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I N D E X .

|                     | <u>Direct</u> | <u>Cross</u> | <u>Re-<br/>Direct</u> | <u>Re-<br/>Cross</u> |
|---------------------|---------------|--------------|-----------------------|----------------------|
| Walter E. Dunn      | 2             | 17           | 28                    | 35                   |
| Charles W. Mahrwold | 42            | 54           |                       |                      |

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|                           | Direct | Cross | Re-D. | Re-C. |
|---------------------------|--------|-------|-------|-------|
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| Charles W. Nahrwold, con. | 74     | 74    | 84    | 85    |
| George M. DeVille,        | 89     | 90    | 91    |       |
| George Kluberdanz,        | 91     | 103   | 110   |       |
| Moses Loewel,             | 115    |       |       |       |
| William J. Mansmann,      | 117    | 138   | 145   |       |
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| Frank Bollenbacher,       | 174    | 184   |       |       |

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COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY AND COUNTY OF NEW YORK. PART IV.  
Before HON. OTTO A. ROSALSKY, J., and a Jury.

-----x  
THE PEOPLE

-vs-

FRANK BOLLENBACHER.

(2<sup>nd</sup> Trial)  
-----x

Tried, New York, January 27, etc., 1908.

Indicted for Attempted False Registration.

Indictment filed October 21st, 1907.

-----oOo-----

A p p e a r a n c e s .

Deputy Attorney-General JOHN PALMIERI, for the People.

W. F. DONLIEE, ESQ., for the Defense.

-----oOo-----

Frank S. Beard,  
Official Stenographer.

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## THE PEOPLE'S TESTIMONY.

W A L T E R     E .     D U N N , a witness called on behalf of the  
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Dunn, how old are you?    A 28, this coming August.

Q And where do you reside?    A 217 West 38th street.

Q Married?    A Yes, sir.

Q And you reside there with your family?    A Yes, sir.

Q And, Mr. Dunn, how long have you been in the United  
States?    A All my life.

Q And what is your position, to-day?    A Deputy State  
Superintendent of Elections.

Q And when were you appointed to this position?    A Septem-  
ber 13th.

Q Of what year, please?    A 1907.

Q And were you sworn to perform your duty as such officer?  
A Yes, sir.

Q And, before entering upon your duties, you took your oath  
of office?    A Yes, sir.

Q And you have held that position ever since?    A Yes,  
sir.

Q Now, Mr. Dunn, direct your attention to this case.    Do  
you remember the 12th day of October of the year 1907?    A Yes,  
sir.

Q I will bring you now to the evening of that day.    About,

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say, between 8 and 9 o'clock where did you see the defendant, Frank Bollenbacher? A 2060 Eighth Avenue.

Q What time was that, Mr. Dunn? A Between 8 and half past.

Q And what place is that? A A polling place.

Q What polling place is it? A The ninth election district of the nineteenth Assembly district.

Q Did you see him go into that polling place?

BY THE COURT:

Q Where is the place? A 2060 Eighth Avenue.

BY MR. PALMIERI:

Q (Question repeated.) A Yes.

Q Did you go in there? A Yes, sir.

Q Then did you see him come out of that polling place?

A Yes, sir.

Q When he went into that polling place, did you see the Chairman ask him questions?

MR. DONIHUE: I object.

Q Yes or no?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

Q Did you hear the Chairman ask Bollenbacher questions?

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

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A Yes, sir.

Q Did you hear and see Bollenbacher answer those questions?

MR. DONIHUE: Objected to, for the same reasons, and for the additional reason that it is beyond the pale of the indictment, upon which the defendant now stands on trial.

MR. PALMIERI: May I state my position in this case, your Honor, what I want to show? If your Honor--

THE COURT: The indictment charges what?

MR. PALMIERI: Charges him with having committed an election fraud in the seventh election district of the nineteenth Assembly, and we want to show, on the question of scientia that, before he went into the seventh election district, he went into a polling place in another election district, in the same Assembly district, and the Chairman of the Board asked him some questions, which he answered.

We can only try him for one crime, that committed, as we claim, in the seventh election district. But, if we can show, on the question of scientia, if his acts were committed at the same time and place, and are so correlated that the proof of one would explain the other, we understand that your Honor will admit proof of the other; because it is in accordance with your Honor's rulings in other cases, and in accordance with the rulings of the Court of Appeals.

THE COURT: Now, what name did he give in the ninth election district?

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MR. PALMIERI: John Weldon. And, in the eleventh, he registers under his own name.

THE COURT: I will exclude this evidence, Judge Palmieri, and direct the jury to disregard the statements by the learned counsel representing the People. Under this charge, it seems to me clear that you will have to confine yourself, and restrict this evidence, to the seventh election district of the nineteenth Assembly district.

MR. PALMIERI: That's correct, your Honor. But I don't believe that I've made myself clear. We don't propose to show what he did in the ninth election district of the nineteenth, nor what he did in the eleventh election district of the nineteenth.

But this officer, as a proof of res gestae, was following him, and I asked him where he began to take up the search, the following of this man, and he said from the ninth election district of the nineteenth. That, I believe, your Honor will not strike out, because it is the time he began to follow him.

THE COURT: Yes; but I do not think that I can permit it.

MR. PALMIERI: Well, does that part remain in the record?

THE COURT: Yes. But I will strike from the record what the defendant said there, or what was said by the witness to the defendant, except for the purpose of showing

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that the defendant, at some time, made a declaration with reference to his name.

MR. PALMIERI: Yes, sir. We will show that.

THE COURT: You see, you charge him with registering under a false name in this district.

MR. PALMIERI: Yes, sir.

THE COURT: I will allow you to show only that, at some time, somewhere, he gave his true name, but I will not allow you to prove what occurred in the ninth election district of the nineteenth.

MR. PALMIERI: Well, suppose he gave another name in the ninth, would your Honor allow me to prove that?

THE COURT: No.

MR. PALMIERI: Then we will show it at some other place. From what your Honor properly ruled, it is incompetent what he said to the Chairman of the ninth, or what the Chairman of the ninth said to him. But I didn't ask what was said. I asked the officer, "Did you see him go in there; and ask the questions to the Chairman, and the Chairman put questions to him?" on the question of scientia; that's all.

THE COURT: But, Judge Palmieri, for example, if a person picks another's pocket, on one car, and then picks another pocket, on another car; and then picks another pocket on a third car, do you mean to say that it was part

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of a scheme of that man to rob or steal; that the question of scientia would arise; and that you could prove similar acts, with a view of tending to prove guilty knowledge?

That is restricted to forgery, receiving stolen property, knowing the property to have been stolen, and larceny by false pretense. It is not admissible in cases of robbery, in cases of burglary, in cases of common law larceny. I have grave doubt whether you can prove any more than what is charged in the indictment.

MR. PALMIERI: Well, suppose that I confine myself to the matter in this particular charge in the indictment, and then reserve the right to ask your Honor to determine whether I can contradict the defendant, if he goes on the stand, and if he claims that he didn't go but to one place, on that night?

THE COURT: That is a different proposition. And I strike from the record any conversation had by the Chairman of the Board with this defendant, or the defendant with the Chairman. It remains on the record only that the witness saw him in the ninth election district of the nineteenth Assembly district, the first time he saw him.

BY MR. PALMIERI:

Q Is that right, Mr. Dunn? A Yes, sir.

MR. DONIHUE: I respectfully ask your Honor to give me an exception to your Honor's ruling that that may remain

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in the record, that fact, on the ground it is immaterial, irrelevant and incompetent, and not within the pale of the indictment on which he stands at the bar, and not binding on the defendant.

THE COURT: Yes.

BY MR. PALMIERI:

Q Where did he go from there, the defendant? A He walked up Eighth Avenue.

Q With whom? A With others.

Q With whom?

MR. DONIHUE: Objected to.

THE COURT: Allowed.

A Alex Ahearn, Joseph Healey, otherwise Joseph King--

THE COURT: Strike that out, otherwise Joseph King.

BY MR. PALMIERI:

Q Then don't mention him as Joseph King, but only as Joseph Healey. A Well, Joseph Healey and another man.

Q And where did the men go, these three men? A There were four.

BY THE COURT:

Q Who was the fourth man? A The defendant.

BY MR. PALMIERI:

Q You say the defendant Bollenbacher? A Yes, sir.

Q Joseph Healey? A Yes, sir. And Alex Ahearn.

Q And another man, whose name you don't know? A Yes, sir.

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Q But you can identify him if you see him?

MR. DONIHUE: I object to that, if your Honor please. It is an unfair line of examination, assuming that the witness can identify him.

THE COURT: I will sustain the objection to the last question.

BY MR. PALMERI:

Q Now, from there, where did you see these gentlemen go, the defendant and these other three? A Up Eighth Avenue to between 116th and 117th street.

Q What did they do there? A Went upstairs into a club room.

Q Did you see this defendant come down from there?  
A Yes, sir.

Q Was the defendant in company with anybody when he came down from there? A With the same people, and two others.

Q Do you know their names? A No, I don't.

Q When they came down, did you see Healey come down, Joseph Healey, with the defendant?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained, as leading.

BY THE COURT:

Q Who did you see come down, if anybody? A Alex Ahearn, and the defendant, Healey, and two or three others.

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BY MR. PALMIERI:

Q Now, where did the party go to? A They walked down Eighth avenue, to as far as 111th street, and then stood on the corner for about five minutes, and proceeded down Eighth Avenue to 108th Street.

Q Where is that? A Through 108th Street to Manhattan Avenue, and they stopped on Manhattan Avenue for five or six minutes, and Alex Ahearn left them, and walked up the block.

BY THE COURT:

Q Who walked up? A Ahearn left them, and walked up the block.

MR. DONIHUE: Now, I object, and move to strike out all that Ahearn did, as not binding on the defendant.

THE COURT: Motion denied.

MR. DONIHUE: Exception.

Q Continue? A And walked up the block, and went into the polling place.

Q Who went into the polling place? A Alex Ahearn. And came back, and joined the defendant and Healey and the others. They all proceeded up the block, Healey first, the defendant second, and Alex Ahearn and the others followed into the polling place.

Q What polling place was that? A The seventh election district of the nineteenth Assembly.

Q That is the one for which the defendant is being tried,

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to-day? A Yes, sir.

Q What distance was there between Joseph Healey, who entered the seventh election district of the nineteenth Assembly district first, and the defendant, what was the distance between them?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and as leading.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A About two foot.

Q Then how long a time after Joseph Healey entered the seventh election district of the nineteenth, did the defendant Bollenbacher follow? A He went in with him.

Q Who approached the Board of Election Inspectors first?

MR. DONIHUE: Objected to as leading.

THE COURT: Objection sustained. Let him state what occurred.

BY MR. PALMIERI:

Q Well, just state. A Healey went in, and the defendant followed him, and Alex Ahearn and two or three others. Healey walked up to the desk, and the defendant followed him. The Chairman of the Board of Elections asked him if he wished to register, and he said yes.

Q Asked whom? A Asked Healey.

Q Oh, never mind. After Healey got there, there was some--

MR. DONIHUE: Now, wait a moment. I move to strike

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what the Chairman of the Board asked Healey out, as not binding on the defendant.

MR. PALMIERI: I will consent to strike out anything the witness might have said that the Chairman asked Mr. Healey. Is that fair?

THE COURT: Strike it out.

BY MR. PALMIERI:

Q Now, after some conversation occurred between Healey and the Chairman of the Board, what took place between the Chairman and this defendant?

MR. DONIHUE: I object to that, as leading. After having stricken out the proposition of the conversation, there is nothing on the record to show that any conversation had taken place; and it is assuming something which is not shown by the record.

MR. PALMIERI: Question withdrawn.

Q Now, did any conversation occur between the Chairman and Healey, before the defendant came forward to register, in his presence?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

MR. PALMIERI: I am not trying to prove the conversation.

THE COURT: Answer the question yes or no. Objection overruled.

MR. DONIHUE: Exception.

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A Yes, sir.

BY MR. PALMIERI:

Q Now, at the conclusion of the conversation, did you see the defendant do anything? A Yes, sir.

Q What did you see the defendant do, after the conclusion of the conversation between the Chairman and Mr. Healey? A He followed Healey in line to the desk where the Board of Registry sat. The Chairman turned around to him, and asked him if he wished to register, and he said yes; and he said, "Where do you live?"-- "What is your name?" and he said, "Charles McMahon." The Chairman put down the name of "McMahon", and then "Charles" after it.

Q Was this in your presence? A In my presence.

Q And was Bollenbacher there when it occurred? A Standing right alongside of me. The Chairman got "McMahon" on his book, and "Charles" after it, when he was challenged.

Q Now, one moment. You say he was challenged. Who challenged him? A Deputy Kluberdanz.

Q Was he there? A Yes, sir.

Q Who else was there besides Deputy Kluberdanz? A Deputy Nahrwold.

Q And when Kluberdanz said, "I challenge this man," what conversation, if any, occurred between Alex Ahearn and this defendant?

MR. BONIHET: Objected to, as immaterial, irrelevant

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and incompetent, and not binding on the defendant.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

THE COURT: It was something said to this defendant.

A Alex Ahearn said, "Oh, the devil with it. Don't go to all that trouble. Let it go."

Q And what did the defendant do when he said that? A He said, "All right. I don't want to register."

Q And then what did Kluberdanz and you and Nahrwold do?

A Kluberdanz placed him under arrest, placed his hand on him, and took him out of the polling place.

Q Was Healey there at the time? A Yes, sir.

Q Now, where did you go with the defendant, after he was placed under arrest? A We were going to take him to--

Q Never mind what you were going to do. What did you do?

A We took him out of there to Columbus Avenue, and down Columbus Avenue to the 104th Street Station.

Q Now, when you arrested the defendant, what became of Alex Ahearn?

MR. DONIHUE: Objected to, as immaterial.

MR. PALMIERI: The man who advised him not to register, or to obey the challenge, if your Honor please.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A He accompanied us down Columbus Avenue to the 104th Street

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Station. On the downtown side of the station, he turned to Kluberdanz--

BY THE COURT:

Q Who did? A Alex Ahearn.

MR. DONIHUE: I object to what Alex Ahearn did, at this time, if your Honor please; he is not on trial.

BY THE COURT:

Q Did he say anything to this defendant? A Yes.

Q State what he said, if anything?

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A He asked a question before that of whether they were under arrest, and Deputy Kluberdanz said no.

MR. PALMIERI: Well, that is all material in the presence of the defendant, I submit.

A (Answer continued.) And he turned around to the defendant Healey, who was with him, and he said, "Oh, you don't need to go with these fellows," and I pulled open my coat, and showed my shield.

MR. DONIHUE: Objected to, and I move to strike that from the record, as not binding on the defendant, and as being immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

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A (Answer continued.) I pulled my coat aside, and told them that I placed them under arrest.

Q And then you proceeded to the State Superintendent of Elections' office? A No, sir; there was a little argument and scuffle.

Q And where did you go? A We had to take them to the 100th Street Station House.

Q Now, at the 100th street station house was the defendant asked his name? A Yes, sir.

Q Did he give the name there of McMahon? A No, sir.

Q What name did he give?

MR. DONIHUE: Objected to, as leading. I object to the previous question as to whether he gave the name of McMahon, and move to strike out the answer.

THE COURT: Objection sustained. Strike out the previous answer.

Q Well, what did he say as to his name and residence, etc., to the sergeant? A The sergeant asked him what his name was, and he said Frank Bollenbacher. And he asked him his address, and I think it is 2092 Eighth Avenue-- I ain't positive, but I think that's the address he gave.

And he asked him his age, and he said 23 or 21-- I'm not sure which-- and he asked him his occupation, and he said an engraver.

Q Now, from there where did you go? Oh, you left the

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defendant there? A No, we didn't.

Q Where did you take him to? A We took him down to the State Superintendent of Elections' office, 42nd street and Sixth avenue.

Q What did you do there? A The State Superintendent asked him a few questions. We were accompanied by two detectives sergeants from the 100th street station house.

Q And what happened then? A They were searched.

MR. DONIHUE: I object to what happened there.

Q Did you search the defendant?

MR. DONIHUE: Objected to.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A I didn't search him.

Q Was he searched in your presence? A Yes, sir.

Q Who searched him? A Detective Sergeant Rahill. I don't know whether he is a detective sergeant. I'm not positive of that, but he's a detective, anyway. He searched him.

CROSS EXAMINATION BY MR. DONIHUE:

Q When did you become a Deputy State Superintendent of Elections? A On the 13th of September.

Q Was your appointment suggested by anybody? A Yes, sir.

Q By whom? A By my father.

Q Well, does he hold any public office in this city?

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A Well, he is a Clerk of the Supreme Court. I don't know whether you call that a public office or not.

Q And what was he before that? A He was Secretary to the County Clerk of New York.

Q Not the present County Clerk? A No, sir; the County Clerk before.

Q And previous to that what was his office?

MR. PALMIERI: Objected to. Is that material, what his father's office is?

MR. DONIHUE: Well, I assume that it is, in the light of the questions asked by the counsel of the jurors before they were sworn.

THE COURT: Well, if you make an objection, I will sustain it.

MR. PALMIERI: I object to it, as immaterial.

THE COURT: Objection sustained.

MR. DONIHUE: Exception.

Q By whom were you appointed? A Mr. Leary, the State Superintendent, appointed me.

Q Are you a resident of the nineteenth Assembly district?

A No, sir.

Q Do you know your colleagues, Kluberdanz and Nahrwold?

A Yes, sir.

Q Do you know Mr. Thompson? A No, sir.

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

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Q Are they fellow employees of yours in Mr. Leary's office?

A Thompson ain't, but Mr. Gunar is-- Mr. Gunar, he was there, during the election times.

Q And he was there at that time, on the 12th of October? A Yes, sir.

Q And Mr. Nahrwold and Mr. Kluberdanz were? A Yes; and they are still employed there.

Q Do you know where they live? A No, I don't. But I know that Nahrwold lives in 115th street, but what number I don't know.

Q Do you know what election district that is? A As far as I can find out, it is the eleventh.

Q Do you know near what avenue it is? A Between Eighth and Seventh.

Q How long have you lived there? Do you know? A I don't know.

Q Now, are you a per diem man? I mean by that, are you paid by the day? A No, sir.

Q Were you paid by the day on the 12th day of October, 1907? A Yes, sir.

Q Are you familiar with the rules of your office? A Some.

Q Well, there are many men paid by the day; are there not? A Not at present.

Q But were all there on the 12th of October? A Oh, yes.

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Q And was Mr. Kluberdanz a per diem man? A No, sir.

Q Or is Mr. Nahrwold? A No, sir.

Q Is Mr. Gumar? A Yes, sir.

Q How long have you been in the employ; do you say?

A Since the 13th day of September, 1907.

Q 1907? A Yes, sir.

Q And when were you placed upon the monthly payroll?

A The 16th day of November.

Q After Election? A I ain't positive of that date, but I can find it in a minute for you. I have the certificate here.

Q Well, after the 16th day? A Yes, sir.

Q That was sometime after this arrest, of course?

A Oh, yes.

Q Did the fact that you were concerned in this arrest have anything whatsoever to do with your monthly employment by the Bureau of Elections? A I don't think so.

Q Well, by saying you don't think so, what do you mean by that? A Well, I don't think it had anything to do with this.

Q Well, is it a custom of the office, so far as you know, to continue the men who are paid by the day, after Election, if there is any unfinished business that they have been concerned in? A I don't know anything about that.

Q Don't you know that that is the custom of the office?

A No, I don't.

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Q Do you know any men who are employed at present by the Bureau of Elections, and paid by the day? A No, sir; I don't.

Q They are all on monthly salaries? A Yes, sir; all that I know of. There might be some that I don't know anything about.

Q You saw the defendant at 116th Street and Eighth Avenue, you so testified? A Yes, sir.

Q Now, you stated that, when the defendant returned to the street from the club house, that there were several persons with him. Who were those persons, if any? A Well, Alex Ahearn, Healey; and the others I don't know.

Q Well, where did the others leave the defendant? A When a little muss-up happened in 108th street.

Q Did the others go all the way down to 107th street? A 108th street.

Q And you say that they went down Eighth Avenue to 108th Street? A Yes; 108th street.

Q Did they go directly down Eighth Avenue? A Directly down Eighth Avenue. They stopped on their way down.

Q They stopped on their way down? A Yes, sir.

Q Were you alone? A No, sir.

Q Who was with you? A Kluberdanz.

Q And followed them down? A Yes, sir. To 113th Street.

Q Now, when did you first see Nahrwold? A At 113th

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Street.

Q Now, did you have any conversation with him concerning the defendant? A Yes, sir.

Q And in consequence of that conversation what did Nahrwold do, so far as you know? A Why, he came along with me.

Q So that, from 113th street down, you, Kluberdanz and Nahrwold trailed the defendant, you say? A Yes, sir.

THE COURT: Neither side has brought out yet where the polling place is located, the seventh election district.

BY THE COURT:

Q Where is that? A 74 West 108th street.

Q In the Borough of Manhattan? A Yes, sir.

Q County of New York? A Yes, sir.

BY MR. PALMIERI:

Q And, pardon me. You said a little muss-up took place at 107th street. Was that at the time of the arrest? A At 108th Street corner.

MR. DONIHUE: One moment, Judge Palmieri. Don't interrupt my examination.

THE COURT: Yes. Allow counsel to continue his examination.

BY MR. DONIHUE:

Q Did you see Nahrwold in the polling place of the seventh election district? A I seen him in the store, in the registration place.

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Q And what was he doing, when you first saw him there?

A Why, he was standing with his back towards the window.

Q Well, was he concealed in anyway? A No, not in the least.

Q Was he evading anybody, so far as you could observe?

A No.

Q Had you ever been in Nahrwold's house? A No.

Q Do you know where his house is? A No.

Q Have you been to the defendant's house? A No.

Q Do you know where his house is? A Yes.

Q How far is it from Nahrwold's; do you know? A I don't know where Nahrwold's house is.

Q How long were you in that district, all told, during your official life? A I was there for the four days of registration.

Q And you are, or were, frequently in the company of Nahrwold? A Yes, sir.

Q And during those four days you operated where particularly? A On Broadway, in 101st and 102nd street.

Q How, were you operating particularly along Eighth Avenue, that day? A Yes.

Q In the vicinity of 115th Street? A Yes.

Q And how often did you see Nahrwold? A I saw him, the whole day, once.

Q And how often did you see him in 113th street? A Well,

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every time I went down there.

Q And how often during the day at 115th street? A Only once.

Q Now, when you reached the polling place of the seventh election district, was Nahrwold in full view? A Yes, sir.

Q Now, you say that the defendant gave the name of Charles McMahon? A Yes.

Q Are you certain that it was the name of Charles McMahon? A Positive.

Q And where were you when he gave that name? A Right alongside of him.

Q Dunn, you had seen the defendant before the 12th of October; hadn't you? A Never laid an eye on him.

Q Did you ever hear Nahrwold say that he knew the defendant? A No, sir.

Q Before the 12th of October? A No, sir.

Q Do you know Mr. Thompson? A Yes.

Q Was he concerned in this election? A Well, as far as I found out, yes.

Q Didn't you know that on the 12th of October? A No, I didn't.

Q When did you find out that he was? A On the 14th.

Q When? A On the 14th.

Q Well, did you ever see Thompson with Nahrwold? A I might have.

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Q Did you, Dunn, yes or no? A Well, I can't tell you that, whether I seen him or not. I told you I might have seen him. I'm not positive whether I did or not.

Q Were you ever with Nahrwold at the club in the neighborhood? A I was never in the club, and never knew where it was, until a week or two ago.

Q And not before that? A No, sir.

Q What were you doing there, a week or two ago? A I went up to see Nahrwold.

Q And you saw Nahrwold there? A Yes, sir.

Q Did you find Kluberdanz there? A No, sir.

Q Or Gumar? A No, sir.

Q Or Thompson? A No.

Q Well, then, you didn't meet Thompson, you say, until the 14th? A The 14th.

Q Did you ever hear Nahrwold speak about Thompson previous to that date? A Well, he might have. I don't remember any conversation. He might have spoke his name.

Q When and how did you learn that Thompson was interested in the election? A I seen him talking to Nahrwold, between 113th and 114th street, about 2 o'clock on Monday afternoon. I was on the opposite corner. When they got through talking, I asked Nahrwold who he was, and he said, "Why, that's Thompson, the man that's running for Alderman there."

Q And was Kluberdanz there? A No, sir.

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Q Now, since the first meeting with Thompson, how often had you seen him? A Four times.

Q Did you discuss this case with him? A No.

THE COURT: With whom?

MR. PALMIERI: With Thompson.

THE WITNESS: Yes, I did, to-day.

BY MR. DONIHUE:

Q Not before to-day? A No, sir.

Q Didn't you know Thompson when your father was Deputy County Clerk of this county? A He was never Deputy County Clerk.

Q Well, he was employed in that office? A Yes, sir.

Q And didn't you know that Thompson was employed as a Deputy in the County Clerk's office, at the same time? A Yes; he told me to-day, about it.

Q And you didn't know it before this? A No.

Q You used to go down and see your father frequently when he was employed there? A Very often, very often.

Q And did you ever see Thompson there? A I don't recollect seeing him there. I might have seen him there, but I don't know.

Q How long is it since your father was Deputy County Clerk?

MR. PALMIERI: He didn't say he was Deputy County Clerk, but Secretary to the County Clerk.

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A About two years ago.

BY MR. DONIHUE:

Q About two years ago? A Yes, sir.

Q And you don't remember seeing Thompson there, at that time? A No; I don't remember seeing him.

Q Now, what did you say to Thompson, on the 14th, concerning this case? A I didn't speak to him about it.

Q When did you first speak to him? A About this case?

Q Yes. A Right outside there.

Q What time? A Oh, about 11 o'clock or half past 11.

Q Some weeks ago, didn't you see Thompson down here, in the other court room? A Yes, sir.

Q Did you talk to him about this case, then? A No.

Q Or he to you? A No.

Q You don't know of your own knowledge whether Thompson has made any affidavit, or signed any paper in connection with this case or not? A Not to my knowledge.

Q Did you ever hear that he had, from himself? A No.

Q Who arrested the defendant? A Who arrested the defendant?

Q Yes. A I. (Indicating himself.)

Q Who do you mean when you point that way? A Well, I don't see anybody else but myself around here.

Q You mean that you arrested him? A Yes, sir.

Q And who arrested the defendant when he was rearrested,

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several weeks later? A Ike Silverman.

Q Who is Ike Silverman? A A Deputy State Superintendent of Elections.

RE DIRECT EXAMINATION BY MR. PALMIERI:

Q When you say that Silverman and you arrested him--

A Yes.

Q You don't mean that he was arrested, that night, by you too? A No, sir; that was afterwards.

MR. DONIHUE: Now, I object. I didn't intend to ask him as to who arrested him, on the night in question, but who arrested him some weeks ago, ten days ago.

THE WITNESS: I don't say anything about ten days ago.

MR. DONIHUE: My intention was to ask of the witness about that.

THE COURT: Then question the witness anew on the subject.

MR. DONIHUE: Yes, sir; I will do that.

BY MR. DONIHUE:

Q You were asked, some time ago, who arrested the defendant; weren't you? A By who?

Q Well, were you asked by anybody who arrested the defendant?

MR. PALMIERI: Give us the date, and give the name.

A I don't know what you mean.

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THE COURT: You should draw the attention of the witness to a particular time.

BY MR. DONIHUE:

Q Well, when you were asked, in another part of this court, by anybody, as to who arrested the defendant, on the 12th of October-- A Yes.

Q And did you state that you arrested the defendant, in answer to that question? A No.

Q Who did you say arrested him? A Kluberdanz.

Q Now you say you arrested him? A Yes.

BY MR. PALMIERI:

Q Now will you tell the jury how that explanation came about? A They were taken out of the polling place--

Q Who were taken out of the polling place? Well, it might have been this jury, for all that. Now, just explain your answer. A Kluberdanz and I took the defendant and another man, named Healey, out of the polling place in 108th Street. As I understood it, Kluberdanz had placed these men under arrest. When we got to the station at 104th street, Alex Ahearn asked Kluberdanz had he placed these men under arrest, and Kluberdanz said, "No, I haven't," and Ahearn said, "Then you don't need to go with them," and then I showed my shield, and said, "I place them under arrest," and I placed my hand on this man, arrested this man, and he has been my prisoner ever since.

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Q Then you placed him under formal arrest, rather than actually under arrest? A Yes.

MR. DONIHUE: I object to that, and move to strike it out as a conclusion and as leading.

THE COURT: Motion granted. Strike it out.

Q Now, Mr. Dunn, you were asked as to what occurred at 108th Street, and you said something about a muss having occurred at 108th street. Now, did that muss occur after you and Kluberdanz took Healey and the defendant out of the polling place of the seventh election district of the nineteenth Assembly?

MR. DONIHUE: Objected to, as immaterial, irrelevant, incompetent and not binding upon the defendant, being without the pale of the indictment.

MR. PALMIERI: It was brought out by counsel for the defendant. I want the jury to get a concise idea of what occurred, after they were arrested, and taken out of the polling place.

THE COURT: Did the defense allude to it?

MR. PALMIERI: Yes, sir; the defense brought it out.

MR. DONIHUE: No, sir; we did not. It was at the outset of my attempt to cross examine that Mr. Palmieri injected this questioning, and I didn't ask the witness a question about that.

THE COURT:

Q Now did this muss, as you call it, occur? A He asked

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me where these people--

Q No, no. In the polling place of the seventh election district, or outside? A In the seventh election district of the nineteenth.

Q Inside? A Yes; when we arrested the defendant and Healey, and these people walked out of the polling place.

BY MR. PALMIERI:

Q Then tell the jury what happened? A When we arrested these people--

MR. DONIHUE: No. I object to this, as immaterial, irrelevant, incompetent, and not proper on the re-direct examination.

THE COURT: Objection sustained.

BY THE COURT:

Q Tell the jury everything that occurred in the polling place between you and this defendant? A He went into the polling place and he registered-- attempted to register under the name of McMahon. When he was--

MR. DONIHUE: I object, and ask that the characterization be stricken out.

THE COURT: Strike it out.

Q After this defendant, as you say, gave the name of McMahon, what, if anything, occurred between you and this defendant? A Nothing at all. He just refused to register, and we took him out of the polling place.

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Q Well, was there a muss there, at the time? A Well, it was on account of these people running out, on account of this arrest.

BY MR. PALMIERI:

Q Well, that's what I want you to say. Why don't you say that?

MR. DONIHUE: Objected to.

THE COURT: Just a moment. The witness should be exhausted on direct examination. Of course, the Court has the discretionary power which may be exercised in the interests of justice, but it makes a disconnected record.

BY THE COURT:

Q Now, state everything. You have been connected with this office for some time and know how to testify. State everything that occurred?

MR. DONIHUE: Now, if your Honor please, I object to the witness being examined further by the Prosecution or by the Court upon these questions that he has already testified to, on the ground that it is improper, at this time, in re direct examination.

THE COURT: Objection overruled.

MR. DONIHUE: Exception. And on the ground that the witness has already answered the question.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

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A That was all that there was. These other people that were with them, that come down from 116th street, the other three men that were with him, run out of the place. I don't know their names.

BY MR. PALMIERI:

Q And when they ran out of the place, that is what you mean by muss? A That's what I meant by muss.

MR. DONIHUE: I object to it as immaterial, irrelevant and incompetent and leading.

MR. PALMIERI: I will consent to strike it out.

THE COURT: Strike it out.

Q Well, what did you mean by a muss?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent and improper on re-direct examination.

A What I meant was that, when the arrest was made, there was so much excitement between the Board of Inspectors and the deputies, that these other people got afraid, and run out of the place, and there was nobody left in there.

MR. DONIHUE: I object, and move to strike out the testimony.

THE COURT: The motion is granted, as the answers contain conclusions of fact on the part of the witness. Let him state, in detail, the facts. Do not let him give his own expression of opinion.

BY MR. PALMIERI:

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Q You said something about a muss? A Yes, sir.

Q What did you mean by that? Will you just tell what occurred? A Just a little excitement in there, when we placed the defendant and Healey under arrest.

Q When the defendant and Healey were placed under arrest, what happened? A There was a little excitement between the--

Q What was that? Tell the jury? A Well, arguments between the Deputy State Superintendents and the Inspectors of Election.

MR. DONIHUE: I object to the question as improper on re-direct examination, and incompetent, immaterial and irrelevant, and not binding on the defendant, what a lot of people did in the neighborhood, and move to strike it out.

THE COURT: Objection sustained, unless it is shown that the men who left the polling place were in company with the defendant when he entered that place, and had been in company with him on the public highway before that.

BY MR. PALMIERI:

Q Now, you said that first Healey, and then Bollenbacher, and third, Alex Ahearn entered the place, and then several others that you don't know by name.

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and leading, and improper on re-direct examination, it being assumed that the witness has been exhausted by the Prosecution on direct.

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THE COURT: Objection overruled.

MR. DONIHUE: Exception.

Q Is that correct? A Yes, sir.

Q And the other men's names were what? A I don't know.

Q And when you placed Healey and Bollenbacher under arrest, what did these men who had entered the place do?

BY THE COURT:

Q Mention their names, if you know them. What became of Ahearn? A Ahearn stayed there; and the other three men who had accompanied the defendant and Healey down to this polling place, and were in line to be registered, turned on their heel, and walked out, when this man was placed under arrest.

RE CROSS EXAMINATION BY MR. DONIHUE:

Q And where did you arrest the defendant? In the polling place or in 104th street? A I didn't arrest him in the polling place. Kluberdanz arrested him in the polling place.

Q And, when you say after the arrest, then you don't refer to the arrest as having been made by you? A No, sir, not then.

Q Now, do you recall being asked, on the previous occasion, at the last trial of this case, how many persons were in the polling place at the time of the arrest, and you having stated about fifteen persons? A Yes, sir.

Q Is that so? A Well, about that. I said about fifteen.

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Q There were about fifteen persons there? A Yes; about fifteen.

Q Citizens in progress of registering? A The Board of Registry, and a police officer, and the Deputy State Superintendents of Elections, and these people that accompanied the defendant.

Q And citizens who were there for the purpose of registering? A I didn't see any other citizen there.

Q Do you know every citizen in that election district?  
A Well, I know every man that came down with this defendant.

MR. DONIHUE: I object to that, and move to strike it out as irresponsible.

THE COURT: Motion granted.

Q Do you know all the citizens of the seventh election district? A No.

Q There were about fifteen persons there? A Yes, sir; about fifteen.

Q Now, there was yourself? A Yes, sir.

Q Kluberdanz? A Yes, sir.

Q Nahrwold? A Yes, sir.

Q A police officer? A Yes, sir.

Q Four Inspectors of Elections? A Yes.

Q And who else? A Healey, Bollenbacher, and Alex Ahern--

Q You gave the defendant before? A Well, then, Alex

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Ahearn and three other men. The manager of the place.

Q Who were the other three men? A I told you I didn't know their names.

Q Well, were they citizens? A Well, I guess they were.  
BY MR. PALMIERI:

Q Well, the citizens ran out of the place? A Yes, sir; the citizens ran out of the place.

Q And the citizens were the citizens who came down with the defendant? A Yes, sir.

BY MR. DONIHUE:

Q Do you mean to say that there were no other persons, excepting the three persons who accompanied the defendant down?  
A No; I didn't see any.

Q You didn't see any more? A No, sir. They may have been in the back of the store.

Q And you didn't look at them? A No, sir; I didn't look for them.

Q What is the name of the manager of the place? A You know more about that than I do.

MR. DONIHUE: I ask that the witness be compelled to answer.

THE COURT: Answer the question.

A I don't know.

BY MR. DONIHUE:

Q That is a laundry; isn't it? A Yes, sir.

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BY MR. PALMISTRI:

Q Was Mr. Haubner, the florist, in there? A I don't know; I didn't see him.

Q Well, that's very fair. You didn't see him in there?

A No, sir.

BY THE COURT:

Q Now, I want you to be good enough, officer, to describe to this jury how the men constituting the Board of Registry were seated in the place, at the time you claim that this defendant gave the name of Charles McMahon? A How do you want me to do?

Q Well, look at the jury, and tell them. A Well, it's a double store, and on one side is a counter, just like this (illustrating); and, as you go up, the Board sat here (indicating). One of the inspectors sat here, and the Chairman here, and another one here, and another one here (indicating); and over here was the booths, in the rear of the table; and over here was the railing; and the defendant stood here, and gave his name to the Chairman of the Board (indicating).

Q And what were the members of the Board doing when the defendant gave his name? A The Chairman asked him his name, and wrote it down in the book.

Q What were the other men doing? A Following the same.

Q Did the inspectors look on the defendant, at the time?

A The Chairman did.

Q How about the other members? A A man opposite to this

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gentleman over here (illustrating), I don't know whether he looked up or not. The gentleman on the far side of the table looked up, I think.

BY MR. PALMIERI:

Q You had your eyes on the defendant, at the time?

A Yes, sir.

Q You were watching him closely? A Yes, sir.

Q Now there is no doubt in your mind that you saw the defendant advance toward the table where the inspectors were, and give his name? A No, sir; because I was right alongside of him.

Q And you heard the name McMahon with your own ears?

A Yes, sir.

Q There is no question about it whatever? A No, sir; not in the least.

Q And there is no question in your mind but that he gave the name of McMahon? A None whatever.

Q And was there anybody else registering at the same time that the defendant was registering? A No, sir.

THE COURT: At the same time?

MR. PALMIERI: I mean at the time that the defendant gave the name of Charles McMahon, no one else was registering at the time.

BY THE COURT:

Q Were there any other electors in front of the defendant

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at the time? A No, sir.

Q Or beside him? A No, sir; but there were behind him.

BY MR. PALMIERI:

Q Who was behind him? A I don't know the man's name.

Q But you would identify him if you saw him? A Yes, sir.

BY MR. DONIHUE:

Q When did you see that man who was behind the defendant since the last trial? A I ain't seen him.

Q Now you said that this is a double store? A Yes, sir.

Q Is the entrance to the store in the center? A I think it is.

Q Well, do you know? A Well, I'm pretty positive it is.

Q Isn't it a fact that it is to the right, as you approach the store? A There is a counter on the left, as you go in.

Q Yes. And isn't it a fact that the door is to the right, as you go in? A No; the door is in the center of the store.

Q And not to the right? A No.

Q And now there is a counter there? A Yes, sir.

Q And the inspectors were at the end of the counter?

A The counter was on this side of the room (illustrating), and on this side of the room was the table where the Board of Inspectors sat. (Illustrating.)

Q Now, Mr. Dunn, the store is on the south side of the street; isn't it? A Yes, sir.

Q Now, we will assume that the store stands as does this

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table. (Illustrating.) A Yes, sir.

Q North and south? A Yes, sir.

Q And you enter the store from its front? A Yes, sir.

Q Now there is a counter to the left, as you go in?

A No; to the right.

Q To the right as you go in? A Yes, sir; on the west side.

Q And the table? A The table was on the left.

Q Where the inspectors were? A Yes, sir.

Q Now, which position at the table, with reference to the entrance to the room, was occupied by the Chairman? A Right on the end.

Q And who sat opposite him? A Munzman.

Q And the other two inspectors? A Sat at the end.

Q And you observed that? A Yes, sir.

Q And all the time you had your eyes on the defendant?

A Yes, sir.

