

**START**

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I N D E X.

WITNESSES.

Direct   Cross   Redirect   Recross.

John Ryan,

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I N D E X.

<u>WITNESSES.</u>	<u>DIRECT.</u>	<u>CROSS.</u>	<u>REDIRECT.</u>	<u>RECROSS.</u>
John Ryan,			17	
John F. Sussillo,	17	20	22	
Cornelius M. Shannon,	25			
Charles A. Walter,	37	40		
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Fritz Cousin,	51	56	58	
William A. Mathews,	61			
James McGrath,	63			
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COURT OF GENERAL SESSIONS OF THE PEACE,

PART III.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK :

against :

PETER HAGGERTY, THE YOUNGER. :  
-----X

Before Hon.

MARTIN T. McMAHON,

and a Jury.

Indicted for ATTEMPTED DOUBLE VOTING (Section 41-L Penal Code)

Indictment filed November 27th, 1905.  
-----

New York, April 16th, 1906.

A P P E A R A N C E S:

FOR THE PEOPLE:

Deputy Attorney Generals Louis Ogden O'Brien and  
William Blau;

FOR THE DEFENDANT:

Bartow S. Weeks and James F. Swanick, Esquires.  
-----

James E. Lynch,

Official Stenographer.

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A jury was duly empanelled and sworn.

MR. WEEKS: If you will state what you desire me to concede in the way of technical proof, I will endeavor to concede it.

THE COURT: That is, the election records, and so on?

MR. WEEKS: Yes, sir.

MR. BLAU: That Thomas P. Brennan, Thomas L. Coleman, George E. Mensching, and William Schroeder, were all duly appointed Inspectors of Election of the 35th Election of the 19th Assembly District for the Election held on November 7th, 1905.

MR. WEEKS: No; the 35th Election District has not anything to do with this 2nd Election District. This is a charge as to something in the 2nd District.

MR. BLAU: Well, during the progress of the trial we will show its materiality.

MR. WEEKS: When you get to that point where it appears to be material, then I will concede it.

THE COURT: Well, you do not deny the authenticity of that record with the others?

MR. WEEKS: No, sir, if he is going to offer it.

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My suggestion is, if he will make his statement of what he desires conceded of the facts stated in the indictment, and anything in relation to the 2nd Election District, this being the general day of election, I want to concede it, but when he wants to prove something in another part of the city, I do not see how I should be asked to concede that.

THE COURT: Well, I do not see that he asks that.

What is that book?

MR. BLAU: This is the register of election of the 35th Election District of the 19th Assembly District.

MR. WEEKS: And not the election district in which it is alleged this crime was committed.

THE COURT: I cannot see how you can offer that.

MR. BLAU: All I want him to concede is that these people were such Inspectors on Election Day. If it is not material it is not going to hurt him any.

THE COURT: In what district?

MR. BLAU: The 35th Election District.

MR. WEEKS: I certainly will not concede anything in the 35th Election District, any more than I

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will concede who were the Inspectors of Election in the 35th Assembly District. That is an entirely different part of the city. Make your offer in regard to the 2nd Election District and I will concede as to that.

MR. BLAU: Then I understand it is conceded by Counsel for the Defense that Joseph Murray, John Ryan, John F. Sussillo, and Cornelius M. Shannon, were duly appointed Inspectors of Election of the 2nd Election District of the 19th Assembly District for the Election held on November 7th, 1905?

MR. WEEKS: Yes.

MR. BLAU: And that they were duly appointed, qualified and sworn?

MR. WEEKS: Yes.

MR. BLAU: And that they acted as such Inspectors on the days of registration and on Election Day?

MR. WEEKS: Yes.

MR. BLAU: It is likewise conceded that Charles A. Walter and Howard De Adams were the Poll Clerks duly appointed, qualified, sworn and acting on Election Day, November 7th, 1905, in the 2nd

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Election District of the 19th Assembly District.

MR. WEEKS: Yes.

MR. BLAU: It is also conceded that these four books are the official registers of electors kept by said Inspectors of Election in the 2nd Election District of the 19th Assembly District on November 7th, 1905, and that this is the official poll book of the same election and assembly district for said Election.

MR. WEEKS: Yes.

(Marked People's Exhibits 1, 2, 3, 4 and 5 in Evidence.)

MR. BLAU: I also offer in evidence official map of the 19th Aldermanic District, showing the boundary lines of said district.

MR. WEEKS: And of the various election districts therein, yes.

(People's Exhibit 6 in Evidence.)

J O H N R Y A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLAU:

Q Mr. Ryan, where do you reside? A. 249 West 60th Street.

Q And did you reside there on November 7th, 1905? A. I did.

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Q And did you reside there thirty days prior to November 7th, 1905? A. I did.

Q You were one of the Inspectors of Election of the 2nd Election District of the 19th Assembly District? A. Yes, sir.

Q Did you attend there during the entire day of November 7th, 1905? A. I did, only at certain times when I could not. I would have to be excused sometimes for a few seconds.

BY THE COURT:

Q But you were there practically on duty all day? A. Yes, sir.

BY MR. BLAU:

Q I show you People's Exhibit 2 and ask you if that register is in your handwriting? A. Yes, sir -- no, that is not my handwriting; that is not my book.

BY MR. WEEKS:

Q That is not your book? A. No, sir.

Q Will you look at it carefully, Mr. Ryan? A. (No answer.)

BY MR. BLAU:

Q Pick out your own book. A. That is my book (indicating).

