of September.

Q You put in the word "Yes" on Saturday? A No, sir, Sunday night.

JUDGE ROSALSKY: Any other witnesses?

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MR. MOFFAT: That is all.

JUDGE ROSALSKY: Both sides rest?

MR. MOFFAT: Yes, sir.

JUDGE ROSALSKY: Have you read the Collins case?

MR. MOFFAT: Yes, if your Honor please.

JUDGE ROSALSKY: If a man hires a room in a hotel or a furnished room in a house or takes a room in a lodging house and shows by acts and deeds that that place is his home he can legally claim such place as his home.

The object of having a thirty day residence prior to election is a wise police regulation. The purpose is plain, to keep track of those citizens who claim the right to vote and to prohibit a person or citizen from voting more than once. That is the plain intent of the Legislature.

Now, in this case, in my judgment, the People's case must rest upon the testimony of Creighton. The testimony of the two other clerks relate to matters not connected with this case prior to October 3rd, 1909. Albee's testimony, in so far as the defendant is concerned, shows that he was in the hotel from 7 a. m. until 7 p. m. According to Creighton's testimony it appears affirmatively that the defendant had never occupied lodgings in that hotel.

We are not trying this defendant here as to

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whether he registered under a false or assumed name.

The question as it appears to us is, was the defendant a resident in the election district thirty days before election and was he entitled to vote at the last election?

As against this testimony you have the testimony of Davidson, the owner, who says that he rented lodgings to the defendant at \$10 a month. The housekeeper says that she saw him there frequently. We have the testimony of the barber who had seen him there frequently during the month, and the testimony of a watchman as well as the testimony of the defendant himself.

The question that addresses itself to us is this: Have the people established evidence which convinces us that there is probable cause to believe this defendant guilty and that he will be convicted upon a trial?

Now, our purpose is not to hold a man for trial unless we are convinced that a petit jury would convict. There is no reason why we should clog our calendars with cases unless there is a reasonable hope that the man will be convicted of a crime. Now, on Election Day Judge Swann and I held cases over for further examination and finally concluded that out of the cases presented to us there were three cases where we believed that the defendants were guilty and that in all probability a petit jury would convict them of the crime with which they were

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charged. But in this case it does appear to me in view of the conflicting testimony I doubt very much whether a petit jury would convict.

MR. MOFFAT: There is no question about the law. We are all agreed on the law. As your Honor says, it comes down directly to whether or not this man was a regular lodger there, whether he had a residence there.

JUDGE ROSALSKY: It makes no difference whether he was on the first floor, the second floor or the third floor.

JUDGE SWANN: Or whether he slept on the roof or in the cellar.

MR. MOFFAT: There is not a witness called for the purpose who can show where this man lived in these premises, not a witness. On the other hand, the People show that this man-- show affirmatively by Creighton, that this man did not live there. We show by Albee that he did not live there at any time from 7 a. m. to 7 p. m., that he was in these rooms when Albee gets there, when he goes on duty in the morning. When he went on duty he could tell what rooms were occupied.

JUDGE ROSALSKY: That does not apply to the monthly lodgers.

MR. MOFFAT: I have shown, your Honor, that this room 1 and this room 4, the only two rooms in which this

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defendant Hogan was in any way connected with were actually occupied by other people right along. The book in evidence shows that.

JUDGE SWANN: Only from September 26th to October 6 was room 1 occupied by others. That book shows that room 1-- there is nothing in that book to show that room 1 was not occupied by Hogan from August 29th up to September 26th.

MR. MOFFAT: Hogan swears he occupied room 1 from August 29th, 1909 on and off until he took room 4. We have shown without contradiction that room 1 was used as a card room up to the time of the Fulton-Hudson celebration. In that respect Hogan's testimony was a mistake. We will be charitable and say that he was mistaken, he was not in room 1. I asked him if he slept on the table during that time because there was no bed there. Hogan was very much mistaken.

JUDGE SWANN: Albee testified that room 1 had a single bed; I have got a memorandum of that here. During the Hudson-Fulton celebration it was occupied by two people.

MR. MOFFAT: We have shown by Decker, we have shown by St. Claire and we have shown by Creighton and we have shown by Albee that room 1 was a card room and it has not been disputed by their own witnesses. Mrs. Matthias admitted it was a card room up to the middle of September.

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On page 109 of the cross examination by myself of this Jennie Matthias, this housekeeper, she says it was turned into a bedroom about the middle of September.

JUDGE SWANN: Albee distinctly testified that it was occupied by a single bed during the Hudson-Fulton celebration when two people occupied it. In order to shake Davidson's testimony and attack his credibility, you asked him why he signed and swore to an affidavit that he owned the Strand Hotel, didn't you? Now, he distinctly signed "Strand Hotel Company, Frank J. Davidson, President;" look at that. Now, does not the register show that room No. 1 was assigned to Hogan on August 29th and does not your witness say that he did assign him to that room on August 29th?