Q May it not be that, because of your attention being fixed upon the defendant, that you didn't see any citizens in there, registering? A No.

Q Or who were in there for the purpose of registering?

A No.

Q It might not be possible? A No; it might not be possible.

Q If citizens were in there, you having your eyes on the

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defendant-- and you did have in mind the purpose of arresting him? A I certainly did.

Q And, having in mind the purpose of arresting the defendant, you still say that it would be impossible for any person among fourteen or fifteen, as you estimate it, to be there for the purpose of registering? A In that store, at that time, yes; that was not in company with this defendant.

Q And this was at what time? A Between 9 and a quarter past 9 or 9:20.

BY MR. PALMIERI:

Q In the daytime or night? A In the night.

BY MR. DONIHUE:

Q But it was between 8 and 8:30 when you first saw him; wasn't it? A Yes.

Q And now you say it was between 9 and a quarter after that he was arrested? A Why, I picked up the defendant at--

Q Answer my question. Is that true or not? A Yes.

C H A R L E S     W .     N A H R W O L D , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Nahrwold, are you an officer of this state? A Yes.

Q What kind of an officer? A Deputy State Superintendent

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of Elections.

Q And how long have you been appointed to that position and how long have you served in that position? A About seven years.

Q And have you continuously for seven years served as Deputy State Superintendent of Elections? A Not continuously; off and on.

Q And have you since the 12th day of October, continued in that position? A Yes, sir.

Q As Deputy State Superintendent of Elections? A Yes, sir.

Q Do you know the defendant at the bar? A Now I do; yes.

Q What name-- on the 12th day of October last, where did you see this defendant? A 74 West 108th street.

Q And what place is that? A Polling place.

Q Now, before you went to that polling place, No. 74 West 108th street, had you been approached by Mr. Dunn, another State Superintendent of Elections, and had you had a conversation with Mr. Dunn? A Yes, sir.

Q And after that conversation you went to this polling place, 74 West 108th street? A Yes, sir.

Q Now, what polling place is that? A It is the seventh election district of the nineteenth Assembly.

Q And, when you went there-- I withdraw that question.

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When you reached that place, was that--

THE COURT: One moment. Is there going to be any dispute as to the polling place? There is no objection to the witness testifying that it is the seventh election district of the nineteenth Assembly district.

MR. DONIHUE: I am willing to concede that the polling place of the seventh election district of the nineteenth Assembly district was there.

THE COURT: No, Assemblyman; but will you concede the necessary elements of proof in that respect?

MR. DONIHUE: Well, we did, at the last trial, and we will do it again.

THE COURT: Well, that should be done now, Mr. Attorney-General.

MR. PALMER: Yes, sir. It is conceded by the defendant that, on the 12th day of October, 1907, which was a day duly appointed by law as a day for the general registration of the qualified voters of said county, in the Borough of Manhattan, City of New York, that the polling place of the seventh election district of the nineteenth Assembly district was at No. 74 West 108th street, which was a place for the meeting of Inspectors of Elections of the said seventh election district of the nineteenth Assembly district, duly designated as the polling place of said election district, for the general registration of the male

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electors of such election district, who would be, at the next following election, to wit, on the 5th day of November, 1907, being the Tuesday succeeding the first Monday, and being the day duly appointed for a general election throughout the State and City of New York, Borough of Manhattan and County of New York, entitled to vote therein; and that the several Inspectors of Elections in the said district were duly qualified to act as such, and duly took their oath of office, before entering upon their duties, on the 12th day of October, 1907.

MR. DONIHUE: I have consented to a stipulation being placed on the record, and I agree to the same, reserving to myself the right to examine any of the inspectors of election, or any other officials of the election machinery, as I deem fit.

THE COURT: Surely.

BY MR. PALMIERI:

Q Now, we have got to the point where you, having had a conversation with your brother officer, Dunn, stationed yourself in the seventh election district of the nineteenth Assembly?

A Yes, sir.

Q Now, from that moment on-- I don't want to lead you-- tell the jury what you observed, after entering the polling place. And from the time you entered, where you placed yourself, what you observed, and tell that loud enough for the

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last gentleman to hear you, Mr. Nahrwold. What time did you enter the place? A Around 9 o'clock.

Q All right. Now, 9 o'clock means nothing. It might have been in the morning or at night. A Well, near 9 o'clock in the evening.

Q In the evening? A Yes, sir.

Q Now, when you entered that place, at 9 o'clock in the evening--

MR. DONIHUE: No; he says near 9 o'clock.

BY MR. PALMISTRI:

Q You didn't time yourself with a watch; did you?

A No, sir.

Q Now, when you entered that place, what occurred?

A After I entered the place, and was in there about three minutes, several men come in to register.

Q Now, how did they come? In line? A Well, the first man that registered, his name was Dwyer.

Q All right? A And the second man was Healey.

Q The next? A The next man that registered, his name was McMahon, or he attempted to register.

Q Now, when you say McMahon, do you see him in court, the man that you saw attempt to register as McMahon? Do you see him in court, to-day? A Yes.

Q Where is he? A Right over there, by the side of the attorney (indicating).

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Q Pointing to the defendant? A Yes.

Q Now, what did he do, after Healey registered? Where did Healey go? Into the booth? A Yes, sir; into the booth.

Q And, while he was in the booth, did you see anyone else advance to the inspectors' table? A McMahon.

Q All right. McMahon, when he advanced to the inspectors' table, what did you see the Chairman do or say to him?

MR. DONIHUE: I object to what the Chairman said or did to him.

THE COURT: To the defendant?

MR. DONIHUE: Yes, sir.

BY THE COURT:

Q That is, the Chairman, you say, spoke to the defendant at the bar, when the defendant appeared before the Board of Registry? A Yes, sir.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Now, what did the Chairman say? A He asked if he wanted to register.

BY THE COURT:

Q Asked whom? A Asked the defendant, McMahon.

BY MR. PALMIERI:

Q And what did the defendant say? A He said yes. He said, "What's your name?" and he says, "McMahon." Deputy

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Kluberdanz said, "I challenge that man."

Q Was all this in your presence? A Yes, sir.

Q When Deputy Kluberdanz said, "I challenge that man," did he point to this defendant? A Yes, sir.

Q When this happened, what did Alex Ahearn say, if anything?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent.

MR. PALMIERI: I withdraw the question.

Q Who was behind the defendant at that time?

MR. DONIHUE: Objected to, as leading.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A I don't know.

Q Was there a man behind him? A Yes.

Q There was a man behind him? A Yes.

Q You don't know his name? A No, sir.

Q Now, what did that man say to the defendant when Deputy Kluberdanz, pointing to the defendant, after he had given the name of McLahan, said, "I challenge this man"?

MR. DONIHUE: Objected to, as not binding on the defendant, and as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained, for the present.

BY THE COURT:

Q Describe this man?

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BY MR. PALMIERI:

Q Well, describe this man that was behind the defendant?

A He was a stout man, with a dark suit of clothes on. That's as near as I can describe him.

Q Had you seen this person in the company of this defendant at any time before the defendant entered the polling place?

MR. PALMIERI: This deputy was directed to be there.

He was not following the defendant.

BY THE COURT:

Q Well, did you see this person enter the polling place with the defendant? A No, sir; I had my back turned to the door.

BY MR. PALMIERI:

Q And that's why you didn't see the defendant or any other person enter just then? A Yes, sir.

BY THE COURT:

Q Have you since learned the name of the man? Yes or no.

A Yes.

BY MR. PALMIERI:

Q What was his name? A Alex Ahearn.

BY THE COURT:

Q Now, state what was said, if anything, by Alex Ahearn to this defendant?

THE COURT: My object in questioning this witness was solely for the purpose of identifying a person whom the

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other witness identified as being in the company of the defendant. Of course, what a perfect stranger said would be immaterial; but it is claimed that this man was in the company of the defendant.

MR. DONIHUE: And I move that the testimony of the witness be stricken out, upon the ground that, on the direct examination of Mr. Palmieri, he was uncertain who was behind the defendant.

THE COURT: That is a matter for the jury.

MR. DONIHUE: And that he could not describe the person, and that he is now testifying to the name of some person, to something he has learned was the name of some person that he is incapable of describing.

THE COURT: That is a matter for the jury. Motion denied.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Now what was it that was said by this man behind the defendant, after Kluberanz said, "I challenge this man"?

MR. DONIHUE: I object to that as not binding on the defendant, and as incompetent, immaterial and irrelevant.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Well, he said, "If there is going to be any trouble about it, don't register."

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Q Is that what the defendant said-- is that that this man who was behind the defendant said, to the defendant, at the time the defendant was challenged? A Yes, sir.

Q And when that was said to the defendant, what did the defendant do? Did he continue to register? A No, sir.

Q Did he say anything to the Chairman about not registering any more?

MR. DONIHUE: I object to this as leading.

THE COURT: Yes. Objection sustained.

BY MR. PALMIERI:

Q What did he say or do? A I didn't hear him say anything.

Q Well, what then did he do? A He stopped registering.

Q Well, then, what did he do, if he stopped registering; what happened? A Well, the other man that had registered before him came out of the booth.

Q All right. That's Healey? A That's Healey. And, as he came out of the booth, Kluberdanz said--

MR. DONIHUE: I object to that, and I move to strike that out, any reference whatever to Healey.

MR. PALMIERI: I withdraw the question.

MR. DONIHUE: But I now move to strike out all the answers of the witness, from the moment that the question was asked, "Now what did he do?" The witness states that he stopped registering, and that's a conclusion, and

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I ask that that be stricken out.

THE COURT: yes. Motion granted.

MR. DONIHUE: And all the succeeding testimony.

THE COURT: Motion granted.

BY MR. PALMIERI:

Q Now, Mr. Nahrwold, when Alex Ahearn stated to him, "If there is going to be any trouble about it," meaning the defendant, "don't register," what did you observe the defendant do, with respect to leaving the registering table, or anything else? Tell that to the jury in your own way?

MR. DONIHUE: I object to the question as assuming something having been said by Alex Ahearn, and testified to by the witness, and which the witness doesn't say was said.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A When Kluberdanz said he would challenge that man--

BY THE COURT:

Q Who said that he would challenge him? A Deputy Kluberdanz. He said, "I am going to take that man down to the State Superintendent of Elections' office."

BY MR. PALMIERI:

Q Who said that? A Kluberdanz.

Q And the defendant refused to continue registering?

A Yes, sir.

Q Well, then, was he taken out? A Yes, sir.

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BY THE COURT:

Q Now, wait awhile. You say that he refused to continue.  
Did he leave-- A Yes; he left the line.

BY MR. PALMIERI:

Q Well, please say it. I can't testify, you know.  
Did you see him leave the line? You saw the defendant, after  
Alex Ahearn-- after Kluberdanz said, "I challenge that man,"  
leave the line? A Yes, sir.

Q When I say leave the line, he was at the head of the  
line to register? A Yes, sir.

Q And you didn't observe the defendant leave the line?  
A Yes.

Q And, as he left the line, did anybody place his hand on  
him, and, if so, who?

MR. DONIHUE: Objected to as leading.

Q As he left the line, what happened?

MR. DONIHUE: Objected to.

MR. PALMIERI: The last question is withdrawn.

Q What happened? A Deputy Kluberdanz said, "I am going  
to take that man down to the State Superintendent's office,"  
and Deputy Dunn said he would take the other man.

Q All right. Was that said in the presence of the  
defendant? A Yes, sir. And Kluberdanz took Bollenbacher,  
and Dunn took Healey out of the polling place, and over to  
Columbus avenue, down Columbus avenue to the Elevated railroad

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station.

Q Now did you know, at that time, that the defendant's name was Bollenbacher, instead of McMahon? A No, sir.

Q You at that time only knew him by the name of McMahon?  
A Only knew him by McMahon.

Q And did you follow them to the station house? A No, sir; to the Elevated railroad. They went up on the station.

Q And that's all you know about this matter? A yes, sir.

CROSS EXAMINATION BY MR. DONIHUE:

Q What do you mean when you say you saw the defendant leave the line? A When he stepped out of the line.

Q Well, what did the line consist of? A (No answer.)

Q Were other persons there waiting to register? A Not then any more. That's where the line was.

Q Well, when you said you saw the defendant leave the line, what did you mean? A The line that he was standing in.

Q An imaginary line? A No. A line had been there; and, as they would go to register, one after the other would drop out of the line.

Q And how many were there to register when the defendant was there? A Well, I'd seen register.

Q When the defendant was in the place? A Two previous to the defendant; yes.

Q Now, did you notice a number of people in there, on

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the line? A On the line; no.

Q Waiting to register? A No.

BY THE COURT:

Q Well, you said there were three people. A Well, two previous to him.

Q Well, isn't that a number, three? A Yes.

BY MR. DONIHUE:

Q Now you said you saw the defendant at 74 West 108th street, on the night of October 12th? A Yes, sir.

Q And didn't you see him at 113th street and Eighth Avenue?

A Before that time?

Q Yes. A Yes.

Q Wasn't he pointed out to you then? A No, sir.

Q Didn't Dunn, indicating the defendant, or some person, say, "Follow that man"? A No, sir. At 111th street.

Q Well, was it at 111th street? A Yes, sir.

Q And Dunn then indicated some man and said, "Follow that man"? A Three or four men; not some man.

Q Directed you to follow three or four men? A He didn't direct me about anything. He said, "Them men are going down the avenue, and we are going to follow them, and I want you to help me."

Q Dunn was in charge of the deputies; wasn't he? A I don't know whether he was in charge of the deputies or not.

Q Will you swear that you didn't know that he was in

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charge of the deputies concerned in this arrest? A I will positively swear that he was not. One deputy has got to assist the other, without anybody in charge of them.

Q Dunn wasn't designated as the deputy in charge? A In charge?

Q Yes. A I don't know anything about that.

Q Well, you saw the defendant at 111th street? A I couldn't say that it was the defendant. There were four people on the other side of the street, and it was dark over there.

Q Then you couldn't say that you saw him there? A No, sir.

Q But you are able to identify the defendant at the bar as being the same person that you saw in the premises 74 West 108th street? A Yes.

Q On the night of October 12th? A Yes, sir.

Q Now, you were asked by Mr. Palmieri, by Judge Palmieri, who was behind the defendant, and you said that you didn't know. A No; not at that time.

Q You said some stout man? A Yes, sir.

Q Can't you give a more detailed description of the man who was behind him than that based upon your recollection of the person who was behind the defendant, on the 12th of October of last year? A No, sir.

Q How are you able to state then that the person behind the defendant was Alexander A.earn?

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MR. PALMIERI: He didn't say Alexander. He said Alex Ahearn.

A From what I learned afterwards.

Q Well, you haven't any recollection, have you, of the man who was behind the defendant? A No, sir.

Q Did somebody tell you he was Alex Ahearn? A Yes, sir.

MR. DONIHUE: Now, if your Honor please, I move to strike out the statement of the witness respecting the identification of the man behind the defendant, as testified to by him, and his subsequent identification of the man as being Alex Ahearn, on the ground that, by the witness' own statement, it is shown to be based on hearsay.

MR. PALMIERI: Your Honor, this witness didn't say to this jury that he identifies the person behind this defendant as Alex Ahearn. He said that there was a male person behind this defendant, whom he described to the best of his ability.

THE COURT: Well, I will grant the motion to strike out any reference by this witness to Alex Ahearn.

MR. PALMIERI: All right. All the testimony--

THE COURT: But his description of some person behind remains, and the conversation of that person, or his statement.

How much longer will you be in the cross examination, Mr. Donihue?

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MR. DONIHUE: At least an hour, sir, longer.

THE COURT: Then, as it is after the usual hour for adjournment, we will adjourn here.

Gentlemen of the jury, do not discuss this case among yourselves, or permit anyone to discuss it with you, and do not form or express any opinion concerning the guilt or innocence of the defendant, until the case is finally submitted to you.

In reading the newspapers, refrain from reading any account of this case; and, if any person attempts to approach you, report such fact to the Court.

You may go until tomorrow morning, at 10:30.

And do not allow any person to leave this court room until this jury is taken to the elevator. And, at the close of each session, see to it that no spectators, or persons in the court room, are allowed to follow the jury out. Let the officers take the jury to the elevator.

MR. DONIHUE: And will your Honor make that apply to the deputies of the Attorney-General's office, and the Superintendents of Elections?

THE COURT: What I mean by that is that I do not want persons to go near the jurors, and discuss this case. That rule applies to everybody; and, at the conclusion of each session, this rule should be observed, Captain.

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TRIAL RESUMED.

New York, January 28th, 1908.

MR. PALMIERI: May it please your Honor, we have here a witness who had been taken from his sick bed, and only by permission of Chief Inspector Cortwright was I permitted to have him brought here, with the assistance of two Deputy Superintendents of Elections. I will therefore ask your Honor's indulgence to permit me to place my witness on the stand, this morning, so that he may return to his bed.

THE COURT: Very well.

JOHN A. GORDON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Now, Mr. Gordon, will you please speak loud enough for the last gentleman in this jury box to hear you, if you please?

A Yes, sir.

Q Are you a sickman? A Yes, sir.

MR. DONIHUE: I object to that, is he a sick man? We see him, and let the jury draw their own conclusion.

THE COURT: Objection sustained.

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MR. DONIHUE: Now, if your Honor please, at the outset of this day's proceedings, I request your Honor to direct Judge Palmieri to desist from the practice that he was engaged in, yesterday, that of leading the witnesses, and then supplementing the leading suggestion of the question that he intends to propound to the witness. It isn't fair, and Judge Palmieri should realize it by this time.

MR. PALMIERI: Your Honor, I ~~wx~~ wish to show --

MR. DONIHUE: And it only occasions many objections on my part, many of which your Honor sustained.

THE COURT: I did not observe that Judge Palmieri led the witnesses, except upon immaterial matters.

MR. PALMIERI: I want to show here why this officer has not been here for two months. Will you allow that?

THE COURT: Yes.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Have you been sick, Officer? A Yes, sir, I have been on sick leave for two months. I was directed by the Police Surgeon to come here, to-day, so as to have this case settled.

Q Now, were you an officer attached to the Metropolitan

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Police Force of this city on the 12th day of October last?

A Yes, sir.

Q And were you detailed as such officer, detailed to the 7th Election District of the 19th Assembly District? A Yes, sir.

Q Were you in that polling place on the night of the 12th day of October last? A Yes, sir.

Q Now, Officer, where is the 7th Election District of the 19th Assembly District? A 108th Street, south side, near Columbus Avenue. The number I don't know.

Q You don't remember the number? A No; I don't remember the number.

Q Now, Officer Gordon, about what time, that night, did you observe anything in that place that happened --- A Yes, sir.

Q About what time? A I guess it was about 9.15. It was after nine, I remember.

Q All right. It was after nine o'clock, about 9.15? A Yes, sir; it was after nine o'clock, I know.

Q Now, were you in the polling place? A Yes, sir.

Q Now whereabouts in the polling place were you? A Sitting right by the table, on a chair.

Q Were you near the inspectors or near the door or where? A Right by the inspectors, at the table.

Q The inspectors who recorded the names of the persons

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who registered? A Yes, sir.

Q There were four inspectors? A Yes, sir.

Q Now, will you tell this jury, about nine or 9.15, whom you noticed coming in, and who followed him? Tell it in your own way, because I don't want to lead you. Now tell that to this jury. Who did you notice coming in first? A Well, I was detailed there to relieve the man ---

Q I didn't ask you that, Officer. You will be asked that by the other counsel.

MR. DONIHUE: Now, I object to your telling the witness what I am going to ask him. You have no information of what I am going to ask him.

MR. PALMIERI: All right.

A I was there relieving a man.

Q I didn't ask you that, Brother Gordon. I asked you whom did you observe coming in to register, first? A I noticed several people coming in.

Q Could you name one? A And I had my challenge list in my hand. Then there was a fellow come in, by the name of Joseph Healey.

Q Yes. A He registered; he went into the booth.

Q Now, wait a minute. Who followed Healey to register? A Another man by the name of Charles McMahon. He was also on the challenge list, and the Chairman asked him ---

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Q Wait a minute. Now do you know Charles McMahon, if you see him? A Yes; I would know him.

Q Can you point to him? A Yes, sir.

Q Where is he? A That's him, right there (indicating).

BY MR. DONIHUE:

Q Which one? This one here (indicating a young man seated by his side)? A That's McMahon (indicating the defendant).

Q This man (indicating as before)? A No; just wait a moment.

BY MR. PALMIERI:

Q Now, just step down and pick him out? A That's the man (indicating the defendant).

Q Place your hand on him, please. There may be some doubt about it afterwards. A There he is (indicating the defendant by placing his hand on him).

Q What is his name? A He gave his name as Charles McMahon.

Q That's the only name you know him by? A That's the only name I know him by.

Q Now, just tell this jury when you saw the defendant, Charles McMahon, advance to the table, what was the first thing that the Chairman asked him, the first question? A "Do you want to register?".

Q The Chairman asked him, "Do you want to register?"?  
A Yes, sir.

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Q And what did the defendant Charles McMahon, say?

A "Yes".

Q What then did the Chairman him again? A "What's your name?".

Q "What's your name?"? A Yes, sir.

Q And what did the defendant say? A "Charles McMahon".

Q Now, at that time, did anybody say anything, when he said, "My name is Charles McMahon," anybody standing in the place?

MR. DONIHUE: Now, I submit, if your Honor please, that that question is distinctly leading.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

Q Just tell that to the jury.

THE COURT: Answer that question yes or no.

A Yes.

BY MR. PALMIERI:

Q Now, what was said by anybody? A There was a man behind the line, and he said, "To hell with it."

Q Pointing to whom? Pointing to Charles McMahon, as you have indicated? A Yes, sir. "Let it go."

Q And before that happened, did anybody challenge McMahon? A Yes, sir.

THE COURT: Now, strike that out. That is too

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leading.

BY MR. PALMIERI:

Q Well, before that, did anybody say anything to the Chairman about McMahon; did any Deputy say anything to the Chairman?

MR. DONIHUE: Objected to.

THE COURT: Objection sustained.

MR. PALMIERI: Call in Mr. Kluberdanz.

Q Did you ever see that man before (indicating Kluberdanz)? A Yes, sir.

Q Was he in that polling place, on that night? A Yes, sir.

MR. DONIHUE: Now, I want him to step out, if you have done with him.

MR. PALMIERI: He may go out, of course.

Q And what did that man do, when the defendant said "Charles McMahon"? A Well, this party said behind him, "To hell with it", and Kluberdanz put him under arrest.

Q Well, before he put him under arrest, did he say anything about challenging him? A He challenged him.

Q What did he say? Just tell the exact words. A Well, he just challenged him. He said, "I challenge that man", and put him under arrest.

Q Now, Officer Gordon, is there any doubt in your mind

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that the man who said his name was Charles McMahon, and who was challenged by Kluberdanz is the defendant, whom you pointed out, and placed your hand upon; any doubt at all? A No, sir.

CROSS EXAMINATION BY MR. DONIHUE:

Q Who gave you the challenge list that you had? A The man that I relieved.

Q And the name of Charles McMahon was upon it? A Yes, sir.

Q Where is it now? A Well, I suppose it is in the station house or over in the Election Bureau. I don't know where it goes to.

Q Are you positive that the name Charles McMahon was on it? A Yes, sir.

Q And in consequence of the name being there, you were waiting for Charles McMahon to come in? A No.

Q What was your object in having the challenge list?  
A I was waiting for everybody on the challenge list.

Q And you were waiting for McMahon, in common with everybody else? A Everybody that came in, I listened to their names.

Q (Question repeated) A I wasn't waiting for him any more than anybody else. I had a list of challenges there.

Q And Charles McMahon was on that list? A He was on that list.

Q Do you recall the address? A Eh?

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Q (Question repeated) A The address of what?

Q Of the Charles McMahon whose name was there? A No, I don't. The Deputies put them under arrest.

Q Now, Officer, how long have you been on the force?

A Eight years.

Q How long have you been detailed on Election Day?

A Every year.

Q Every year? A Yes, sir.

Q And you have been detailed for the days of registration? A Yes, sir.

Q Were you ever before, on a day of registration, given a challenge list, containing the names of any persons? A Always.

Q On a day of registration, sir? A Eh?

Q (Question repeated) A No; on the day of the primaries; yes.

Q This was a day of registration; wasn't it? A Yes; for the primary elections.

Q It was the 12th of October, wasn't it? A Yes; that's what it was.

Q Was it a registration day for the general election?

A Yes; and for the primary too. Not a general election; it wasn't. The 4th day of November is general election.

Q Now, who was the person that you say gave the name of

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Charles McMahon dressed on this occasion? A What's that?

Q How was the person who you say gave the name of Charles McMahon dressed on this occasion? A Dressed?

Q Yes; how was he dressed? A I didn't notice his clothes.

Q You didn't make the arrest; did you? A No; the Deputy.

Q And you didn't assist the Deputy; did you? A No; I asked for assistance, and they said no; they were taking him to the Superintendent's office, in 42nd Street.

Q You asked for assistance? A I asked him if he wanted my assistance, that gentleman that just went out there.

Q Kluberdanz? A Yes, sir.

Q And what enabled you to determine that the defendant at the bar is the same person whom you heard give the name of Charles McMahon on the 12th of October, 1907? A Because I remembered him.

Q And yet you don't remember how he was clothed? A No; I didn't look at his clothes. I didn't think it was necessary. I can remember a man's face.

Q Now, are there any peculiar marks about him that enable you to remember him? A No, no peculiar marks, but I remembered his face, though.

Q And how do you fix the time as being about nine o'clock? A Eh?

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Q (Question repeated) A How do I fix it?

Q Yes. A I took my watch out, and looked at it at nine o'clock, and it was quite a little after that they came in; and it was about 9.15 when this man appeared.

Q And you had looked at the time on your watch? A Yes, sir.

Q Where were you during the month of December, 1907?

A Month of December?

Q Yes.

BY MR. PALMIERI:

Q Last month? A I was on sick leave.

BY MR. DONIHUE:

Q Were you on the sick list? A Yes; I am on it yet.

Q Were you on the sick list on the 12th of October?

A No, sir.

Q When were you placed on the sick list? A I don't remember the date exactly. It was in November. I was on it from ---

Q Have you been on it continuously from November? A From November.

Q Now, Officer, there were a great many people in this polling place, at the time; were there not? A Yes, sir; quite a few people came in.

Q How many? A Oh, I couldn't tell you; I didn't count.

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Q Were there 40? A I can't tell you the number. All I was doing there was to see the people that come in and listen to their names, and if any was on the challenge list.

Q What did you do with the challenge list? A Eh?

Q (Question repeated) A I turned it over to the man that relieved me.

Q What was his name? A I don't know what his name was.

Q Was he from your precinct? A No.

Q From what precinct was he? A From the 100th Street precinct; used to be the 30th.

Q But you don't know his name? A No, sir.

Q When did you turn it over to him? A When he came back from his dinner.

Q And weren't you there permanently, that day? A No.

Q What were you doing there? A I was just there temporarily, relieving the two men attached to the polling place.

Q And you were attached to what precinct, permanently?

A The 9th.

Q Where is that? A Eldridge Street.

Q And how long were you in this polling place, all told, on the night of the 12th? A Well, I should judge about three hours, I think. I made out my report, and it can be found in the blotter.

Q What report did you make on the challenge list? A Eh?

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Q What report did you make on your challenge list, concerning Charles McMahon, whose name, you say, was on it?

MR. PALMIERI: I object. The challenge list is the best evidence.

THE COURT: Objection overruled. It is cross examination.

A I made no report.

Q Well, wasn't it your duty, or part of your duty?

A No, sir.

Q To make a report? A No, sir.

Q Well, what was it --- what did you understand to be your duty? If a person named Charles McMahon came in to the election booth, and presented himself for registration? A All right. Listen. If a Deputy of the State Elections arrests a man, that's his duty; not mine.

Q And then you didn't deem it your duty to make any report? A No, sir; I haven't any right to make any report of that, so long as the Deputy makes the arrest. If I make the arrest, I make the report.

Q Do you know John Bauer, of 108th Street and Columbus Avenue? A No, I don't. John who?

Q John Bauer? A No.

Q Do you know either of the Mr. Farleys up there?

A No, sir.

Q You were drinking that day, weren't you, Officer?

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A No, sir.

Q Not a drop? A No, sir.

Q Don't you drink? A I drink a glass of beer once in a while.

Q Well, what do you call once in a while? A At my dinner, a glass of beer, once in a while.

Q And you didn't drink on the 12th of October? A No, sir.

Q And you don't know John Bauer? A No, sir; it's the only day I have ever been up there in my life.

Q Now, do you recall any other name on the challenge list you had? A Oh, I couldn't tell all the names. They are the only two that came in, Joseph Healey and Charles McMahon.

Q And both of those names were on the challenge list?

A Yes, sir.

Q Now, Officer, do you mean to state to this jury that the names --- that the name of the defendant Bollenbacher, or Frank McMahon, was on the challenge list which you had in your possession on the 12th of October, the 12th of October being a day of registration only, and not for voting? Do you still maintain that the name of Frank McMahon was on that list?

A Yes, sir.

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THE COURT: Do you, gentlemen, need this witness any more?

MR. DONIHUE: Well, I would like to reserve the right to call him at any time, any future time.

THE COURT: certainly. You may now return to your home, Officer.

MR. PALMIERI: Yes; and I will send a coach for you, if necessary.

BY MR. DONIHUE:

Q Just one more question. What is the name of the Police Surgeon in whose care you are? A Dr. Brunner.

Q Where is his residence? A 45 Ninth Street.

RE-DIRECT EXAMINATION BY MR. PALMIERI:

Q And you report to him how often? Once a week or how often? A I report to him, to-morrow.

BY THE COURT:

Q Was Bollenbacher's name on the list? A No, sir; he was chairman of the Board.

Q What name was on the list? A Joseph Healey and Charles McMahon.

RE-CROSS EXAMINATION BY MR. DONIHUE:

Q Do you mean to say that on the challenge list that you have in your hand on the 12th of October, 1907, in the election booth of the polling place of the Seventh Election District

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of the Nineteen Assembly District, that it contained the name of Charles McMahon? A Yes, sir.

Q And, bearing in mind that that was a day of registration and not of voting -- A Eh?

Q Bearing in mind that the 12th of October was a day of registration? A Yes.

Q And not a general election day, for the purpose of voting? A No, sir; it wasn't; only for primary elections.

Q Do you understand my question? It was a day of registration; wasn't it? A Yes.

Q Now, do you distinguish between a day of registration and the general election day, for the casting of votes?

A Yes.

Q And understanding that this was a day of registration, you still maintain that the name of Charles McMahon was upon the challenge list in your possession? A Yes, sir.

Q Do you? A Yes, sir.

CHARLES W. NAHRWOLD, his cross examination be-

ing continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. DONIHUE:

Q Where were you last night, Mr. Nahrwold? A Where was I last night?

Q Yes. A Home.

Q Weren't you at the organization? A Yes.

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Q Why didn't you answer that? You were there, too; weren't you? A yes, sir.

Q Now who were you in conversation with there, concerning this case? A Nobody.

Q Didn't you see some gentlemen out here in the hall with whom you were in conversation concerning this case? A No, sir.

Q Not one? A No, sir.

Q Did you meet Mr. Thompson there? A No, sir.

Q Did you meet that gentleman there (indicating) and talk with him, last night? A No, sir. I was in the executive meeting.

MR. PALMIERI: And I want to get that gentleman's name. He says his name is George M. DeVille.

BY MR. DONIHUE:

Q Were you discussing this case with anybody? A No, sir.

Q Were you discussing it corner of 115th street and Eighth avenue with anybody? A No, sir.

THE COURT: Now, one moment. Is this gentleman to be a witness?

MR. DONIHUE: No, sir. I just happened to see him in court, and I know that this man Nahrwold is acquainted with him.

THE COURT: But the point is that, if he is to be a

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witness, he should be excluded.

MR. DONIHUE: No, sir; I don't intend to call him.

MR. PALMIERI: Then --

MR. DONIHUE: Then what?

THE COURT: Do you intend to call him, Mr. Palmieri?

MR. PALMIERI: Yes, sir. I intend to call him, to show that he had no such conversation with the witness.

THE COURT: Where is he now?

MR. PALMIERI: He has walked out.

THE COURT: Then call the gentleman in. I direct you, sir, to remain in the corridor, subject to the call of the Attorney General.

BY MR. DONIHUE:

Q Now, Mr. Nahrwold, you stated yesterday that the man who was behind the defendant at the time that the defendant was on the line in the Seventh Election District of the 19th Assembly District, the polling place thereof, that he was -- that you saw a stout, dark man? A Stout man, with a dark suit.

Q With a dark suit? A That's what I said.

Q Did he have an overcoat? A Yes.

Q How old a man was he? A I don't know.

Q Was he 50? A I don't know.

Q Was he 25? A I don't know.

Q Have you any recollection? A No; otherwise I could

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describe him.

Q You stood near the window, you say? A Near the wall.

Q Well, did you stand with your back to the window?

A Yes.

Q near the wall? A Yes, sir; near the wall.

Q Well, are there a wall and a window at the same place?

A No; the window was behind me and the wall was to the left.

Q The building runs the same as this table does, doesn't it (indicating the counsel table)? It's on the south side of the street? A Yes, sir.

Q The store? A Yes, sir.

Q And the length of it corresponds in position with the length of this desk; doesn't it? A Yes.

Q Now the window is in front; isn't it? A Two windows.

Q In the front? A Yes, sir.

Q And the walls are on the side? A Yes, sir.

Q Now, did you stand with your back to the window?

A Yes, sir.

Q or your back to the wall? A My back to the window.

Q Well what did you mean when you said, a minute ago, that it was to the wall? A On the side of the wall. And there is the window and there is the wall (illustrating). I was up against the wall, with my back to the window, and there is the window behind me (illustrating).

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Q Well, will you tell me this? Were you standing with your face toward the wall? A Well, no; I couldn't be, with my face towards the wall, and my back to the window. You are reversing it.

Q Then you had your back to the window? A Yes, sir.

Q And you were up against the wall? A Yes, sir.

Q How long have you been in the Department or Bureau there, the Bureau of the Superintendent of Elections? A Off and on, seven years.

Q Off and on seven years? A Yes, sir.

Q And what was your first employment there? A As a Special Deputy.

Q And your compensation was what? A Sir?

Q By the day or what? A By the day; \$5 per day.

Q And how long did that employment last? A That lasted until the law was changed, in 1905.

Q And then you became what? Became a salaried man?

A A regular deputy, at \$1200 a year.

Q Now, while you were a per diem man, how long out of the year were you employed? A Well, it is according to how far you go back.

Q Well, the beginning of your first employment? A Well, under Chief McCullagh, it was for about 90 days, the first year; and, the next year, probably the same. The third year, I think it was about four months.

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Q Now, the third year did you make any arrests?

A Under McCullagh?

Q Yes. The third year you were there. I don't know who you were under. A I'm not positive; I can't state any time.

Q You don't remember whether you made any arrests, the third year, or not? A I can't state any time, no, sir. The records will show that.

Q Well, are you familiar with the customs of the Department? A Some of them, yes.

Q Well, are you familiar with the custom of the Department to continue a man on the 90 day employment, if he is concerned in any arrests that may be made, or prosecutions? A Well, if a man had a case on at that time, he was kept on until his case was finished, at that time.

Q Until his case was finished? A Yes, sir.

BY MR. PALMIERI:

Q When was that? A 1902.

BY MR. DONIHUE:

Q And is that rule still in vogue? A No, sir.

Q It isn't? A Not that I know of. Now, I'm a deputy by the year. I don't know anything about them special deputies.

Q How many deputies have you? A I don't know.

Q How many deputies are there outside of the door here,

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now? A I don't know; I didn't count them.

Q Are there twenty-five? A I don't know.

Q Thirty? A I don't know.

Q Fifty? A I don't know.

Q Well, are there less than fifty?

MR. PALMIERI: Where?

MR. DONIHUE: Outside of the door, now.

Q Well, are there less than fifty? A I didn't count them; I don't know.

Q In 1903, the third year that you were in the employ of the State Superintendent, you were a per diem man; weren't you? A Yes.

Q And that rule was in vogue at that time? A Yes, sir.

Q And you say it isn't in vogue now? A I told you I don't know. I told you I am a yearly man, and I don't know anything about the other men.

Q Well, do you know any \$5 a day men, who are not engaged in the prosecution of any case, who are still on the pay roll of the Superintendent of Elections, for the Metropolitan District? A I couldn't tell you one \$5 a day man that is in the place now, to-day.

Q To-day? A No, not to-day.

Q Do you know Mr. Thompson? A Mr. Thompson, yes.

Q How often have you seen him since the 12th of October?

A How often?

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Q yes. A probably every day, outside of the days that you see him.

Q Well, you may have seen him that day, too? A No. Not in Albany. Outside of that I perhaps see him every day.

Q Well, you have talked this case over with him?

A I certainly did.

Q Do you know whether Mr. Thompson was in New York during the latter part of last month or not? A The latter part of last month?

Q yes, December. A Yes.

Q You saw him every day then; didn't you? A Why certainly; pretty near.

Q And you saw him down here and in the Part across the hall; didn't you, the Part of this Court across the hall?

A When?

Q During the trial of the former trial of this case?

A I don't believe I see Mr. Thompson across the hall in this case, until he was subpoenaed down here.

Q Well, you saw him across the hall in the other Part, didn't you? A Well, you've got to tell me when.

Q During the course of the last trial of this case?

A The last trial?

Q yes. A No, sir.

Q You didn't see Mr. Thompson? A No, sir.

Q Now, did you see him any night during the progress of

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the last trial? A Oh, yes.

Q You saw him every night? A Well, pretty near.

Q And didn't you see him and talk with him about this case? A Mr. Thompson?

Q Yes. A Yes, sir.

Q Thompson belongs to the same organization that you do?

A Yes.

Q And Gumar belongs to it? A Yes, sir.

Q And Gumar wasn't concerned in this arrest, was he?

A Not in the arrest, no.

Q And is Gumar now upon the list of employes of the State Superintendent of Elections? A I told you I don't know anything about it. I couldn't get them books or records. I'm not allowed to go in there, and look at them.

Q Do you know whether Gumar is employed there or not?

A In the steady employ?

Q Yes. A No, he isn't.

Q He isn't? A No.

Q You were very much interested in Thompson, at the last election, too; weren't you? A I was very much interested.

MR. PALMIERI: Your Honor, is all this material?

THE COURT: Well, upon the question of interest and credibility, I think it is.

Q Were you? A Yes, sir.

Q And Mr. Thompson was a candidate for office; wasn't he?

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A Yes.

Q Now, are you familiar with, or have you any knowledge about the pending proceedings in which the State Superintendent of Elections is charged with neglect of duty?

A No, sir.

Q You know that such a proceeding is under way?

A Yes, sir.

Q And do you know that testimony has been taken in it?

A yes; I read that in the papers.

Q Have you been subpoenaed on it? A No, sir.

Q Have you discussed that case? A (No answer)

Q Have you discussed those charges? A (No answer)

Q With anybody? A Oh, yes.

Q Then you are interested in Mr. Leary's welfare?

A Yes, sir.

Q And the charges are neglect of duty, so far as you know?

A So far as I know?

Q yes. A I don't know what the charges are.

Q Have you heard them discussed with any of the deputies?

A What the charges are?

Q yes. A I don't believe any of the deputies know what the charges are.