Q That is, book, People's Exhibit 3, is the book kept by you in your own handwriting? A. Yes, sir.

Q Now, look at Entry 144 in People's Exhibit 3, and tell me if that entry is in your handwriting? A. That is my handwriting.

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Q Whose name appears there upon that entry? A. W. A. Matthews is the name there.

Q You say that entry is in your handwriting? A. Yes.

Q Will you read that entire entry, please? A. (Reading)  
"W. A. Matthews, 219 West 60th Street, fourth floor; age 25; 18 years in the State; 18 years in the County; 5 years in the Election District; born in the United States; New York; New York."

Q Does it appear from that entry that William Matthews ----  
MR. WEEKS: Objected to as leading.

Q Well, is that the entry -- did you read the entire entry, Mr. Ryan? A. "State of New York, City of New York, Number and name of street or avenue, 219 West 60th Street."

Q What is the entry in the last column?  
MR. WEEKS: 118.

Q What does that 118 designate? A. Consecutive number and stub of ballot.

Q Of the ballot voted? A. Yes, sir.

Q Can you tell from the number of ballot as voted and as described in this People's Exhibit 3, at what time of day that ballot was cast? A. I could not, sir.

Q Do you recall the time when this ballot was cast? A. No, sir, I could not.

Q Do you know the defendant Peter Haggerty? A. I do not.

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Q Have you ever seen him before? A. I could not say I have.

Q Well, do you know that you have or have not? A. Well, I have not seen him to my knowledge, to my best ability and thinking.

Q You do not know whether you have seen him before or not?

A. No, sir.

Q Where was the polling place of the 2nd Election District of the 19th Assembly District located on last Election Day?

A. 60th Street.

Q What number? A. It was 105, was it not, or 205. It is a kind of double building and it may have two numbers on it.

Q No. 205, was it not, West 60th Street? A. Yes.

BY MR. WEEKS:

Q 205 West 60th Street? A. Yes.

MR. WEEKS: All right; I will concede that.

CROSS EXAMINATION BY MR. WEEKS:

Q You were on duty, you say, practically all day? A. All day, practically.

Q And when this man Matthews voted, you were there, were you, as one of the Inspectors? A. I must have been; there is my handwriting.

Q You did not see this defendant? A. I could not say that.

BY THE COURT:

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Q You say that is in your handwriting and therefore you are satisfied you were there when he came and registered and voted? A. Yes, sir.

Q But you do not recall him? A. No, sir, I could not say.

REDIRECT EXAMINATION BY MR. BLAU:

Q I show you Entry 156, in People's Exhibit 3; tell me if that entry is in your handwriting? A. Yes, sir; that is my handwriting.

Q Will you read that entry?

MR. WEEKS: I do not know anything about that.

Your indictment does not show what name this boy is supposed to have voted under or anything else. I am in the dark about it.

Q Does it appear from that entry that McGrath voted? A. It seems so. It is not my handwriting.

Q That he voted? A. He voted.

Q Examine the entry. A. (Reading) "30 West End Avenue; fourth floor; age 23; in the State 23; in the County 23; in the Election District 5; Born United States; New York; New York; 218 West 67th."

Q Does it appear from that entry that McGrath voted? A. Certainly it does, yes, sir.

Q What is the number of the ballot he voted? A. (No answer.)

BY THE COURT:

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- Q Look at the last column; what is that? A. (Reading)  
"October 16th, 1904." It looks like something was scratched there. There was a number there and it is not fully designated.
- Q No, you have under the column of date, of registration, 1904 last registration; then you have on the other date of registration an illegible entry. Can you tell from this whether he appeared on Election Day and cast or offered to cast his vote; can you from this book? A. Well, his name is there.
- Q His name is there, but that is the fact that he registered? A. Yes, sir.
- Q Now, could you tell from this book whether on Election Day he came and voted? A. Does it appear there, sir?
- Q It does not, as far as I can see. A. What does it say there, sir.
- Q Not a thing. A. Is this the same gentleman you are trying now?
- Q That is the same one, I presume, that is for the jury to say.

MR. WEEKS: I was just going to ask Mr. Blau what the materiality of Matthews' entry was, and also of the McGrath entry. Are McGrath and Matthews the same person?

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MR. BLAU: We will show that the defendant

Haggerty appeared at the polling place in the morning and cast a vote under the name of Matthews; and that he returned in the afternoon and attempted to vote under the name of McGrath.

MR. WEEKS: Now I can see something about it.

BY THE COURT:

Q Mr. Ryan, could you take this book and testify that any single person whose name is in it did actually vote on the 7th of November, at the last General Election? A. How is that?

Q If any single name in it actually voted, or any single person did actually vote; can you determine it from this book?

A. From my own book or this other book?

Q Look at them. A. Well, the Inspector who handled that book, it is correct with mine.

Q There is one column here, consecutive number of stub of ballot; does not that mean or is not that evidence that the stub or ballot was found in the box and showing that the party had appeared there and voted? A. Yes, sir.

Q There is no column in this book and there is not in this on that subject (indicating)? A. Sometimes they make a mistake.

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Q I have looked at four pages and there is not a single one.

A. (No answer.)

THE COURT: Let me see another book. Here is one  
Inspector who did (indicating).