MR. MOFFAT: My recollection of it is that the witnesses say it was turned into a card room. My recollection of the testimony is that this man Creighton said that he saw Hogan and remembered having assigned him to a room. I think he said that he assigned him to a room on two occasions, once when he was accompanied by a woman and at another time when he was alone. I don't think he testified that it was on August 29th.

JUDGE SWANN: Your book shows that. The book shows that the name Cornelius J. Hogan was registered on August 29th and that he was assigned to a room. On page 35 he

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remembers assigning him to a room under his own name w  
in the employ of Mr. Davidson. That is page 35.

MR. MOFFAT: I will call Mr. Creighton back for a  
moment.

CHARLES A. CREIGHTON recalled.

BY JUDGE ROSALSKY:

Q Give Mr. Creighton a piece of paper, pen and ink.

Now, write lll? A (Witness does so.)

Q Do you always write the way you do now? A Yes, sir.

Q Don't you write straight? A No, sir.

Q Will you write 632? A (The witness does so.)

Q Were you on duty on the 29th of August, do you know?

A Yes, sir, I think I was.

Q Is that the date you assigned Mr. Hogan to a room?

A I think that is the date I assigned Mr. Hogan to a room.

Q To what room did you assign him? A I remember the  
circumstance. I was called away. I did not assign him to  
any room myself. I had to go downstairs, but I think the  
housekeeper assigned him that, I think that is in her handwrit-  
ing.

Q Room 1? A Yes, sir; it is not in mine; that is not  
my handwriting; this is not mine.

Q The first time Hogan registered. A About that time.

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I wasn't called on duty then but came on duty an hour or so ahead of my time.

Q Was room 1 used in the month of August? A I think that is a mistake. I don't think it was a sleeping room, I think he must have slept in some other room that night; I don't think it was used as a sleeping room on that day.

Q When was it used as a sleeping room? A During the Fulton-Hudson celebration.

Q After that? A Yes, sir, right up to the day of my leaving there.

Q Used as a sleeping room? A Yes, sir.

Q How about that-- after that date? A It was used as a sleeping room during the Fulton celebration, it was.

Q And after that Fulton celebration-- that was in September? A The 25th.

Q So that from the 25th to the time you left it was used as a sleeping room? A To the time before that, I think.

MR. MOFFAT: I don't dispute that. Our contention has been, your Honor, that it was not a sleeping room on August 29th, 1909, that it was not a sleeping room until the Fulton celebration. This is simply as to the credibility of Hogan.

BY JUDGE ROSALSKY:

Q I want you to be absolutely frank, Mr. Creighton, I want you to be careful what you say. Isn't it a fact that

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in this Strand Hotel you would not assign people to other rooms, but when they registered they were assigned to any room. In the case of a man and woman registering in that hotel, were they assigned to the identical room set opposite their names?

A Outside of regular lodgers they were assigned to regular rooms, but the regular lodgers, possibly like Hogan or like the employees in the hotel, when they have occasion to use a room, or a married couple such as we had there for quite a while-- but all strangers coming in, of course, and registering were assigned to rooms.

Q Were they assigned to the particular rooms set forth in the register? A In most every case that was correct; it was while I was on duty.

Q How many hotel books did you keep there, how many sets of registers? A Well, there was one prior to that that I worked in one day, the first day I was there. They discarded the old book, it was getting soiled or something and they adopted this new one.

Q How does it appear that from August 29th that room was not used-- why was the entry made room 1? A I didn't make that entry; I have no idea; I am under the impression that Hogan that night slept in 22, I am not sure about it, but I am under that impression.

Q Where was room 22? A On the floor above where No. 1 was located. It was a better room than No. 1.

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JUDGE ROSALSKY: Any claim made that Hogan lived in room 21?

MR. MOFFAT: No, sir. The claim was that he lived in room one. It is my recollection that Mr. Hogan so testified in cross examination.

BY JUDGE ROSALSKY:

Q What was the nature of the furniture in room one in the month of August? A I am quite sure when I first went there, August 16th, that it was very seldom used but when used--

Q How about that room one? A I was saying that up to the time of me going into the employ of Mr. Davidson I am quite sure that during the month of August that No. 1 while it wasn't used very often still when it was used it was used as a serving room; it had a card table and a few chairs.

Q Any beds? A And a drop light.

Q Any bed? A No, sir, no bed at that time.

Q When was the bed put in? A It was put in-- I was not on watch when it was put in.

MR. MOFFAT: If there is any doubt in your Honors' minds as to room one, I would ask the privilege of putting on two other witnesses, day clerks who were serving at this time in August.

JUDGE ROSALSKY: The question of room one does not arise. The question which arises in my mind is, Did

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this defendant have a residence there within the meaning of the law. That is the question.

MR. MOFFAT: But his credibility is attacked here on cross examination as to whether he was residing in room No.1 on August 29th. We have shown that that room was used as a card room and a serving room and there was no bed in it.

JUDGE ROSALSKY: Any other evidence.

MR. MOFFAT: No, sir.

JUDGE ROSALSKY: In view of the conflicting testimony and in view of what the Court has understood on the subject, I am going to discharge the defendant.

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