Q Well, but there are charges pending? A It so states in the paper.

Q Now you, of course, would like to see Mr. Leary as

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Superintendent relieved of those charges, wouldn't you?

A I don't know what you mean.

MR. PALMIERI: Pardon me. Unless they show that this case is one of the charges on which Mr. Leary has been charged with neglect of duty, I see no reason why we ought to try Mr. Leary for neglect of duty in any case.

THE COURT: Do you object?

MR. PALMIERI: Yes, sir.

THE COURT: objection sustained.

MR. DONIHUE: Exception. If your Honor please, I am asking the witness these questions for the purpose of showing his interest in this prosecution.

THE COURT: I will sustain the objection.

MR. DONIHUE: Exception.

RE-DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Nahrwold, the counsel for the defendant has asked you something about per diem men, or per day men? A yes, sir.

Q Were you a per day man on the 12th day of October, or were you a regularly employed deputy State Superintendent of Elections, on this day? A A regular employed deputy.

Q And how long before the 12th day of October, had you been such? A Since July 1st, 1905.

Q So that, since the year 1905, and continually up to this

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date, you have been a regular employe of the state Superintendent of Elections? A Yes, sir; that was the time the law went into effect, the new law.

Q And so that, whether you had any cases or not, you would be paid regularly every month? A Yes, sir.

Q Whether you have any cases or not? A Yes, sir.

CROSS EXAMINATION BY MR. DONIHUE:

Q Where do you live? A 260 West 113th street.

Q And that is in the 19th Assembly District?

A Yes, sir.

Q In what election district is that? A The 12th.

Q There has been a recent change in the election district lines? A Yes, sir.

Q And the last election was the first time that the change went into effect? A Yes, sir.

Q And how far is that from the corner of 114th street and Eighth avenue? A From the corner of 114th street?

Q 113th street? A Well, about two blocks, and then the distance down 115th street.

Q And how long have you lived there? A Eleven years.

Q You are a man of many social engagements in the neighborhood; aren't you? A I don't know what you mean. Social engagements?

Q I mean you are out in public a great deal? A I am out pretty near every night.

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Q And you are frequently to be found along Eighth avenue, around 115th street? A Yes; the same place that you are found. I meet you every night.

Q And you have seen the defendant; haven't you?

A Since the 12th of October?

Q Didn't you ever see him before? A No, sir.

Q You are pretty well known in that district; are you not? A You know that.

Q Well, I want you to say that, for the record. I will admit that you are. A Well, I think I am.

Q You know the northwest corner of 113th street and Eighth avenue? A I positively do, yes.

Q You frequently go in there? A Eh?

Q (Question repeated) A Why, I go in there, once in a while.

Q And you meet your friends there; don't you?

A (No answer)

Q You meet friends of yours there? A Yes; I meet friends all over. I've got no enemies, not that I know of.

BY MR. PALMIERI:

Q And you never had any controversy, before this occurrence of the 12th of October, with the defendant? A No, sir never seen him.

Q And have no motive to injure him? A No, sir.

Q Except to do your duty as a sworn officer? A Yes, sir.

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Q Now, pay particular attention to this question. When the defendant said, "My name is Charles McMahon" and was standing near the Board of Inspectors there, was anybody registering at the same time that the defendant was? A No, sir.

Q The defendant was the only man registering, at that time? A Yes, sir.

Q No question about that? A No question at all.

Q And the defendant was standing near the inspectors?

A Yes, sir.

Q Where is no doubt in your mind about that? A No, sir.

MR. DONIHUE: Now, if your Honor please, Pardon me, Judge Palmieri; but Judge Palmieri is not leading the witness with his question, but I submit, sir, that he is by his actions, his movements about the table here.

MR. PALMIERI: Then I will sit down.

MR. DONIHUE: It impresses me, and it must impress the witness.

MR. PALMIERI: If you object to my movements, I will sit down.

Q Now, Mr. Nahrwold, please pay close attention to this question, because it is very important. What were the inspectors doing at the time the defendant said his name was Charles McMahon? The reason why I ask this question is because I want to know whether those inspectors looked at him, or were putting down his name? A They were writing; when

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he said that his name was McMahon, they started to write.

Q When he said that his name was McMahon, they started to write?

A Yes, sir.

Q So that the inspectors were not looking at the defendant, but writing down his name?

A yes, sir.

Q While you and the other two inspectors were there to do the other part of the work?

A The other two deputies?

Q (Question repeated)

A Yes.

Q And to detect these very men who were registering?

A Yes, sir.

BY MR. DONIHUE:

Q Now, was there not a man in the booth?

A That registered previous to McMahon?

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Q. Yes. A. Yes, sir.

Q. You know something about the registration of electors; don't you? A. Yes, sir.

Q. You know the process? A. Yes.

Q. Did you ever, in your career, see a Board of Registry registering two persons at the one time? A. No, sir.

G E O R G E M . D e V I L L E , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q. Now, Mr. DeVille, you were in the courtroom when Deputy Superintendent of Elections Nahrwold was asked the question by counsel for the defendant as to whether that Deputy had had a conversation with you? You heard him put that question? A. Yes, sir, I did.

Q. And you heard the Deputy say no? A. Yes.

Q. Now, I wish to ask you whether you did have any conversation with the Deputy about this case? A. Not bearing ---

Q. Yes or no. A. I didn't have any conversation with him bearing on the testimony in the case, but we spoke about this matter, three or four weeks ago, to my recollection, when the other trial took place.

Q. Now pardon me. You have heard my question, and you have been a witness before. I want to know if you had any

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conversation with him about this case, last night or this morning? A Not last night.

Q But you had a conversation with him, four weeks ago?

A Yes, sir; four or five weeks.

Q Are you interested in this case? A Not at all.

Q Are you interested in any election case? A Not at all.

Q Do you know the defendant? A I do not.

Q Do you know Mr. Donihee? A I know him; I met him two or three weeks ago, and met him last night.

Q Did you talk with Donihee about this case last night?

A I did.

Q Did he ask you to be a witness in this case? A He did not.

Q And you happen to be in the courtroom purely as a spectator? A No; as a matter of routine business. This time, as a spectator.

Q This time as a spectator? A Yes, sir.

CROSS EXAMINATION BY MR. DONIHEE:

Q You belong to the same organization that Mr. Nahrwold belongs to, and that Mr. Thompson belongs to? A Yes, sir.

Q Are you one of the officers of that organization?

A I am.

Q And you are not interested in this case? A Absolutely not at all.

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Q And it is merely an accident that you belong to the same organization with these people, too? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. PALMIERI:

Q Now, Mr. DeVille, do you know anything about this case?

A Not at all. Only I was joking last night, when I met the Assemblyman, and I said, "How are you getting along with this case?" and he said, "All right".

Q I didn't ask you that, I asked you, do you know anything that would help this jury in reaching a proper verdict in this case? A No, sir; nothing whatever; only I heard that a man named Bollenbacher, from my district, is being tried for illegal registration.

BY MR. DONIHUE:

Q Well, you have heard a great deal of discussion about this case, haven't you? A Yes; thanks to you.

BY MR. PALMIERI:

Q Thanks to whom? A To Mr. Donihee, the gentleman himself.

G E O R G E K L U B E R D A N Z , a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Kluberdanz, are you married or single? A Married.

Q And you live with your family where? A 260 West 144th

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Street.

Q 260 West 144th Street? A Yes.

Q In the City of New York? A In the City of New York; yes.

Q And your position is what? A Deputy State Superintendent of Elections.

Q And how long have you held such a position? A For the last six or seven years, on and off.

Q Are you a per diem man, a day man, as Mr. Ponihoe spoke of, or a regularly employed Deputy State Superintendent of Elections? A I am a regularly employed State Superintendent of Elections.

Q And were you such on the 12th day of October last? A Yes, sir.

Q And so, whether you have cases or not, you come into court, and even if you don't come into court, your pay runs just the same? A Yes, sir.

Q And I want to know how long you have held that position as Deputy of State Superintendent continuously? A Since August, 1904.

Q You have been a regularly appointed State Superintendent of Elections from that time up till to-day? A Yes, sir.

Q And, by the way, are you a member of any organization of this district, in the 19th? A No, sir.

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Q Do you know --- on the 12th day of October last, 1907, were you in the 7th Election District of the 19th Assembly District? A I was.

Q How did you get there? A I followed up several men to the polling place.

Q Can you mention some of those men's names? A Joseph Healey and a man named McMahon, known as Bollenbacher now, St. John, Alec Ahearn and some other man, I don't know his name.

Q Did you see St. John, this morning? A Yes, sir.

Q Where is he? A Outside in the corridor.

Q Did you see Alec Ahearn, this morning? A I did not.

Q When did you see him last? A Last Thursday.

MR. DONIHUE: Now, I ask that this be stricken out, as improper on the direct examination.

THE COURT: The last reference to Ahearn, I will strike out.

BY MR. PALMIERI:

Q And where did you follow Healey, Ahearn, St. John, and the defendant, Bollenbacher, otherwise known as Charles McManon? A From 116th Street --- between 116th Street and Eighth Avenue to the polling place of 74 West 108th Street.

Q Who did you see go in there?

BY THE COURT:

Q What course did these men take?

BY MR. PALMIERI:

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Q Oh, yes. Just describe the course they took. A Well, they stopped at 116th Street, and then they walked down, and stopped at 111th Street, on the corner of Eighth Avenue; and then they went over to 108th Street and Manhattan Avenue, and Alec Ahearn went down to the polling place, looked in the polling place, and then came back, and spoke to the four.

BY THE COURT:

Q Looked into what polling place? In 108th Street?

A Yes, sir; in West 108th Street.

Q And what was the number of the polling place? A 74 West 108th Street.

BY MR. PALMIERI:

Q That would be the 7th Election District of the 19th Assembly District? A Yes, sir.

Q And what did Alec Ahearn do? Just tell that again.

A Alec Ahearn looked in the polling place, and came back and spoke to the other men.

Q To whom? A To Healey, Bollenbacher, St. John and this other man.

Q Where were they while he went and looked in the polling place? A At the fence in Manhattan Avenue.

Q And what time of the day or night was it? A About nine o'clock.

Q And when Alec Ahearn came back and spoke with the four men, Healey, Bollenbacher, St. John and the other man, what did those people do? A They went over and went in the polling

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place.

Q Now, show this jury how they went in. Who went in first? A Well, this one man went in ahead, the man that really registered was the man by the name of Dwyer, and another.

Q And another by what name? A Joseph Healey.

Q Next? A And then McMahon, known as Bollenbacher.

Q And where was Ahearn? A He was on the side. And St. John was behind Bollenbacher, or McMahon.

Q And did you see them go in in the manner that you have described to this jury?

MR. DONIHUE: Well, now, let the witness state how they went in.

MR. PALMIERI: He stated how they went in.

THE COURT: Yes, let the witness state, Judge Palmieri.

MR. DONIHUE: You make a good witness, Judge.

You do better than Kluberdanz does.

BY MR. PALMIERI:

Q Now just tell how they went in? A Well, they went in there in a line.

Q And in what manner of rotation did they go in? Who first, second and third? A Well, Dwyer went first; Joseph Healey second; McMahon third, or Bollenbacher; and St. John and ~~Alexander~~ Alec Ahearn.

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Q And what did they do, St. John and Alec Ahearn, when they went in?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding on the defendant.

THE COURT: Overruled.

MR. DONIHUE: Exception.

Q Did you see them go in? A Yes, sir.

MR. DONIHUE: Objected to as leading.

THE COURT: Overruled.

MR. DONIHUE: Exception.

Q Well, now, we have these people in the polling place. Now, tell us what happened there?

MR. DONIHUE: Now, I object to the statement of counsel.

THE COURT: Strike it out.

Q Tell the jury what happened in the polling place?

A Well, Dwyer was finished registering, and passed his primary ballot; and then Joseph Healey registered; and then McMahon. The Chairman of the board, when he asked everybody if he wanted to register, he said "Yes".

MR. PALMIERI: Now, I consent to strike that out, what he asked everybody.

THE COURT: Strike it out.

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Q What did the Chairman ask the defendant?

MR. DONIHUE: Objected to.

THE COURT: Allowed.

MR. DONIHUE: Exception.

A The Chairman asked him if he wanted to register.

Q And what did Charles McMahon say? A Yes.

Q By the way, who is Charles McMahon? A The defendant there (indicating).

Q Can you identify him? A I can.

Q Well, come down and put your hand on him? A There (putting his hand on the defendant).

Q Identifying the defendant, Bollenbacher? A Yes, sir.

Q Did you know that the defendant's name was Bollenbacher that night? A No, sir.

Q The Chairman asked if he wanted to register, and he said yes? A Yes, sir.

Q And what else did the Chairman ask him?

MR. DONIHUE: Objected to as leading.

THE COURT: Sustained.

Q Well, what next did the Chairman ask him?

MR. DONIHUE: Objected to.

THE COURT: Objection sustained.

BY THE COURT:

Q What, if anything else, was said? A Well, the Chairman

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asked him his name.

BY MR. PALMIERI:

Q Asked whom? A McMahon.

Q And did McMahon reply? A He did.

Q What did he say? A Charles McMahon.

Q When he said Charles McMahon, what happened? A I seen the Chairman of the Board putting the name in the book, and then I challenged him.

Q Well, what did you say? A "I challenge that man".

Q In what way? What did you say? A "I challenge that man".

Q Now, when you said that, did anyone behind the defendant say anything, and if so, what?

MR. DONIHUE: Objected to, as leading.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A When McMahon gave his name, after I challenged him, Alec Ahearn says to McMahon, he says, "If there is going to be any trouble, to hell with it. Don't register." And then the Chairman turned around to McMahon, and he says, "Well, I don't want to register, I won't go no further".

BY THE COURT:

Q Who said, "I won't go no further"? A The defendant. And he then stepped sideways towards the door, and I went and took hold of Bollenbacher, and Dunn took Healey; and Alec

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Ahearn then wanted to know where I was going to take them two men.

BY MR. PALMIERI:

Q In the presence of the defendant? A Yes, sir.

Q That is, when you took the defendant Bollenbacher, and Dunn took Healey? A Yes, sir.

Q Then Alec Ahearn wanted to know where you were going to take them? A Yes, sir; and I said I was going to take them down to the State Superintendent's office, at 42nd Street and Sixth Avenue.

Q And did Ahearn follow then? A Yes, sir.

Q Did he go as far as that place?

MR. DONIHUE: Now, I object to this.

THE COURT: Objection sustained.

Q Well, by the way, was Donihue at the State Superintendent of Election's office, that very night? A He was.

MR. DONIHUE: I move to strike it out.

MR. PALMIERI: I am going to show what conversation he had, in the presence of the witness, that night.

THE COURT: No. I will sustain the objection.

MR. DONIHUE: And, if he wants me, I will volunteer as a witness.

MR. PALMIERI: Very well then; and we will know a great deal more about this case.

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MR. DONIHUE: You bet your life you will.

THE COURT: I do not see the materiality of this. Mr. Donihue is a lawyer, and he had a right to be there.

MR. PALMIERI: Well, he was there not only in the capacity of a lawyer, but ---

MR. DONIHUE: I object to these statements by counsel. And let him remember that he is a lawyer, too, and not a percent public official, but a lawyer being paid by the moneys of the people of this State.

THE COURT: The remarks on both sides will be disregarded by the jury.

BY MR. PALMIERI:

Q Well, will you please state to this jury --- don't answer this question ---

MR. DONIHUE: I object to the question and the direction of the counsel to the witness not to answer, as improper.

THE COURT: It is only fair on the part of counsel, in cautioning the witness; since the witness might answer a question which appears to counsel to be objectionable.

MR. DONIHUE: Well, he might state, if the objection is made, not to answer it.

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THE COURT: Please be temperate, gentlemen. It is unnecessary to excite yourselves. Put the question.

BY MR. PALMIERI:

Q Will you please tell this jury what conversation occurred between this defendant Bollenbacher, Alec Ahearn and Mr. Donihee and myself, that night, at the State Superintendent of Election's office, in the presence of the defendant Bollenbacher?

MR. DONIHEE: I will not object to the question.

A When we were ordered to take the two prisoners to the West 47th Street station house, with the assistance of two police officers from the West 100th Street station ---

BY MR. DONIHEE: Q Mind you, this testimony is in the presence of me and the defendant Healey and Bollenbacher?

A No.

MR. PALMIERI: That is all I asked for.

BY MR. DONIHEE:

Q Well, that's what I want to know. You understand the question of counsel? A Yes, I understand it. When we were taking these men downstairs Mr. Donihee ---

Q Well, that wasn't in the office; was it? I met you downstairs in the building; didn't I? A Well, that was downstairs, in the building.

MR. DONIHEE: I object to the question as immaterial, irrelevant and incompetent.

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THE COURT: Before I allow the answer I will question the witness.

BY THE COURT:

Q Did the defendant participate in the conversation, or did he remain mute? A The defendant had nothing to say.

THE COURT: I will not allow the question, under the case of the People vs. Smith, Castone and Young. The only object of the testimony is to show ~~x~~ what effect it has on the defendant, when the accusation is made against him. But, if he remains silent, and does not participate in the conversation, and his conduct is under restraint, being at that time held in custody by the officers of the law, it seems to me clear that the evidence is incompetent; and I sustain the objection.

BY MR. PALMIERI:

Q Now, Mr. Kluberdanz, when the defendant said his name was Charles McMahon, what were the other inspectors doing? I don't mean the Deputy Superintendents of Election, but the inspectors who were taking down the names of voters who went there to register. When the defendant said his name was Charles McMahon, what were those four men doing, those four inspectors?

MR. DONIHUE: I object to those questions. And the conduct of the counsel is leading.

THE COURT: Overruled.

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MR. DONIHUE: Exception. One minute. Counsel has indicated upon the table by some motions.

THE COURT: Well, I did not observe that.

MR. DONIHUE: And I respectfully ask your Honor to observe it in future.

THE COURT: Strike out the question.

BY THE COURT:

Q At the time that McMahon gave his name, in answer to the question propounded by the Chairman, what did you observe, if anything, the inspectors doing at the time? A They took the book, and opened it, and went to the letter Mc, and then started to write.

BY MR. PALMIERI:

Q They weren't looking at the defendant Bollenbacher?

A No, sir; they were looking at the books at the time.

CROSS EXAMINATION BY MR. DONIHUE:

Q Now, did you have your eyes on anybody? A I did.

Q Who did you have your eyes on? A I had my eyes on the whole business of the Board, and also on Bollenbacher, or, at least, McMahon.

Q Oh, you took everything under your observation?

A Yes, sir.

Q How many ~~arrests~~ arrests have you made since your connection with the department? A How many arrests?

Q Yes. A Oh, I have made quite some.

Q Do you recall an arrest and the arraignment of a prisoner before Magistrate Steinert, two years ago? A No.

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Q Yes. A I didn't arraign no prisoner.

Q Were you concerned in an arrest before Magistrate Steinert? A I was detailed to the Court, that day, and an officer brought in the prisoner.

Q And what did you do when that prisoner was brought in?

MR. PALMIERI: Why, is that a proper subject of inquiry in this case? I object to it.

THE COURT: What materiality has that? What did he do with the prisoner?

MR. DONIHUE: I am going to find out.

THE COURT: I will sustain the objection.

MR. DONIHUE: Exception.

Q Well, in consequence of that arrest what did you do?

MR. PALMIERI: pardon me. What arrest?

MR. DONIHUE: This arrest that I am talking about.

A I didn't make no arrest.

Q Well, an officer brought in a prisoner, that day?

MR. PALMIERI: Well, is that this case or some other case?

MR. DONIHUE: Another case.

MR. PALMIERI: Then I object.

THE COURT: I will allow you to put the specific question that you desire to interrogate him about. And remember that you are questioning him on a collateral

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matter, and you are bound by the answer of the witness.  
So put the specific question.

MR. DONIHUE: I will obey your Honor's suggestion.

Q When this prisoner was brought into court, did you  
become the complainant in a proceeding against him?

MR. PALMIERI: I object to that, on the ground that  
it is, first --

THE COURT: I will sustain the objection. I will  
allow you to ask the witness directly what is in your  
mind, instead of interrogating the witness on a lot of  
immaterial matters.

BY MR. DONIHUE:

Q Were you the complainant in that case? A I was the  
complainant in the case, yes, on the formal complaint.

MR. PALMIERI: I object to that, if your Honor  
please.

THE COURT: Objection sustained. I exclude the  
question. If you can show anything affecting the  
credibility of this witness, you may ask him about it.

BY MR. DONIHUE:

Q Did you make an identification, that day?

MR. PALMIERI: Objected to, as immaterial, irrelevant  
and incompetent.

THE COURT: Allowed.

A No, sir.

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Q Did you sign any papers, that day? A Yes.

Q In consequence of the signing of those papers, what was done?

MR. PALMIERI: Objected to.

THE COURT: objection sustained.

MR. DONIHUE: Exception.

Q Were you ever the defendant in an action arising out of your participation in election cases?

MR. PALMIERI: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Was he ever a defendant?

MR. DONIHUE: Yes, sir; in an action arising out of election cases.

THE COURT: I will allow it.

A No, sir.

BY MR. DONIHUE:

Q Were you arraigned before Magistrate Steinert?

MR. PALMIERI: objected to.

THE COURT: I will sustain the objection.

MR. DONIHUE: I will withdraw the question. I will prove it in another way.

MR. PALMIERI: I hope you will.

BY MR. DONIHUE:

Q When did you first know Alec Ahearn as Alec Ahearn?

A On the 12th day of October.

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Q You knew that he was Alec Ahearn? A Yes, sir.

Q How did you find that out, that he was Alec Ahearn?

A Well, in the polling place in Eighth avenue, between 113th and 114th street.

Q Well, were you introduced to him? A No, sir. But I was in the polling place when several men came in, and were talking about him, and said, "Alec Ahearn, come here. I want to see you."

Q And you were there at the time? A Yes, sir.

Q And how many times did you see the defendant with this same person that they called Alec Ahearn, that afternoon?

A That evening?

Q That afternoon, the 12th of October? A Not at that time.

Q Well, you saw Alec Ahearn frequently, though, around that time; didn't you? A Yes, I did.

Q And you saw Nahrwold frequently? A I did.

Q And you saw Thompson? A I did.

Q How long have you known Thompson? A Oh, I've known Thompson for several years:

Q And did you know Thompson when he was in the County Clerk's office? A I think I did.

Q Did you know Mr. Dunn when he was there? A Who do you mean by Mr. Dunn?

Q Mr. Dunn, Mr. P. H. Dunn? A Yes; I know him.

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Q For a good many years you know him? A Yes, sir.

Q And you knew Thompson when Thompson was there with Mr. Dunn, in the County Clerk's office? A Well, I am not positive whether he was in that office with Mr. Dunn. I knew Thompson before ever Dunn went into that office.

Q Well, then you are an old friend of Mr. Thompson?

A Yes; I know him for seven or eight years.

Q And had your long friendship with Thompson anything to do with your presence in that district, on the 12th of October? A No, sir.

Q Now, did you have any conversation with Thompson on the 12th of October? A I had some conversation with him.

Q And did the conversation concern his candidacy?

A Well, it did, in some way, and in some it didn't.

Q Well, how far did it?

MR. PALMIERI: objected to. Give the whole conversation, and I have no objection.

THE COURT: Objection overruled.

Q What did he say to you about his candidacy? A Well, he thought he had a good chance of getting elected, if he would get a square deal.

Q And you were there to see that he would get a square deal? A Not for him.

Q Not for him? A I was there for everybody. I was there in your interest, just the same.

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Q I am very grateful to you, indeed, Mr. Kluberanz.

And Nahrwold was with you, the greater part of the day; wasn't he? A Yes.

Q And Dunn? A Yes, sir.

Q And the three of you saw Alec Ahearn how often?

A Well, I don't know if Nahrwold saw him.

Q Well, how often did you see Ahearn, on the 12th of October? When you were in company with Dunn and Nahrwold?

A Well, I don't know whether Dunn and Nahrwold were there when I seen him, at the time, because this was in the polling place.

Q There was another man with you there, was there not, Gumar? A He wasn't with me, he was in the district.

Q How many men were in the district? A Oh, about 12 or 14.

Q Now, were you with Nahrwold around to the organization that they belong to? A No, sir.

Q You were not around in 117th street with him?

A No, sir. On that day, I never was in any organization.

Q Well, at any time were you there? A I was to one smoker, up there, one night.

Q That's recently; isn't it? A Oh, that's some time ago.

Q Well, that was some time in December? A I don't know if that is the same club room; I think it is; I ain't posi-

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tive.

Q 117th street near Manhattan avenue? A Yes, sir.

Q And you met Nahrwold there? A Yes, sir.

Q And you met Thompson there? A I think Thompson was there, too.

Q And you have met Thompson and Nahrwold at 115th street and Eighth avenue; haven't you? A On October 12th?

Q Yes. A No.

Q At any time? A No.

Q Now, how often did you talk with Thompson concerning this case? A With Thompson?

Q Yes. A Why, I never talked to him about it.

Q How often did you talk with Nahrwold? A Well, I may have talked with him; not since this trial was going on.

Q Not since? A No, sir.

Q How often before? A Oh, I don't know; may be two or three times. I asked him certain questions.

RE-DIRECT EXAMINATION BY MR. PALMIERI:

Q Kluberdanz, if there is no objection, I will ask you this question. Will you please explain to this jury, if you can, why McMahon, otherwise known as Bollenbacher, the defendant in this case, did not fully register, on that night?

MR. DONIHUE: objected to, as incompetent, and calling for a conclusion.

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THE COURT: Well, did he not narrate the circumstances?

MR. PALMIERI: He did. But I want to have it --

THE COURT: He said, as I understand it, that when Kluberdanz challenged McMahon, Alec Ahearn said to him, "If there is going to be any trouble, don't register," or words to that effect, and then the defendant proceeded to walk away, and he was placed under arrest. I will sustain the objection.

BY MR. DONIHUE:

Q Now, in answer to Judge Palmieri's question, you said that it was about half past nine o'clock when you went into the Seventh Election District? A Yes.

Q In answer to the same question, at the last trial, didn't you say it was between eight and nine? A No, sir.

Q Are you positive of that? A Yes, sir, I am positive of that. What I said was between eight and nine was I met Dunn between eight and nine.

BY MR. PALMIERI:

Q Oh, by the way, where did you take up the trail of these men, and begin to follow them?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. DONIHUE: Exception.

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A On Eighth avenue, between 113th and 114th street, and up as far as the club room.

Q Where is that? A Between 116th and 117th street and Eighth avenue -- on Eighth avenue.

Q And was the defendant with anybody at that time?

A Yes, sir, he was with Healey, at that time.

Q And did you see the defendant and Healey go anywhere in 116th street? A Why, they went up in the club room, to talk.

Q And you didn't hear what they were saying? A Oh, no, sir.

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding on the defendant; the conversation is not binding.

MR. PALMIERI: I consent to strike out that part of this witness' answer in which he said that they went up to the club room, to talk.

THE COURT: yes, strike out that reference.

MR. DONIHUE: And I object to the statement that they went up to the club room, as incompetent.

THE COURT: I will allow that statement to stand.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q And how long did they remain up in the club room?

MR. DONIHUE: Objected to.

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THE COURT: Sustained.

BY THE COURT:

Q They went up into a building where there is a club room? A Yes, sir.

Q And do you know whether they went into the club room or not? A No, sir.

BY MR. PALMIERE:

Q And was anybody with the defendant, when he came downstairs, and out of that building? A Yes, sir.

Q Give the names.

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A St. John and Alec Ahearn and Healey and Bollenbacher, and another man that I don't know the name of.

Q You say a company of five then emerged from this club room? A There was six. And then they stopped at 116th street and then 11th street, and then they went to 108th street and Manhattan avenue, and then they stopped there.

BY MR. DONIHUE:

Q Are you familiar with the distribution of challenge sheets by your Bureau? A I am/ somewhat.

Q You have been directed to go out on registration days; have you not? A I have.

Q Now, do you know anything about a challenge sheet being

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used on a registration day?

MR. PALMIERI: Now, I object to that, so far as this inspector is concerned. He is not a police officer.

THE COURT: I will allow it, if he knows.

A There is challenge sheets used.

BY MR. DONIHUE:

Q On a registration day? A Yes.

Q When did you ever see any? A When did I see them?

Q Yes. A On registration days?

Q Did you see them last registration day? A I did.

Q In whose hands did you see them? A Well, in several polling places.

Q In whose hands did you see them? A Well, I had them, some of them, in my hands.

Q Are they furnished by your Bureau? A They are.

Q Will you bring some of them here, this afternoon?

A Challenge sheets?

Q Yes. For use on the registration days. A Yes; I guess we can get one.

Q Well, will you bring one this afternoon? A Do you want the names on them, or just the sheet?

Q Well, I want the challenge sheets used in the Seventh Election District of the 19th Assembly District, on the 12th of October. A Well, I don't know if I can get them off the Superintendent of Elections.

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Q And what would be used on primaries? A We ain't got none for primaries. We use what we have got on the registration days and election day; and they are sent out to the police, and the police has one and the Board of Inspectors has one.

Q And will you bring one of those challenge sheets for registration days, this afternoon? A I will; yes.

MOSES LOEWEL, a witness called on behalf of the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Loewel, you are an Election Captain -- or Election Inspector of the Eleventh Election District of the 19th; aren't you? A Yes, sir.

Q I mean you were on the 12th day of October?

A Yes, sir.

Q And do you remember on or about the 12th day of October, 1907, the defendant coming to your election district, and registering there? A Yes, sir.

Q What name did he give, that night? A Frank Bollenbacher.

Q That is the 11th Election District of the 19th Assembly? A Yes, sir.

Q What time of night was it? A It was in the evening. I have no recollection of the time. It was in the evening.

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Q And do you identify the defendant Bollenbacher as the man who gave the name of Frank Bollenbacher, that night, and registered under that name? A Yes, sir.

BY THE COURT:

Q What time was it? A In the evening. The exact time I don't know, your Honor.

Q Had you known the defendant before that night?

A No, sir; no, your Honor.

Q And he gave the name of Bollenbacher? A yes, sir; Frank Bollenbacher.

Q Frank Bollenbacher? A yes, sir.

THE COURT: I understand that it is conceded.. Why call this witness?

MR. DONIHUE: It is conceded that he had a right to vote there.

MR. PALMIERI: And it is conceded that he had a right to vote once.

MR. DONIHUE: And that once was in the 11th Election District of the 19th Assembly District.

THE COURT: Do you concede that the true name of this defendant is Frank Bollenbacher?

MR. DONIHUE: yes, sir; and never disputed it.

THE COURT: Then there is no necessity for this witness.

MR. DONIHUE: And it is conceded that he had a right

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to register there?

THE COURT: yes; I so understand.

MR. PALMIERI: yes, sir. Now, then, one more question, with your Honor's permission.

Q Now answer yes or no to this question. Did you have a conversation with Alec Ahearn concerning the defendant Bollenbacher?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding on the defendant at the bar.

THE COURT: Was the defendant present?

BY MR. PALMIERI:

Q Was the defendant present at the time of this conversation? A No.

THE COURT: Objection sustained.

W I L L I A M J. M A N S M A N N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Mansmann, were you one of the inspectors of the 7th Election District of the 19th Assembly District, the night of the 12th of October last? A Yes, sir.

Q And was it your duty as such inspector to take down the names of all the persons who came in there to register?

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A yes, sir.

Q And do you remember the night of the 12th of October, between the hours of 9 and 9:15, a person coming in there to register under the name of McMahon?

MR. DONIHUE: objected to, as leading.

THE COURT: Sustained.

MR. DONIHUE: Now, will your Honor direct Judge Palmieri to desist in this leading method of questioning?

THE COURT: The witness should not be lead.

MR. PALMIERI: Well, I don't wish to lead the witness, but it is such an established fact, being in the registry book, that I couldn't see how my learned friend would split hairs on that. I could readily see that he would object to my getting his defendant identified, but that a man named Charles McMahon, or under that name, registered, I can't see the necessity for objecting.

MR. DONIHUE: And I object to the counsel making this statement, after your Honor has ruled.

THE COURT: yes, the jury will disregard it.

BY MR. PALMIERI:

Q Well, what happened there, on that night, about 9 o'clock, Mr. Mansmann?

MR. DONIHUE: I object to the statement of the time.

Q Well, what happened there, that evening? A Well, there

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was an arrest made there -- two arrests made there.

Q Well, just before the two arrests were made, now did anything happen there? Did anybody register or attempt to register there?

MR. DONIHUE: objected to, as leading.

THE COURT: Sustained.

Q Well, what happened before those two arrests, before the two arrests took place, what happened? What did those two men do? A What two men?

Q Who were arrested? A (No answer)

Q Now, see here, Mr. Mansmann, did you talk with anybody about this case?

MR. DONIHUE: I object to this question of counsel, as tending to prejudice the defendant's rights in this case.

THE COURT: For the present, I will sustain the objection.

BY MR. PAIMIARI:

Q Well now I will ask you to look around and show me the man that was arrested in that polling place?

MR. DONIHUE: I object to the means of identification sought by counsel.

THE COURT: objection overruled.

MR. DONIHUE: Exception.

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Q Now, come down from there, please, and show me the man that was arrested that night. Now, look around. A I don't see the man.

Q I ask you to come down, and I tell you to come and look at the man that was arrested that night in the place, if he is in the room? A I don't see the man.

Q And you look at me; do you? I ask you to look around and see the man that was arrested. A Well, I do look around, but I can't see him.

Q Did you look at the counsel's table?

MR. DONIHÉE: Objected to as leading.

MR. DONIHÉE: Exception.

Q Now, look at the counsel's table, and I ask you if either of those gentlemen, those three gentlemen, were there, that night?

MR. DONIHÉE: Objected to as immaterial, irrelevant and incompetent, and not a proper way of making an identification.

Q Now, I didn't ask you to look only at Mr. Donihée.

A Well, I looked at everybody in the room, except the jurors.

Q Now sit down again. Didn't you identify that man for me, didn't you point that man out to me?

MR. DONIHÉE: Objected to, as tending to ---  
he can't attack the credibility of his own witness

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in this way.

THE COURT: Wait a moment. There is a way of doing it, and it will be done in the regular way.

MR. DONIHUE: I ask for a ruling upon my objection.

THE COURT: Overruled.

MR. DONIHUE: Exception.

BY THE COURT:

Q Did you identify --- did you tell Judge Palmieri, before you took the stand, that you could identify the person or persons who were arrested, that night?

MR. DONIHUE: I respectfully object to the question propounded to the witness by your Honor, as immaterial, irrelevant and incompetent.

A Did I tell him when?

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

Q At some time before this trial? A Well, I told the Judge ---

Q Did you? Yes or no. A Well, I didn't recognize his face.

Q Did you tell Judge Palmieri that you could identify the man who was arrested, that night? Answer that question yes or no.

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MR. DONIHUE: I respectfully ask that the same objection be noted.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A No.

Q Now, you were an inspector of elections there? A Yes, sir.

THE COURT: Have you the book in which this gentleman registered voters?

MR. PALMIERI: Yes, sir.

MR. DONIHUE: May I look at the book, please, your Honor?

THE COURT: In a moment.

MR. PALMIERI: Now, while your Honor is looking at the book, may I ask the witness a question?

Q Now did you not, in the presence of his Honor and myself, identify the defendant when he stood up, in Part II?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent; and for the further reason that the question tends to prejudice the rights of the defendant at bar.

THE COURT: Objection sustained, for the present.

MR. PALMIERI: Well, stand up, Bollenbacher.

MR. DONIHUE: Well, I object to that, if your

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Honor please, under these conditions. If your Honor directs the defendant to stand up, there is a different situation. But, for the purpose of identification, he shall not be permitted to rise, as I understand the decisions in this State.

THE COURT: The defendant can be required to respond to the direction. It was so held in the Gardiner case. Recorder Smyth was upheld in that case.

BY THE COURT:

Q Is this book in your handwriting? A Some of it is in my handwriting.

Q As an inspector of elections, did you allow any other inspector to keep your book? A Well, possibly, if I went out.

Q Now, look under the letter "M". A None of these entries are mine. This isn't my book.

BY MR. PALMIERI:

Q Now, look at this book (indicating another book)?

A That's not my book either.

THE COURT: Then produce all the books from that polling place, and let the witness look through the books.

THE WITNESS: That's not mine either. It's the last one there (indicating). This is mine (indicating).

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BY THE COURT:

Q On the night of the 12th of October, 1907, as an inspector of elections for the 7th Election District of the 19th Assembly District, were you doing duty in that polling place, that night? A I was.

Q Are the entries from 300 to 309 all in your handwriting?

A They are.

Q Did you cause --- did any person appear that night, and ask to be registered, giving his name at the time as Charles McMahon? A They did.

Q Did you enter the name Charles McMahon in your book?

A No, sir.

Q Did you enter any part of that name in your book? A I entered "McMahon."

Q "McMahon"? A Yes, sir.

Q Will you kindly show me where the entry is contained?

A 307.

Q 307? A Yes, sir.

Q And does the name McMahon appear opposite the entry 307? A No, sir.

Q Who erased that name? A I did.

Q By what authority? A Why, because the man refused to register. I had only the name "McMahon" down.

Q How do you know that the man refused to register?

A Well, when they made the arrest, he refused to register.

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Q Now, can you identify that man who gave the name of McMahon? A No, sir.

Q Did you look at the man? A No, sir, I did not.

Q Well, when this person came in, tell the jury the circumstances under which you entered the name of McMahon, that night? Before proceeding with that question, did you, that night, register any other McMahon?

BY MR. PALMIERI:

Q That same night?

BY THE COURT:

Q That same night? A No, sir.

Q Sure about that? A Yes, sir.

Q Do you know Frank McMahon? A No, sir.

Q Then you have a distinct recollection of a person coming there to the polls, that night, and part of whose name you entered in your book, "McMahon"? A I entered "McMahon".

Q Yes, "McMahon"? A Yes.

Q Now, I want you to tell this jury under what circumstances you entered the name McMahon in your book? A Well, we were quite busy. There were four or five voters there to register, and I was busy. I had two books, in fact, I had three books, to keep; and this man come in. The Chairman asked him did he want to register. He said yes.

BY MR. PALMIERI:

Q Asked who? A Asked McMahon, and he said, "What's

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your name," and he said, "McMahon".

And I put down "McMahon"; and, in the meantime, I went to another book and started to fill in, because I was behind with my books, and didn't notice anything.

Suddenly there was a commotion and the man was put under arrest. I didn't look up. I kept right on with my books.

Q Did you hear anybody challenge this man McMahon?

A I don't know as I did.

Q What part of the name had you entered? A The full name, "McMahon".

MR. DONIHUE: Objected to. The book speaks for itself.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

THE COURT: The witness says that he erased the name of McMahon. We will take a recess now.

The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.

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AFTER RECESS.

W I L L I A M     J .     M A N S M A N N , his direct examination  
being continued, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. PALMIERI:

Q Mr. Mansmann, you say that a man came in there that  
night, on the 12th of October, while you were an inspector;  
is that correct? A Yes, sir.

Q That the Chairman asked him, "Do you want to regis-  
ter?". Is that correct? A Yes, sir.

Q And the man said "Yes". Is that correct? A Yes,  
sir.

MR. DONIHUE: Now, one minute, Judge Palmieri.  
I move to strike out all these answers, as repeti-  
tion. The witness has already stated all these  
things.