BY THE COURT:

Q This is your book. You have got it on this last page of  
"R"s and you have got it on the page of "T"s, and you have  
got it on the page of "V"s, but on this page where McGrath's  
name is entered, there is no consecutive number of stub of  
ballot, neither is there in that other book there. Now,  
there is "James McGrath, residence 30 West End Avenue, number  
of rooms," and so forth, age and so forth, and State and  
County and Election District, and so forth; when the last  
place of registration, that is all down. Then, the year of  
last vote or registration, that is down; the date of regis-  
tration, that is down; and then consecutive number is down  
for all the rest except McGrath. Now, what does that in-  
dicate to you, that he did or did not vote? Look at it;  
on the other names there is consecutive number of stub of  
ballots; now, when the stub of ballot is found in the box,  
that indicates that the man had voted, does it not? A.  
(No answer.)

MR. WEEKS: Here is another one, No. 4, which has  
not any number at all on either of the "M"

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pages, either the "M" pages or the "Mo" page.

THE COURT: Here is a book in which they have got on front of McGrath's name the consecutive number of ballot, and then it is erased.

MR. BLAU: Exactly. Now, perhaps this book will confirm the matter ((handing)).

BY THE COURT:

Q The date of registration is October 16th. Then you started to put down evidently something, because there is a slight stroke there. What does that indicate to you?

A. (No answer.)

THE COURT: This other man has written "125" as the consecutive number of stub, and then crossed it out. Does not that indicate that he was not allowed to vote?

THE WITNESS: It seems so, sir.

MR. WEEKS: That would not indicate that he was not allowed to vote, because then in the next column in the book it would require an entry, if a ballot is once given, to the voter; they cannot scratch it out, but they must make an entry in the next column.

THE COURT: They must, but suppose they do not?

What are you going to do?

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MR. WEEKS: You cannot do very much, but I mean the conclusion is that.

THE WITNESS: It looks as if he did not vote.

THE COURT: Mr. Ryan's book gives all the entries up to the last, and then there is an evident "1", partly drawn, and the other two figures are not added. In the other book the other two figures are added "125" and then they are erased by two lines, which would indicate that he was not allowed to vote. This column of remarks should have stated "Challenged" and so forth, and there is not a single entry in any columns of remarks in these books. Now, if the gentlemen who control elections would pay a little more attention, it would be better.

MR. WEEKS: The Matthews entry, which I learned just a few moments ago is the entry of the first occasion when they claim this boy voted, shows that the consecutive number of his ballot was 118. Now, if the entry on the McGrath line means anything and the consecutive number of the ballot is 125, it would ----

MR. BLAU: There is no such entry at all.

MR. WEEKS: There is such an entry. It would mean

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EXHIBIT

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that this boy must have gone in and voted under the name of Matthews, and then turned right around and got on the end of the line and got the McGrath ballot.

MR. BLAU: You will find any number of erasures there.

THE COURT: Now, in the Matthews case, where he voted according to this book -- whose book is this (showing)?

THE WITNESS: That is Murray's.

THE COURT: Now, Murray's book indicates from the Matthews entry, William A. Matthews, his residence, etc., etc., and down to the number and name of the street or avenue, etc., and then the date of registration, 1904, he puts down that, and the month, and then no number whatever on "Consecutive number of ballot"; no remarks in the column for remarks.

MR. WEEKS: This witness's book shows the Matthews number to be 118, and Book No. 2, I think, shows the Matthews number to be 118. Book No. 4 has no number for Matthews.

BY THE COURT:

Q This is your book, is it not (showing)? A. Yes, sir.

THE COURT: This book of Ryan's shows that the stub

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number was 118?

MR. WEEKS: Yes, sir. Now, if the other number was 125 ----

THE COURT: It was, but it is erased.

MR. WEEKS: Yes, but I say, for some reason 125 was put opposite McGrath, which would indicate that he must have gone into the little booth there and then come right out and on the end of the line.

THE COURT: That would depend upon how lively they were voting at that time.

THE COURT: Gentlemen of the Jury: At each adjournment I am obliged to give you the statutory caution not to converse with each other, nor with anyone else, about the case, and of course, to come to no conclusion until it is finally submitted to you. You are excused until to-morrow morning at half past ten o'clock.

(The further trial of the case was accordingly adjourned until 10:30 A. M. on Tuesday, April 17th, 1906.)

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New York, April 17th, 1906.

TRIAL RESUMED.

J O H N R Y A N, a witness for the People, recalled:

BY MR. BLAU:

Q Mr. Ryan, I hand you People's Exhibit 2, which you testified yesterday was in your handwriting ----

MR. WEEKS: People's Exhibit 3 is Ryan's book.

Q (Continuing) Well, People's Exhibit 3, then, and ask you to look at the last page of the book; is that your signature attached there, to the four certificates? A. No, the first is mine; the four first signatures is mine.

Q And are the other three signatures, the signatures of the other Inspectors, subscribed in your presence? A. Yes, sir, as well as I could ----

BY MR. WEEKS:

Q You said something about as well as you could, what? A. Yes, sir; as well as I could recollect.

BY MR. BLAU:

Q They were signed in your presence? A. Yes.

Q On the various days that the certificates are dated? A. Yes, sir.

J O H N F. S U S S I L L O, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLAU:

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Q You were one of the Inspectors of Election of the 2nd Election District of the 19th Assembly District for the Election on November 7th, 1905? A. I was.

Q And did you act as such on the four days of registration and on Election Day, 1905? A. I did.

Q Look at these three books, People's Exhibits 2, 4 and 5, and pick out the one in your handwriting? A. That is it (indicating People's Exhibit 2).

Q I show you People's Exhibit 2 and call your attention to Entry No. 144; will you read that entry? A. (Reading) "Mathews, William A., 219 West 60th; fifth floor; twenty-five years of age, eighteen years in the State; eighteen years in the County; five years in the Election District, born in the United States; last place of registration was New York State, New York City; 219 West 60th; 1904; the date of registration October 16th; consecutive number and stub of ballot, 118".

Q What does that number 118 mean? A. The number on the ballot which was voted.

Q Which was voted by whom? A. William A. Mathews.

Q By a man who gave the name of William A. Mathews? A. Yes, sir.

Q And that entry was made in his presence and while he was giving his name? A. Yes, sir.

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- Q All those entries have been made in pursuance to answers that he gave to questions asked him? A. Yes, sir.
- Q Now, look at the last page of People's Exhibit 2, and tell me if your signature is there attached to the four certificates on the various days of their dates? A. Yes, sir.
- Q And did the other Inspectors subscribe their names in your presence to those certificates? A. Yes, sir.
- Q And is that the case with reference to the three other books? A. Yes, sir.
- Q Your signature appears there, together with the signatures of the other Inspectors? A. Yes; I signed the other three books.
- Q Now, look at Entry 156, in People's Exhibit 2, and read that entry. A. (Reading) "McGrath, James, residence number, 30 West End Avenue; fifth floor; twenty-three years of age; twenty-three years in the State; twenty-three years in the County; five months in the Election District; born in the United States, last place of registration, New York State, New York City, 218 West 67th Street; year of last vote or registration was 1904; date of registration October 16th."
- Q Does it appear by that entry that McGrath voted? A. No, sir.
- Q So that McGrath did not vote? A. No, sir, according to this book.

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Q Did you attend all of the registration day at the polling place? A. Yes, sir.

Q Do you recall any challenge being made in the afternoon of that day? A. On Election Day?

Q Yes, sir. A. Not while I was there.

Q Do you know if there was any challenge made there that afternoon at all? A. I do not.

Q You do not know? A. No, sir.

Q How long were you away from the polling place? A. Well, I should not say any longer than twenty minutes.

Q At about what time? A. That I cannot answer very fluently.

CROSS EXAMINATION BY MR. WEEKS:

Q Are you able to tell me about what time this Ballot No. 118 which is shown by your book to have been cast, by Mathews, was voted? A. Well, no, I could not very plainly.

Q About how many voters were there? A. As near as I can recollect, I think there were 210 registered.

Q And did they come in rapidly in the morning? A. Yes, sir.

Q About how many were cast, say, before nine o'clock? A. Well, say, close on to 100.

Q And how many within the next hour? A. Well, there was a let-up then, and I could not very well say. I should say anything from 15 to 25.

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Q That is, between nine and ten in the morning? A. Yes, sir.

Q And say between ten and eleven, about how many? A. Well, I do not think there was much of a decline at that hour.

Q But you were in there all the morning, were you not? A. Except I had occasion to go to the urinal.

Q Well, that was only a moment or two? A. Well, that is all, yes, sir.

BY THE COURT:

Q Was there any hour during the day, as far as you remember, when less than 5 votes were cast, from the time the polls were opened until the hour of closing? A. I cannot remember.

Q Now, suppose Ballot No. 118 had been cast at nine o'clock, and Ballot 125 -- that would be seven ballots after 118, would it not? A. Yes, sir.

Q Well, if that had been cast late in the afternoon -- was it the last ballot cast? A. The last ballot cast for that day?

Q Yes. A. No, sir.

Q But the fact of the numbers convinces you that only seven ballots had been cast between 118 and 125? A. Yes, sir, from my way and knowledge of the election.

Q Exactly. Because they are in consecutive order? A. Yes,

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sir.

Q And the stubs show them? A. Yes.

Q As matters of record? A. Yes, sir.

Q Now, after 125, you say the total number cast was 210?

A. No, the registration was 210, but the votes, I think, were something around 190.

Q Well, it would take some little time to cast those other votes, over 125, would it not? A. Yes, sir.

REDIRECT EXAMINATION BY MR. BLAU:

Q Do you mean to swear that there were about 118 votes cast out of 190, total votes cast that day before nine o'clock in the morning? A. No, sir.

Q Well, before ten or eleven? A. I think it is safe to say that, yes.

Q Well, do you think it is safe to say that, or are you positive? A. I am not positive, no.

Q You do not know? A. No.

BY THE COURT:

Q There is no record of how many votes are cast in each particular hour? A. No, sir.

BY MR. BLAU:

Q The total vote cast there that entire day was 190? A. I think around that number, yes, sir.

Q So that, if 118 votes were cast in the forenoon, that would

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have left it 72 votes for the entire rest of the day?

A. If 190 was the total, yes.

Q Now, is it possible that but 125 was cast in the forenoon?

A. It is possible, yes.

BY MR. WEEKS:

Q You say it is possible, because anything is possible, but you have not the slightest idea that was the fact? A.

No, sir; I do not swear to it by any means.

Q On the contrary, you believe it must have been cast in the morning? A. Yes, sir, just as well.

BY THE COURT:

Q I ask you another thing, for the information of the jury: You say that according to your record you can testify from that that the man McGrath did not vote -- the one that registered later in the day? A. No, he did not, according to my book.

Q That is, according to your record? A. Yes, sir.

Q Now, if he had voted, the record would have been in the column of consecutive number of stub? A. Yes, sir.