THE COURT: Motion denied.

MR. DONIHUE: Exception.

MR. PALMIERI: I simply ask these questions to  
lead up to a certain point, where I wish to direct  
the witness's attention.

Q And the Chairman asked him what question, after he  
said he wanted to register? A He asked him his name.

Q The Chairman asked him his name? A Yes, sir.

Q Now, I wish you would speak a little louder. I don't

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wish to repeat your answers. And did you hear the man say anything when the Chairman asked him his name? A Yes, sir.

Q What did he say? A McMahon.

Q Did you put the name McMahon in the book? A I put "McMahon" in the book.

Q And that's as far as you went? A That's as far as I went.

Q Now from that point on, tell the jury what happened about the challenge, at that time? A Why, when he gave his name as McMahon, I put McMahon down, and the Deputy ---

Q Yes. A Put him under arrest.

Q Oh no. Before the Deputy put him under arrest, what did the Deputy do? A "I arrest this man", he says.

Q Before the Deputy placed him under arrest, what did the Deputy do or say, I mean?

MR. DONIHUE: I object to that, as not proper on direct examination.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A What did he do?

Q What did he say, if anything? What did you hear him say, if anything, with reference to a challenge? A Why, he says, "I put this man under arrest. You take care of that other man." He said that to another Deputy.

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Q That's all right. That was at the time of the arrest. Now I want you to bring your mind just a little before that, between the time McMahon said, "My name is McMahon", and the time you put "McMahon" in the book, and what happened immediately after that? A Well, that is the next thing I remember.

BY THE TENTH JUROR:

Q Did he register, or did you register his full name as he gave it? A I just registered "McMahon".

Q Well, didn't he give his full name?

BY MR. PALMIERI:

Q Didn't you hear him say "Charles McMahon"? A "McMahon" is all I got. And then the dispute arose.

BY THE TENTH JUROR:

Q Well, wasn't something said about an erasure? A I erased "McMahon", after it was all over.

Q And that's all you did erase? A Yes, sir.

Q Did anyone give you authority to erase his name, or direct you to do so? A Why, no.

Q Well, why did you do it? A Well, because I only had the name "McMahon", and I had no initial, or address, or anything.

Q Well, what right had you to erase that name? A I don't know as I had any right. It was my experience as an

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inspector.

Q He was registered? A He was registered as "McMahon".

BY MR. PALMIERI:

Q Well, I don't think I will proceed much longer, but I want to direct your attention to one fact. I want to ask you whether you ever gave testimony, under oath, in this case before? A I did.

Q Do you remember Palmieri questioning you before, while you were under oath? A I do.

Q "By Mr. Palmieri ----" Was this following question asked you by Mr. Palmieri, and did you make the following answer: "Q. And did you walk into this courtroom, this morning, and look at the defendant's back, at my request? A. I did"? Was this question asked you, ~~am~~ and did you make the following answer, under oath?

MR. DONIHUE: One minute. I object to that as immaterial, irrelevant and incompetent, and not proper on direct examination, and in violation of the rules of evidence, that the counsel shall not impeach the testimony of his own witness.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Will you kindly read that again?

Q (The question is repeated by the stenographer) A I did.

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Q Was this question asked you, and did you make the following answer: "By Mr. Palmieri: Q. Now look at the defendant, and I ask you if the defendant is the man who you saw register as McMahon, leaving the place, that night? A. Well, to the best of my recollection, it looks like the same man, though he is sitting down now and he was walking out when I saw him."? Did you make that answer to my question under oath?

MR. DONIHUE: The same objection, if the Court please.

THE COURT: I will allow this line of questioning.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Now I put the question in this form to you. Was this question asked you, and did you make that reply? A I did.

Q Was this question put to you, and did you make this answer: "Q. And you mean to say that the same man that said his name was McMahon, when he went into that place, is the same man who is now sitting here? A. Yes."? Did you make that answer to that question?

MR. DONIHUE: The same objection to that question.

THE COURT: Overruled.

MR. DONIHUE: Exception. And as involving

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an improper method of attempting to identify the defendant at the bar.

THE COURT: Overruled.

MR. DONIHEE: Exception.

BY MR. PALMIERI:

Q Was the following question propounded to you, and did you make the following answer? A What's the question?

(It is repeated by the stenographer.)

Q Under oath? A I don't recollection.

Q You don't recollect? A No; I don't recollect.

Q And if you made that answer to that question, was that a false answer?

MR. DONIHEE: I object to that.

THE COURT: Objection sustained.

A I don,t think anything I said was false.

Q If you made that answer to that question, was that --- were you mistaken when you made that answer?

MR. DONIHEE: I object to the question.

THE COURT: Objection sustained.

Q Now, then, I will ask you this. Do you remember that, in addition to these questions and answers by you, that the defendant was made to stand up? Do you remember that?

MR. DONIHEE: Objected to.

THE COURT: Objection sustained.

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MR. DONIHEE: And the defendant was not made to stand. It is not the fact. Your Honor ruled against the proposition, at the last trial.

MR. PALMIERI: Well, your Honor, that isn't so at all. Before my own eyes, this defendant stood up, and was identified by this man.

THE COURT: Refer to the record.

BY MR. PALMIERI:

Q Well, can't you recollect having made that answer to that question? A No; I honestly can't.

Q Well, is your memory defective? A Well, I will tell you. It is quite some time ago.

Q Why, that was only last month, in December, when you made that answer? A I can't recollect.

Q Well, when you were asked by Palmieri, this morning, to go down and look, did you look at the defendant?

MR. DONIHEE: Objected to as incompetent, immaterial and irrelevant, and as involving a conclusion of counsel.

THE COURT: I will sustain the objection, on other grounds. If you want to refresh the witness's recollection as to what he did testify to, on the former trial, I will allow you to direct his attention to what is in the record.

MR. PALMIERI: The witness says that he doesn't

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remember what he said in answer to an important question, and I now direct his attention to the fact that he admitted, and he also now tells me that that is correct, that, to the best of his recollection and belief, the defendant was the man who registered under the name of McMahon. He now states that he did state that, on the former trial. I now ask him this question.

THE COURT: Well, did he so testify?

MR. DONIHUE: And I ask that those remarks be stricken from the record.

THE COURT: Yes; strike it out.

BY MR. PALMIERI:

Q Now, did you so testify?

MR. DONIHUE: Objected to, as already asked by the counsel, and the witness has answered.

MR. PALMIERI: I will put the question in this form, your Honor.

Q You have stated to this Court, that the following question was asked you, and the following answer was made by you to that question, which is as follows: "Well, to the best of my recollection, it looks like the same man, although he is sitting down now, and he was walking out when I saw him."  
"Q. And do you mean to say that the same man who gave his name as McMahon is the same man here now? A. Yes." And you say

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these are the answers that you gave, at the last trial?

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

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Well, just as I said, to the best of my recollection.

Q To the best of your recollection what?

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A Well, the best I could recollect from registration day until the time of that trial. That was a long time. I couldn't remember it. My memory isn't very fine.

Q Well, what could you recollect about the defendant's identity? A Well, I told you, once before, that I seen him go out, and I could about describe what he looked like from the rear. I think I described him too.

Q Yes. And what do you say about the answers that you made before, with reference to the identify of this defendant? Were they correct or incorrect?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent, and not involving a proper rule of examination.

THE COURT: Overruled.

MR. DONIHUE: Exception.

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A What do you mean? Identical as to his face?

Q His general appearance, in height, his identity?

A Well, I told you, I described him to the best of my ability, what he looked like from the rear, going out with the Deputy.

Q And did you say, at the last trial, under oath that, to the best of your recollection and belief, the ~~HAND~~ man who gave the name of McMahon was the same man who is sitting there, although he was sitting, and at that time he was walking out?

MR. DONIHUE: Objected to, as not being shown to have been the testimony of the witness.

THE COURT: Are you reading from the record?

MR. PALMIERI: I am, your Honor. And there is no dispute about the record. You can read it yourself, Mr. Donihee, right there (indicating).

MR. DONIHUE: I submit that the question last propounded by counsel to the witness is not in the record. The question in the record is this -- the answer is this: "Well, to the best of my recollection, it looks like the same man, though he is sitting down now, and he was walking out when I saw him."

MR. PALMIERI: Now, didn't I say that? I ask that the stenographer repeat my question.

(It is repeated by the stenographer)

THE COURT: In what respect is the question propound-

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ed by Mr. Palmieri different from what you have now read?

MR. DONIHUE: But Mr. Palmieri didn't read the question that way exactly, and indicated this defendant as sitting here.

THE COURT: That is your conclusion. It will be for the jury to conclude as to that.

Objection overruled.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Well now, describe the man. A Well, the man was, I thought, medium height, about five foot five.

Q Five foot five? A Yes, sir; or six. What I noticed particular about him was the style he had his hair cut in. He had his hair cut straight down the back.

Q And you looked at him at my request, did you not, when you came into court in December last; did you not? A Yes, sir.

Q And do you remember stating that, from looking at him for fifteen minutes, he was the same man who registered under the name of McMahon? A From the rear, yes.

Q Now why didn't you look at him, this morning?

MR. DONIHUE: Objected to. Counsel has asked him why he didn't look at him, this morning. It is a conclusion of counsel that he didn't look at him.

MR. PALMIERI: Question withdrawn.

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CROSS EXAMINATION BY MR. DONIHUE:

Q At the last trial, you were twice on the stand?

A Yes, sir.

Q You were on the stand once in the afternoon, and, if I recall correctly, once in the forenoon? A Well, I can't say what time I was there.

Q Well, there was a break in your examination; was there not? A Well, the first time I was on the stand was late in the afternoon. Court had adjourned, and I was told to appear the next day. That was the first time I was on the stand.

Q And between the time of adjournment and the time you returned to the stand, with whom did you speak concerning this case? A With whom did I speak concerning the case?

Q Yes. A Well, I spoke with my brothers and I spoke home, with the family.

Q Didn't you speak with Judge Palmieri? A Between that time?

Q Yes; and the time that you returned to the stand? A Well, I believe I did. I believe Judge Palmieri did speak to me, in the corridor.

Q You sat some distance in the rear of the court-room, did you not? A The second time?

Q Yes, the second time; the morning of the second time that you were on the stand? A No, sir; I wasn't allowed in

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the court room at all.

Q Weren't you in the court room? A No. I was called in from outside.

Q By whom? A I don't know. By the attendant, I suppose.

Q And did you then have a conversation with Judge Palmieri? A No; I was called right on the stand.

Q Didn't Judge Palmieri, indicating the defendant at the bar, in the other court-room during the progress of the previous trial, ask you to look at the back of the defendant's neck?

A He did.

Q Well then you were in conversation with him; weren't you? A Well, that was before I went on the stand, the first time.

Q Before you went on the stand the first time?

A Really, I can't recollect. I don't know whether --

Q Now, the time that Judge Palmieri asked you to look at the back of the defendant's neck, did he indicate the defendant? A No, he didn't.

Q Did he say, "Look at the back of the neck of these people"? A No; he said, "Just look around here and see if you can recognize the back of the man that you saw going out of the polling booth, that night".

Q And where was the defendant at the time? A I believe he was sitting in the second row on the aisle.

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Q The defendant was, this defendant? A That was the second time -- or the first time.

Q Wasn't he sitting at the counsel table, next to me?

A Yes; the second time he was sitting at the table.

Q When Judge Palmieri told you to look at the back of his neck?

MR. PALMIERI: No, to look around the court-room.

A Well, you put the questions to me in so many different ways that I don't know what I am saying.

Q What? Judge Palmieri did? A No. I am talking of you. I say you are putting in so many questions in so many different ways.

Q Well, when you were called upon to identify the defendant, and looked at the back of his neck, where were you sitting? A I was sitting in the next to the last seat, or in the last seat.

Q Where was the defendant sitting? A The first time, you mean, Judge Palmieri --

Q No. When you were called upon to look at the back of his neck. A He asked me twice. Which time do you mean?

Q Well, the first time. A Then the defendant was sitting in the second row. No, really, I can't recollect correctly. No. I believe the defendant was at the counselor's table.

Q Well, when Judge Palmieri asked you to look at the back

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of the necks of persons in the court-room, did you understand that he wanted you to look at the back of the defendant's neck or not? A Did I understand what?

Q (Question repeated by the stenographer) A Well, I understood he wanted me to identify the back of somebody's neck.

Q And did you identify the back of any other person's neck? A Just the one.

Q Just the one? A Yes, sir.

Q And that one was the defendant; was it? A Yes, sir.

Q Now, describe what you mean by straight hair cut?

A Why, a straight hair cut, just cut straight down the back, and no razor used on it.

Q Look at mine. A That's a straight cut.

Q And look at Judge Palmieri's? A Yes; that's a straight hair cut.

MR. PALMIERI: And now let's look at the defendant's back, the back of his head.

MR. DONIHUE: Certainly.

Q Now, look at that head, the defendant's hair cut?

A Yes; that's a straight hair cut, straighter than Judge Palmieri's.

Q Now, how about the other people in the court-room, that day? A They were all kinds of hair cuts.

Q Well, did you notice whether there were straight or

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round cuts? A Well, I don't know anybody that was there, and didn't notice.

Q Did you see the officer who was in the polling place on the 12th of October? A Did I see the officer?

Q Yes, the officer that was detailed there? A When?

Q On the 12th of October? A Did I see him when?

Q Did you see him in the polling place, that day?

A Yes; all day.

Q What was he doing? A Why, nothing in particular.

Q Was he awake all the time? A To the best of my knowledge he was.

Q He was out of the polling place often? A He went out for a meal.

Q So -- do you know the smell of liquor? A Yes.

Q Were you close to the officer, on that day? A No, sir, I wasn't. I was next to the furthest man away from the officer.

Q You were the furthest? A No, sir; next to the furthest.

Q Were you and your fellow members of the Board discussing the officer, his appearance? A No, sir.

Q Isn't it a fact that the officer, detailed to the polling place on that day, Officer Gordon -- do you remember Gordon? A Gordon was his name, yes.

Q Isn't it a fact that most of the day he was asleep?

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A No, sir; not that I know of.

Q Well, were you there all day? A I was there all day.

Q And not out of there at all? A Oh, yes; I was out for a meal.

Q Did you notice the officer drinking anything, that day?  
A Well, yes, I did.

Q How much did you notice him drink? A Oh, I don't know how much he drank.

Q Do you mean that he drank so much that you couldn't estimate it? A How?

Q (Question repeated) A No, I don't mean that; I don't know how often he drank.

Q Well, he drank frequently during the day, did he?

MR. PALMIERI: Objected to as leading.

THE COURT: Allowed.

A Well, I suppose he did.

MR. PALMIERI: I object to that he supposes, your Honor, and I move to strike that out.

THE COURT: Yes.

BY MR. DONIHUE:

Q You saw him drink frequently, did you? A I saw him drink, frequently, yes; a couple of times.

BY THE COURT:

Q Was the officer intoxicated? A No, sir; he wasn't

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intoxicated.

Q What did he drink? A Beer.

BY MR. PALMIERI:

Q How many times? A Well, that I couldn't tell you.

Q Well you said, a couple of times on the record a moment ago? A It was frequently; I couldn't tell you exactly how many times.

BY THE COURT:

Q Was that officer present, Officer Gordon, at the time that McMahon was arrested? A Yes, sir; he offered his assistance.

Q He did what? A He offered his assistance to the deputy.

BY MR. DONIHUE:

Q What do you mean? He offered his assistance?

A Why, he offered to assist the deputy in making the arrest.

Q Of whom? A Of the two prisoners.

Q And what did he say? A Why, he asked him, "Do you want me to help you take them down?" That was all there was of it. And he said, "No."

Q And they said no? A They said no.

Q And where was he? Did you see him when the defendant was placed under arrest? A Did I see who?

Q The officer? A Why, yes.

Q Where was he? A He was sitting down in a chair.

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Q Where? A Why, in the rear of the store.

Q He wasn't anywhere near the rail; was he? A No.

Q Away in the rear of the store? A Well, it was a very small store.

Q How deep was the store? A Why, I should judge about 25 foot deep.

Q He wasn't right by the defendant, though; was he?

A No, sir.

RE-DIRECT EXAMINATION:

MR. PALMIERI: Please bring in Deputy Superintendents Dunn, Nahrwold and Kluberdanz.

Q Did you see those three officers there, that night?

A Yes, sir, I seen them there, that night.

Q You saw Mr. Dunn, Kluberdanz and Nahrwold there, at that time, on that night, at the time McMahon was registered?

A Yes, sir.

Q Was that at the time that McMahon was registering?

A Yes, sir; at the same time.

Q And did they arrest the man that gave his name as McMahon? A They did.

Q Do you know that gentleman, Mr. Haubner (indicating)?

A Yes, sir.

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

Q So that you saw officer Gordon there at the time that McMahon was arrested? A Yes, sir.

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Q And Mr. Dunn, Mr. Kluberdanz and Mr. Nahrwold?

A Yes, sir.

Q You saw these five people there? A Yes, sir.

BY MR. DONIHUE:

Q You saw that gentleman who has just gone out, Mr. Haubner, frequently during the day, didn't you? A Yes.

Q Do you know him? A Yes.

Q Do you know whether he had any official connection with the election? A I did.

Q What was that? A He was the Republican Captain of the district.

Q Of the seventh Election District? A The seventh Election District.

Q Of the 19th Assembly District? A Of the 19th Assembly District.

W I L L I A M E. H A U B N E R, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Haubner, will you speak loud enough for the twelfth gentleman to hear you in this jury-box? A I will.

Q Are you a business man in the City of New York?

A I am.

Q Are you married? A I am.

Q Where do you reside with your family? A 72 -- I don't

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reside with my family. I live 72 West 108th street.

Q In this city? A In this city.

Q Where is your place of business? A 208 West 98th.

Q And what is your business? A Sign painting.

Q And how long have you been engaged in that business?

A Twenty years, pretty near.

Q And how long have you resided in this community?

A All my life; from 40th street up.

Q What were your duties -- how did you happen to be in the 7th election district of the 19th assembly district, on the 12th of October? A Well, I am captain of the district for the republican party; in that 7th election district.

Q In that election district? A Yes, sir.

Q The 7th? A The 7th.

Q And that is how you explain your presence in that polling place, that night? A That's it.

Q Now will you tell the jury whether you were there, in that polling place, about 9 o'clock on that evening?

A I was.

MR. DONIHUE: I will suggest that the question is somewhat leading.

MR. PAIMIERI: Why, Mr. Mansmann and every one else has admitted that this witness was there.

THE COURT: Allowed.

MR. DONIHUE: Exception.

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A yes.

Q What time was it? A About 8:30 or 9 o'clock; somewhere along there.

Q Now did you observe any one coming in there, and if so, who were they? A Well, until that time, everything went along peaceably until Mr. Healey appeared.

Q Until Mr. Healey appeared? A Yes, sir.

Q Was -- did anybody follow Mr. Healey? A Yes; the gentleman there (indicating).

Q Well, there are several gentlemen here. I would like to know who was the other gentleman who followed Mr. Healey? A The gentleman that sits there now (indicating).

Q Will you be kind enough to come down and point to him directly? A Well, there is the gentleman there (indicating); the gentleman sitting alongside of the counsellor.

Q Well will you come down and do as you are told, Mr. Haubner? A There is the ~~defendant~~ gentleman there (indicating the defendant).

Q Pointing to Bollenbacher, the defendant? A Yes, sir.

Q Did you know him before? A No, sir.

Q Had you met him before that evening? A No, sir.

Q You say that the defendant Bollenbacher followed Healey? A Followed Healey.

Q And what next did you see happen there, after Healey and Bollenbacher came in? A After Healey came out of the

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booth, he was placed under arrest by the deputy.

Q While Healey was in the booth, what was the defendant doing? A He started to register.

Q Now, one moment. What did you see him do, A He was before the chairman, to the chairman's left.

Q Now who was before the chairman, to the chairman's left? A This man (indicating the defendant).

Q Well, what did the chairman ask him, the first question? A Asked him his name.

Q All right. And did he ask him, before he asked him his name, if you recollect, whether he wanted to register?

MR. DONIHUE: I object to it as leading, if the Court please.

THE COURT: Sustained.

MR. DONIHUE: Now, counsel has been warned by your Honor, and treated leniently by me in this respect, and he proceeds in this line of questioning, which is nothing but leading, and it is unfair to this defendant.

THE COURT: Do not lead the witness.

BY MR. PALMIERI:

Q Mr. Haubner, just, if you can, try to give the correct conversation had between the ~~the~~ chairman and the defendant Bollenbacher, that night? A Well, the name was given, and the chairman started to put it down.

Q Now you say the name was given. Who gave the name?

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A That gentleman there (indicating the defendant).

Q The defendant? A The defendant.

Q What did he say? A He gave his name, and that's as far as they got.

BY THE COURT:

Q What name did he give? A Well, there is one thing you got me tripped up on, right now. The name -- I'm not familiar with that name now, but I can describe. I ain't got it right down positive now.

BY MR. PALMIERI:

Q Well, will you recollect it, if I tell it to you?

A Yes, I will, if you will tell me.

MR. DONIHUE: I object to that.

THE COURT: Exhaust the witness' memory on the subject.

THE WITNESS: I can, Judge. I've got it up at the house.

BY MR. PALMIERI:

Q Do you recollect the name now? A It commenced with an M.

BY THE FOREMAN:

Q I would like to ask a question. Was the name given McMahon? A Well, it was with an M. It began with an M.

MR. DONIHUE: I object to the question and ask to have it stricken out.

THE COURT: Motion denied.

MR. DONIHUE: Exception.

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THE FOREMAN: Well, the witness says he can give the name, if it is given to him, that's why I asked the question.

MR. DONIHUE: Well, I object to the question and the answer of the foreman and of the witness, and move to strike it out.

THE COURT: Motion denied.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q And did you hear the defendant give the name, and what name was it? Tell the jury if you can? A I am pretty positive it was the name of McMahon.

Q Well, who gave that name? A The defendant.

Q Was that after Healey had registered? A After Healey-- while he was in the booth.

Q Well, when the defendant gave the name of McMahon, what did you hear anybody say to the defendant, if anything?

MR. DONIHUE: Objected to as leading.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A What was the question?

Q When the defendant said, "My name is McMahon", did you see the Chairman put that down, if you know; did you see him writing?

MR. DONIHUE: Objected to.

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A He was writing, but whether he put that name down, I don't know.

THE COURT: Objection sustained. Strike out the answer.

Q Well, you saw the Chairman write, when he gave the name of McMahon?

MR. DONIHUE: Objected to.

THE COURT: Objection sustained.

Q Well, what, if anything, did the inspectors do at that time, when the defendant gave the name of McMahon? A Well, the Chairman of the Board was writing, and they all appeared to be writing. I stood in the rear of the room.

Q Yes. A Alongside of the officer.

Q Now what else happened? A The Deputy placed Healey under arrest, at the same time that there was another Deputy grabbed the defendant, and said, "You are under arrest. Let him swear in his vote."

Q Now, "Let him swear in his vote", you know that is a challenge; don't you?

MR. DONIHUE: Objected to, as a conclusion of law.

THE COURT: Objection sustained.

Q Well, do you know under what circumstances a vote is sworn in?

MR. DONIHUE: Objected to.

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THE COURT: Sustained.

Q Well, did you hear the word "challenge" used, that night?

MR. DONIHUE: Objected to, as already answered by the witness.

Q Used by any person?

MR. DONIHUE: Objected to.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A What's that, now?

Q Did you hear any person there ~~speak~~ utter the word "challenge" that night? A Yes.

Q Would you be able to identify the person, if I produced him? A I would.

MR. PALMIERI: Bring in Kluberdanz.

THE COURT: Oh, well, call in several.

MR. PALMIERI: Oh, yes. Bring them all in.

MR. DONIHUE: Oh, he knows Kluberdanz.

THE WITNESS: I know them all now.

BY MR. PALMIERI:

Q Out of the three Deputy Superintendents of Elections, who are now produced in court, will you tell the jury which of the three men uttered the word "challenge", when the defendant gave his name as McMahon? A The gentleman in front of me there, with the overcoat on his arm (indicating).

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Q The gentlemen with the overcoat over his arm is Mr. Kluberdanz. Is that the gentleman? A That's the one.

Q And you heard him say "challenge"? A Yes, sir.

BY MR. DONIHUE:

Q Wait a moment. Let the witness go out.

BY THE COURT:

Q What did you hear Kluberdanz say? A I heard him say, "I challenge your vote. Let him swear it in".

BY MR. PALMIERI:

Q And then what did McMahon do? A He was put under arrest.

Q Well, did he swear in his vote, before he was put under arrest? A No, sir, he didn't.

Q And what did he say, if anything, if you know? A There was another gentleman standing near the counter, at the west side of the store, and he said, "Never mind. To hell with registering."

Q Did he say that to Kluberdanz or whom? A To the defendant he said that.

Q And when he said that to the defendant, the defendant refused to swear in his vote? A Yes, sir.

CROSS EXAMINATION BY MR. DONIHUE:

Q You know Nahrwold; don't you? A yes, sir; for years.

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Q Do you know Thompson? A Tom Thompson, that was candidate for Alderman?

Q Yes; the same gentleman? A Oh, yes.

Q And do you know Kluberlanz? A I never knew him before.

Q And do you know Gumar? A Who?

Q Edward Gumar? A I knew him just slightly. I wouldn't know him to call him by name, but just by sight, and to say "Hello".

Q And you belong to the same organization that Thompson and Nahrwold belong to? A I belonged to two organizations that Thompson belongs to, that is, before the district was cut.

Q (Question repeated) A Yes, I do.

Q And with whom are you living? A Eh?

Q (Question repeated) A With relatives. My mother and two cousins.

Q You state that you are a married man? A I am. I was until eight or nine years ago. I don't think that's necessary for me to tell. I refuse to answer that ---

BY THE COURT:

Q You refuse to answer what? A My wife left me for a year and a half, and I didn't know where she was. I don't think that ought to be brought in here.

THE COURT: I do not think it is necessary.

MR. DONIHUE: I don't want to ask any more than

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I can help. I don't want to hurt this man's feelings any more than is necessary for the protection of my client.

THE WITNESS: Well, you can't hurt my reputation in that way.

THE COURT: Answer the question.

BY THE COURT:

Q Now, you separated from your wife? A She left me, and I didn't know where she was, and she being a Catholic, I didn't want to be divorced from her, but I haven't lived with her for eight or nine years.

Q Are you supporting her? A No, sir, I am not. Why should I? She left me. I am living with my mother and cousins.

BY MR. DONIHUE:

Q Haubner, who are you living with now? A With my mother, when she is in the city, she is with me, and two relatives.

Q Who else are you living with? A My cousin, now Mrs. Bell and Mrs. Rives.

Q Is she a relative of yours, too, Mrs. Rives? A Yes, sir.

Q Where is she now? A She is living in New Jersey, part of the time, with other relatives.

Q How long have you been in the painting business?

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A About 20 years.

Q And how long have you been a captain? A Up there?

Q Yes. A I have been a captain now, an acting captain, for four years. I didn't seek it either.

Q You say you were in the back of the store? A I were, yes.

Q When this arrest was made? A Yes, sir.

Q And the officer was with you, wasn't he? A He was alongside of me, to my right.

Q In the back of the store? A Yes, sir.

Q And the officer was not standing next to the defendant at that time; was he? A No, sir; he was not; not at that time.

Q Have you talked concerning this case with any person or persons since the 12th of October? A No, sir, I haven't; of any account.

Q Of any account? What do you mean by that? A Well, I talked to nobody; only they wanted to know if I got a subpoena, and the like of that.

Q Weren't you down to the Superintendent of Election's office? A I never was there in my life.

Q And didn't you make an affidavit in this case? A No affidavit whatever.

Q And have you had several conversations with Judge Palmieri? A No conversations, only here, when he instructed

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me not to ---

Q Have you had conversations with this gentleman, Mr. Garrett? A No, sir; only he said he would like to have me down.

Q Didn't you speak with him concerning your testimony? A No, I didn't.

Q You have spoken to Tom Thompson about the case, haven't you? A Yes. He is outside now.

Q Have you spoken with him concerning your testimony? A Not a bit. I will tell you what was said to Mr. Thompson. He said, "I got a subpoena from down there", and I said, "You did?" What do you know about it?" and as to holding any conversation about the case with Mr. Thompson, I had none. Mr. Thompson is outside.

Q Haubner, were you ever convicted of crime? A Me?

Q Yes. A No, sir; I wasn't convicted of any crime that I know of.

Q Well, you would know, if you were? A Yes; I should certainly know it. I think I --- I wasn't convicted any-  
how. I served no time at all. There was an election day fight, that is all, about 12 or 14 years ago. I wasn't convicted. I was honorably discharged before Judge Cowing.

Q After a plea; wasn't it?

MR. PALMIERI: One moment; I object to that.

THE COURT: I will allow that answer. A plea

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of what?

MR. PALMIERI: He didn't say a plea. He said he washonorably discharged before Judge Cowing.

BY THE COURT:

Q Were you ever convicted of crime? A No, sir; I never was convicted.

BY MR. DONIHUE:

Q Were you ever employed in Mr. Leary's office? A No, sir; and I never seeked it.

Q Now, outside of the action before Judge Cowing, I ask you if you were ever convicted of a crime? A Was I ever convicted of a crime?

Q Yes. A No; I was never convicted of any crime, and never served any time; only, as I told you, it was an election day squabble, and I acted in self defense, and it was proven such.

BY MR. PALMIERI:

Q Now you said you were honorably discharged. Now wait for the next question.

BY MR. DONIHUE:

Q Since the last trial, have you been at your district club, to which Thompson and Nahrwold belong? A yes, I was there, last evening.

Q And did you talk about this case? A No, sir. I was at a ~~met~~ meeting of the executive committee.

Q Did you see Mr. Nahrwold there, last night? A No, sir,

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I didn't see him there at all.

Q And you didn't discuss the case with anyone? A No, sir, I didn't, Assemblyman.

MR. PALMIERI: The People rest in this case, if your Honor please.

MR. DONIHUE: Now, if your Honor please ---

THE COURT: Now wait a moment, gentlemen. What about your technical proof?

MR. PALMIERI: That has been consented to, long ago.

THE COURT: Well, but what about the name of McMahon having been put on several of the books? Is that conceded?

MR. PALMIERI: It was put on and scratched out. I proved that.

THE COURT: On one book.

MR. DONIHUE: On the registry book of Mansmann.

THE COURT: What is the charge here? An attempt?

MR. PALMIERI: Yes, sir, an attempt. But, with the purpose of complying with your Honor's request, I offer this book in evidence, identified by Mansmann.

THE COURT: Well, but you are offering a blank.

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You have got the records here; have you not?

MR. PALMIERI: Yes, sir, I have the records here.

THE COURT: Now do you concede that the inspectors, that night, the night of the 12th of October, 1907, the inspectors of the 7th Election District of the 19th Assembly District, made an entry of "McMahon", or "Charles McMahon"?

MR. DONIHUE: No, sir, I don't; for this reason ---

MR. PALMIERI: That's all, that's all. I will call the witnesses.

M I C H A E L     B A L L , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION EXAMINATION BY MR. PALMIERI:

Q Mr. Ball, what is your official position? A Clerk in the Board of Elections, Borough of Manhattan.

Q And as such clerk of the Board of Elections, have you in said Board original registry books of the different assembly districts? A Yes; of the Borough of Manhattan.

Q Of the Borough of Manhattan? A Yes, sir.

Q I show you four books of the 7th Election District of the 19th Assembly District, and ask you if those are original books of registry, of the 7th Election District

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of the 19th Assembly District? A Three of them were produced by me, to-day, on a subpoena served on our office.

Q Three of them were produced by you? A Yes, sir.

Q And you identify three as such original records of the Board of Elections? A Yes, sir; of the 7th Election District of the 19th Assembly.

BY THE COURT:

Q Where were these books kept? A Kept at the borough office. They were taken from the files, this morning.

BY MR. PALMIERI:

Q By you? A Yes, sir.

Q And you brought them here? A Yes, sir; from our office.

Q And brought here by you? A Yes, sir.

MR. PALMIERI: I offer them in evidence.

MR. DONIHUE: No objection.

(They are admitted as People's Exhibit 1.)

THE COURT: Do you consent to the books being admitted in evidence?

MR. DONIHUE: I have no objection to the tender of the books; that is, if counsel offers the four books.

THE COURT: Yes. You cannot mark the books, because they are public records. You must read them in evidence.

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BY MR. PALMIERI:

Q What is the fourth book? A That was a record of our office, and was afterwards transferred to the State Superintendent of Elections' office.

Q That is one of the four books of that district? A Yes, sir.

BY MR. DONIHUE:

Q When was it transferred? A Oh, shortly after the election. I believe a day or two. I can't just positively state as to the date. The law requires our office to send one book over there.

BY MR. PALMIERI:

Q You simply complied with the law in doing that? A Yes, sir. There is one from each election district throughout the Borough of Manhattan.

MR. DONIHUE: I have no objection, if the counsel will offer the four books kept by the four inspectors.

THE COURT: Do you offer the fourth book?

MR. PALMIERI: Yes, sir, I do. And the foreman of the jury has asked me if that name is McDonough or McDonald. Will your Honor answer the question?

THE COURT: Well, call back Mansmann. The testimony should be read, if you desire it, gentlemen. Or, to save time, I will state what Mansmann testified to. The juror would like to know why the

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name of McDonough appears there?

MR. DONIHUE: Well, I submit, your Honor, that it is a question of fact peculiarly within the province of the jury.

THE COURT: Why, I will charge the jury that if a person appeared before the Board of Registry, and caused his name to be registered by the announcing of his name, and the entry was made, that that constitutes the crime of false registration, whether all the inspectors put the name down in the books or not. That is immaterial.

MR. DONIHUE: provided the defendant presented himself there for that purpose?

THE COURT: Of course. It must appear that the defendant was the person. Therefore, I asked you if you conceded that the inspectors there, that night, proceeded to register the name "McMahon", but not conceding that this defendant was the person who gave the name of McMahon.

MR. DONIHUE: I concede nothing upon that point.

THE COURT: No.

MR. DONIHUE: Except that there is some testimony here that a person presented himself, and said his name was McMahon, and that the inspectors, one

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of them at least, proceeded to write the name of McMahon, and subsequently erased it. That is the testimony, I believe?

THE COURT: Well, you have now conceded that the books go in evidence?

MR. DONIHUE: I have, sir.

THE COURT: Now, call back Mansmann.

The witness Mansmann, being recalled, testified as follows:

BY THE COURT:

Q Is this your book (indicating)? Look at the signature here (indicating). A This is my book.

Q Will you kindly explain to the jury what name you had on line --- on No. 307? A I had "McMahon".

THE COURT: Have you heard that answer, Mr. Foreman?

THE FOREMAN: Yes, sir.

BY THE COURT:

Q Now explain to the jury how you came to put the name of McDonough down, instead of McMahon? A Well, after he gave the name McMahon, the man that gave the name, he was told not to register, if there was so much trouble about it, and he refused to register. And then, after the excitement was over, and after the men were taken out, I erased that.

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Q And you registered McDonough? A Yes; registered him as the next man.

Q Now, are you familiar with the handwriting of the other inspectors there? A Well, I think I am familiar with just one.

Q Well, now, let me see. Your name is what? A William J. Mangmann.

Q Now, did you see the inspectors Leo C. Bartrow, Chairman, Edward S. Broughton and Peter J. Nunnery sign their names to your book on October 7th? A Yes, sir.

Q And on October 8th? A Yes, sir.

Q And on October 12th? A Yes, sir.

Q And on October 19th? A Yes, sir.

Q Now look at the other three books and state whether you have also seen these inspectors sign their names to the books of registry, for the 7th Election District of the 19th Assembly District, on October 7th, 8th, 12th and 14th? A Yes, sir.

Q Now, look at the other three books.

MR. DONIHUE: Will your Honor permit me to note, at this time, an objection to your Honor's line of questioning, on the ground it is immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. DONIHUE: And that it has a tendency to

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prejudice the defendant in his rights.

THE COURT: Objection overruled. Do you consider it prejudicial, if the Court asks questions?

A Well, they seem to be all right to me.

Q Does your signature appear in the four books? A My signature is all right, all the way through, yes. My signature is correct in the ~~x~~ four books.

Q Now, under what circumstances did you append your signature to the book, on October 12th, 1907, at the end of the day's work? A Under what circumstances?

Q Well, how is it that you came to put your signature there, as well as the other inspectors? A I was through with the day's work.

does

Q What ~~is~~ this certificate indicate (indicating)?

A This certificate (indicating)?

Q Yes. A Why, it only calls for the number of registrations for the day.

Q What else? A Well, the names.

Q Well, talk up. The jury want to hear you. A And the names and addresses of the electors.

Q Showing the correct number of persons registered, and their names, etc.? A Yes, sir.

THE COURT: Now, what part of these books do you offer in evidence?

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MR. PALMIERI: That part in which the name "McMahon" appears in one book, and in another book in which there is an erasure, and, in the place of the erasure there appears the name of McDonough. And I also offer in evidence the other two books, on the same line.

THE COURT: Does the name "McMahon" appear in the other two books?

MR. PALMIERI: The name "McMahon" appears in one book, and it appears ---

THE WITNESS: It is reased in my book.

MR. DONIHUE: I object to these statements of counsel, in the hearing of the jury.

THE COURT: Yes. The jury will disregard any statements. Now, how about the certificates.

MR. PALMIERI: I will offer them in evidence, if your Honor please.

THE COURT: Only the certificate of the 12th, I will allow.

MR. PALMIERI: Yes, sir; only the certificates of the 12th of October, 1907.

(They are admitted as People's Exhibit 2.)

MR. PALMIERI: They are signed by the four inspectors, gentlemen.

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CROSS EXAMINATION BY MR. DONIHUE:

Q Now, I direct your attention to this record, and I ask you to count down from the top the names registered in that --- on this page, under "Mc", and tell me at what number, counting from the top, the erasure occurs? A What number?

Q Yes.

MR. PALMIERI: I object to that, because the book speaks for itself, and is the best evidence.

MR. DONIHUE: And then I ask that the books be permitted to remain here.

MR. PALMIERI: I have no objection to that.

THE COURT: Why, surely, the books will remain here.

MR. PALMIERI: And I have no objection. I want the jury to look at them.

THE WITNESS: Will I answer?

MR. PALMIERI: Objected to.

THE COURT: No, it is a matter for the jury.

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BY THE FOREMAN:

Q It is the custom, when you go into an election place, isn't it, and you go to register, that the chairman asks you what is your name, and generally calls out to the other inspectors the name what you answer? A Yes.

Q Did that McMahon, when the chairman asked him, "What is your name?" Did the chairman call out to the other inspectors to put down the name McMahon? A He did.

MR. PALMIERI: The People rest.

MR. DONIHUE: Now, if your Honor please, I move to dismiss, on the ground that the People have failed to establish a case; that they have failed to identify the defendant at the bar as the person who presented himself, under the name of McMahon; and that they have failed to identify the defendant at the bar as being any person who presented himself for the purposes of registration, on the night of October 12th, 1907, to the Board of Election Inspectors of the 7th Election District of the 19th Assembly District.