Q And if that column is not filled in in your record, it is proof to you that he did not vote? A. Yes, sir.

Q Now, on another of the Inspectors' records I find that McGrath, and with the same data, that in the column of consecutive number of stub, there were marked originally very

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plainly the figures "125", and then they were crossed out. Now, what, to your mind, does that indicate; there it is, look at it (showing)? A. Well, more or less a mistake; that is all I can say.

Q And it would indicate that that was the number of the ballot and the Inspector put it down before the vote was cast and after the vote was rejected? A. That might possibly be, too, yes.

Q In the other two books there is no mention there; and in one of them there is just a faint "1"? A. Well, I have no knowledge of that.

Q My idea is to get at the exact thing that occurred. The Inspector was just examined here, and he had written all the rest of the entries, until he came to this column, and then he made the figure "1" and then stopped. In this there is "125", and that is crossed out; and in this and the other it is left blank. A. Yes, sir.

Q But you are quite satisfied he did not vote? A. Yes, sir.

Q I mean, from the entries in the books? A. Yes, sir.

Q That indicates that he did not vote? A. Yes, sir, I would take it that way, yes, sir.

Q The failure of entry in your book indicates that he did not vote? A. Yes, sir.

Q And the partial entry in Ryan's book, that is, he started

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to make an entry, but it is so faint, just the figure "1", and then he runs out the line, does not finish it ---- A. Yes, sir.

BY MR. BLAU:

Q And the entry of that "125" upon that register in that column, which is crossed out, that, you say, is evidently a mistake? A. I should take it as a mistake, yes. I cannot account for it at all.

BY THE COURT:

Q Well, would not that explain it, what I suggested? A. Yes, sir.

Q When the number of the ballot was called out, he put it in the book, and then as he did not vote, he crossed it out?

A. Yes, sir.

Q When a thing like that happens, what do you do with the stub? A. Well, it would come under the head of void ballots. There is a box for them.

Q Now, the man that came after him would get 126, would he not? A. 126, yes, sir.

Q And 125 would be marked as a void ballot? A. Yes, sir.

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

DIRECT EXAMINATION BY MR. BLAU:

Q Where do you reside, Mr. Shannon? A. 235 West 60th

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Street.

Q How long have you resided there? A. Well, I have been residing there off and on for about twelve or fifteen years.

Q And were you one of the Inspectors of Election of the 2nd Election District of the 19th Assembly District during the registration days and Election Day, November 7th, 1905?

A. I was.

Q And you acted as such on all the registration days and on Election Day? A. Yes, sir.

Q I hand you two books, People's Exhibits 4 and 5; pick out the one in your handwriting? A. I believe this is the one (indicating People's Exhibit 4).

Q People's Exhibit 4 is in your handwriting? A. Yes, sir.

Q I direct your attention to Entry No. 144 in People's Exhibit 4, and ask you to read it?

(Question withdrawn)

Q Look at that entry and see if under the designation of "Number of stub of ballot" there is any entry there? A. Stub of ballot?

Q Yes, the number of the ballot voted. A. Well, there is no stub, I believe, of the ballot voted in this book.

Q Why not? A. Because my book was sent down to the Bureau of Elections; consequently, it was not used on Election Day.

Q Well, have you any recollection as to the person represent-

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ed by Entry No. 144 having voted, William A. Mathews?

A. I do not remember anything about -- anything particular about that registration, except what occurred on Election Day.

Q With reference to Mathew's vote? A. That is when he came in, a young man come in and stated his name was Mathews, but it had already been voted on, and that is the only thing I remember about it.

Q When did that occur?

MR. WEEKS: I move to strike out that remark, unless there is some evidence that it was in the presence of the defendant.

THE COURT: Well, he simply answered the question, which was general.

(Objection withdrawn.)

Q When did that occur? A. About, I should judge, about half past three.

Q In the afternoon? A. Yes, sir.

Q By whom was he informed that his name had already been voted? A. I was one of the inspectors that informed him.

Q And you informed him? A. I was one of them. The others informed him also.

Q And you told him that Mathews had already been voted on, because you knew that the name of Mathews had been voted on?

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A. We had it marked on the book as voted.

Q And you declined to permit this young man to vote, did you?

Objected to; objection sustained.

Q What did you say to the young man when he offered to vote?

MR. WEEKS: Objected to. It is not claimed that this defendant was present at that time.

THE COURT: Well, that is what we want to know.

There seemed to be two registrations there, one of Mathews and the other of McGrath. Now, whoever came in in the afternoon, did he come in and represent that he was Mathews, or that he was McGrath?

THE WITNESS: As far as McGrath was concerned, I have no recollection of anyone coming in and claiming that anyone had voted on that name of McGrath.

BY MR. BLAU:

Q Were you out during any time of the afternoon? A. No, sir, I was not out, only to the door to get a little air, but I was there when every one voted.

Q Well, will you tell what was done by the Board of Inspectors or anybody in that place, in the polling place, when this young man came in and offered to vote?

MR. WEEKS: Objected to. Which young man?

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THE COURT: Objection sustained.

Q When a young man came in to vote?

THE COURT: I will allow him to say "A young man came in".

MR. BLAU: I am not now referring to the defendant.

MR. WEEKS: You say you are not claiming it was the defendant?

MR. BLAU: I say, I am not now asking him in reference to the defendant.

MR. WEEKS: Unless you claim it was the defendant and that the defendant was there, the conversation would not be competent evidence against this defendant.

THE COURT: That is correct, but at the same time he has a right -- repeat the question.

(Question repeated).

MR. WEEKS: Not the defendant.

THE WITNESS: A young man came in and gave his name as Mathews and wished to vote. We looked at the book, each of us, and we saw that the name he gave had already been voted on, and we declined to take his vote. He wanted to know why, and we told him we could not take a second vote on the one name unless by order of the

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Supreme Court, and then he went out. He made a few remarks afterwards, but I do not just recollect what he said. He said he did not vote. That is all I remember.

BY MR. BLAU:

Q Would you recall the young man if you saw him? A. Since I have been coming down here I met the young man, but if I had not seen him down here and talked to him, I would not have known him.

Q Well, if you saw the young man, if he was presented to you in the Court now, would you recognize him? A. I would know him as the man that came in and said he was Mathews, and whom we did not allow to vote.

BY MR. WEEKS:

Q You would not recognize this young man who was coming in now as the young man who came in on the afternoon of Election Day, if he had not told you he was the man, would you? A. I saw him; I met the young man down at the Attorney General's office, and I asked him, I says, "I think I know you," I says, "Haven't I seen you some where?" Then he told me his name and then I recollected he was the one that came in. I did not know him before and had not seen him since.

Q You only thought you had seen him some where, but did not

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know where? A. I was sure I saw him some where.

Q Until he told you where you had seen him? A. No. He said to me his name was So-and-so, and then I recollected when I had seen him.

BY MR. BLAU:

Q Look at this young man (indicating) a person at the rail); is that the young man? A. That is the young man that came in, claimed he wished to vote, and whom I did not allow to vote.

Q You are positive about that? A. Almost as positive as I possibly can be.

THE COURT: Is he the defendant in this case?

MR. BLAU: No, sir.

THE COURT: Then why do you go on with the case?

MR. BLAU: It is claimed by the People that this defendant voted under the name of Mathews.

THE COURT: That is not charged in the indictment.

It is an attempt to vote.

MR. BLAU: An attempt to vote twice.

THE COURT: And here you bring in another, who it appears is Mathews, and was Mathews, and who was entitled to vote, and the Inspectors refused to let him, because they did not have an order of the Supreme Court.

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MR. BLAU: But does it make any difference whether the defendant voted under the name of John Doe or Richard Roe or anybody else ----

THE COURT: No, when he is indicted and on trial, it does not make a particle of difference. The Inspector here testifies that he came in in the afternoon to vote and they would not let him vote.

MR. BLAU: Because somebody had already voted on his name.

THE COURT: Call that young man back and let him stand alongside the defendant.

BY THE COURT:

Q Now, the first time you identified this young man here on that side (indicating), when he came to vote under the name of Mathews, you did not remember him then, or recall him, until you met him afterwards in the Attorney General's office? A. I would not be able to tell one from the other at that time, your Honor.

BY THE FOURTH JUROR:

Q May I ask both of them to put on their hats?

THE COURT: Yes.

(The defendant and the other person referred to both place their hats on their heads as

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directed.)

THE WITNESS: At that time it would be just the same. I never saw either of them before.

BY THE COURT:

Q You put the two circumstances together, when you saw him in the Attorney General's office, that he said his name was Mathews and that a man named Mathews had been rejected? A. I remembered he was the man who came in and said his name was Mathews, because there was a little argument.

Q Suppose the other man, the defendant, had met you, and said, "Do you remember, my name is Mathews"? A. There would be no incident to draw my attention to that day, at that moment at all, to the man in any way.

BY MR. BLAU:

Q But you are positive that the young man, Mathews, who has just been presented here, is the young man who came in on Election Day and who was not permitted to vote? A. And claimed he was Mathews, but whether he is Mathews or not, I could not possibly say.

Q But he is the man that claimed to be Mathews and he was told somebody had already voted on his name? A. Yes, he is the man.

Q Now, Mr. Shannon, look at the last page of People's Exhibit 4, and tell me if you see your name subscribed to four cer-

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tificates on that page? A. Yes, sir.

Q And did the other Inspectors subscribe their names on these certificates in your presence? A. Yes, sir.

Q And did they do likewise with the other three books? A. Yes, sir.

Q And your name is also subscribed to the other three? A. Yes, I signed every book.

BY THE COURT:

Q Give the best of your recollection on this: Suppose that Ballot No. 118 is cast in the morning, and Ballot No. 125 is cast, or offered to be cast, later in the day; can you give the Court a general idea of the interval that would elapse between the casting of the two ballots, in the ordinary course of election? A. Well, in the ordinary course of election -- from Ballot 18?

BY MR. WEEKS:

Q 118. A. 118 to 125?

BY THE COURT:

Q Yes. Seven ballots. A. Well, there would not be any more than at most an hour and a half or two hours, at the very most.

Q For seven ballots? A. Yes, sir. Perhaps it would be only just a few moments.

Q Yes, precisely. In the morning, of course, the vote is a

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little heavier? A. Yes, sir; but about eleven o'clock it drops off, half past ten or eleven, and at twelve it increases again.

Q When men are off work? A. Yes, sir; and then it comes down again after one o'clock.

Q Well, now, let me ask you again: Give your general recollection. Supposing 192 ballots are cast during the voting hours, where would you put 125, what part of the day?

A. With 70 odd to follow?

MR. WEEKS: I would suggest if he can tell us at this past Election, about.

Q On that one day, yes, 125.

MR. WEEKS: In that election district.