THE COURT: There appears from the record that three Deputy Superintendents of Election and Mr. Haubner and a police officer gave testimony that this defendant appeared at the polling place, sometime in the neighborhood of 9 o'clock, that night, and was asked by the chairman if he desired to register; and that the defendant replied in the

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affirmative; that he gave the name of Charles McMahon; that he was challenged; that he was there placed under arrest. It seems to me this testimony presents a question of fact for the jury to determine, as to what faith and credit they will give to this testimony. I will deny your motion.

MR. DONIHUE: Exception. Now, if the Court please, I had understood that this -- that the people's case would at least fill out this day, and that being so, I have made no preparation to enter upon the defense at this time.

THE COURT: Well, Assemblyman, the difficulty of adjourning at this hour is this. The Tombs is in a very crowded condition, and I will have a special jury here, to-morrow, to try another case; and it seems to me that we ought to utilize the court hours for work, instead of for adjournment.

MR. DONIHUE: Well, your Honor will bear with me for a moment, to this effect, that, at the last trial, the People presented more witnesses than they have presented here.

MR. PALMIERI: I object to that. That is not so, at all. That is not a correct statement.

MR. DONIHUE: Well, I only appeal to your Honor's understanding of the case, without entering into a con-

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troversy.

THE COURT: Well, perhaps the Attorney General has resorted to the geometrical principle that the shortest way between two points is the most direct, and he has, therefore, curtailed his case, this time.

MR. DONIHUE: Well, I had hoped that the compliment was directed to me, over the head of the counsel for the People.

THE COURT: Well, I would like to get through with this case by to-morrow, because I would prefer to discharge this jury from further service, this term, to-morrow.

MR. DONIHUE: Well, I would like to present my case continuously, to-morrow, if your Honor please. I wish to state, your Honor, that this afternoon I had issued subpoenas.

THE COURT: Have you not any witnesses here at all?

MR. DONIHUE: I have not.

MR. PALMIERI: Well, how about your inspectors?

MR. DONIHUE: They are under your subpoena, sir.

MR. PALMIERI: That makes no difference. You used them, last time, and they are outside now.

THE COURT: Do you intend to call them?

MR. DONIHUE: Well, I haven't considered that phase of the case yet, because I assumed that the People would

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call the inspectors to prove their case. I haven't considered the proposition of calling them at all.

THE COURT: Well, I do not like to lose a half hour, Mr. Donihee.

MR. DONIHEE: Well, I don't like to have to ask your Honor to indulge me in this way, but I confess that I have been too indulgent in relying on the conditions of the other trial, and I have only issued my subpoenas, this afternoon.

THE COURT: How long do you think you will take in your defense?

MR. DONIHEE: I will take the day, your Honor, at least.

MR. PALMIERI: But he has his principal witness here, the defendant, in court now.

THE COURT: No. I ~~am~~ think you should go on further, to-day. I would like to give this case to the jury, tomorrow.

MR. DONIHEE: very well, sir. I will open my case.

(Mr. Donihee then opened the case for the defense)

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## THE DEFENSE.

F R A N K B O L L E N B A C H E R, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONIHUE:

Q How old are you, Bollenbacher? A 24.

Q When were you 24? A December 11th.

Q 1907? A yes, sir.

Q Where do you live? A 2092 Eighth avenue.

Q And with whom do you reside? A My mother and sister.

Q Is your father living? A No, sir.

Q Do you maintain the house where you reside?

A Yes, sir.

Q What is your profession or business? A Photo engraver.

Q And how long have you been a photo engraver?

A Between seven and eight years; seven or eight years.

Q You have been in that business between seven and eight years? A yes, sir; or a little more.

Q And for whom have you worked? A The Consolidated Engraving Company and Bond & Crosby.

Q And during the course of your employment your duties were the general duties of a photo engraver? A Yes, sir?

Q Now how long have you lived in the premises where you now reside? A Well, between four and five years.

Q Are you acquainted with Mr. Nahrwold? A Yes, sir.

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Q How long have you known him? A About eight months now I guess.

Q And how did you come to know him? A I know him from around 115th street and 116th street and all around there.

Q And what avenue? A Eighth avenue.

Q And that is the avenue upon which you live?

A Yes, sir.

Q Now, come down to the 12th of October, 1907. You recall meeting any person in the evening of that day, at 116th street and Eighth avenue? A Yes, sir.

Q Who was that person? A Mr. Conboy.

Q Well, do you know his full name? A No, sir.

Q Do you know what his business is? A Yes, sir.

Q What is his business? A He is an undertaker.

Q How long have you known him?

BY MR. PALMIERI:

Q Conman or Conboy? A Conboy.

BY THE COURT:

Q Conboy? A Yes, sir.

BY MR. DONIHUE:

Q No; his name is not Palmieri, but Conboy.

MR. PALMIERI: For which I thank you.

MR. DONIHUE: I now ask your Honor to direct Mr.

Palmieri to desist these side remarks in the hearing of the jury.

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THE COURT: Yes, Mr. Palmieri.

MR. PALMIERI: And I simply asked the witness a question, just as your Honor did, as to the name.

BY THE COURT:

Q You met Mr. Conboy where, Bollenbacher? A 116th street and Eighth avenue.

BY MR. DONIHUE:

Q And did you have a conversation with Mr. Conboy?

A Yes, sir.

Q Now, in consequence of that conversation, did you do anything? A Yes, sir.

Q State to the jury what you did? A Well, I left the house about ten or fifteen minutes after eight, and I started to walk up the avenue, and went in 114th street, and I registered.

BY MR. PALMIERI:

Q What is that? A I registered.

MR. PALMIERI: I move to strike out all that. You were not asked that. I move to strike it all out.

THE COURT: I will allow it to stand so as to give a connected statement of the defendant.

MR. PALMIERI: Well, I wish he would answer the question of his counsel.

BY THE COURT:

Q You went to 114th street and registered? A Yes, sir.

Q What polling place did you go to? A It is 280, I

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think ; I ain,t sure of the number.

Q In 114th street? A Yes, sir, in 114th street.

It's right by the corner. I don't know the number exactly.

Q Proceed. A And from there I started to walk up the avenue. I got as far as 116th street, and I met Mr. Conboy there.

BY MR. DONIHUE:

Q Now, one minute. On your way up the avenue, did you see anybody you knew? A Yes, sir.

Q Who did you see? A I see Mr. Nahrwold.

Q And from there where did you go? A From there I went to 116th street, walking up the avenue.

And Mr. Conboy stopped me, and said, "Where are you going?" And I said, "No place in particular," and he said, "Well, will you do me a favor?" And I said, "Yes."

And so he said, "Come inside and have a drink," he says, and that was 116th street and Eighth avenue, and I said, "No, sir; I don't touch it."

So he said, "Wait till I come out," and then he went in, and he must have wrote something, but, any how, he came out and give me an envelope and asked me to take it down to Joe's house, Joseph Murphy's house.

Q And then what did you do? A And from there I jumped on a car.

Q What car?

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BY THE COURT:

Q Where did you take the car? A 116th street and Eighth avenue.

Q And what time was that? A It must have been about half past eight or twenty five minutes to nine.

Q You took an Eighth avenue car? A No, sir; a 116th street car.

Q Going cross town? A Yes, sir.

BY MR. DONIHUE:

Q Going west, was it? A Yes.

Q Where did you go? A I got off at Columbus avenue and 109th street. 993 is on the corner of Columbus avenue. And I went up there, and asked if Joe was in, and they told me no.

And so I went downstairs and I inquired, and they told me that I might find him around at the polling place, as he was some kind of an acting captain, assistant captain there; and so I went around there, and I asked for him, asked this man named Reilly.

BY THE COURT:

Q Where was this polling place? A In 108th street.

Q Who did you ask? A Reilly. And he said that he didn't see him. So, as I am going out, there is somewhat of a scrimmage there, and I see Mr. Nahrwold talking to these two men, and, when I go out, these men -- one of these men

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put me under arrest.

BY MR. DONIHUE:

Q Now, when you approached the polling place did you see Nahrwold? A No, sir, I seen him inside.

Q As you went in? A Yes, sir.

Q And he stood right where you could see him as you went in? A Yes, sir; he stood in the back.

Q Now, what occurred after that? A Well, there was a scrimmage there.

Q Yes. A And as I am going out of the place, Mr. Dunn and this Kluberdanz locked me up, put me under arrest.

Q And they took you where? A They took me to 104th street elevated station; and from there down to 100th street station house; and from there down to 42nd street, and kept me there about three hours, two hours and a half or three hours.

Q Now, were you alone at any time going down? A Going down?

Q Yes. When you were taken down, were you left alone? A No, sir.

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Q Well had you delivered at this time the note?

A No, sir.

Q What did you do with that? A I put it in my bosom.

Q Where were you when you put it in your bosom? A Down at the Superintendent of Elections', down at 42nd street.

Q Under what circumstances? A Well, there was about fifteen people down there asking me all kinds of different questions, and they put me in one little room.

Q And were you locked up down there? A No, but I got put in a separate room.

Q You were in a room? A Yes, sir.

Q All by yourself? A Yes, sir; one of these detectives from the 100th street station house was with me.

BY MR. PALMIERI:

Q Was what? A Was with me.

BY MR. DONIHUE:

Q They sent an officer with you from the 100th street station house; did they? A Yes, sir.

Q And he accompanied you down to the Superintendent of Elections' office? A Yes, sir.

MR. PALMIERI: I thought you were going to let the defendant testify.

MR. DONIHUE: I think he is doing pretty well.  
What do you think, Judge Palmieri?

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MR. PALMIERI: Well, I will let you know, when I get through with this case.

BY MR. DONIHUE:

Q Now, at any time on the 12th of October, 1907, in the place of registration No. 74 West 108th street, designated as the place of registration of the Seventh Election District of the Nineteenth Assembly District, did you attempt to register under the name of Charles Mc Mahon, or any other name whatsoever? A No, sir.

BY THE COURT:

Q Bollenbacher, did I understand you to say that you met Kluberdanz on Eighth avenue? A Kluberdanz?

Q At least, Nahrwold? A I met him in this polling place.

Q Did you see him on Eighth avenue at any time? A No, sir, I didn't see him from there on. I had seen him down at 108th street.

Q Did you say that you saw Nahrwold at 106th street and Eighth avenue? A No, sir.

MR. DONIHUE: No, sir. I asked him if he knew Nahrwold, and he had said that he had seen him along the avenue, and had known him from that neighborhood.

THE COURT: Then let the testimony be repeated, so that this matter may be rectified.

(The testimony is repeated by the stenographer.)

BY THE COURT:

Q Now then did you meet Nahrwold, that evening? A Yes,

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sir.

Q ,Where? On the avenue? A No, sir, in the polling place.

MR. DONIHUE: I will straighten that out for him.

I think it is a misunderstanding.

Q Now, when you left your house, that evening, you went to register? A Yes, sir.

Q And who did you see in the registration place?

A Nahrwold.

BY THE COURT:

Q In the registration place, you saw Nahrwold? A Yes, sir.

Q In what place? A In 114th street.

Q And you registered there as Frank Bollenbacher?

A Yes, sir.

Q And you are positive that you saw Nahrwold there, that night? A Yes, sir.

Q And then did you see Nahrwold, for the second time?

A Yes, sir; in 108th street, and he was talking to these two men.

Q Well, now, did Nahrwold board that car with you?

A No, sir; not that I seen.

Q And did any passengers get out at 116th street with

you? A Well there must have been about 20 or 25 in the car, I should judge.

Q How long a time elapsed from the time you entered the

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polling place where you registered under the name of Bollenbacher, and where you had a right to register under that name, to the time when you entered the other polling place, to deliver that note? A Well, I should judge about a half or three-quarters of an hour.

Q When you entered the polling place, did you see Nahrwold? A Yes, sir.

Q As you entered the polling place you saw him? A Yes, sir; in the back.

Q And did you know him? A Yes, sir, I knew him.

Q Do you know how he happened to be in the same polling place that you were in? A No, sir, I don't.

Q You didn't see him get on the car with you? A No, sir.

Q Now did anybody accompany you to the house at 109th street and Columbus avenue? A No, sir.

Q What is the name of the person of whom you inquired about Joe? A In the house?

Q Yes? A An elderly woman.

Q Do you know her name? A It was his mother or his aunt.

Q Did you speak to this lady? A Yes, sir.

Q Do you know her name? A No, sir; I went up and asked her was this Murtha, and she said yes, and I asked if Joe was in, and she said no.

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Q Well, who told you where Joe could be found?

A Downstairs.

Q Who, did you ask? A A bunch of fellows on the corner.

CROSS EXAMINATION BY MR. PALMIERI:

Q You met a bunch of fellows at what corner?

A 109th street and Columbus avenue.

Q Give the jury the name of any of the bunch of fellows that you asked? A On the corner?

Q Yes? A I don't know.

Q Why, you approached the bunch of fellows to find out where Murtha was? A They were standing right down by his door. He lives on the corner.

Q And so you mean to tell the jury that not one of those fellows was known to you? A No; I didn't live down there.

Q You didn't live down there at all? A No, sir.

Q Now who bailed you in this case?

MR. DONIGEE: Objected to as immaterial, irrelevant and incompetent, and not part of the proof in this case.

THE COURT: Objection overruled.

MR. DONIGEE: Exception.

A Mr. Fay, first.

Q Go on. Is that the man who bailed you? A It is, first, yes. And Mr. Ahearn.

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Q Mr. Ahearn? A Yes, sir.

Q You know Alec Ahearn; don't you? A No, sir.

Q What? A No,, sir.

Q Well, Jimmy Ahearn bailed you? A Yes.

Q Do you mean to say that you don't know Alec Ahearn, although James Ahearn bailed you?

MR. DONIHUE: Objected to, as the witness has already stated that he did not.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Yes.

(Question repeated.)

MR. DONIHUE: Objected to, for the same reasons.

THE COURT: He said that . There is no reason for repeating it.

BY MR. PALMIERI:

Q Did you ever see Alec Ahearn before? A No, sir.

Q You wouldn't know him if you saw him? A Not Alec Ahearn; no , sir.

Q But you do know James Ahearn? A James Ahearn, I do.

Q How long have you known him? A I don't know. I don't know him personal. I know him from being leader up there in my district; yes.

Q Yes. He is the leader of the 19th? A Yes, sir.

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Q And how long were you acquainted with this leader?

A I ain't acquainted with him at all.

Q Well, you say that you knew him personally; didn't

you? A No, sir; I told you I didn't know him personal.  
at all.

Q You didn't know him at all? A No, sir.

Q So that this leader was a perfect stranger to  
you? A Outside of what I know him for being leader.

Q Well, you say you saw him, without being personally  
acquainted with him? A No, sir, I saw him, but not per-  
sonal acquainted with him.

Q How did you see him? A Walking up the avenue.

Q But you didn't speak to him? A No, sir.

Q And he didn't speak to you? A No, sir.

Q So that you didn't even have a speaking acquaintance  
with him? A No, not --

Q What? A No.

Q He never gave you any letters of recommendation, or  
anything of the kind; did he? A No, sir.

Q And do you mean to say that, although this man was a  
perfect stranger to you, with the exception of the fact that  
you saw him on the avenue, but didn't talk to him, that he  
bailed you in this case? A Well, I believe Mr. Fay bailed  
me.

Q You believe or do you know? A Mr. Fay or Mr.

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Conboy, one or the other.

Q Do you know Healey? A No,,sir.

Q You never met Joe Healey before? A No, sir.

Q Don't you know that Joe Healey worked for Mr.

Conboy? A No, sir.

Q Didn't you hear Conboy say that, in your presence?

A I don't know that he worked for him or not. How am I going to tell?

Q Didn't you hear Conbly say that Healey worked for him? A I don't remember.

Q Didn't you hear Conboy say that Healey worked for him for years? A No,,sir, I don't remember that I did.

Q You won't swear that Conboy didn't say that; will you?  
swear  
A No; and I won't : : that he did say it.

Q Conboy is a man who is interested in the elections of the 19th and 31st; isn't he?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and calling for a conclusion.

Q If you know?

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A I don't know.

Q Didn't you hear Conboy say, in your presence, that he was interested in bring about as many votes as he could in both districts, the Nineteenth and Thirty-first?

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MR. DONIHUE: Objected to, as not binding on the defendant.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A No, sir, I don't.

Q You never heard him say that? A No, sir.

Q You never heard Mr. Conbly say that he ~~was~~ used an automobile in the district? A I don't remember him saying it. He might have said it. I won't swear to it.

Q You don't remember hearing him say that? A No, sir.

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Q Now, in the month of October when you were arrested, you were out of work, weren't you? A Yes, sir.

Q And you had been out of work for how many months?

A About two months, about; a month or so.

Q So that for about two months before the 12th of October, when you were arrested in this polling place, you had been out of work for two months continuously, and over?

A I think so; two months, I will say.

Q And when you went to this polling place, that night, you say you saw a man named Reilly? A Yes, sir.

Q And you said to him, "Did you see Joe Murtha"? A Did he say Joe?

Q How did you address Reilly? A I said, "Hello, Reilly, do you know Joe?"

Q You said, "Hello, Reilly, do you know Joe"? A Yes, sir.

Q And what's Reilly's first name? A I don't know his first name.

Q How long have you known Reilly? A I know him from coming up the avenue.

Q You know him from coming up the avenue? A Yes, sir.

Q Is that the only place you know Reilly? A Well, I got introduced to him.

Q By whom? A By three or four young fellows.

Q Well, what are their names? A One is named Smith.

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Q What does Smith do? A I don't know what he does.

Q Where does he live? A Between 117th and 118th street, I think.

Q What number? A I don't know his number.

Q You don't know Smith's number? A I know a good many people on that avenue, that I don't know their number.

Q Well, who else introduced you to Reilly? A Well let me see. Smith--let me see. O'Neill, William O'Neill.

Q Yes. Where does he live? A He lives around 117th and 118th street.

Q What number? A I don't know.

Q What does he do for a living? A I don't know.

Q How long have you known O'Neill? A I have known them people for about two years.

Q You have known O'Neill for two years, and don't know where he lives? A No, sir.

Q Or what he does for a living? A No, sir.

Q How long have you known Smith? A About the same time I guess.

Q And you don't know what Smith's business is? A No, sir.

Q Or the number of his house? A No, sir.

Q Or the street on which he lives? A He lives between 117th and 118th street.

Q He lives between 117th and 118th street? A Yes; on

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Eighth avenue somewhere.

Q He lives on Eighth avenue? A Yes, sir.

Q Would you know the place? A I would know where to find him.

Q Well, you know then the house in which he lives? A I would know where to find him, because he hangs on that avenue.

Q Oh, then, you know where he hangs out? A Yes.

Q This O'Neill? A Yes, sir.

Q And you are one of the boys; aren't you? A Not in particular.

Q Well, sometimes you meet the boys around there; don't you? A Well, but I don't hang around the corner, though.

Q I didn't ask you that. (Question repeated.) A Yes.

Q And have a social talk with them? A Yes, sir.

Q And who are the other boys who introduced you to Reilly? You said there were four of them. Who was the third? A Well, I can't think of them now. Its about a year ago now.

Q Well, what was Reilly's business? A I don't know what it is.

Q And you were introduced to Reilly how long ago?

A About fourteen months ago.

Q About fourteen months ago? A Yes, sir.

Q About fourteen months ago you were introduced to Reilly by these two boys? A Yes, sir; two or three boys.

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Q And you met Reilly how many times, off and on, during these fourteen months? A About twice or three times.

Q And you spoke to him, didn't you? A I said, "Hello," that's all.

Q Now will you tell me where this Reilly lives? A He lives somewhere down in 109th street, which I don't know his number.

Q Now, before you came to this trial, did you try to find out where he lives? A No, sir.

Q Did you try to look for him at all? A No, sir.

Q Well, Reilly is the man to whom you spoke in the polling place, that night, where you were arrested? A Yes, sir.

Q And Reilly was in that place? A Yes, sir.  
were

Q And Reilly is the friend to whom you introduced, fourteen months ago? A Yes, sir.

Q And yet you come to this trial, without seeking Reilly?  
A Well, I don't know where to find him.

Q But you made no efforts to seek him; did you?  
A No, sir.

Q And how do you expect to find a man without making any efforts to seek for him; can you tell me? A I didn't think it was necessary.

Q Oh, yes. So that you didn't think that it was necessary for you to produce Reilly as your witness here, even though there were five witnesses who would swear that you were

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the fellow who registered there under the name of McMahon?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. DONIHUE: And not proper cross-examination.

THE COURT: Overruled.

MR. DONIHUE: Exception.

Q What is your answer? A I didn't catch it.

MR. PALMIERI: The stenographer will repeat it.

MR. DONIHUE: And, if the Court please, on the ground that the question involves a condition over which the witness had no control whatsoever.

THE COURT: Well, the question might be modified somewhat. I will strike out the last question and answer.

BY MR. PALMIERI:

Q Well, you made absolutely no effort, to get Reilly here at this trial; did you? A No, sir.

Q What? A No, sir.

Q Now, who supported you during those two months that you were out of work? A Myself.

Q What did you do for a living in those two months?

A I didn't do anything. I worked for the last seven years. I think I ought to have had some money.

Q Did you have this money in any bank? A No, I had it

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at home.

Q You had it at home? A Yes, sir; with my mother.

Q You had no bank account? A No, sir.

Q And you supported yourself during those two months, without doing any work? A My mother and sister, too.

Q Yes. Now, what did Reilly do that night? Did he go along with the officers when you were arrested? A I didn't see what become of him.

Q Reilly was the man whom you asked, in the polling place, where Joe was? A Yes, sir.

Q You said, "Hello, Reilly"? A I did.

Q And that was in the presence of the officer, Officer Gordon; is that right? A It wasn't. He was away back in the back of the room.

Q Officer Gordon wasn't there? A No, sir; he was away in the back, sitting down.

Q How far back? A Oh, twenty or twenty-five feet.

Q Was there any partition separating the officer from the inspectors? A No; not that I noticed.

Q Well, if there was one there, you would have noticed it? A I think I would.

Q So you say that the officers was 20 feet behind there? A Yes; away in the back of the store.

Q And you noticed Gordon there; didn't you? A Yes.

Q He was in full uniform; wasn't he? A Yes.

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Q And what was Gordon doing when you entered? A He looked to be sleeping to me.

Q He looked to be sleeping to you? A Yes.

Q You noticed that; did you? A Yes.

Q Well, did he have his eyes closed? A He looked as though he was drunk, to my knowledge.

Q Well, was he druhk? A I think he was.

Q He was very drunk; was he? A Not very, but he was drunk, though.

Q He looked to you, as you entered this place, and as you looked at the officer, that he was under the influence of liquor? A Yes, sir.

Q You didn't smell his breath? A I did, when he come up to me, as I was going out of the door.

Q He came up to you? A Yes.

Q Where was it? A By the door, where all these men grabbed me.

Q And the officer came up there? A Yes, sir.

Q And said, "Do you want assistance, I will give it to you"? A No, sir; he didn't say that.

Q Well, what did he come up to the door for? A I couldn't tell you. I don't know what his idea was.

Q Well, what was the officer doing? Sitting down as you entered? Officer Gordon? A He looked as though he was sleeping to me.

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Q He looked to you as though he was sleeping? A Yes, sir.

Q May I assume from that statement that he had his eyes closed? A Well, he was down like that (illustrating).

Q And he was dozing then? A Yes; his eyes was half open and shut.

Q Yes; his eyes were opening and shutting? A Yes, sir.

Q And how long did you observe the officer doing that?

A Two minutes.

Q About two minutes? A Yes, sir; that I was in there.

Q And during all these two minutes that you observed this officer, the officer was dozing, shutting and opening his eyes; is that correct? A Correct.

Q And during those two minutes, did anybody register?

A I don't know. I seen a line there. But I don't know if anybody registered.

Q You saw a line there? A Yes, sir.

Q And how many people were standing in the line?

A Seven or eight, I guess.

Q Yes. Did you hear the Chairman say, "Do you want to register?" to a man? A No, sir.

Q Did you hear a man say, "Yes," while you were there?

A No, sir.

Q Did you hear the Chairman say, "What is your name?"

A No, sir.

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Q Did you hear the man reply, "McMahon"? A No, sir.

Q You didn't hear the word "McMahon", at all? A No, sir; I was too far away.

Q And how many feet were you away from the inspectors' table, at the time? A Well, from here over to that man there (indicating the District Attorney's subpoena server, at the end of the counsel table).

Q Well, how many feet would you judge that to be?

A Well, I can't judge how many feet that is; 20 or 25.

Q From here to the corner of the clerk's desk? A No, sir; over to that man there (indicating as before).

Q Well, how far? How long was the store? How deep?

A I couldn't tell you. I didn't measure it.

Q I know that you didn't. But you say the officer was 20 feet away from the inspectors? A Yes, sir.

Q And you were 20 feet away from the inspectors?

A Yes, sir.

Q And this officer was? A From the inspectors?

Q And how far were you away from the officer? A 25 feet, I guess.

Q 25 feet from the inspectors and 25 feet from the officer? A I didn't say 25 feet from the inspectors. I don't know. I was just showing.

Q About? A About.

Q Yes. A I don't know how many feet it is.

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Q Well, show me the distance, and I'll tell you?

A I'm telling you; from here to that (indicating).

Q Then the officer must have been near the inspectors?

A He was back further.

Q How much further back of the inspectors was the officer? Show the distance there? A Well, about from here to the wall (indicating the steps of the witness stand).

Q Well, that's about six feet; isn't it? A I guess it's more than that.

Q Well, how many feet? A I don't know. Its more than six feet.

Q About seven feet? A About seven or eight feet.

Q And the officer was that distance away from the inspectors?

A Yes, sir.

Q And what was the Chairman of the Board doing when you entered? A I don't know.

Q Was anybody being registered when you entered?

A Yes; there was a line there.

Q The people were answering their names; weren't they?

A I suppose they were. I didn't hear them. I didn't pay no attention.

BY THE COURT:

Q Where was Reilly standing? A Right near the door.

BY MR. PALMIERI:

Q Then you were standing right by the door? A Yes.

Q And do that you didn't go near the inspectors at all?

A No, sir; I was as far as from here to over there (indicating as before), from them.

Q And so you were never near the inspectors' table? A No, sir.

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Q And so that you mean to tell me that the officers, who were near the table, came over to where you were and got you? A Well, there was a scrimmage or muss there.

Q Between whom? A About eight or ten of them got into it.

Q Was there any fight? A Yes, sir. Well, there was no fight.

Q Did you see any blows struck? A No, sir; I didn't see no blows struck.

Q What do you mean then? A There was a scrimmage. Everybody was grabbing each other.

Q Did these officers grab anybody? A Yes, sir; they were grabbing everybody, and everybody broke up the line.

Q Now don't you know that but two men were grabbed, that night, and that was Healey and you? A Yes; I got caught.

Q And when you were caught, you were at the Inspectors' table? A No, sir; I was at the door.

Q Now don't you know that Nahrwold had his shoulders to the door; don't you know that? A He did not.

Q Nahrwold hadn't his shoulders to the door? A He hadnot.

Q And where was Nahrwold at the time? A He was standing back somewheres, near this officer.

Q Where was he standing? A About six foot away

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from the officer, towards the left.

Q Nahrwold was standing this way from the officer, to the left (Illustrating)? A Yes, sir.

Q And that must have been right near the Inspectors' table? A Well it is quite a wide store.

Q Well, how far was he from the Inspectors' table? A Well, about twelve feet, I should judge.

Q The officer was only seven feet away from the Inspectors' table; is that correct? A Well, I estimated the distance, about 5 or 7 feet. I don't know how many feet it is exactly.

Q And where was Dunn standing? A I didn't see Dunn.

Q Why didn't you see Dunn grab Healy? A No, sir.

Q You didn't see Healy get arrested at all? A No, sir; I seen some man get arrested.

Q Do you mean to tell this jury that you don't know Healy?, A No, sir.

Q Do you mean to say that, after you were arrested, you didn't ask permission, in the elevated train, from the two officers and the Deputy Superintendents of Elections, to give you permission to go over and have a conversation with Healy? A No, sir.

Q Didn't you have a talk with Healy? A No, sir.

Q On the elevated train? A No, sir.

Q Didn't you speak with Healy for about ten minutes

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in the train, in a low tone? A No, sir.

Q And that is just as true as everything else that you have testified to? A I didn't catch that:

Q (Question repeated). A I didn't talk to him.

Q And didn't you get a package of cigarettes in the Deputy Superintendent of Elections' office? A No, sir; I got a package of cigarettes off of Deputy Dunn.

Q At the 57th street court, didn't you get a package sent to you by Alec Ahearn? A No, sir.

Q You heard these Inspectors mention the name of Alec Ahearn before; did you not? A Yes.

Q James Ahearn is the leader of the district? A Yes.

Q Did you speak with James Ahearn about Alec Ahearn?  
A No, sir.

Q Did you go to him and say to him, "Here, these people say that Alec Ahearn was there, that night, and I want him as a witness?" A No, sir.

Q Did you seek Alec Ahearn from the day you were arrested up to this time?, A No, sir, I don't know him.

Q And you have never spoken a word to Alec Ahearn at all? A No, sir.

Q And that is just as true as everything else you have testified to? A Yes, sir.

Q Do you mean to say that you didn't get a package of cigarettes from Alec Ahearn, at the 54th Street Court?

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A No, sir. I got one package of cigarettes, and that was in 100th street, and this Deputy Dunn bought them for me. He took mine from me, coming up, and, going down, he bought me some more, for what he took away.

Q Was St. John with you that night? A No, sir.

Q And you heard the deputies say that St. John and Alec Ahearn were in the line; didn't you?

MR. DONIHUE: One minute. I want to interpose an objection here.

BY MR. PALMIERI:

Q Did you hear the Deputy Inspectors of Election swear that St. John was one of the men in the line in the polling place, that night?

MR. DONIHUE: Objected to. I object to the question as assuming something not shown by the record.

THE COURT: One of the witnesses testified that St. John --

MR. PALMIERI: It was Kluberdanz.

THE COURT: Kluberdanz mentioned the name of St. John. He said he followed several men, of whom the defendant and St. John were two. Objection overruled.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Did you hear him say that? A Yes, sir; while I was sitting here I heard that.

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Q And was St. John in that polling place, that night?

A No, sir, he wasn't.

Q So that you were a perfect stranger in that polling place, that night?

A Yes, sir.

Q You were alone, and in company with no one at all?

A No; nobody.

Q And you never advanced to the Inspectors' table at all?

A No, sir.

Q And you remained near the door?

A Yes, sir.

Q And how long did you remain in there?

A Until

I asked Reilly where Joe was.

Q And how many minutes did that take?

A Oh, I guess

about four or five minutes.

Q Four or five minutes?

A Yes, sir.

Q Four or five minutes to ask Reilly where Joe was?

A Well, I asked him something else.

Q Well, what else was it?

A I don't wish to state.

Q Why don't you wish to state?

A Because it don't

concern this, at all.

Q Well, it is for his Honor to say whether it does or not?

BY THE COURT:

Q Will the answer to the question tend to degrade you or incriminate you?

A Well, it's about a lady. It is

nothing in the case at all, and I don't see why it should be

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put in.

Q How long had you known Reilly, do you say?

MR. PALMIERI: Fourteen months, Judge .

BY THE COURT:

Q Fourteen months? A Yes, sir.

Q And did you see Reilly leave the polling place, that night? A I haven't got time to see anybody. They grabbed me, and shoved me out.

Q Now, the policeman, in order to get near to the officers who arrested you, did he have to pass by the Board of Inspectors? A The policeman?

Q Yes? A Yes, sir.

Q Now, when there was a muss, as you call it, did you remain stationary in the place, where you were talking to Alec Ahearn? A I wasn't talking to Alec Ahearn.

Q Well, I mean to Reilly? A No, sir, I stood there; and, after the scrimmage, I wanted to get out; I didn't know what they were going to do.

Q Well, was the door to the polling place open or closed? A Closed.

Q It wasn't locked? A No, sir.

Q And you were standing at the threshold of the door? A Well, there is a counter. It is a laundry, I believe.

Q Yes. A It was a laundry. And I was standing right up against the counter, and I was talking to Joe --

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not Joe -- to Reilly, see?

BY MR. PALMIERI:

Q You said you were talking to Joe? A To Reilly.

Q Is it Joe Reilly? A Reilly.

Q You said you didn't know Reilly's first name?

A I don't know his first name.

Q Then why did you tell his Honor that you were talking to Joe? A I was going to tell you that I was talking to Reilly, and asked him where Joe was.

BY THE COURT:

Q Now, during this difficulty, and when the officers placed Healy under arrest, how far were you away from Healy at that time? A I don't know Healy, your Honor .

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Q Well, the man who was placed under arrest. Illustrate the distance here. A Well, about from here over to the wall (indicating the side wall of the court-room).

Q Well, at that time you expected that you were to be arrested; did you? A No, sir.

Q Now, was there any police officer or Deputy Superintendent of Elections --

MR. PALMIERI: pardon me, your Honor. May we have the measurement from here over to that further wall? What measurement would you say, Mr. Foreman?

THE FOREMAN: Well, more than 30 feet.

BY THE COURT:

Q Did you see any police officer or Deputy Superintendent of Elections in front of you? A No, sir.

Q Well, how far away was this other man from you, at the time that you were arrested? A Which other man?

Q The man who was placed under arrest? A I am telling you, he got placed under arrest away back in the store.

Q And how many people were in that room? A Oh, I should judge around 20.

Q And out of the 20 -- A Or more.

Q And out of the 20, only you and this other man were selected? A Yes, sir.

Q Is that right? A Yes, sir.

Q Did you say anything to the officer, when he placed

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you under arrest? A I asked him why he was arresting me, and he said nothing. He said "I am going to take you down to the Bureau of Elections."

Q Did you ever have any trouble with Kluberdanz before in your life? A Well, little arguments.

Q When? A About six months ago.

Q When did you say? A About six months ago.

Q About what? A Politics.

Q Where? A 115th street and Eighth avenue.

Q Who was present? A I couldn't tell you.

Q Well, now, did Kluberdanz say, to you, placing his hand upon some part of your body, "I challenge you?" A No, sir, not to me.

BY MR PALMIERI:

Q Now was this question propounded to you, at the last trial, and did you make the following answer: "Q By Mr. Palmieri: Did anybody in that polling place put his hand upon you, or pointing his finger, state, 'I challenge this man'?"

A In what place? Q In the 108th street place, where you were with Reilly? A A man said, challengeme, and I was arrested." Is that right? Did you swear to that?

A He didn't challenge me. I didn't see why he should challenge me.

Q Well, his Honor has just asked you if the word "chal-

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lenge" was used and you said no. A Not to me.

Q Well, did you hear the word "challenge"? A Not that I remember now.

Q Didn't you testify as follows: "When I was walking out of this place, this man comes up to me, and he says, 'Here is another. Challenge him and lock him up'?" Didn't you swear to that? A When I was going out, he said, "Here's another one. Lock him up."

Q Didn't you swear to that before: "When I was walking out of this place, this man comes up to me, and he says, 'Here's another. Challenge him ~~up~~ and lock him up'"? A I won't swear that I said "challenge".

Q If you said that, were you mistaken? A I don't know; I ain't sure.

Q So that you can't remember now whether the word "challenge" was used or not? A No, sir.

Q It might have been used? A Yes, sir.

Q Before that time? A Yes, sir.

THE COURT: Gentlemen of the jury, do not discuss this case among yourselves, or permit any person to talk with you about it; and, if any one attempts to do so, at once inform the Court. Do not form or express any opinion regarding the guilt or innocence of the defendant, until the case is finally submitted to you.

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Now, gentlemen, the special jury will be here, to-morrow morning, at 10:30. I think we can safely adjourn this case until 10:45, at least as far as this jury is concerned. You may be here, to-morrow morning, at 10:45, and the Court will stand adjourned until 10:30 o'clock.

(Further trial of the case was then adjourned until Wednesday morning, January 29th, 1908, at 10:45).

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THE PEOPLE v. FRANK BOLLENBACHER.

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TRIAL RESUMED.

New York, January 29, 1908.

FRANK BOLLENBACHER, the defendant, his cross-examination being continued, testified as follows:

CROSS-EXAMINATION CONTINUED BY MR. PALMIERI:

Q Now, is your memory pretty good, with reference to remembering matters of occurrence to yourself, important to yourself? A Pretty fair, sir.

MR. DONIHUE: You must speak up louder. I can't hear a word you say. It was the same, yesterday. You must speak louder.

BY MR. PALMIERI:

Q Now, do you remember that the following question was propounded to you by me, and whether you made the following answer to this question: "Q Did anybody in that polling place--" meaning the 7th Election District of the 19th Assembly District, where you were arrested-- "put his hand upon you and state, 'I challenge this man'? A In what place?

Q Why, in the 108th street place? A A man said, 'Challenge me,' and then he arrested me"? A Well, I don't know whether he meant me or not.

Q Then why did you say "'Challenge me' and arrested me", what did you say that for? A I don't know whether he meant me.

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Q Well then why did you say that the man said--"The man said, 'Challenge me' and arrested me"? A I don't know.

Q What? A I don't know.

Q You don't know why you said it? A No, sir.

Q It was a slip of the tongue? A Maybe so.

MR. DONIHUE: I object to the characterization.

THE COURT: Yes. Sustained.

BY MR. PALMIERI:

Q Did you also say in answer to another question, as follows: "When I was walking outside, this man--" meaning Kluber-danz-- "comes up to me, and he says, 'Here's another. Challenge him, and lock him up'"?

MR. DONIHUE: One minute. I object to the question as being improperly put to the witness. The counsel merely states the answer, without putting the question.

THE COURT: Put the entire query, that is, the question and answer.

MR. PALMIERI: I will follow your Honor's suggestion, but I didn't think it was absolutely necessary.

THE COURT: That is the rule.

MR. PALMIERI: Very well, sir.

Q "Q Didn't you say, in answer to the previous question, 'Challenge this man,' and then you were arrested, didn't you say that a moment ago? A When I was walking outside, this man comes up to me, and he says, 'Here's another.

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Challenge him, and lock him up'?" Did you say that? A Yes; I admit that he said, "Here's another one." I admit that he said, "Here's another one. Lock him up."

Q How about the "Challenge him," first? A I don't remember saying that.

Q Well, if you said that, were you mistaken? A That I can't say.

Q You can't remember whether the man said, "Challenge him," or not? A No, sir.

Q But you can remember this, "lock him up"? A Yes.

Q And you can remember the officer being twenty feet away, dozing, and opening his eyes occasionally, but you can't remember about, "Challenge him, and lock him up"? A I can't remember about, "Challenge him"; I can remember "lock him up."

Q Do you deny that you said he said, "Challenge him"? A No, sir, I don't deny it.

Q Only your memory is at fault as to that? A Yes, sir.

Q Was the following question put to you, and did you make the following answer, under oath: "Q Did the fact that the man said, 'Challenge this man,' attract your attention at all? A No, sir"? Did you make that answer to that question? A Yes, I think I did.

Q You think you did? A Mes, sir.

Q Well, don't you know that you did? A I ain't sure.

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It's so long ago.

Q Why, that's only last month, Bollenbacher? A I can't remember all that was said. I can't tell you word for word.

Q Well, is it the substance of what you said? A It is.

Q "Q It would not attract your attention at all, if the man said, 'Challenge this man'?" A No, sir"? Is that correct? A What's that?

Q You didn't hear me? A No, sir.