Q 125 was the stub number, and in the whole election district there were 192 cast during the day. A. Well, 125 in my election district was cast about, I should judge, about half past eleven.

BY MR. BLAU:

Q So that if there were 192 ballots cast during the entire day, it took the 70 odd ballots from half past eleven o'clock until the close of the polls to be cast? A. About that, as far as my judgment goes.

Q That, however, is merely your judgment; you do not recollect? A. Yes, I would not swear to that as a positive

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fact.

Q And it is just as possible and probable that 125 might have been cast at one or two o'clock in the afternoon? A.

Well, hardly, not that. We cast that before one o'clock or two in the afternoon; I am positive about that.

Q Well, how do you know?

THE COURT: He does not say he knows. I asked distinctly to give his best recollection.

THE WITNESS: That that was cast before one or two o'clock in the afternoon.

Q You could not tell that? A. I could not tell exactly, right to one, to the minute, but I am positive before two o'clock in the afternoon; in fact, before one.

BY MR. WEEKS:

Q You get about 60 per cent of the ballots in before twelve o'clock, do you not? A. Yes, sir, generally so, especially before, we get them in before that.

Q You get more than 60 per cent before? A. Yes, sir.

Q And you get nearly 50 per cent of your entire vote in before nine o'clock, do you not, before ten o'clock? A. Well, about ten.

Q And if, say, 125 were cast, as you say, about 11:30 o'clock, about what time would you think 118 were cast, seven ballots ahead, say? A. Well, I should judge around from eleven

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to half past eleven.

Q Within half an hour? A. Yes, sir.

Q At that time there would be seven ballots cast, would there?

A. About that time. I am not positive, but that is my opinion.

BY THE COURT:

Q You have served as an Inspector before, have you not? A. Yes, sir.

MR. WEEKS: Are you not going to call the Inspector who was responsible for Book No. 5?

MR. BLAU: I may call him.

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

MR. BLAU: If your Honor please, at this stage of the proceedings, I offer in evidence the other poll book of the 2nd Election District of the 19th Assembly District, which was brought here by the County Clerk.

MR. WEEKS: The other poll book is already in, is it not?

MR. BLAU: Yes.

MR. WEEKS: No objection.

(Marked People's Exhibit 7).

DIRECT EXAMINATION BY MR. BLAU:

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- Q Where do you reside? A. 211 West 60th Street.
- Q What is your business? A. I am in the Hotel Albert, 11th Street and University Place.
- Q Were you one of the Poll Clerks of the 2nd Election District of the 19th Assembly District on November 7th, 1905? A. I was.
- Q And on Election Day? A. Yes, sir.
- Q And did you keep one of the poll books? A. I did.
- Q I show you People's Exhibit 1. Tell me if that is in your handwriting? A. That is.
- Q It is? A. Yes, sir.

MR. WEEKS: I will concede that the book shows that  
Ballot 118 was given to some one named Mathews.

MR. BLAU: And that a person with the name "William  
A. Mathews" voted?

MR. WEEKS: Received Ballot 118.

MR. BLAU: And voted.

MR. WEEKS: Yes, I have no reason to doubt it, so I  
will concede it. I have not any knowledge  
about it, but I will concede it.

MR. BLAU: It is conceded, then, that some person  
voted under the name of William A. Mathews, in  
the 2nd Election District of the 19th Assembly  
District, who received Ballot 118?

MR. WEEKS: Yes.

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MR. BLAU: And it is likewise conceded that James McGrath, whose name appears upon the registers of electors of the 2nd Election District of the 19th Assembly District, did not vote?

MR. WEEKS: No, I cannot concede that. Because I cannot tell from those books what happened.

THE COURT: That is not shown in the book.

BY MR. BLAU:

Q Now, Mr. Walter, look at the page I indicate and tell me if any person by the name of McGrath appears to have voted?

MR. WEEKS: That book cannot show. That book simply shows the issuance of the ballot to a man. It cannot show whether he voted or not.

THE WITNESS: No, it don't show that McGrath voted, no.

Q Does this book, this poll book, show the persons who cast their votes? A. It shows the persons who cast their votes, yes.

Q And it does not appear that any person by the name of McGrath voted? A. That is what it don't show. No person by the name of McGrath voted that day.

Q Look at the other poll book, People's Exhibit 7, and see if that book shows that any person by the name of McGrath voted? A. It does not.

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## CROSS EXAMINATION BY MR. WEEKS:

- Q Well, will you look at your book; your book shows the number of the ballot, does it not? A. Yes, sir.
- Q You have not anything to do with the question of whether that ballot is deposited in the box or not, have you; you put the number down and you give out the ballot? A. We do, yes, sir.
- Q Do you make any additional mark when the ballot is deposited? A. We do.
- Q What mark do you make? A. We simply make, we recognize the fact in a certain column on the poll book, that the number of the ballot has been given to the elector, and the number of the ballot that this elector votes.
- Q Show me the mark for the voting of Ballot No. 121, under the "M"s?

THE COURT: 125, is it not?

- A. 121 is where a man named Charles McGee got that ballot.
- Q What is there to indicate that he voted Ballot No. 121? A. The number of ballot voted according to the column.
- Q Have you got it down there twice? A. Yes, twice in the column, yes, sir.
- Q Now, I would like to know what you did with the Ballot No. 125; to whom did you issue that ballot? A. Well, I cannot tell now unless I see the book.