Q Then I will speak a little louder. "Q It wouldn't attract your attention at all to the challenge? A No, sir"? A Why should it?

Q Well, I didn't ask you why it should attract your attention, but I believe, if a man said, "Challenge this man" I thought it would attract your attention. If it didn't attract your attention--

MR. DONIHUE: I object to the question, as embodying the thoughts of the counsel.

MR. PALMIERI: No. He asked me why it should attract his attention, and I am answering him.

MR. DONIHUE: And I move that the questions of counsel be stricken out.

THE COURT: Motion denied.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Well, what do you say to that? A I don't know what

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you said.

Q You asked me why it should attract your attention, and I told you why, because it was directed to you?

MR. DONIHUE: Objected to, as embodying a conclusion of counsel.

THE COURT: Now, I will strike out the last question. Ask the witness whether the question was put to him, and whether he gave that answer, on the previous trial.

MR. PALMIERI: Well, I will put another question, to save time, your Honor.

Q Was the following question put to you by me, and did you make the following answer, under oath: "Q Now, mind you, Bollenbacher, this was at the time when you had already asked Reilly where Joe was, and had completed your business, when, at that time, a man in that place said to you, 'Challenge this man,' and yet you say that that fact didn't attract your attention at all? A No, sir; I didn't know he was challenging me." Did you say that? A Yes, sir.

Q Then he was challenging? A No, sir.

MR. DONIHUE: Objected to, as embodying the conclusion of counsel. The witness testified that he didn't know that he was challenging him.

MR. PALMIERI: Then I will put the question in this form.

Q Then do you wish to say to the jury that you did or

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did not hear the man's challenge? A I say that, at the time, there was a scrimmage in there.

Q I didn't ask you that. I will ask you to answer my question. Do you mean to say to this jury that you heard the man's challenge, or that you didn't hear the man's challenge? A I don't remember.

Q You don't remember? A No, sir.

Q Is that the best answer you can give to the question, that you don't remember? A That's the best I can give.

Q Was the following question propounded to you, and did you make the following answer: "Q But, as soon as you heard the words, 'Challenge this man,' you started to walk out; didn't you? A I was by the door when I heard it."? Then you did hear it?

MR. DONIHUE: Objected to, as not proper cross-examination.

MR. PALMIERI: Question withdrawn.

Q Now, did you make the following answer to that question, under oath: "I was by the door when I heard it"?

A I was by the door.

THE COURT: No. Answer the question.

BY MR. PALMIERI:

Q I will put the question again. Was the following question propounded to you, and did you make the following answer: "Q Put as soon as you heard the words, 'Challenge this man,'

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you started to walk out; didn't you? A I was by the door when I heard it."? Did you make the following answer to that question?

MR. DONTHER: I assume you mean, "Did you make that answer to that question?"

THE COURT: Yes; strike out the word "following".

A I believe I did.

BY MR. PALMIERT:

Q Then your memory is refreshed? Now you remember.

A Yes; at that time.

Q Now, then, you remember? A Yes.

Q Now, then, you did hear the word "challenge", when you were at the door? A He didn't say it to me.

BY THE COURT:

Q Well, when did you hear the word "challenge"?

BY MR. PALMIERT:

Q When you were at the door? A Well, I ain't positive.

Q Well, you just said that your memory is refreshed?

A I won't swear to it. Why should I swear to a thing what I don't know. I ain't positive of it.

Q Well, you just said that you did make that answer to my question? A I might have.

Q No; you said you did. A (No answer.)

Q You didn't say you might, but you said you did. Now, do you want to change it? A No, sir.

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Q So that you did make answer to that question? A I am telling you I might have did it.

Q Then you don't remember now? A No, sir.

Q So that you might have remembered it, the last time, but you don't remember it to-day? A Yes.

Q Is that what you want to say? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Your memory is a little hazy now upon the subject, but it was fresher then?

MR. DONIHUE: I object to the question, the characterization by counsel of the memory of the witness.

THE COURT: Overruled.

MR. DONIHUE: Exception.

Q Did you hear my question? A You've got to repeat it.

Q (Question repeated.) A I came down on the trial then.

Q No. Answer my question. Was your memory fresher in December than it is to-day? A Yes, sir, it was.

Q It was? A Yes.

Q Then tell the jury how it was that you said, yesterday, that you had a political argument with Nahrwold, and you didn't say a word of it, last December? A I didn't think it was necessary.

Q Oh, you remembered that?

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MR. DONIHUE: I object to the question, and ask that the answer be stricken out, as incompetent, immaterial and irrelevant.

MR. PALMIERI: Your Honor, this--

THE COURT: Motion denied.

MR. DONIHUE: Exception.

Q You didn't think it was necessary to say that Nahrwold, one of the men that identified you as attempting to register in that place, you didn't think it was necessary to say, at the last trial, that he was the man with whom you had a political argument; you didn't think that was necessary? A No, sir.

Q But you thought it was necessary, yesterday, to state it; didn't you? A Yes.

Q Then, how do you explain that it was necessary to state it yesterday, and it wasn't necessary to state it, last month; how do you explain that? A Because it didn't come to me, at the time.

Q Oh, so, you didn't remember it at the time? A I did, in a way.

Q You did, in a way, and didn't in another way? A Yes.

Q So you didn't mean to say that you didn't think it was necessary to state it; you didn't mean that? A I did.

MR. DONIHUE: I object.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

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Q Then, if you did remember it, and you did think it was necessary, explain to this jury why you stated, yesterday, that you had a political argument with Nahrwold, and you didn't state it in the other court, when you were on trial? A Well, because I didn't think it was necessary; that's all.

Q Didn't you think it was necessary to show on the part of a person who appeared against you animus on his part, to show motive why he was coming here to testify against you; didn't you think that was necessary? A I did not; not at the time.

Q You thought it was necessary yesterday; didn't you?  
A Yes.

Q You did? A Yes, sir.

Q You didn't think of it at the time, you said; is that correct? A I didn't think it was necessary at the time.

Q So that you have gone over this matter since? A Yes, sir.

Q And you have decided what was necessary to state and what was not? A Yes, sir.

Q Is that correct? A Yes, sir. Found out all the faults.

Q Yes, found out all the faults? A Yes, sir.

Q And you repair the faults on this trial?

MR. DORTCH: I object to the question in that form.

MR. PALMIST: Question withdrawn.

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Q Well, so then you have corrected all the faults at this trial?

MR. DONIHUE: Objected to.

THE COURT: Objection sustained. It is argumentative.

MR. PALMIERI: Yes, sir. I fully agree with your Honor.

Q When did you find out all the faults?

MR. DONIHUE: Objected to, for the same reasons.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Why, after my first trial, when I seen this man was trying to send me away.

Q Who was? Nahrwold? A Yes, sir.

Q When you saw that Nahrwold was trying to send you away?

A Yes, sir.

Q How about the officer? Did you ever have any fight with Officer Gordon, or any political argument? A Who is the officer?

Q Officer Gordon, the officer that you said his eyes half open and half closed? A No, sir; never seen him.

Q You never had any political argument with that officer? A No, sir.

Q Never had any controversy with him? A No, sir.

Q And you know of no reason why that man should come

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here and lie against you? A No, sir.

Q Now, how about Dunn? Did you ever have any political argument with Dunn? A No, sir.

Q Or any controversy with him? A No, sir.

Q Now, will you tell this jury whether you know of any motive on the part of Mr Dunn to come here and swear your liberty away? A Well, I heard, if he convict me, he will get a life job.

Q A life job? A Yes, sir.

Q Who told you that? A Well--

Q Who told you that? A Well, some friend.

Q His name? A I can't think of his name.

Q When did he tell you? A Before the first trial.

Q Before the first trial? A Yes, sir.

Q Then why did you tell the jury, at that last trial, that Dunn is that kind of a man that he is going to swear your life away?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent. There is no evidence that he was asked for any such testimony.

BY MR. PALMERI:

Q All right. I will ask you, then, this question. Were you asked? A No, sir.

Q Did you tell your lawyer? A Yes, sir.

Q Do you know whether your lawyer asked you? A He

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didn't ask me.

Q. Although you told your lawyer that a friend of yours had told you that Dunn was going to get a life position to swear your life away, your lawyer didn't ask you that question?

MR. DONIHUE: Objected to, as not the best evidence.

THE COURT: Objection sustained. Anything that a person tells to his counsel cannot be brought on cross-examination.

MR. PALMIERI: All right, your Honor.

Q. Then I will ask you this. You were not asked that question by your lawyer?

MR. DONIHUE: Objected to, for the same reason.

THE COURT: I will sustain the objection.

BY MR. PALMIERI:

Q. Did you seek that friend, before this trial?

MR. DONIHUE: Objected to, as incompetent, immaterial and irrelevant.

THE COURT: Overruled.

MR. DONIHUE: And as seeking to obtain testimony on the identical proposition that your Honor has ruled upon.

THE COURT: But that does not prevent the prosecutor from seeking evidence in another matter.

MR. DONIHUE: But, if the purpose is identical?

THE COURT: It makes no difference, as long as it is

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not a betrayal of confidence between the client and the attorney.

MR. DONIHUE: I except to your Honor's ruling.

BY MR. PALMIERI:

Q Did you seek that person who told you that Dunn was going to get a life position, if you were sent away? A No, sir; I haven't seen him since.

Q You didn't seek that person, although he told you that Dunn was the man who was going to swear your life away, and would get as a reward a life position? A I didn't see him since.

Q You said you didn't seek him? A I don't know what you mean. I thought you meant, did I see him.

Q Well, did you seek him? A I don't know what that word means.

Q Well, did you try to find him? A No, sir.

Q Well, didn't you think it was important to bring to light, to prove, by this friend of yours, that Dunn was the man who was going to swear your life away for a reward?

A Well, I don't know where to find him.

Q Well, but you say that you didn't make any effort to find him? A I did not.

Q Well, then how do you expect to find a man, if you don't try to find him? A Well, I can find him, all right.

Q Well, now then tell me where I can find him, and I

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will find him for you? A Well, I will get somebody to get him.

Q No. Tell me, and I'll find him for you? What's his name? A Well, I couldn't tell you what his name is.

Q Well, you say he was your friend? A Yes, sir.

Q How long had you known this man? A Four or five years.

Q And do you mean to tell this jury that you have known this friend for five years, and you don't know his name?

A Well, I can't think of it now.

Q What's his business? A I don't know.

Q You have known him for five years, and don't know his business? A No, sir.

MR. DONIHUE: Now, I ask your Honor to direct the counsel for the People to address the witness, when he questions the witness.

THE COURT: Who was he looking at?

MR. DONIHUE: At the jury, sir.

THE COURT: Of course, the Court cannot compel counsel to refrain from looking at the witness, or at the jury, or at the ceiling.

MR. DONIHUE: Of course not, sir; but it is only a suggestion made to reform the bad habit of counsel, if possible.

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Q Now, you said, yesterday, that the reason why you were in this polling place was because you had a letter to deliver from Conboy to Joe Murtha in this polling place; is that correct?

A Yes, sir.

Q How long have you known Joe Murtha? A About two years.

Q Do you know him well? A I know him from--from around there; dances, and so on.

Q Didn't you ever meet Joe Murtha at 116th street?

A No, sir.

Q Do you know where 116th street and Eighth avenue is?

A I do.

Q And that's where you met Conboy, that night? A Yes, sir.

Q And you often went there; didn't you? A I did not. I walked past there.

Q Well, then, you also walked past there; didn't you?

A Yes, sir.

Q And you know where that club room is; don't you?

A I do.

Q And you were often up there; weren't you? A No, sir.

Q Why, don't you know that Conboy and Joe Murtha and Alec. Ahearn and Joe Healey used to go to that clubroom almost every night?

MR. DONTREE: Objected to, as immaterial, irrelevant

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and incompetent, and as assuming conditions that don't appear in proof.

THE COURT: Overruled.

MR. DONNELL: Exception.

A I don't.

Q Well, tell this jury how you come to know that club-room? A Well, I walked past there every night, since I've been living down there.

Q You walked past there every night since you have lived down there? And you want to tell this jury that, although you knew this club, you never went up there? A No, sir; I don't belong to no club at all.

Q Don't you know that Conboy is a member of that club?

A No, sir.

Q You don't mean to say that he isn't? A I don't know; I couldn't swear that he was or that he ain't.

Q But every night you pass that clubroom? A Yes; pretty near every night.

Q Did you have any friends up there? A No, sir.

Q Did you ever stop in front of that place? A No, sir.

Q Did you consider it harmful for you to stand in front of that place?

MR. DONNELL: Objected to, as immaterial, irrelevant and incompetent as to what the witness would have con-

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sidered.

THE COURT: Objection sustained.

Q Well, now, tell me. The leader of the district, James Ahearn, bailed you out; is that correct? A Yes, sir.

Q And Joe Murtha is the assistant captain, political captain, of the 7th Election District of the 19th Assembly; isn't he? A Yes, sir; I believe so.

Q Why, you said you knew it? A Well, I ain't sure. That's what he said.

Q Oh, well, when did he tell you that? A Oh, he's been that way a couple of years, I suppose.

Q He has been there a couple of years? A Yes, sir.

Q But I want to know when he told you that he was assistant political captain of the 7th Election District of the 19th, the place where you were arrested? A Well, about eight months, I guess, or nine months ago.

Q And where did he tell you that? A Down at his house.

Q Oh, you used to go to his house? A Once in a while.

Q And you were quite friendly with him? A I would go out, now and then, with him.

Q Yes. And the assistant captain of that polling place was Joe Murtha, the polling place where you were arrested? A I believe so.

Q And you had a letter from Conboy to Joe Murtha, that night? A Yes, sir.

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Q You have known Conboy for how many years? A Oh, three or four or five years.

Q And you have known Joe Murtha, the assistant captain of this district, for two years? A Yes, sir.

Q And the leader for how many years, James Ahearn? A Well, I don't know him personal, but I know he has been leader up there for a couple of years.

Q And you want to tell this jury that you never spoke to James Ahearn? A I only spoke to him once.

Q Why, you said, yesterday, that you never spoke to him at all? A Well, I spoke to him upstairs, when he took me out on bail, and I never spoke to him after that, after I went out on bail.

Q Now, will you give this jury the letter that you said you had in your pocket, that night, and which the officers didn't see? Where is that letter? A Mr Conboy has got it.

Q Is that the only letter that you had in your pocket, that night? A The only letter what I had for Murtha. I had a whole lot of--

Q I didn't ask you that. (Question repeated.) The only letter you had in your pocket, the night you were arrested? A Yes.

Q Are you positive about that? A Yes.

Q You had no other letter in your pocket, outside of the letter that you had for Joe Murtha? A Yes.

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Q Are you positive about that?

MR. DONIHUE: Objected to, as having been already answered by the witness.

MR. PALMIERI: Yes; he can answer again.

Q You are positive about that? A Yes.

Q You were in a room in the Superintendent of Election's office, with a detective near you; weren't you? A Yes, sir; he come in there and sat down, and talked to some men there; whether they were election men or not I don't know, but he come back and sat down again; and I was in there for about two hours and a half.

Q And the detective was near you? A Well, sometimes he was and sometimes he wasn't. It was a big room.

Q Well, where was he? A He was talking to these men. I was sitting behind a high desk.

Q And do you want to tell this jury that, in the presence of this officer who had charge of you, you succeeded in placing the letter in your bosom? A Why, it's a big room, and, when he was away talking to the men, couldn't I do it?

Q Well, just show us how you did it? A Well, couldn't I just open up my bosom, and do it (illustrating). I had a soft shirt on.

Q And did you undo the button of your shirt? A I did.

Q And was the room light or dark? A Electric lights in the room.

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Q Electric lights in the room? A Yes, sir.

Q And the detectives sat how far away from you?

A Well, I am telling you. They were talking to him.

Q How far were they from you, when you put the letter in your bosom? A Oh, maybe 10 or 15 foot.

Q Maybe 10 or 15 feet? A Yes, sir; I was sitting behind a high desk.

Q Now, I am going to ask you a question, and I want you to be very careful with your answer.

MR. DONIHUE: Now, I ask that counsel's directions to the witness be stricken from the record.

THE COURT: Yes.

MR. DONIHUE: And that the counsel be instructed to desist from such line of examination.

MR. PALMIERI: I simply want him to be careful.

THE COURT: Yes. Strike it from the record.

BY MR. PALMIERI:

Q Did you think it was any harm to have that letter in your possession, in that polling place, that night? Yes or no.

MR. DONIHUE: Objected to.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Well, Mr Conboy--

THE COURT: Now, answer that question.

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BY MR. PALMERT:

Q Answer my question, yes or no? A Well, I didn't know what was in it.

Q I didn't ask you that. I will repeat the question. Did you think that there was any harm in your having that letter in your possession, in that polling, that night?

MR. DONIHUE: The same objection, if your Honor please.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

Q Yes or no? A I didn't know what was in it.

Q I didn't ask you that. Did you think there was any harm in your having that letter in your possession, in the polling place, that night? A Well, not when I went in.

Q Ho? A No.

Q Well, did you think that there was any harm in having that letter in your possession at any time? A No, sir.

Q Then, Bollenbacher, why didn't you, when you were arrested by these officers, produce that letter and say, "Here, I'm here on an innocent purpose. I came here to deliver a letter. Ask Mr Reilly. He is here. He is the man of whom I asked where this Joe Murtha was. Here's the letter that I came here to deliver"?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

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MR. PALMTERI: I will withdraw the question, and put it in a somewhat similar form. He said that he didn't think there was any harm--

THE COURT: I understand the testimony.

BY MR. PALMTERI:

Q. Now, if you didn't think there was any harm in having that letter, can you give the jury any reason why you didn't tell the officers that you were there to deliver the letter there, that night?

MR. PALMTERI: Or, I will change it to this form.

Q. Did you tell the officers, when you were arrested, that you had that letter in your possession in the polling place? Yes or no? A. No.

Q. Did you tell the officers, when they placed you under arrest in the polling place, that you had just arrived, and had just asked Reilly where Joe Murtha was, to deliver a letter? A. No.

Q. Did you make any explanation to any of these officers that arrested you, as to the reason why you went into that polling place, that night? A. No, sir.

Q. Now, you were arrested--you were arrested there? Yes, sir.

Q. Then, when you were arrested, you didn't know what you were being arrested for; did you? A. No, sir.

Q. You didn't know it? A. No, sir.

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Q And you believed that you were innocent, at the time you were arrested; didn't you? A Yes.

Q And why didn't you ask these people why it was that they were arresting you? A I did ask them.

Q Well, what did they say? Who did you ask? A I asked Kluberdanz, or whatever his name is.

Q You asked Kluberdanz? A Yes, sir.

Q And what did Kluberdanz say? A He said, "I'm going to take you downtown".

Q For a walk? A Yes, sir.

Q "I'm going to take you downtown, for a walk"? A "I'm going to take you downtown." I don't know that he said for a walk.

Q Now, you said that he did. Now, please be careful. You knew that Kluberdanz was not going to take you downtown for a walk; didn't you?

MR. DONIHUE: Well, the witness has stated what occurred, what was said, and I submit that he has made a fair answer.

MR. PALMIERI: All his answers are fair.

MR. DONIHUE: More so than the counsel's questions and attitude.

THE COURT: Such remarks are unnecessary, gentlemen; and the jury will disregard the remarks.

MR. PALMIERI:

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Q What did you ask Kluberdanz? A What was he going to do with me.

Q You asked Kluberdanz what he was going to do with you; is that correct? A Yes, sir.

Q "What are you going to do with me"? A Yes, sir.

Q Why, the first question you should have asked was, "Why do you arrest me?" not, "What are you going to do with me?"

MR. DONIHUE: Objected to.

THE COURT: Sustained.

Q Now, then, what did Kluberdanz say, when you said, "What are you going to do with me?"

MR. DONIHUE: Objected to, as already answered by the witness twice.

THE COURT: Objection sustained.

Q And then what else did you say? A I said, "Go ahead."

Q Didn't you think it was necessary, at that time, to tell Kluberdanz that you had gone there on an innocent purpose? Yes or no? A No.

Q When you were taken before the sergeant, at the station house, didn't you think it was necessary then to tell the sergeant? A They wouldn't let me talk.

Q Well, you say they wouldn't let you talk? A No, sir; I was taken downtown.

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Q Who wouldn't let you talk? A The sergeant.

Q The sergeant wouldn't let you talk? A No, sir.

Q Well, didn't he ask your name? A Yes.

Q Will you identify the man before whom you were, that night? A Yes.

Q And when you went before the desk, you were asked for your name? A Yes, sir.

Q And you said Frank Bollenbacher? A Yes.

Q And you were asked for your address? A Yes.

Q And you gave your right address; didn't you? A Yes.

MR. DONIHUE: I ask that the characterization, "right", be stricken out.

MR. PALMIERI: I consent.

THE COURT: Strike it out.

Q Then you were informed of the charge against you; weren't you? A Yes.

Q When you were informed of the charge against you, what did you say? A He said, "If you have got anything to say, go downtown with these men."

Q And what did you say then? A I couldn't say anything. I had to do what he told me.

Q Now, do you see that man there, that roundsman? Did you see him there, that night, that man (indicating)? A Yes.

Q Is he the man that wouldn't let you talk?

MR. DONIHUE: Objected to. Under your Honor's

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ruling that these questions are not to be asked in the presence of any witness.

THE COURT: Yes. Let the witness step outside.

MR. DONIHUE: This is a very vital question that he is asked in the presence of the jury.

THE COURT: Let the witness step out.

BY MR. PALMIERI:

Q Is that the officer who wouldn't let you talk? A He said, "If you want to say anything, go downtown."

Q He said, "If you want to say anything, go downtown"?

A Yes, sir.

Q Well, you did go downtown? A Yes.

Q Did you say it there? A Well, he asked me what I was in there for.

Q Now, did you say, downtown, that you had gone into that polling place for an innocent purpose, to deliver a letter?

Yes or no? A No, sir.

(The Court then took a recess for fifteen minutes, having admonished the jury in accordance with Section 415 of the Code of Criminal Procedure.)

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AFTER RECESS.

FRANK BOLLENBACHER, the defendant, his  
cross-examination, being continued, testified as follows:

CROSS-EXAMINATION CONTINUED BY MR. PALMIERI:

Q Bollenbacher, after the trial, last month, you went  
to Maryland?

MR. DONIHUE: I object to that, as assuming something  
on the part of counsel.

Q Did you go to Maryland?

MR. DONIHUE: And improper on cross-examination.

Q Did you go to Maryland, after the last trial?

MR. DONIHUE: Objected to.

MR. PALMIERI: I want to show that he came back  
with Ahearn.

MR. DONIHUE: Objected to. I will concede that he  
was in Pennsylvania, too.

THE COURT: Objection sustained.

BY MR. PALMIERI:

Q You say Pennsylvania? A Maryland.

BY MR. DONIHUE:

Q Wasn't it Pennsylvania? A No, sir; Maryland, Hagers-  
town, Maryland.

BY MR. PALMIERI:

Q Now, when you went to Maryland, with whom did you come  
back? A With myself.

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Q All alone? A Yes, sir.

Q Did you go to a man named Hoffman in Maryland?

A Named who?

Q Hoffman? A No, sir.

Q Did you go there with a man named Hoffman? A No, sir.

Q Do you know Hoffman? A No, sir.

Q Now, when you left-- just one question about the polling place. You said that there was a scrimmage in the polling place, but you never got into the scrimmage? You were near the door? A Yes.

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

Q Now, when you were placed in custody, and walked out with the Deputy Superintendent of Elections, out of the polling place, did any of your friends follow? A Didn't have no friends.

Q Did any one in that polling place follow you or the officers? A I don't know if they did or not.

Q Don't you know that Alec Ahearn asked the officers, in your presence, when you were arrested, "Where are you going to take them?" A No, sir; I don't know.

Q Well, did anybody come along with the officers, whether it was Alec Ahearn, or St. John, or anybody else? Did any

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one go along with you? A No, sir.

Q Not a soul? A No, sir.

Q You went along yourself? A Yes, sir.

Q And with Joseph Healey and the officers? A Yes, sir;  
I went along with the officers, with Mr. Dunn.

Q And there was no one that came along? A No, sir.

Q There was no one that came as far as the station  
house? A Not that I seen; no, sir.

Q Well, you would have seen them, if they were following;  
wouldn't you?

MR. DONIHUE: Objected to, as assuming something.

THE COURT: Objection sustained.

Q (Question repeated):

MR. DONIHUE: Objected to.

THE COURT: Objection sustained. Ask him whether  
they were following him.

BY MR. PALMIERI:

Q Were they following you?

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A No, sir.

Q And you didn't see anybody in the State Superinten-  
dent of Elections' office? A No, sir.

Q And you didn't see Mr. Donihee? A I see him, down-

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stairs.

Q Did you see Alec Ahearn there? A No, sir.

Q Downstairs, with Donihee? A No, sir.

Q Did you see St. John with Donihee? A No, sir.

Q Did you take the Elevated train to go down from  
100th Street to 42nd Street? A From 104th Street.

Q With the officers? A From 104th Street.

Q Yes. At the 104th Street station, you boarded an  
elevated train with the officers? A Yes, sir.

Q You and Healey and two officers, and four officers,  
I think? Now, was St. John on that train? A Yes.

Q And where did you meet St. John? A On the elevated  
station.

Q St. John was there? A Yes.

Q St. John was in the polling place? A No, sir.

Q St. John was never in the polling place? A I didn't  
see him, sir.

Q Will you swear that St. John wasn't in the polling  
place? A I will swear that I didn't see him.

Q Didn't St. John have an argument with the officers,  
in your presence?

MR. DONIHEE: Objected to as immaterial, irrelevant  
and incompetent, as not binding on the defendant.

MR. PALMIERI: I shall withdraw the question.

Q Who introduced you, if any one, to Nahrwold? A I know

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him from around 115th Street.

Q Did any one introduce you to Deputy Superintendent of Elections Nahrwold, whom you say you have known for years?

A No, sir.

Q When was the first time that you spoke to him, if at all, and where? A I spoke to him every time I seen him, around the 115th Street corner.

Q And when was the first time you spoke to him? A I can't tell you that.

Q How many years ago? A It ain't years.

Q And how many months ago? A Eight or nine months ago; eight months ago; seven or eight months ago.

Q You spoke to him for the first time eight or nine months ago, at the corner of 115th Street and Eighth Avenue? A Yes, sir.

Q Who was present when you spoke to him? A Nobody.

Q Well, what were you doing at that corner? A Why, I was walking up.

Q And, Nahrwold was walking down? A Why, he hangs on that corner.

Q You hang at that corner, too? A Why, I hang all around there.

Q Did any of your friends hang at that corner? A They hang all over.

Q (Question repeated). A They do, too, there.

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Q Well, what are their names? A Well, I don't think of all the names.

Q Well, give me the name of one friend who hangs at the corner of 115th Street and Eighth Avenue? A Well, there is Jack Lanz.

Q Where does he live? A He lives in 114th Street.

Q 114th Street? A Yes.

Q What number? A I don't know the number.

Q What is his business? A His father owns this saloon at 113th Street and Eighth Avenue.

Q What is Jack Lanz' business? A He works in offices, and so on. He worked in the Consolidated Gas Company, I believe, or the Standard.

Q And was Jack Lanz present when you first spoke to Nahrwold? A No, sir.

Q What did you say to Nahrwold, when you first spoke to him, eight or nine months ago? A We talked about things, politics.

Q And that's eight or nine months ago? A Yes, sir.

Q And he was a perfect stranger to you then, wasn't he? A Well, he was a Deputy Sheriff; I knew that.

Q Well, how did you come to speak to him? He was a stranger to you, and no one introduced you to him. How did you come to speak to him? A Why, I seen him on the corner.

Q Well, do you usually speak to any one that you speak to on the corner? A Well, I seen him a bunch of times when I

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hang there, and I got acquainted with him.

Q And was that the time you had the political argument with him? A No, sir.

Q And then you spoke to him, in all, about how many times out of eight or nine months that you claim to have known him? A Why, I spoke to him every time I seen him.

Q Well, what did you say? "Hello"? A "Hello".

Q "How do you do?" A Yes.

Q "How are you?" A Yes.

Q Is that all? A That's all.

Q Did you ever go up to his house? A No, sir.

Q Did he ever go to your house? A No, sir.

Q Did you ever do any favor for him? A No, sir.

Q Or he for you? A No, sir.

Q Now, when was it that you had a political argument with him? A About six months ago, I guess.

Q What? A About six months ago.

Q About six months ago? A Yes, sir.

Q In whose presence did you have that political argument?  
A Himself.

Q Was there any of your friends, Jack Lanz, or any of your friends who hang around this corner, present, when you had this political argument?

MR. DONIHUE: Objected to, as already answered.

THE COURT: Overruled.

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MR. DONIHUE: Exception.

A I don't remember; no.

Q Do you remember if any one was present? A There were lots on the corner, but not by us.

Q Well, then there was no one present when you had this argument? A No, sir.

Q Was it in the day time or the night time? A In the night time.

Q What day of the week was it? A I can't tell you that.

Q Was it after nine o'clock? A I can't tell you just that.

Q Now, just tell the jury what you said to him and he to you, six months ago? A Well, he said that they were putting up one of his men for leader, or something, or assemblyman, or something like that, Mr. Thompson.

Q Yes. A And he says, "This Hines is no good". And I says, "He's good. He's a nice young fellow, a very nice young fellow, and I would like to see him get in," and he said, "Youse kids has got too much to say," and I said-- "Well, him and I had a couple of curse words.

Q Now, I want to know the whole argument. He said, "Youse kids have too much to say"? A And I said, "I'm no kid. I have got a right to think."

Q And what did he say? A He said, "Ah, you are too fresh," and so on like that.

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Q And what did you say? A And I told him I wasn't as fresh as he was.

Q And then you walked away, and he walked away? A After some more.

Q Well, what was it? A Well, he called me names, and I called him back.

Q Well, I want to know the others? A Well, I don't wish to express them.

Q Oh, that's all right. When you were around with the boys, you didn't mind that; did you? A Well, I don't wish to express it.

Q Oh, well, the jury will forgive you. Just tell the jury what he said to you, and what you said to him? A Well, I don't wish to express the name.

Q Well, what did he call you? A Well, he called me all sorts of names, and I called them back to him.

Q Well, he said you were a son of a so and so, didn't he? A Yes.

Q And he called you-- A All kinds of names.

Q All kinds of names on the calendar? A Well, no, not all.

Q Well, a part of them? A Yes, sir.

Q Well, the worst part of them? A Yes; and I threw them back at him.

Q And you threw them back at him? A Yes, sir.

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Q Well, didn't that collect a crowd? A No, it didn't.

Q Well, that's a pretty busy corner, isn't it, 115th Street and Eighth Avenue? A No, sir; it isn't.

Q It isn't? A No, sir.

Q And you didn't strike him any blow; did you? A No.

Q Didn't you say, a moment ago, that there were a lot of people at the other corner, that they weren't talking to you? A Yes; they wasn't by us.

Q Well, wasn't the attention of the other people attracted to your argument with this man, who was calling you all sorts of badnames, and you were calling him all sorts of bad names?

MR. DONIHUE: Objected to.

THE COURT: Objection sustained.

Q Well, if you know? A Well, I don't know.

MR. DONIHUE: Now, one minute, Judge Palmieri.

THE COURT: The question is answered.

MR. DONIHUE: And I ask that the answer be stricken out.

THE COURT: You want the answer, "I don't know", stricken out?

MR. DONIHUE: Why, I had interposed an objection, and in disregard of my rights here as counsel, Judge Palmieri proceeded to ask the witness another question, before your Honor had ruled upon the objection.

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THE COURT: Yes; that should not be done. I will deny your motion, to strike out the answer.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q And for sixmonths thereafter you haven't met Nahrwold at all? A I met him, but I haven't talked with him.

Q And you didn't have any more argument with him?

A No, sir.

Q He didn't strike you any blows? A No, sir; I wouldn't let him.

Q I guess you wouldn't. A I guess I wouldn't.

Q And you never spoke to him a word? A Well, I did, outside, now and then. He would say, "Good morning," and I would say good morning.

Q "Good morning" to the man who called you all sorts of names? A Yes.

Q You did? A Yes. He said, "Good morning" to me.

Q And you said "Good morning" to him? A Yes.

Q Now, did you tell this story to any one before this day and yesterday? A What story?

Q The story about this fight that you had with Nahrwold?

A No, sir; I didn't think it was necessary.

Q You never stated this story before this day to any one? A I told Mr. Donihue.

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Q Before the last trial, didn't you? A I did; yes.

Q But you never stated a word about it? A He told me not to.

Q Donihee told you not to say that? A He didn't think it was necessary, he said.

Q Donihee didn't think it was necessary? A Yes.

Q And you said you didn't think it was necessary before?

MR. DONIHEE: I object to this testimony, and ask that it be stricken out, as absolutely improper.

THE COURT: Objection sustained.

MR. PALMIERI: It was volunteered by the witness, that Donihee didn't think it was necessary.

THE COURT: Yes; but it was brought out on cross-examination.

BY MR. PALMIERI:

Q Well, now you met Nahrwold, the night you were arrested, in two polling places? A Yes.

Q You met him in the polling place where you registered as Bollenbacher, that night? A Yes; and I met him coming out, too.

Q And you met him coming out of the polling place where you registered as Bollenbacher, in 114th Street? A Yes.

Q And that was the very night you were arrested? A An hour and a half or two hours after.

Q Well, you met Nahrwold before you were arrested?

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A Yes.

Q In the 114th Street place? A Yes, sir.

Q Were you registered as Bollenbacher? A Yes; and I met him outside; I seen him on the corner.

Q Did you speak to him? A I did not.

Q Did he speak to you? A No, sir.

Q And you met him in this other polling place? A I seen him there.

Q In the 7th Election of the 19th? A In 108th Street, I seen him.

Q yes. And did you see him-- did you speak to him in 108th Street? A No, sir.

Q Did he to you? A No, sir.

Q Now, when you were arrested, you didn't know what you were being arrested for; did you? A I did not.

MR. DONIHUE: Objected to.

THE COURT: He has answered it.

Q Now, was the following question asked you, at the last trial, and did you make the following reply to these questions: "Q You assumed that the man who lives up there spoke to somebody--" meaning Nahrwold-- "and then you were arrested? A Yes; he seen me in the polling place at 114th Street, where I registered." Did you make that answer to that question? A Yes.

Q "And then on account of seeing you in the polling place at 114th Street, you were arrested? A Yes; that's

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what I thought he was arresting me for." A Yes, I did.

Q Arresting you for being in two polling places?

A No; for having that argument with him previously, before that.

Q But you didn't say a word about the argument. You said you thought he arrested you for being in the 114th Street place? A I meant on the argument.

Q Did you say anything about the argument? A I thought I did; I am not sure.

Q You don't think you did? A Yes.

Q Or do you think you did? A Yes.

Q Didn't you say, a moment ago, that you didn't say a word about the argument, at the last trial, because it wasn't necessary? A That's what I said to you.

Q Now, you say you thought you did say it, about the argument? A Yes, to you.

Q Well, did you say it or not? A I ain't sure.

Q You are not sure? A No, sir.

Q Why, didn't you say a moment ago, that Donihee told you it wouldn't be necessary to state it, and that's why you didn't state it? A (No answer).

MR. DONIHEE: Objected to.

THE COURT: Sustained.

RE-DIRECT EXAMINATION BY MR. DONIHEE:

Q Bollenbacher, were you challenged in this polling

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place in 108th Street? A No, sir; I heard somebody say something; that's all.

Q Have you read over the testimony since the last trial? A --Did I what?

Q (Repeated). A No, sir.

Q Were you ever asked by counsel, at the last trial, either by Judge Palmieri, or by myself, concerning a quarrel with Nahrwold? A Yes.

Q When? A By Judge Palmieri.

Q When? A Oh, no, sir. I thought you meant a quarrel in the polling place.

Q I mean, were you asked concerning a quarrel between yourself and Nahrwold? A No, sir.

Q Either by Judge Palmieri or me? A No, sir.

Q Now, this letter, that Conboy had given you, you didn't see him write it; did you? A No, sir.

Q Was it sealed? A It was pasted up with mucilage, (illustrating).

Q That's what I mean? A Yes.

Q And did you know what the letter contained? A No, sir; he told me to give it--

MR. PALMIERI: Objected to.

Q Now, when you were arrested, why didn't you make an explanation to the officers?

MR. PALMIERI: Well, that is calling for a conclus-

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ion, your Honor. He said that he didn't.

MR. DONIHUE: Why, you asked him on cross-examination--

MR. PALMIERI: Oh, I have no objection. He may answer.

A Because I thought there was something in the letter, and I thought these people would take it away from me. Mr. Conboy told me to deliver it to Joe Murtha personal.

Q You are up and down Eight Avenue frequently; are you not? A Yes, every night.

Q In the evening? A Yes, in the evening.

Q Now, how often, about how often up and down the avenue do you see Nahrwold, at the corner of 118th Street? A Every night in the week, very near.

Q And do you know persons who he meets there? A Yes.

Q Name one of them? A Mr. Thompson, the man what was running for Assemblyman, and got defeated, or something.

Q He is there every night? A Very near every night.

RE-CROSS EXAMINATION BY MR. PALMIERI:

Q Mention to me the name of any person who ever saw you speak to Nahrwold, so that I can get him here at two o'clock?

MR. DONIHUE: Objected to.

THE COURT: Strike out, "at two o'clock."

Q Now, mention to me the names and addresses of any

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persons whoever saw you speak to Nahrwold? A Well, I can't tell you now.

Q Well, when can you tell me? A I can't remember it now.

Q Can't you remember at least the name of one person who saw you speak to Nahrwold, in the last eight months, at that corner? A St. John.

Q St. John? A Yes.

Q He is out here now; isn't he, (indicating the corridor).

A I don't know. How do I know? I am not sitting outside.

Q Then St. John saw you speak to him? A Yes.

Q And when did he see you speaking to him? A Oh, I don't know. How can I tell the day and the month?

Q Well, when was it about? A It might have been a week, or three, or four months ago, for all that I know.

Q Now, who else besides St. John? A I can't tell you now; I can't think now.

Q Can you give any one else? A No.

Q St. John was the man who rode with you on the Elevated train, that night? A Yes.

Q And he is the man who spoke to the officers that night? A I didn't see him.

Q You didn't see him speak to the officers that night, in your presence? A I seen him on the elevator, yes.

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Q Now, tell this jury what happened with St. Joh, on the Elevated?

MR. DONIHUE: Objected to, as not binding on the defendant.

MR. PALMIERI: I withdraw the question.

Q What did St. John say, in your presence, to these officers, on the Elevated station, if anything?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

Q Is St. John your friend?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. DONIHUE: Exception

A Well, he is; I know him.

Q Did you ever have a drink with Nahrwold? A No, sir.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock).

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AFTER RECESS.

MR. DONIHUE: I will now call Mr. Conboy.

MR. PALMIERI: I wish to ask your client just one more question.

MR. DONIHUE: Yes. Very well.

FRANK BOLLENBACHER, being recalled for further cross-examination, testified as follows:

CROSS-EXAMINATION continued by Mr. Palmieri:

Q When you went to Maryland, you went there on the 22nd of January, did you not? A (No answer).

Q That is, you were in Maryland on the 22nd day of January? A I was there two weeks ago.

Q Were you there on the 22nd day of January, 1908?

A Well, I was there about two weeks ago. That's the 22nd; isn't it?

Q All right, sir. And you came back on the 22nd, did you not? A On Thursday.

Q Yes, on Thursday? A Yes.

Q And that's the day that your case came up?

MR. DONIHUE: Objected to.

Q Do you know that your case came up, on that day?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

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MR. DONIHEE: Exception.

A Yes.

Q Maryland is a pretty large State. You were in a little town known as Hagerstown; were you not? A Yes; Hagerstown .

Q And you were there with Hoffman?

MR. DONIHEE: Objected to as incompetent, immaterial and irrelevant.

THE COURT: I do not know what this question will lead up to.

MR. PALMIERI: I propose to connect it.

MR. DONIHEE: Objected to as before, and because it has been already answered by the witness.

THE COURT: Objection overruled.

MR. DONIHEE: ~~EX~~ception.

A No, sir.

Q Why did you hesitate? A Well, I was waiting until Mr. Donihee got done.

Q And Alec Ahearn brought you back? A No, sir.

RE-DIRECT EXAMINATION BY MR. DONIHEE:

Q One minute, Bollenbacher--

BY THE TENTH JUROR:

Q When you had that letter in your possession, I want to ask, as you were taken down to the presence of the officers,

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why did you put that inside of your shirt? A Well, I was told to deliver it personal to Mr. ---

Q Well, you must have known then that there was something in that letter that shouldn't be seen by the officers of the Government?

MR. DONIHUE: With all due respect to the Court, I object to the question.

MR. PALMIERI: I have no objection.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A No, sir. He told me to give it to him personal, and I didn't know what it contained. I didn't know if it was money or what was in it. I had to give it to Mr. Murtha.

THE JUROR: I would like to have my question repeated.

(It is repeated by the stenographer).

MR. DONIHUE And I have a further objection to the question, on the ground that it assumes a condition which is not warranted by the evidence.

MR. PALMIERI: May I put it in legal form for the juror, your Honor?

MR. DONIHUE: And upon the further ground that the question coming from the juror at this time is an absolutely improper one.

MR. PALMIERI: Do you mean to say that a juror cannot

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ask question?

MR. DONIHUE: I do mean to say that he can ask questions.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Now, you understand what the juror wants to know? Now, you didn't know whether that letter contained anything which was harmful? You said that to me, before? A I didn't know what was in it.

Q Or that would injure the liberty of any person?

A No, sir.

Q And you didn't know the contents of the letter at all? A No, sir.

Q And therefore, you didn't think-- I wish to withdraw that. And, therefore, when you placed it in your bosom, you placed it there, without knowing what the contents of the letter were? A Yes.

Q Simply because Conboy told you to deliver that letter to Joe Murtha, you hid that letter from the officers of the law? A Yes.

Q Without knowing whether that letter contained any bad or good things? A Yes, sir.

BY MR. DONIHUE:

Q One minute. Now, you were asked by Judge Palmieri as

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to whether you were brought from Hagerstown by anybody. I  
now ask you, did anybody bring you here? A No, sir.

Q Did you come of your own volition? A yes, sir.

J A M E S N. C O N B O Y, a witness called on behalf of  
the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONIHUE:

Q What is your business, Mr. Conboy? A County  
detective.

Q How long have you been in business? A About 26  
years.

Q How many? A 26 years.

Q And you have a place of business where? A 144 St.  
Nicholas Avenue.

Q In the City of New York? A Yes, sir.

Q And you reside where? A 148 West 117th Street.

Q Now, are you acquainted with the defendant? A I am.

Q You recall, on or about the 12th day of October,  
1907, having a conversation with the defendant? A I do.

Q Where was that conversation? A On 116th Street and  
Eighth Avenue.

Q About what time? A Around eight o'clock, some time.

Q In the evening? A yes, sir; in the evening.

Q Of that day? A Yes, sir.

Q Now, just state to the jury what you said to the  
defendant, and what the defendant did? A Why, I came out of

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Fay's restaurant, with my wife, and left her there on the street, and walked to the corner, and met the defendant, and he came along, and I said, "Hello, Boll, will you go on a message for me?" And he said, "Yes."

And I says, "Come on in, and I will treat you," or something to that effect, and he said, "No, I am not drinking."

So I says, "Wait a minute, and I will write a note for you," and I went into Fay's-- into the cafe'-- and on a little desk there I wrote a note to a party named Murtha, Joe Murtha, of 993 Columbus Avenue. I went out and gave him the note, and he went down on one of the cars that went west.

Q Now, at the time you gave him the note, did you say anything to the defendant? A I said, "Give that to Joe Murtha. Go to his house, and give it to him."

Q And what did you then see the defendant do, if anything? A He walked out, and got on the car, on the corner.

BY THE COURT:

Q Did you see him board the car? A Yes, sir; yes, your Honor.

BY MR. DONIHUE:

Q In which direction was the car going? A West.

Q Through 116th Street? A Yes, sir.

Q Now, are you familiar with the course of the tracks, following the westward direction, as they pass through 116th Street? A Yes, sir.

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Q How do they run? A West to Manhattan Avenue, and down Manhattan Avenue to 109th Street, and through 109th Street to Columbus Avenue, and then down Columbus Avenue.

Q And it was on the car going westward that you saw the defendant? A Yes, sir.

Q Now, did you, thereafter, receive from any person the note which you wrote and delivered to the defendant, on the evening in question? A On the same evening?

Q No; did you at any time after? A Yes.

Q When did you again see that note? A I think it was the next day, Sunday. That was on a Saturday night-- it was a couple of days-- I think it was on a Sunday, I believe, I got the note back.

Q And was the note, when returned to you, sealed or unsealed? A Sealed.

Q And when you delivered it to the defendant, was it sealed? A Sealed.

Q And was the endorsement upon the note in your own handwriting? A Yes, sir.

CROSS-EXAMINATION BY MR. PALMIERI:

Q Where is that letter? A I destroyed it.

Q You knew that this defendant had been arrested? A Yes, sir.

Q You knew-- from whom did you get the letter? A From Bollenbacher.

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Q From Bollenbacher? A Yes, sir.

Q Why didn't you go to the police, and show them the letter, and say that this boy was there on a peaceful and innocent purpose?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent, and having no bearing on the matter of this indictment, and not binding upon the defendant at the bar, as to what Conboy did or neglected to do.

THE COURT: It is not offered for the purpose of binding the defendant, I assume?

MR. PALMIERI: It is not.

THE COURT: It is only as to the credibility of the witness?

\*MR. PALMIERI: Yes, sir; as to his motive in not doing it.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

Q You didn't do it? A No, sir.

Q Although you knew that the defendant had been arrested, with this very letter in his possession? A I didn't know that he was arrested because he had the letter.

Q Of course not. But did the defendant explain to you that he didn't show it to the officers? A He didn't explain anything to me.

Q Didn't you know, sir? A No; I didn't know. He says,

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"Here is your letter"--

Q Now, wait. Answer my questions. You didn't know where he was arrested? A No, sir.

Q Didn't you think it important for him to inquire?

A Not very.

Q You were not interested? A No.

Q What's that? A How do you mean? In what way?

Q Well, you are interested in political work in the 19th Assembly District; are you not? A No, sir.

Q At the last trial, the following question was propounded, and did you make the following answer: "Q In what Assembly District do you live in? A The 31st District." Did you make that answer? A Yes.

Q "Q And you hang around where? A In the 19th Assembly District, or in the 31st, or both of them." Did you make that answer? A Yes.

Q The following question was propounded to you: "Q Do you do any political work there? A I do; all over in the 19th and the 31st District." Did you swear to that? A I don't recall that. Political work? I don't do any political work.

Q Well, I asked you if you made that answer to that question? A If it's there, I did.

Q "Q Your services are pretty well required around there, during election time? A I know; because I am well known in

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Harlem." Did you make that answer? A Yes, sir.

Q "Q When you do political work in the two districts, as I understand you to say, you mean that you are a good fellow, you will treat everybody, you give a drink to everybody, and you go around with the boys? A That's right. And I hire<sup>an</sup> automobile and go around and see that both districts come around all right, on election day." Did you say that? A Yes.

Q So that you were interested in politics in the 19th Assembly District, on the 12th of October, 1907; were you not? A No; not on the 12th day of October, 1907.

Q You had your automobile then? A Not on the 12th of October.

Q You were not interested on registration days, at all? A No.

Q You were only interested on election day? A On election day; that's all.

Q And, of course, you didn't care anything about the registration? A Not a bit.

MR. DONIHUE: I object to the question, because it is assuming a condition of mind on the part of the witness.

THE COURT: Objection overruled.

MR. DONIHUE: ~~Ex~~ception.

Q Answer my question. A What was the question.

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(The question is repeated by the stenographer).

A No.

Q Don't you think that is an important factor to look after, to bring about an honest and fair election?

MR. DONIHUE: Objected to as irrelevant, immaterial and incompetent.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Well, I would, if I was running for an office.

Q But you were interested in politics, you said, in the 19th? A Not as a politician.

Q You were not running for office on the 12th day of October, 1907? A No, sir.

Q Well, then, you were interested for other men, then?

A Yes, sir; friends of mine.

Q Do you know James Ahearn, the leader of the 19th?

A Yes, sir.

Q James Ahearn is the man who bailed Bollenbacher; is he not? A I couldn't say.

Q Did you ask James Ahearn to bail him? A No, sir.

Q Do you know who did? A No, sir.

Q How many times did you see James Ahearn talking to Bollenbacher? A I don't believe I ever saw him talk to him.

Q But you saw James Ahearn many times? A Many times.

Q At the Club? A Yes.

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Q That's at 116th Street? A Between 116th and 117th Street.

Q That's where you met Bollenbacher, that night? A No, sir.

Q Where did you meet him? A At the corner of 116th Street and Eighth Avenue.

Q How far is that from the Club; how many feet? A Well, I should say about two hundred feet.

Q About two hundred feet away from that club you met Bollenbacher? A Yes.

Q And you know Joe Healey; don't you? A Yes.

Q And he was arrested with Bollenbacher, that night; wasn't he?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

Q Joe Healey worked for you; didn't he? A Yes.

Q You don't know Bollenbacher's name; do you? A No, sir.

Q You only knew him by the name of "Boll"? A Yes.

Q You didn't know him by the name of Bollenbacher?

A No, sir.

Q How long did you know him? A Oh, I couldn't say how long.

Q A good many years? A Two or three years; maybe a

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little longer; seeing him around.

Q Seeing him around your place? A No; upon the avenue.  
I would meet him on the avenue.

Q You never saw him around your place? A He never was  
in my place, to my knowledge.

Q You always saw him on the avenue and on the street?  
A Yes.

Q In the day time or night? A In the evening.

Q Evening? A Yes, sir.

Q You know Alec Ahearn? A Yes.

Q And you have known him for a good many years? A Yes.

Q When did you see him last? A To-day.

Q Where is he? A I don't know where is now. I met  
him going through Centre Street.

Q Well, didn't you speak to him about this case? A No,  
sir; I said--

Q What did you say to him? A I said, "Hello Alec", and  
he said, "Hello."

Q Why, Centre Street is right down here, where this Court  
building is. A Yes.

Q And how far from this Court did you see him? A Two  
blocks from here, I think.

Q And when did you see him? At what time? A Just when  
I had my lunch.

Q Did you tell him that you were a witness here? A He

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knew it.

Q How did he know it? A Because he knew it was down here.

Q Well, how did you know that he knew it? A Oh, I took it for granted.

Q Well, then, do you swear now to what you take for granted, or to your own knowledge? A Well, he said, "How do you think things are going?" And I said, "I don't know."

Q Oh, he wanted to know how things were going about this case? A Yes; that's right.

Q Alec Ahearn wanted to know that? A Yes, sir.

Q And you didn't know that; did you? A No, sir.

Q And do you know where he is waiting for the verdict of this jury now?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent, and not having any bearing on the question here.

THE COURT: Objection sustained.

Q Now, you have known Healey for how many years.

MR. DONIHUE: Objected to, on the ground that the witness has already answered the question.

THE COURT: Overruled. The witness says he was employed by him. He did not state exactly how long he knew him.

MR. DONIHUE: Exception.

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A Oh, I've known him for a good many years, a boy growing up.

BY THE COURT:

Q Did you know him under the name of Healey? A Yes, sir.

BY MR. PALMIERI:

Q Don't you know that Joe Healey used to go under the name of Joseph Ahearn? A I never knew it, sir.

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding on the defendant in this case.

THE COURT: Overruled.

MR. DONIHUE: Exception.

Q Well, you have known Joe Healey, as you claim--

A Yes, sir.

Q From childhood? A Yes, sir.

Q And you have known Alec Healey, whom you met down the street, to-day, for seven or eight years? A Yes; and perhaps longer.

Q And how long have you known "Boll", as you call him?

A Three or four years.

Q And did you ever meet together, you and Joseph Healey and Alec Ahearn and your friend "Boll"? A No, sir.

Q Never? A No, sir; we never met together.

Q Now, many times when you used this automobile, you

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took the boys around in this automobile; is that correct?

A What boys?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding -on the defendant.

Q Boys who helped you in the political work?

THE COURT: Strike out the answer of the witness to the previous question, and the jury will disregard it.

MR. PALMIERI: The question is withdrawn, your Honor.

Q Well, you have stated to this jury that you have known Joseph Ahearn, Joe Healey, Alec Ahearn, "Boll", the defendant. Now, you are an intimate friend of the assistant captain of the 7th Election District of the 19th, Joe Murtha; are you not? A Yes, sir.

Q And you have been for how many years? A Oh, a number of years.

Q And it was that very night that you gave the letter to "Boll" to give to Joe Murtha? A Yes, sir.

Q Now, of course, you don't know what happened in that polling place? A No, sir.

BY THE COURT:

Q Mr Conboy, do you know a man named Nahrwold? A Nahrwold?

Q Yes. A No, sir.

THE COURT: Call him in, officer.

THE WITNESS: Not by name.

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Q Do you know this gentleman (indicating Nahrwold)?

A No, sir.

Q Did you ever see him before? A I saw him out in the corridor.

Q Well, prior to the first trial of this defendant?

A No, sir.

Q Did you see this gentleman on Eighth avenue, on the night of October 12th, 1907? A No, sir; not to my knowledge; I don't remember seeing him.

Q Did you know that McGuire was an election district captain in the 7th Election District of the 19th Assembly District? A I didn't, no, sir.

Q Did you know that he was a member of the same club with you? A I didn't know, sir. You said McGuire. I know Murtha very well.

Q I beg pardon. I meant Murtha? A Oh, that's different, sir.

Q You knew that he was, on that night, an assistant district captain, on the night of the 12th of October; did you not? A Yes; I thought he was only an assistant captain.

Q Well, you knew that, as an assistant captain of the election district, that his duties required his presence at the polling place during the time of registration? A Well, I didn't think of that, sir.

Q Well, you wanted to have the message conveyed to him,

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that you sent; did you not? A Well, it was immaterial whether he went that night, or the next day, as long as Joe got it.

Q Did you tell Bollenbacher the contents of the message?

A No, sir, I did not.

Q Did you tell him that it was a very important document? A No; because it wasn't important.

BY MR. PALMIERI:

Q Because what? A Because it wasn't important.

BY THE COURT:

Q Where is Murtha now? A I believe he's outside.

BY MR. PALMIERI:

Q So that it was immaterial whether "Boll", the defendant, would have delivered the letter that night, or not?

MR. DONIHUE: Objected to.

THE COURT: Objection sustained.

REDIRECT-EXAMINATION BY MR. DONIHUE:

Q Have you ever had any business relations with Murtha's family? A I know his folks and my folks are sort of related in some way.

J O S E P H     H.     M U R T H A,     a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. DONIHUE:

Q Mr Murtha, where do you live? A 993 Columbus

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avenue.

Q Do you recall the day of the 12th of October, 1907?

A Yes, sir.

Q Were you in the neighborhood of the polling place of the 7th Election District of the 19th Assembly District, on that day? A Well, I was, a couple of times, in the early part of the day.

Q Do you know whether the defendant Bollenbacher called at your house, on the evening of that day, or not? A There was somebody called at my house.

BY MR. PALMIERI:

Q One moment. Do you know that of your own personal knowledge? A No; only from what I heard afterwards.

MR. PALMIERI: Then I move to strike that out, as hearsay.

THE COURT: Motion granted.

MR. DONIHUE: No objection.

Q Well, were you at home between half past eight and nine on the evening of the 12th? A No, sir, I wasn't.

Q Where were you at that time? A I was working.

Q You were working, that day? A Yes, sir.

Q And were you in the polling place of the 7th Election District of the 19th Assembly District between half past eight and nine o'clock? A No, sir.

Q And are you the captain of that district? A I was

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at the time. I am captain now.

Q You were, on the 12th of October, the election district captain? A No; I was assistant captain.

Q Assistant captain? A Yes, sir.

Q Now, you recall the last trial here? A Yes, sir.

Q Since the last trial, have you had a conversation with me concerning a person named Reilly? A Yes, sir.

Q In consequence of that conversation, what did you?

A I have made inquiries around for him, as you told me; but the only thing I overheard was certain men, Sunday morning, in the barber shop, say that he went away, went away on some ship. There was two or three through the neighborhood going away.

Q Well, did you make any inquiries in the neighborhood?

A Yes, sir, I asked.

Q Now, what did you learn concerning Reilly?

MR. PALMIERI: One moment. Unless he fixes the person or the name.

Q Well, did you make inquiries at the southwest corner of Columbus avenue and 108th street concerning Reilly?

MR. PALMIERI: One moment. I object to that as too general, a man going at the corner of a certain street, and making inquiries.

THE COURT: Objection sustained.

BY MR. DONIHUE:

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Q Is there a building on the southeast corner of Columbus avenue and 108th street, if you know? A Southeast corner?

Q Yes. Southwest? A Southwest corner.

Q What building is it? A Its a brewery.

Q Well, did you make any inquiries about Reilly there?

A Yes, sir; I have asked several people around there.

Q Now, why did you make inquiries around there?

MR. PALMIERI: Objected to.

A Because he's always around there.

MR. PALMIERI: Objected to. Now, didn't you hear my objection? Just wait. I object to that, as calling for a conclusion.

THE COURT: Objection sustained.

Q Well, did you make inquiries there concerning Reilly?

A Yes, sir.

Q And have you been able to find out anything concerning Reilly's whereabouts? A No, sir.

Q You are acquainted with Mr Conboy? A Yes, sir.

Q And you have known him a great many years? A I know him--well, five years, to my knowledge. I might have known him more.

Q And you know members of his family? A Yes, sir.

Q And he knows members of your family? A Yes, sir.

CROSS-EXAMINATION BY MR. PALMIERI:

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Q The captain of the 7th Election District of the 19th Assembly District, that night, whom you assisted, was a man named Quinn; on that night? A Yes.

Q On the night of October 12th, 1907? A Yes, sir.

Q Where is Quinn? A I couldn't tell you.

Q What? A I couldn't tell you.

Q How long have you known Quinn? A I've known him for about two years.

Q What's his first name? A Joseph Quinn.

Q Where does he live? A He did live at West 108th--109th street.

Q That's where he was living on the 12th day of October, last? A Yes, sir.

Q And since then he has vacated?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding on the defendant.

MR. PALMIERI: I shall not press the question.

THE COURT: Objection sustained.

Q Have you seen him since?

MR. DONIHUE: Objected to, for the same reasons.

THE COURT: Sustained.

Q Well, you said you haven't seen him since that night; didn't you?

MR. DONIHUE: Objected to, for the same reasons, if the Court please.

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THE COURT: It is already answered. Objection sustained.

MR. DONIHUE: And I move that that answer be stricken out.

MR. PALMIERI: Why, he wasn't permitted to answer the question at all.

THE COURT: He answered once before, and that is sufficient. Objection sustained.

Q Now, do you know Alec Ahearn?

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A I know Alec Ahearn; yes.

Q Can't you speak a little louder, so that the last gentleman can hear you? A Yes. I can't speak any louder, because I've got a little cold.

Q Well, you didn't have a little cold, on the 12th of October last; did you?

MR. DONIHUE: Objected to, as tending to prejudice the witness with the jury.

THE COURT: Objection sustained.

Q Now you say you were working on the 12th of October last? A Yes, sir.

Q Where? A 419 and 421 Lafayette street.

Q Then you were not an assistant captain there? A Why,

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certainly I was.

Q And did you leave your place of employment, and go to that polling place, two or three times, that day? A Yes, sir; I didn't go to work until the night. I don't go to work until night.

Q Then you were an assistant captain only during the day? A I was assistant captain all the time.

Q And did you see Quinn, that day? A No, sir, I didn't.

Q Or on that night? A No, sir.

MR. DONIHUE: I object to this, as not binding on the defendant, and immaterial, irrelevant and incompetent.

THE COURT: I sustain the objection. What is the object of this?

MR. PALMIERI: Oh, simply to test the witness' memory; that's all.

THE COURT: Objection sustained.

Q Well, now, you have spoken to Alec Ahearn about this case; haven't you?

MR. DONIHUE: Objected to.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A Yes; I spoke to him.

Q I couldn't hear you; I don't believe the last juror could hear you? A I spoke to him.

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Q You spoke to him about this case? A He spoke to me about the case.

Q And did you see him down in Centre street, to-day?

A Yes, sir.

Q And you were there with Conboy; weren't you? A Yes.

Q And you and Conboy saw Alec Ahearn, on Centre street?

A Yes, sir.

Q Now, will you tell the jury what you said about this case? A I didn't say anything about the case.

Q What did Alec Ahearn say? A He didn't say anything to me, sir.

Q And what did Alec Ahearn say to Conboy? A I didn't hear anything said about this case to me, and Conboy and him were talking together aside, and I don't know what they said. I didn't hear it.

Q And that was about two blocks away from this court room; wasn't it? A Yes, sir.

Q Didn't you hear Alec Ahearn say to Conboy, "How are things going in this case?" A I didn't hear him.

Q Well, didn't you ask him to come up here, and be a witness for the defendant?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent, and not binding on the defendant.

THE COURT: Objection sustained.

Q Now, you were interested in getting Reilly here as a

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witness for Bollenbacher; weren't you?

MR. DONIHEE: At my request.

A At the counsel's request.

MR. PALMIERI: Now, I didn't ask the counsel a question. I object to his interrupting.

THE COURT: Yes, do not interrupt.

MR. DONIHEE: Well, I don't intend to interrupt.

THE COURT: But in your zeal, Mr Donihee, the statement was made. I do not think it was made intentionally; but, by making the statement, the witness answered by your request. The witness had better answer.

BY MR. PALMIERI:

Q Now, what is Reilly's first name? A I couldn't tell you his first name. I only knew him by the name of Reilly.

Q Well, just describe him to me? A Well, he is a little taller than I am, dark, and I don't think he is as heavy as I am.

Q Has he a mustache? A No, sir.

Q How many pounds does he weigh? A I don't know.

Q How old is he? A I couldn't tell you.

Q Where does he live? A I don't know where he lives.

Q Why, Reilly did work for you in the polling place, that day? A He done nothing of the sort.

Q What was he doing there? A I don't know.

Q Don't you know Reilly? A I know of Reilly, yes.

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BY THE COURT:

Q Did you see him there, that day? A No, sir.

Q Up to what time were you at this polling place?

A Well, I was around there before 12 o'clock, and I left to go to work, about half past 12.

BY MR. PALMITERI:

Q You say you knew of Reilly. When did you first learn of Reilly? A Well, from knowing him from hanging around the brewery over there.

Q From hanging around the brewery over there? A Yes, sir.

Q Do you hang around there, too? A No, sir, I don't.

Q Well, how do you know that he hung around the brewery?

A Because I've seen him there.

Q You saw him with whom? A With three or four others around there.

Q What are their names? A I couldn't tell you their names.

Q Don't you know the other men who are around that brewery? A No, sir; I don't pay any attention to them.

Q Well, but you paid attention to Reilly? A Of course I did; I knew him.

Q You knew him very well? A No, sir; not very well; just to speak to him. He was pointed out to me, one day.

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Q Who pointed him out to you? A A bartender.

Q Where? A Up at 109th street, I think. They were fooling with him, and I heard his name, Reilly.

Q Now, was Reilly looking at the registration in that polling place, that night? A I can't say.

Q You can't say? A No, sir; I wasn't there. I was working.

Q Well, you say a bartender pointed Reilly out to you before the 12th of October? A Yes; long before that.

Q And in what connection did he point Reilly out to you? A They were fooling in there, and he asked me did I know the party, and I said no, and he said, "That's Reilly." And then they got into a little argument, and he called him by name, and that's how I came to know his name.

Q Oh, Reilly got into a little argument? A Yes, sir.

Q With whom? A I don't know; with one of the customers there.

Q Now give me the names of the persons of whom you inquired for Reilly? A Oh, I inquired in two or three places.

Q Where, where? A I inquired in Bauer's saloon; and then I went over to the brewery.

Q You went from a saloon where you had looked for Reilly to a brewery? A Yes, sir.

Q And where else did you go to look for Reilly? A I didn't look anywhere else for him. I looked around every

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night for him.

Q When was that? A Oh, two or three weeks ago.

Q Now, would you mind telling me why you didn't do that before the last trial?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

MR. PALMIERI: I shall not press it, if counsel objects. I didn't think that you would object to that question.

THE COURT: Objection sustained.

Q Now, I'm going to ask you this. How did you know that the Reilly who had some kind of a talk, that night, and was pointed out to you, that the Reilly that hung around the brewery, and that the Reilly for whom you looked in that saloon, was the same Reilly that was in that polling place, that night? How did you know that? A I didn't say that I did. I was asked to look for Reilly, and I looked for him.

Q Well, you know how many Reillys there are in this country, don't you? A Yes, I do.

Q And then you didn't know which Reilly you were looking for at all; did you? A Well, the Reilly that hung around there; that's all I knew.

Q Now you say you have known Alec Ahearn for years?

A Yes, sir.

Q Your friend? A Yes.

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Q And you have known Bollenbacher for years? A Well, I know him a couple of years.

Q Well, you know him well; don't you? A Yes.

Q He is your friend? A I suppose so.

Q What? A I suppose so.

Q And so is Alec Ahearn your friend? A Yes.

Q And so is Joe Healey your friend? A No, sir.

Q And Joseph Healey is Joseph Ahearn; isn't he?

A I don't know. I don't know Joseph Healey.

Q Of course not. But you know Joseph Ahearn; don't you? A No, sir, I don't.

Q But you know Jimmy Ahearn? A Yes; but I don't know any Joseph Ahearn.

Q Now, did you look for Alec Ahearn to be here? A No, sir, I didn't.

REDIRECT-EXAMINATION BY MR. DONTHEE:

Q One minute, Murtha. It was I that asked you concerning Reilly; wasn't it? A Yes.

Q And in what way did I ask you concerning Reilly?

A You asked me to look for the Reilly that was around the corner, and he is always hanging around. I asked you, "The one that's always hanging around the brewery?" And you said, "Yes."

MR. PALMIST: One moment. I object to that. All

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right. I withdraw the objection. I want to be fair.

Q And, in consequence of that, you went to the brewery to look for Reilly? A Yes, sir.

M I C H A E L B A L L, being recalled by counsel for the defendant, testified as follows:

DIRECT-EXAMINATION BY MR. DONIHUE:

Q Have you produced here, under subpoena, a certain registration record? A Yes, sir.

Q Is that it which you have in your hand? A Yes.

Q Now just tell the Court and jury what that is?

MR. PALMIERI: I object to that. The book speaks for itself.

BY THE COURT:

Q Do you produce the bok from the public record? A Yes, sir; from the files of the Board of Elections. This was a record subpoenaed, yesterday, for this morning.

MR. PALMIERI: Then there is no objection whatever.

THE WITNESS: This is a register of electors of the 7th Election District of the 19th Assembly District, for the year 1906.

BY MR. DONIHUE:

Q That is, for the year previous to the last general election? A Yes, sir.

MR. PALMIERI: Then I object to that. We are not

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charging the defendant with having attempted to falsely register in 1906.

THE COURT: What is the purpose of the book?

MR. DONTREE: For the purpose of showing that the registry for 1906 of this Election District doesn't contain the name of McMahon. For the further purpose of showing the challenge lists are only issued for use on registration days, in such cases as removals have occurred from the preceding election down to the election for which they are then registering.

THE COURT: I will allow you to prove that fact; but I do not see how you can prove it by producing a book of the year before. You may call the person who prepares the challenge lists, and question him as to the fact that you now state. But how this book will show that a list containing the name of McMahon was not made up, I do not see; or how that is material. You have stated your purpose. I will exclude the book from evidence.

MR. DONTREE: Exception.

THE COURT: I will, however, allow you to prove, if you can, that the name of McMahon was not on the challenge list. Do you understand me?

MR. DONTREE: Yes, sir. And will your Honor not permit to prove that the name of McMahon was not registered in this district in 1906?

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THE COURT: I do not see the relevancy of it, counsel. Assuming for the sake of argument, that it was not, would it necessarily disprove the presence of the name of McMahon on the challenge list?

MR. DONIHUE: Well, I think it would go a long way toward unsettling that statement.

THE COURT: As I understand, the challenge lists are prepared by the Superintendent of Elections.

BY THE COURT:

Q And not by your office, Mr Ball? A Yes, sir.

Q They are prepared by the Superintendent of Elections?

A Yes, sir.

THE COURT: And they are forwarded to the Police Department, who, in turn, cause the lists to be distributed to the various precincts; and the commanders of the various precincts distribute the lists to the officers who attend the polling places. Under the statute, the Superintendent of Elections is vested with authority to call upon the police to aid his office.

MR. DONIHUE: Yes, sir; under the Metropolitan Elections Bill.

THE COURT: Now, I will allow you to issue a subpoena to Superintendent Leary, to find out whether any challenge lists were issued for that particular election district, on that election day, or registration day, and,

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if they were not, you will accomplish your object. But how this book will show it, I do not know.

MR. DONIHUE: Well, it may be that Judge Palmieri, having substantial control of those records, will produce the challenge lists of the 7th Election District, issued by the Superintendent of Elections, on the 12th of October.

MR. PALMIERI: Your Honor, the Attorney-General has no such power; nor has he any such record in his possession. As you will know, those challenge lists are destroyed, after election.

MR. DONIHUE: I know nothing of the kind, sir.

MR. PALMIERI: And it is only a play to the jury.

MR. DONIHUE: And then, with the understanding that your Honor will allow me to obtain the evidence from the State Superintendent, if he has it in his possession--

THE COURT: Yes. Telephone at once, Mr Garrett, to your office, and, if there is any such list, it should be produced here at once; and, if not, some one in authority should appear here, and tell what became of such list, if there ever was one.

G E O R G E L. K O E H L E R, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. DONIHUE:

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Q Mr Koehler, what is your business? A Photo-engraving.

Q Are you acquainted with the defendant? A Yes, sir.

Q How long have you known him? A About seven years.

Q Has he ever been in your employ? A He served his apprenticeship in my employ.

Q How many years was that? A Between four and five, the actual term.

Q And do you know other people who know him? A Yes.

Q What is his general reputation for truth and honesty and integrity among the people who know him, and whom you know? A Very good.

Q After attaining his trade or craft, was he still in your employ? A He left my employ to accept a better position.

Q With whom; do you know? A With the Barnes, Crosby Company, under Mr Dunn. I think he was the manager there that employed him.

Cross-examination: None.

THE COURT: Have you any other witnesses as to facts?

MR. DONIHUE: I don't know what the rebuttal of the People will be. I cannot anticipate now just how many witnesses it will be necessary for me to call.

MR. PALMIERI: The rebuttal will simply be a contradiction of some of the facts stated by the defendant.

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MR. DONIHUE: Well, until I hear what the contradictions are, I can't say.

THE COURT: How many witnesses for character have you?

MR. DONIHUE: I have three, if the Court please.

MR. PALMIERI: Three, besides this one?

MR. DONIHUE: I will see. I will call Mrs Bollenbacher.

E M M A B O L L E N B A C H E R, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. DONIHUE:

Q Mrs Bollenbacher, I am going to ask you to talk loud enough to admit of this gentleman hearing everything you say?

A All right, sir.

Q The defendant at the bar is your son? A Yes, sir.

Q Now what is his business? A He is a lithographer, engraver.

Q And are you a widow? A Yes, sir.

Q Who maintains your house? A My son.

Q And for how long has he maintained it? A Ever since his father died; that is, six years ago.

Q And the family consists of what? A Of my daughter and my son and myself, and an older son, but he is married.

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Q The older son is married? A Yes, sir.

Q How long has he been married? A He is married two years.

Q But the defendant at the bar has always maintained you and your home? A Ever since his father died.

MR. PALMIERI: Pardon me, your Honor. I don't like to be captious, but I don't see that this is material to the issues, whether the defendant has maintained his mother is not a material issue here.

THE COURT: Do you object?

MR. PALMIERI: I do object, sir, but it is too late now.

THE COURT: Sustained.

MR. DONIHUE: Exception.

Q What is your boy's reputation for honesty and integrity? A He has been a very good son to me, very good.

Q Well, what is his reputation in the neighborhood in which you live, among the people that you know? A Very good; even in the house where I lived for four years, he has a good reputation.

Q What are his habits? Good or bad? A He has got good habits.

Q What are his habits as to thrift? Is he thrifty, or idle? A He's not idle, only for the last couple of months.

Q Do you know what wages he earns?

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MR. PALMIERI: Objected to, as immaterial, irrelevant and incompetent. And it is done for effect on the jury, and I object to it.

THE COURT: Sustained.

MR. DONIHUE: Exception.

CROSS-EXAMINATION BY MR. PALMIERI:

Q Your boy was out of work for two months during election time; wasn't he, Mrs Bollenbacher? A Off and on; he wasn't working steady, at that time.

MR. DONIHUE: I have called Mr Dunn, but he doesn't respond. I don't know why.

MR. PALMIERI: Will his testimony be the same as at the last trial?

MR. DONIHUE: Yes.

MR. PALMIERI: Now, Dunn isn't here, I will let you tell the jury what you want to prove by him. I want to be fair.

MR. DONIHUE: I want to prove by Mr Dunn that he was in his employ, and that his reputation for honesty and integrity was good, and also the amount that he earned.

MR. PALMIERI: I will object to that.

MR. DONIHUE: I submit that the attitude of the Attorney-General has raised that to an important question.

THE COURT: The amount of his earnings is immaterial.

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MR. DONIHUE: The Attorney-General didn't think so, when he sought to show by inference to this jury that this boy was idle, and out of work, and depended upon other people.

MR. PALMIERI: There was no such inference sought to be conveyed. I'm willing concede that if Mr Dunn were here--

THE COURT: That, if he were here, he would testify that the defendant heretofore bore a good reputation for honesty and truthfulness?

MR. PALMIERI: Yes, sir.

THE COURT: And earned how much a week?

MR. PALMIERI: Well, that I will object to, your Honor. I must press my objection to that.

MR. DONIHUE: Then the defence rests, with the reservation, if your Honor please, that I have mentioned as to the challenge list.

THE COURT: Well, now, how about that concession as to the good character witness?

MR. DONIHUE: I assumed that it had been made and accepted.

MR. PALMIERI: Only as to Mr Dunn. If you have any other witness, bring him.

MR. DONIHUE: I have three witnesses here to character. Two of them have testified, and Mr Dunn was my

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third.

MR. PALMIERI: And I will concede that he would testify to that, if produced, but I will not concede anything as to the wages of the defendant.

MR. DONIHUE: Very well, then, reserving the right to meet any rebuttal testimony, your Honor, I rest.

THE COURT: Yes; you may have that right.

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## REBUTTAL.

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

DIRECT-EXAMINATION BY MR. PALMIERI:

Q Mr Bartrow, were you the Chairman of the Board of Inspectors of the 7th Election District of the 19th Assembly District, on the 12th day of October, last? A I was.

Q And do you remember, that evening, any person coming in there, and wishing to register, and you asking him a question as to whether he wished to register? A Yes.

Q About what time of the night was that? A Well, about--between half past eight and nine.

Q And how were you facing? Were you facing the man who came in? A My back was turned toward him.

Q And did you look at him when he came in? A I did not.

Q Did you have--did you ask him a question as to whether he wished to register? A Just asked his name.

Q What did you hear him say?

MR. DONIHUE: Now, I object to this line of testimony, as being improper on rebuttal.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

THE COURT: The Court has the right, under the Code, in the exercise of its judgment, to admit evidence at

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any time before the case is closed; and, in the interest of justice, the Court exercises this right, at this time, and allows this evidence.

MR. DONIHUE: I except to your Honor's ruling, and to the reasons stated by your Honor for admitting this testimony.

BY MR. BALMIRI:

Q What did you ask him? A His name.

Q And what did he say? A McMahon.

Q What did you do when he said his name was McMahon?

A Put it down in the book.

Q Is this the book (indicating) in which you placed the name McMahon?

A Yes.

Q I notice that there is a line on that name, McMahon?

A (No answer.)

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Q I notice that there is a line running across the name McMahon. Can you explain to the jury how that occurred?

MR. DONIHUE: Objected to. The record speaks for itself.

MR. PALMIERI: Well, a line on the--

MR. DONIHUE: One minute. The record speaks for itself.

BY THE COURT:

Q Is this book in your handwriting? A Yes, sir.

THE COURT: And this book is in evidence?

MR. PALMIERI: Yes, your Honor.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

BY MR. PALMIERI:

Q Now, just explain to the jury how this line came to be drawn across the name of McMahon? A Well, the man who gave the name of McMahon refused to register.

Q Well, what did he say-- pardon me. When he said his name was McMahon, did you see any Deputy Superintendent of Elections say anything to him about a challenge? A I believe there was something about a challenge.

Q And, as soon as that was said, what did McMahon do?

A Well, he refused to register.

Q And then what did you do? A I crossed it off.

Q And then the man who gave the name of McMahon was

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arrested? A Yes, sir.

Q Is that correct? A I believe so.

Q Well, it was in the polling place, wasn't it? A Well, that is, to the best of my knowledge. If the deputies had authority to arrest, then he was placed under arrest, because they took him out.

Q Well, I don't want to be technical. But what I want to know is, if the man who gave the name of McMahon to your Board was the man who was taken out with Joe Healey. A Well, I couldn't say positively whether it was the man or not, because I didn't look at him. I didn't look up, when he gave the name, and didn't see his face.

Q You didn't look up when he gave the name, and didn't see his face? A No, sir; I couldn't say that.

Q You only know that a man came in, and gave the name of McMahon, and was challenged, and refused to register? A Yes, sir.

Q And you couldn't say whether it was this defendant or not? A No, sir.

Q Because you didn't look up? A Because I didn't look up; no, sir.

Q Now, then, you never look up? A Yes, I do; but there was something else that occupied my attention more.

Q What was that? The arrest of Joseph Healey? A Yes, sir.

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MR. DONIHUE: Objected to. And I move to strike out the answer.

THE COURT: Motion granted. Objection sustained.

CROSS EXAMINATION BY MR. DONIHUE:

Q Well, will you swear that this defendant is the man who said his name was McMahon, on that night? A No,,sir, I will not.

RE DIRECT EXAMINATION BY MR. PALMIERI:

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

BY MR. DONIHUE:

Q Now, I show you the registry list of the seventh election district of the nineteenth Assembly district, and direct your attention to the name Bothe? A Yes, sir.

Q Is there a line drawn through that? A Yes.

Q Who drew that line through there?

MR. PALMIERI: Objected to. That is not the subject of inquiry here. We don't claim that he gave the name of Bothe, but that he gave the name of McMahon.

THE COURT: Objection overruled.

A I drew it.

Q Why did you draw the line through that?

MR. PALMIERI: Objected to.

THE COURT: Objection overruled.

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A Because the man didn't live in the election district.

Q Now, turn to D. Is there any erasure there? A One that I can see.

Q Yes. And who made that erasure? A I made it myself.

Q And what was the erasure? A Dipper or Dippen, I believe; some such name as that.

Q And is there a line drawn through that? A Yes. And there is another name, Harding.

Q Why was that erased? A Because it was put under the wrong letter.

Q And how about Dipper? A I can't account for that at all.

Q And yet that is your book? A That's my book.

Q Now, turn to E. Are there any erasures on that page?

A No, sir.

Q Any lines drawn through any name? A No, sir.

Q Now, turn to the next letter. Any erasures there?

A No, sir.

Q Or lines? A No.

MR. DONIHUE: Now, will you let me have those other three books in evidence, please?

Q Is there a name erased under the D, the name of Dodge, in your record? A What's the first name?

Q Just Dodge, under D? A No.

Q I show you this record--

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MR. PALMIERI: That isn't his book, that he is showing him now, your Honor.

MR. DONIHUE: I realize that it isn't.

Q What is that book a record of? A Why, it is one of the books of one of the inspectors.

Q One of the books used on the registration day there?

A Yes, sir.

Q In that polling place? A Yes, sir.

Q Now, examine the certificate in the back of the book.

A I don't know anything about this book. It isn't mine.

Q Now, keep that book for a moment, sir. A I won't testify to anything concerning this book, because it isn't my book.

Q No, sir. Now, just take that book, under the head of the letter D, and state whether or not it corresponds with your book, with reference to the name Dodge, erased in one, and not erased in the other? A Well, it is in both books.

Q Is the name erased in both books? A No; it is erased in one book, but it's carried down below it.

Q Now, that's another registration; isn't it? A No; it isn't necessarily-- why, that has been erased, and the name has been carried down below, two names below it.

Q On the same day? A Why, yes; on the same day of registration.

Q Now, I show you another record, and ask you what it is,

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if you know? A That is a book belonging to one of the other inspectors.

Q Is that also a copy of the official registration used, on the 12th of October, in your election district? A Yes, sir.

Q And do you identify that by reason of the certificates on the pages in the rear of the book, also? A Yes, sir, I do.

Q Now, is the name "Dodge" erased in that book? A No.

Q Is the name "Dodge" carried twice in that book?

A No.

MR. PALMIERI: May I ask whether that has got anything to do with McMahon?

THE WITNESS: That's what I am trying to find out.

MR. PALMIERI: And the jury would like to know that, too, I think.

MR. DONIHUE: I think it has an important bearing. They attempted to prove here the attempted registration by some record.

MR. PALMIERI: Go ahead now, Mr. Donihee. We won't consume much time in talking, later.

BY MR. DONIHUE:

Q Turn to the record kept by yourself. On what-- after the letter M, after No. 280 in that record, what occurs?

A Why, a line is drawn.

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Q Is there any name? A Why, not between the first and second day of registration.

Q Well, between 280 and 281, does your record show the entry of any name? A Yes, sir.

Q What? A Mitchell.

Q And does it show the name Martin? A No.

Q I show you this other record, and ask you what it is?

A I don't know anything about it. It isn't my book.

Q Well, is it one of the records-- can you tell by reference to the certificate-- whether it is one of the books used by the Inspectors of Elections in the seventh election district of the nineteenth Assembly, on the 12th of October last?

A Yes, sir.

Q Now, between 280 and 281 in the last record, that I have shown you, what occurs? A The name of G. Martin.

Q And is there a line drawn through that? A Yes, sir.

Q And does that occur in your record? A No.

Q And do you know why that line is drawn through?

A I don't know anything about it.

Q Do you recall the officer who was detailed to duty in this election booth, this day? A Yes.

Q By the name of Gordon? A Gordon; yes.

Q Did you observe him drink anything that day? A I believe-- I didn't see him drink anything; no.

Q Well, what was his condition? A Well--

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Q During the afternoon and evening of the 12th of October, so far as you observed? A He appeared to be all right to me.

Q Did you-- was there any liquor sent in to you men, that day, that you know of? A Some beer.

Q From where? A I don't know.

Q Didn't you have a quantity of beer sent in from the brewery? A Not to my knowledge.

Q Didn't you see a quantity of it there? A No.

THE COURT: The witness might decline to answer any such questions, gentlemen. It is a violation of law for an inspector of elections to partake of any liquor, in any polling place, on any registration day or election day.

MR. DONIHUE: Well, with all due respect and consideration to your statement there, I think that the election officers may drink of their own liquor in there.

THE COURT: No, sir.

MR. DONIHUE: Well, the question don't arise here.

THE COURT: Well, the only thing is, in justice to this witness, that he can decline to answer any question which may involve him in the commission of an offense.

MR. DONIHUE: I don't press the matter.

J O H N J . R A H I L L , a witness called on behalf of the People, being duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Rahill, will you please speak loud enough for the twelfth gentleman to hear you? A Yes, sir.

Q On the 12th of October last, you were in the station house, uptown? A Yes, sir.

Q Where is that place? A 134 West 100th street.

Q And do you remember two prisoners being brought in there by two State Superintendents of Elections, officers? A I do.

Q Do you remember their pedigrees being taken? A No, sir; I wasn't there when their pedigrees was taken.

Q All right. Well, were you there when they got through taking their pedigree? A Yes, sir.

Q And what happened? Was one of those prisoners this defendant? A Yes, sir.

Q And what is the name of the other man?

MR. DONIHUE: Objected to, as immaterial.

THE COURT: Objection sustained.

MR. PALMIERI: But, pardon me, your Honor, I want to show--

MR. DONIHUE: Now I object to counsel making a statement before the jury as to what he wants to show.

MR. PALMIERI: Then step up to the Court and I will tell the Court.

THE COURT: Let both gentlemen step up here.

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Put your question. Repeat it, Mr. Stenographer.

(It is repeated by the Stenographer.)

BY MR. PALMIERI:

Q Of the other prisoner, in company with this defendant?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, not proper on rebuttal, and not within the scope of the indictment upon which the defendant stands at bar.

THE COURT: I will sustain the objection.

BY MR. PALMIERI:

Q Were you on the Elevated train with the defendant Bollenbacher? A I was.

MR. DONIHUE: Objected to, as not proper on rebuttal.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

Q Was that on the night of the 12th of October last?

A It was.

Q And who had charge of the defendant Bollenbacher?

A I did.

Q Did you make any search of the defendant Bollenbacher?

A I did.

Q Now, was there more than one prisoner?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

Q On that Elevated station?

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MR. DONIHUE: Objected to.

THE COURT: Sustained.

Q How many officers were there? A There was Officer Flaherty, and myself, and two Deputy Superintendents.

Q Do you know the deputies? A Yes.

Q What are their names? A I think it is Kluberdanz and Dunn.

Q And did you take the train? A Yes, sir.

Q Now, in the Elevated train, did Bollenbacher ask you any questions, or for permission to do a certain thing, and, if so, what did he ask permission to do?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

MR. PALMIERI: Your Honor, we wish to contradict the defendant in a very important point. I asked this very question of the defendant. Here is the question that I asked the defendant--

MR. DONIHUE: I object.

MR. PALMIERI: Can't I state to the Court what I asked the defendant, without interruption?

MR. DONIHUE: Yes; if you make no statements.

MR. PALMIERI: I asked the defendant this question--

THE COURT: It is unnecessary to repeat. I do not see the materiality of this testimony.

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MR. PALMIERI: Why, I want to show--

MR. DONIHUE: And now, as to what he wants to show, I object to any statement being made.

THE COURT: Objection sustained.

MR. PALMIERI: Then it is offered for the purpose of impeaching the defendant Bollenbacher, and for no other purpose.

MR. DONIHUE: Objected to. I object to that on any ground whatever.

THE COURT: And you argued that very matter in the Max Bloch case.

MR. PALMIERI: And you were sustained in that position, and you allowed that evidence.

THE COURT: But you tried to upset my ruling as to allowing contradictory evidence; and I allowed it there because it was so particularly germane to the particular inquiry; that is to say, when the defendant took the stand, he was asked by the District Attorney whether he had any improper relations with his sister. He denied it.

He was then asked, "Did you tell your father that your sister made improper advances to you?"

He denied that, The subject of the inquiry being whether there was incest committed between a brother and a sister, I allowed all of their evidence testified as to what the father said to him, because it was germane to

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the inquiry.

Now, you are familiar with the rule in the Stokes case, where a witness was asked, "Did you steal a watch?" and she said, "No."

It was for the purpose of attacking her credibility. They called a witness from whom the watch was stolen, and that witness gave testimony, and the judgment was upset. I will sustain the objection.

MR. PALMIERI: Very well, sir. I bow to your Honor's ruling.

Q Well, then, answer this question yes or no. Did you see, on the Elevated train, the defendant speak-- ask permission to speak to another person, in charge of another officer, for the purpose of having a friendly chat?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: I will, upon the same ground sustain the objection.

BY MR. PALMIERI:

Q Well, when you went to the office of the State Superintendent of Elections, did you make a thorough search of the prisoner Bollenbacher?

MR. DONIHUE: Objected to. The characterization of the search as being thorough.

MR. PALMIERI: Then take the thorough out.

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Q Did you make a search of the defendant Bollenbacher?

A I did.

Q Now, what did you do with reference to his hat?

Did you examine that? A Yes, I examined the hat band on the inside.

Q Did you order him to hold up his hands? A Yes, sir; he held up his hands.

Q And arms? A Yes, sir; and arms.

Q Did he do so? A Yes, sir.

Q And did you then go through his pockets? A I searched all his pockets,,and took the contents out, and left them on the table.

Q Inside and outside pockets? A Yes, sir.

Q Including the inside vest pocket? A Yes.

Q You felt also his trousers pockets? A Yes.

Q And after this search did you discover any documents unsealed about his person? A I did not.

Q Were you particularly directed by the Superintendent of Elections, at that time, to search him with a view of discovering any documents in his possession, at that time?

MR. DONIHUE: Objected to, as incompetent, immaterial and irrelevant, and not binding on the defendant.

THE COURT: Sustained.

Q And did the defendant-- did you go into a little room, with the defendant Bollenbacher? A I did.

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Q And did you leave the defendant Bollenbacher at any time? A I did.

Q When was that? A Well, when Officer Flaherty came out of the Superintendent's office, he came over, and spoke to me, at the rail.

Q And who was there at the time? A Mr. Archer, Mr. Woodward and Mr. Flaherty, I think.

Q You found a love letter in his possession; did you not?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

Q Well, you found a letter in his possession?

MR. DONIHUE: Objected to.

THE COURT: Sustained, to the previous question.

Now put your other question.

BY MR. PALMIERI:

Q Now, did you find a letter in his possession?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A Yes

Q You found a letter in his possession? A I did.

Q And did you read that letter? A I did not.

Q Who did you give that letter to? A I think, Mr. Archer.

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Q Mr. Archer? A Yes, sir.

Q And, after Mr. Archer read the letter, he returned it to the defendant? A He did.

Q In your presence? A Yes, sir.

Q Well, who was the letter directed to? A George Bollenbacher, I believe.

Q The letter was directed to George Bollenbacher?

A yes.

Q Now, did the defendant tell you that he had any other letter in his possession?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent. And, if the statement was made, it was made by the defendant while he was under arrest.

MR. PALMIERI: Never mind going further. I will withdraw the question.

CROSS EXAMINATION BY MR. DONIHUE:

Q Did you-- what time did you search the defendant?

A Well, I figure it was about 11:30.

Q In the evening? A Yes, sir.

Q And do you know what time the arrest occurred? A Well, they were brought in the station house about 9:40 p. m.

Q Well, did you, officer, examine inside the shirt?

A I did not.

Q Worn by the defendant? A I did not.

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RE DIRECT EXAMINATION BY MR. PALMIERI:

Q In other words, you didn't strip him; you didn't do that? A No, sir.

Q You searched him? A Yes.

RE CROSS EXAMINATION BY MR. DONIHUE:

Q Now, you understood what I meant, didn't you, when I asked you, did you examine or search inside of the shirt of the defendant? A I did not.

Q Did you examine inside the outer shirt? A I went in his pocket, like that (illustrating), and took the contents out like that, and put them on the table.

Q Did you open his vest? A No,,sir, I did not.

J A M E S     E .     G U M A E R , called as a witness on behalf  
of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Gumaer, speak loud enough for the last gentleman to hear you? A Yes, sir.

Q What is your present position? A I am in the  
Weigh Department of the United States Assay Office.

Q And on or about the 12th day of October last, what was your position, officially? A I was a Deputy Superintendent.

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Q Of elections? A Yes.

Q Of this state? A Yes.

Q And did you, in accordance with a bench warrant, call at the 54th Street police court, the next day? A No, not with a bench warrant. I was ordered by the Deputy Superintendent to report at the 54th street court, to Deputy Kluberdanz.

Q Did you do so? A Yes.

Q At that court, did you see this defendant Bollenbacher?

A Yes, sir.

Q Did you see Healey there? A Yes.

MR. DONIHUE: I object to his seeing Healey there.

THE COURT: Objection sustained.

Q Now, as the defendant Bollenbacher and Healey were being taken out, did you notice Alex Ahearn there?

MR. DONIHUE: One minute. I object to the question.

THE COURT: Let the reference to Healey be omitted.

MR. PALMIERI: Yes, sir.

Q Did you know this, as the defendant Bollenbacher was taken out, did you see Alex Ahearn?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding upon the defendant.

THE COURT: Objection overruled.

MR. DONIHUE: As to what this witness saw?

THE COURT: I have ruled, I have overruled the objection.

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MR. DONIHUE: Exception.

A Yes, sir. I saw Alex Ahearn.

Q What did you see Alex Ahearn do with respect to this defendant, Bollenbacher?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not proper upon rebuttal. There is no evidence here--

THE COURT: Objection overruled.

MR. DONIHUE: Exception. I respectfully submit to your Honor that there is no evidence here, brought out on direct, nor is there anything in the indictment, that the defendant did anything to Alex Ahearn, or in the 54th street police court.

MR. PALMIERI: Alex Ahearn was the man behind your client, and said, "Don't register;" and was the man in the 54th street police court.

MR. DONIHUE: And for those reasons I again urge my objection.

MR. PALMIERI: And, furthermore, to contradict this defendant, who says he never saw and never heard of Alex Ahearn, and that Alex Ahearn was never in the 54th street court, and never gave him anything, or spoke to him.

MR. DONIHUE: Now, are these statements to be permitted by counsel?

THE COURT: The statements should be disregarded by

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the jury.

MR. DONIHUE: I ask your Honor to direct the Attorney-General again to desist.

THE COURT: Yes. The jury will utterly disregard these remarks.

(Question repeated by the Stenographer.)

MR. DONIHUE: Objected to.

THE COURT: Overruled.

MR. DONIHUE: Exception.

A Why, Healey was the man that said he wanted a smoke.

MR. DONIHUE: Objected to, as not responsive, and I ask to have it stricken out.

MR. PALMIERI: I consent.

THE COURT: Strike it out.

Q Now, I want you to tell what you saw Alex Ahearn bring there, and give to the defendant?

MR. DONIHUE: I object to the instruction of the witness.

Objection sustained.

Q Now, tell that to the jury?

MR. DONIHUE: Objected to.

Q Now answer my question?

THE COURT: No. In all fairness to the defendant, strike the question from the record, and the Stenographer will repeat the question.

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(It is repeated by the Stenographer.)

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent, and not binding on the defendant, and being out of the pale of the indictment, and improper upon rebuttal.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A I saw Alex Ahearn give Bollenbacher cigarettes.

BY MR. PALMIERI:

Q Do you know Alex Ahearn? A By sight.

Q And that happened in your presence? A Yes.

Q Before your own eyes? A Yes.

CROSS EXAMINATION BY MR. DONIHUE:

Q Did you know of your own knowledge, or were you told that the person you saw there was Alex Ahearn? A I knew that it was him by sight.

Q How did you know it? A Because I had seen him on the streets before.

Q And had you ever been told that his name was Alex Ahearn? A No, sir.

Q Did you guess his name was Alex Ahearn? A No, sir.

Q Then how did you know his name? A Because I had seen him prior to that. I saw the man on Eighth avenue, and was told that that was Alex Ahearn.

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MR. DONIHUE: Now, I move that the identification by the witness of Alex Ahearn be stricken out, and the testimony disregarded by the jury.

THE COURT: Motion granted. And the jury will disregard this evidence.

RE DIRECT EXAMINATION BY MR. PALMIERI:

Q Now you say you heard this person addressed as Alex Ahearn; did you not?

MR. DONIHUE: Objected to.

THE COURT: Sustained.

Q Well, then, you saw a person hand cigarettes to the defendant?

MR. DONIHUE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

MR. PALMIERI: The defendant said that he didn't even receive any cigarettes at the 54th street police court.

THE COURT: Where does that appear in the record.

MR. PALMIERI: I will look for it, sir. Well, may I suspend with this witness for a moment, until it can be found? While the record is being looked up? May I suspend this witness? It will be looked up, and I don't wish to take up your Honor's time and the jury's time.

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THE COURT: Yes.

MR. PALMIERI: I have found the place, your Honor.

MR. DONIHUE: May I look at it, Judge Palmieri?

THE COURT: What page?

MR. PALMIERI: Page 201.

THE COURT: That is a specific question, Mr. Palmieri. You asked him if he received the package of cigarettes from Alex Ahearn, and you must ask him, in addition, if he received a package of cigarettes from anyone.

MR. PALMIERI: Now, I wish to contradict the defendant. I will have Alex Ahearn called in the hallway. I have had him called and he doesn't respond. Now, if your Honor please, I wish to contradict this defendant--

MR. DONIHUE: Now, it is perfectly apparent that Judge Palmieri is going to make one of his speeches, when he even hasn't a witness on the stand; and I ask your Honor to direct him to put his question to the witness, without making any statement.

THE COURT: Yes.

MR. PALMIERI: I will recall Mr. Gumaer.

J A M E S     E .     G U M A E R , being recalled by the Attorney-General, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

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Q Did you see the defendant Bollenbacher get a package of cigarettes, at the 54th street court by Alex Ahearn?

MR. DONIHUE: Objected to as immaterial, irrelevant and incompetent. Your Honor has stricken out the testimony of the witness identifying Alex Ahearn.

THE COURT: Objection sustained.

MR. PALMIERI: Now, your Honor, for the purpose of my own information, may I ask your Honor the ground?

THE COURT: Because there is nothing in the record to show that the defendant was asked, on the record, whether he had received a package of cigarettes from Alex Ahearn, and not whether he received a package of cigarettes from any person; and there is no evidence on the record to identify Alex Ahearn.

MR. PALMIERI: Then produce Alex Ahearn, Mr. Donihue.

MR. DONIHUE: I don't know where Alex Ahearn is.

MR. PALMIERI: Why, he was within two blocks of this court room, at recess, and talking with witnesses in this case.

MR. DONIHUE: Well, I don't know where he is.

THE COURT: You ask this defendant the question, if you desire, and ask him whether he received a package of cigarettes from anyone. You confined your question to Alex Ahearn.

MR. PALMIERI: Well, if your Honor please, I don't

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think I will press it any further.

C H A R L E S     W .     N A H R W O L D , being recalled by the  
Attorney General, testified as follows:

DIRECT EXAMINATION BY MR. PALMIERI:

Q Now, I don't know whether at night, you live with your  
family or--

MR. DONIHUE: I object to it.

THE COURT:? Objection sustained.

Q Now, Mr. Nahrwold, first I ask you, were you ever  
introduced to this defendant by any person?

MR. DONIHUE: Objected to. There is no testimony  
as to that. The defendant swore that he was never intro-  
duced to him by anybody.

THE COURT: Objection sustained.

Q Well, did you ever talk to this defendant, before the  
12th day of October last, at any place at all? A Never in my  
life.

Q Did you ever, at the corner of 115th street and Eighth  
avenue, about seven or eight months ago, engage in conversation  
with this defendant about political matters, and thereupon say  
to him, "You are too fresh," and then you called him a son-of-a-  
so-and-so, and other vile names of that character, and then  
left him? A I never see that man in my life, before the 12th

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day of October.

Q Did you ever have such argument with him? A Positively not.

Q Did you ever recognize him in the streets, by saying, "How do you do" to him, or anything else? A Positively not.

CROSS EXAMINATION BY MR. DINIHEE:

Q How often do you stand on the corner of 115th street and Eighth avenue? A How often?

Q Yes. A Well, if I go out of the house-- I live in 115th street-- if I go out of the house, and meet anybody, I probably stand there.

Q And, as a rule, you do meet somebody there? A As a rule?

Q Yes. A And I met you there twice within a week.

(Question repeated.)

A Yes.

BY THE COURT:

Q Answer the question. Do you? Yes or no. You do not consider it not respectable to meet Mr. Donihee; do you?

A No, sir.

MR. DONIHEE: No, sir; and they can meet me at night, at any hour, in my neighborhood.

THE WITNESS: Well, I don't know what you mean as a rule. If I stand there any length of time, I always meet

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somebody coming along.

Q. And you are pretty well known in the neighborhood?

A Yes, I suppose so. I have lived there for eleven years.

Q And you are known to everybody in the neighborhood?

A I don't know that I am known to everybody.

Q Well, you have been interested in politics there for a good many years? A I am a member of a club there.

Q And you have been interested in politics there; haven't you? A Yes.

Q And you have been opposite to the captain of your election district there? A No, sir.

Q You have never helped him? A No, sir.

MR. PALMIERI: I would like to know whether this is proper rebuttal.

MR. DONIHUE: Why, he is your witness, Mr. Palmieri.

MR. PALMIERI: But your cross examination is to be confined to my direct examination, I think.

THE COURT: proceed. Proceed, without argument.

BY MR. DONIHUE:

Q Now, the defendant passes up and down Eighth Avenue; doesn't he? A The defendant?

Q Yes. A I never see him before the 12th of October.

Q Well, how often have you seen him pass up and down Eighth avenue since? A Half a dozen times.

Q And you were standing where when you saw him? A In

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different places. At 106--

Q And principally on what corners? A 116th, 115th and 114th street.

Q And Eighth avenue? A Yes.

Q And you have probably seen him six times? A Yes.

Q And do you want this jury to believe that you never in your life saw him before the 12th of October, 1907? A I positively do want them to believe it.

BY THE COURT:

Q Do you mean to say you didn't see him and didn't know him before that time, Mr. Nahrwold? A Didn't know him and didn't see him, your Honor. He might have walked by me, but I didn't know him.

MR. DONIHUE: Now, I object to the qualification of the witness, and ask to have it stricken out. There was no question propounded to the witness.

THE COURT: I asked a question.

MR. DONIHUE: I submit that he had answered to your Honor's question, and this was a voluntary remark of the witness, the last sentence in the answer.

THE COURT: Motion denied.

MR. DONIHUE: Exception.

RE DIRECT EXAMINATION BY MR. PALMIERI:

Q Before that time you were working nights at the

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Superintendent of Elections' office? A yes, sir.

MR. DONIHUE: Objected to.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

MR. PALMIERI: And, if he was working nights, how could he see the defendant constantly on the avenue, as you intimate?

MR. DONIHUE: And I ask that the statement of counsel be stricken out.

THE COURT: yes. And the jury will disregard it.

MR. PALMIERI: The People rest.

MR. DONIHUE: The defense rests.

THE COURT: And how much time does each side require to sum up?

MR. DONIHUE: Well, I want an hour, your Honor.

MR. PALMIERI: Well, you'll have to talk an hour. I'll only want five minutes.

MR. DONIHUE: And I ask that the remark be stricken out.

THE COURT: Yes; the jury will disregard the remarks of counsel on either side not borne out by the evidence.

MR. DONIHUE: And now I ask permission to sum up, tomorrow morning.

MR. PALMIERI: Oh, I object.

THE COURT: Well, Mr. Donihee, I made the statement,

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yesterday, that I would discharge the jury to-day, at the conclusion of this case, and I would not like to bring them here unnecessarily, unless they agree to come here.

MR. DONIHUE: And I object to that statement of the Court, as prejudicial to the defendant's interests.

THE COURT: Objection overruled.

MR. DONIHUE: Exception. Now, will the Prosecution concede that the name of McMahon was not on the challenge list, in that polling place of the seventh election district of the nineteenth Assembly district, on the 12th of October, 1907, as claimed by Officer Gordon?

MR. PALMIERI: No; we will concede nothing of that kind.

MR. DONIHUE: Then will you concede that such a list is not in existence, as you haven't produced it?

MR. PALMIERI: There was no duty on us to produce it. The officer was on the stand here, yesterday, and you could have asked us then for anything that you desired, at that time, when he was on the stand.

THE COURT: You knew how to produce this evidence, if any such evidence was in existence. Is there anything before the Court to show that these challenges are now in existence?

MR. DONIHUE: Only the statement that they were destroyed.

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THE COURT: Well, call Mr. Garrett. He is in the employ of that office.

MR. PALMIERI: Put him on the stand. He is the counsel for the State Superintendent of Elections. Put him on. Don't be afraid.

MR. DONIHUE: And present the unusual spectacle of the counsel for the defense calling counsel for the prosecution.

THE COURT: You may call Mr. Garrett if you desire.

MR. DONIHUE: Take the stand, Mr. Garrett, if you will, please.

T H O M A S   G A R R E T T , a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONIHUE:

Q On the 12th day of October, 1907, did you deliver a challenge list to Officer Gordon, who was detailed to duty at the seventh election district of the nineteenth Assembly district?

MR. PALMIERI: Objected to, unless it was his duty.

I object to the form of the question.

THE COURT: Objection overruled.

A I did not.

MR. DONIHUE: That's all, Mr. Garrett.

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CROSS EXAMINATION BY MR. PALMIERI:

Q Was it your duty to deliver any such list?

MR. DONIHUE: Objected to.

THE COURT: Objection overruled.

MR. DONIHUE: Exception.

A No, it was not.

MR. PALMIERI: Now, you can ask him something else.

MR. DONIHUE: I don't see that we can ask him anything.

It was his duty to do it, and he doesn't know whether it was done or not.

MR. PALMIERI: The people have rested their case, your Honor.

THE COURT: Does the defense rest?

MR. DONIHUE: The defense rests.

THE COURT: proceed with the summing up. Do you gentlemen want a rest, of five or ten minutes?

THE FOREMAN: We would rather come here, tomorrow morning, Judge; the majority of the jurors want it.

MR. DONIHUE: you would rather come, tomorrow morning?

THE FOREMAN: yes.

MR. DONIHUE: Whatever your Honor directs.

THE COURT: You see, gentlemen, I have ordered a special jury here for tomorrow, and the Tombs is in a very crowded condition, and I think that, in view of the time occupied in the trial of this case, I would rather have you

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take the case, tonight.

THE FOREMAN: All right, sir; we are willing.

THE COURT: I will let you take a ten minutes recess, until 4:20, and then we will complete the case.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 4:20 p. m.)

AFTER RECESS.

(Mr. Donihee summed up the case for the defense, and Mr. Palmieri closed for the People.)

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## THE COURT'S CHARGE.

Gentlemen of the Jury:

The Constitution, the organic law, of this State provides that the Legislature shall enact suitable election laws. In pursuance of this authority, the Legislature has enacted the following provision:

"Any person who registers or attempts to register as an elector under any other name than his own is guilty of a felony."

The People of the State of New York claim that the defendant, Frank Bollenbacher, committed the crime of an attempt to register falsely, under a name other than his own. You will observe that no political party or private individual is prosecuting this case. While witnesses who may be connected with a political party have given testimony, they were the instruments and the means resorted to in order to present the case for your consideration. If a violation of the law has been committed, the violation was committed against the dignity, the peace and the laws of the People of the State of New York, and not against any particular person or political party.

In order that this defendant may receive the benefit of a fair and impartial consideration of the case, and that the People may have their evidence considered with equal fairness and justice, it is absolutely essen-

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tial, under your oath, that you emancipate yourselves from any political prejudices, if you have any.

In a court of justice, politics should not control or govern the individual who sits in judgment. You must be, as your oath commands you to be, cold, neutral judges of the facts.

This is a government maintained by the popular will. In every free government, where true civilization reigns supreme, and where its officers, from the President down to its humblest official, are elected by the popular will--and, of course, in the case of the President, you vote directly for electors--the integrity of the ballot box must be preserved; and it is absolutely necessary, in a government like ours, that every safeguard to protect the ballot box should be established; and any attempt to tear down this important barrier strikes at the very foundation of our Government and our institutions.

The magnitude, therefore, of this offence must not be underestimated by you. But, while you should consider the magnitude of the offence, that, in itself, must not weigh against the defendant. The defendant is entitled to a fair, calm, just and impartial consideration of the case. It is incumbent upon the People to prove his guilt, beyond a reasonable doubt. Sympathy or

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prejudice must not affect your judgment, one way or the other. Whatever feeling of sympathy or prejudice may arise in the case, let it be simply the private feeling of the individual who serves as the judge of the facts, but let not these elements enter into your verdict. You are sworn to render a verdict upon the legal and competent evidence in the case; and, if the evidence spells guilt, beyond a reasonable doubt, it is your duty to render a verdict accordingly. Likewise, if the evidence fails to satisfy your minds, beyond a reasonable doubt, as to the guilt of the defendant, it is your duty to acquit him.

The law does not seek vengeance. It does not tolerate vengeance. It should not be vindictive. Its aim is to single out the wrongdoer, and to bring him to justice.

Now, gentlemen, allow me to suggest some of the questions that you should pass upon: Did this defendant, on October 12th, 1906, in the 7th Election District of the 19th Assembly District, in the Borough of Manhattan, County of New York, the same being a day designated by law as a day for the general registration of qualified electors entitled to vote at the general election in November, 1907, appear in that polling place, and attempt to cause his name to be registered; and, if so, did the

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defendant give a name other than his own? And, secondly, did he appear before the Inspectors of Election, and did he give the name of Charles McMahon; and was that name his true name?

It was not necessary, for the purposes of this case, that the defendant, at the time that he is alleged to have presented himself before the Board of Inspectors of Election, in that polling place, should have given his name, address, and age, and answered all the questions necessary in order to constitute a proper and legal registration, because he is not charged with the offence of false registration, but with the offence of attempting to register as an elector under a name other than his own.

I charge you, gentlemen of the jury, as a matter of law, that, if this defendant appeared in the polling place, before the Board of Inspectors, and gave the name of Charles McMahon, and that the Inspectors, or any one of them, proceeded to record that name in the book of registration, the defendant proceeded in the act of registration, and that, if the act was not completed, the offence committed constitutes an attempt to register falsely.

The People claim that, on the 12th day of Octo-

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ber, 1907, this defendant appeared at this meeting of the Board of Inspectors; that the Board, it is conceded, was properly organized for the 7th Election District of the 19th Assembly District, and that the Inspectors had authority to register the names of electors entitled to register in that district, and who would be qualified to vote at the general election, in November, 1907. It is further claimed by the People that the defendant gave the name of Charles McMahon, and that it was not his true name, and that he did so feloniously, with the intent to violate the law, well knowing, at the time, that he was not entitled to have his name registered as an elector in that district, under the name of Charles McMahon. It is conceded in this case, that the defendant's true name is Frank Bollenbacher.

The People have produced several witnesses, three Deputy Superintendents of Elections, a police officer, an election district captain and an Inspector of Elections. Excluding the Inspectors of Elections, five of these witnesses have testified, under oath, that this defendant appeared in the polling place, that evening, in the 7th Election District of the 19th Assembly District, and was asked by the Chairman of the Board, "Do you wish to register?" or words to that effect, and that this defendant replied that he did, and that he gave the name of Charles

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McMahon; and that thereupon one of the officers, I believe his name is Kluberdanz, said, "I challenge this man"; and that, at that time, another person in the polling place remarked to the defendant, "If there is going to be trouble about it, it is unnecessary for you to register," or words to that effect; and that thereupon the defendant was placed under arrest.

The defendant, in his own behalf, denied that he appeared before the Board of Registry of the 7th Election District of the 19th Assembly District, that evening, and gave the name of Charles McMahon, or any other name; or that he caused his name to be registered, or attempted to have his name registered, as a qualified elector in that election district.

He testified that he went to that polling place upon an errand for a Mr Conboy, to deliver a letter to one Murtha; and that, upon his arrival at the polling place, Murtha was not there; and that he engaged in conversation with one Reilly in the polling place; and that some difficulty ensued in the polling place, and that this defendant was placed under arrest.

Mr Conboy was called, and told you that he did deliver to this defendant a letter for one Murtha. Murtha appeared here, and told you that he was absent from the polling place, that evening.

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Evidence of the defendant's previous good character for honesty and uprightness was offered.

So that you, gentlemen, will see that this case resolves itself into one proposition: Who is telling the truth? If you can determine who is telling the truth, then you solve the problem submitted to you.

While it is not true, under our law, that it is the quantity of testimony that carries with it to a jury the weight of conviction, it is true that the quality of the evidence submitted does so. Sometimes the testimony of one witness may be as effective and as weighty, and carry with it as much force as the testimony of one hundred witnesses; for, while you may believe the testimony of one witness, you may not believe the testimony of one hundred witnesses. In this case, you should consider what interest or motive may prompt witnesses to come to court, and, under oath, give testimony to the effect that this defendant was the person who gave the name of Charles McMahon on that evening. If you believe that there was a scheme, on the part of these witnesses, to cause the arrest of the defendant, and to appear before a jury, and make oath that the defendant gave the name of Charles McMahon, I say to you, gentlemen of the jury, that it is your duty to acquit this defendant.

But, if you believe that the Superintendents of

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Elections, in the performance of a public duty, and without malice towards this defendant, observed this defendant in the act of attempting to register falsely, in violation of law, and that this defendant was apprehended by these officers under the circumstances that they have narrated; and if you believe that the People have established the guilt of the defendant beyond a reasonable doubt, after weighing the testimony carefully and conscientiously, it is your duty to render such verdict as you believe the evidence warrants.

What motive actuates a witness to give the testimony which he did is always an important factor to be considered by a jury. Is he interested in the outcome of the case? Would he, if interested in the outcome of the case, commit wilful and deliberate perjury? These are always important matters for a jury to consider.

You will recall the testimony of Deputy Kluberdanz to the effect that he said, "I challenge this defendant." Deputy Nahrwold testified that he heard him make that statement, and Officer Gordon also testified that he heard him make the statement, and one of the Inspectors testified that he heard the statement made about a challenge; and I believe that the defendant, on cross-examination, testified that he heard the statement "Challenge him," or words to that effect.

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If a person appears in a polling place, to cause his name to be registered, any elector has a right to challenge such person, and if a challenge is made, if the elector desires to have his name recorded, under the statute that may be done, under certain conditions. I will read to you the statute:

"Any person who applies personally to any Board of Inspectors for registration for any election may be challenged by any qualified elector present. If such applicant be so challenged, or if any member of the Board of Inspectors shall have reason to suspect that such applicant is not entitled to have his name enrolled on such register, the Chairman of the Board of Inspectors, or any member of such Board is hereby authorized to, and shall administer to such applicant the following oath: 'You do solemnly swear or affirm that you will true answers make to the questions touching upon qualifications as an elector, and such other questions as may be put to you tending to establish your identity.' And one of the Inspectors shall thereupon read to such challenged person each and every question printed upon the challenge affidavit herein provided for, and shall enter in ink opposite each question the answer thereto given by such applicant. The applicant shall subscribe his name to such challenge affidavit, which shall also be subscribed to by

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the Inspector administering the above oath, and, as witnesses, by the other Inspectors present, who shall certify over their names the fact that the applicant did apply for registration, that he was duly sworn, and that the answers set opposite the printed questions are the true answers given to such questions by the challenged applicant. Inspectors shall also enter in the place provided on the challenge affidavit the description of the person challenged, and the name and address of the person challenging. If the applicant shall by his answers satisfy a majority of the Board of Inspectors of his right to be registered, they shall enroll his name as an elector; if not, they shall point out to him the qualifications which he lacks as an elector, and his name shall not be enrolled upon such register, except as provided by Section 31 of this Act, and upon any such proceeding the challenge affidavit of such applicant shall be submitted in evidence to such court, Justice or Judge. If the applicant shall refuse to make oath to the questions put to him and the answers given thereto by him, or shall refuse to answer any question upon the challenge affidavit, his name shall not be placed upon the register; or, if recorded thereon previous to his ascertained disqualification as an elector, the Inspectors shall enter in the remark column, after such name, the word disqualified, and

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no person shall be allowed to vote on such name at the election."

"Any applicant for registration, or inspector or other person who shall incorporate or cause to be incorporated any false statement in such challenge affidavit, shall be deemed guilty of perjury."

Now, gentlemen of the jury, the defendant is presumed to be innocent, until the contrary be proved. He is entitled to the benefit of every reasonable doubt arising from the evidence in the case. A reasonable doubt is such a doubt as reasonable men may entertain, after a careful and honest review and consideration of the evidence.

Evidence of good character was offered. Good character is no excuse or justification for the commission of crime. Good character should be considered by a jury as any other probative evidence in the case. Our courts have held that good character, of itself, will create a reasonable doubt, where otherwise, without it, none would exist.

So that your verdict in this case will be, either guilty of an attempt to commit the crime of false registration, or not guilty.

Any requests or exceptions?

MR. BONIFER: I ask your Honor to charge the

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jury, that an indictment is no proof of guilt.

MR. PALMIERT: I consent to that.

THE COURT: Yes, I so charge. An indictment is a mere accusation in writing, accusing a person of crime, but is not evidence of guilt.

MR. DONIHUE: I ask your Honor to charge that the defendant had a right to register under his own name, Frank Bollenbacher.

MR. PALMIERT: I consent to that; but only once.

THE COURT: I charge you, gentlemen of the jury, that this defendant had the lawful right to register in the 11th Election District of the 19th Assembly District; and it is claimed that the defendant registered in that place under the name of Frank Bollenbacher, his own name. The defendant is not charged with any violation of law committed in the 11th Election District, or any other election district, but the one charged in the indictment. The question for you to determine as to that is: Did he violate the law in the 7th Election District of the 19th Assembly District?

MR. DONIHUE: And I ask your Honor to charge the jury, that the jury are to disregard the versions of the testimony given by the counsel, and are to be governed solely by their own recollection of it.

THE COURT: Yes; I so charge. You may retire,

gentlemen.

Now, gentlemen, whenever you are ready to go out for dinner, let me know. Whenever you are ready to go for dinner, I will arrange for the preparation of dinner for you.

(The jury retired at 6:15 P. M.)

(The jury returned to the court room at 6:40 P.M., finding the defendant guilty, as charged.)

MR. DONIHUE: If your Honor please, I move to set aside the verdict, as being against the weight of evidence.

THE COURT: Motion denied.

MR. DONIHUE: And I move for a new trial for the defendant.

THE COURT: Motion denied.

MR. DONIHUE: And I except to both of your Honor's rulings.

THE COURT: Yes.

MR. DONIHUE: I ask that the defendant be remanded for a week.

THE COURT: Motion granted. That will be in Part V of this Court, where I sit next term.

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