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- Q Look at your book. Now, you did not issue it to anybody in the "M"s, did you? A. I cannot say that.
- Q Look at your book, and the consecutive number is -- look at 121 and 129; look at your book. A. What number do you want?
- Q 125. Look first in the "M"s, then we will go through the others afterwards. A. I do not find in the "M"s, 125.  
to 125
- Q The nearest numbers in "M" are 121, and the next is 129, is it not? A. The next is 128.
- Q Now, 125 was not given to anybody whose name began with an "M", was it? A. No.
- Q Now, look in the "A"s and see if 125 was given to anybody in the "A"s. A. No.
- Q In the "B"s? A. No.
- Q "C"s? A. No.
- Q "D"s? A. No.
- Q "E"s? A. No.
- Q "F"s? A. No.
- Q "G"s? A. No.
- Q "H"s? A. No.
- Q "I"s? A. No.
- Q "J"s? A. No.
- Q "K"s? A. No.
- Q "L"s? A. No.

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Q Have you a separate page for "Mo", or are they under the "M"s? A. They are under the "M"s.

Q Then go to "M". A. No.

Q "O"? A. No.

Q "P"? A. No.

Q "Q"? A. No.

Q "R"? A. No.

Q "S"? A. No.

Q "T"? A. No.

Q "U"? A. No.

Q "V"? A. No.

Q "W"? A. No.

Q "X"? A. No.

Q "Y"? A. No.

Q "Z"? A. No.

Q Then, what became of Ballot 125, Walter? A. Well, that is something I cannot account for, unless I overlooked it on this book here. I will look for it again and be sure. 125 is on "B". I overlooked it when you called "B". That man's name is David M. Baker.

BY THE COURT:

Q 125 was issued to him? A. Yes, sir, David M. Baker. He was 125 and got the 125th ballot, and the first set was 126. Now, what I am thinking of, it might have been 125, might

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have been a void ballot.

BY MR. WEEKS:

Q If it had been a void ballot, you should have entered and marked it void ballot? A. More than likely.

Q Now, all of the Inspectors' books show that David M. Baker voted Ballot 126. A. He voted Ballot 126, yes.

Q Now, does your book show that Ballot 125 was issued to him and returned marked a void ballot and then Ballot 126 issued? A. Now, I can explain that to you if you will let me.

Q All right. A. There was one of the Inspectors themselves had spoiled a ballot, and by the decision of that Board he was given another ballot. That is the reason why one ballot was for the number it was voted in the district. That is what makes that number 126 instead of 125.

Q Now, you remember that very distinctly, do you not? A. Yes, sir.

Q About what time of day was that? A. I could not say that.

Q Well, about? A. In the morning.

Q Early? A. Before noon, sure.

Q Before noon? A. Yes, sir.

Q And you are sure that was this Ballot 125? A. Well, I do not say that was this ballot, but this man Baker was the

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125th man that came into the polling place, but he received Ballot 126, because this Inspector had spoiled his ballot.

Q Now, have you got any mark of that? A. Well, it ought to be right here; if it is not, it ought to be.

Q Is it not one of your duties as a Poll Clerk to make a record of every ballot you issue? A. Yes, I have it right here. That man's name was Shannon, he received Ballot 59; there was a spoiled Ballot 59 and he received 60.

Q But that does not change 125 and 126? A. Why, certainly, because the man received 59 Ballot; the 59th ballot was spoiled and he got 60.

BY THE COURT:

Q Well, in the meantime, what became of Ballot 125? A. Well, that depends on the Board of Inspectors.

Q Which is the ballot that the Inspector spoiled? A. 59.

Q Well, what became of 125? A. He got No. 60. That must have been put in the box for void ballots.

Q Well, was it? A. Well, they put it in there; I cannot go to work and say now whether they did or not. I made a record there.

Q That is another case. A. Well, that is what makes his ballot 126 instead of 125.

Q Open to the "M"s there. Now, you will find on the second or third line the "Mc"s? A. Yes, sir.

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Q Do you find there a "McGrath"? A. I have got a "James McGrath", yes, sir.

Q What is the reason a line is drawn through his name and no entries made? A. Because whoever came in and gave "McGrath" was challenged, and this party says, "I will go out and get somebody to identify me", but he never returned. And the only reason I had it down there was because I was a faster writer than my side partner.

Q Now, take the Inspector who was not called ----

MR. WEEKS: The other poll book does not have McGrath's name in at all.

Q Now, will you turn to McGrath's name in that book, this Inspector's book; now, it has the same as all, the usual entries are made? A. Yes, sir.

Q In the last column what do you see there? A. The last column I see "125" crossed out. It says "Consecutive of stub number of ballot", and then crossed out.

Q It is crossed out? A. Yes, sir.

Q Well, explain that? A. Well, the only explanation I can give you of that is, one of the men, whoever come in and says his name was McGrath, I put his name right down in the book.

Q But he came to vote? A. When he came into the polling place, the Chairman of the Board asked the name, and he says,

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"McGrath", and he says, "Where do you live?"

Q Yes, and he answered all those questions? A. He was challenged.

Q Now, the number of the ballot that you say is missing, is nevertheless brought in by another person. A. No, sir, that could not be. 125 Ballot is checked twice. This man Shannon, the Inspector, who was given Ballot 59, he spoiled his Ballot 59; consequently he had to have another set of ballots, and the consecutive number is No. 60, but that certainly would not make it run. When they come to the close of the polls, somebody would have to have 126, though he was the 125th person that appeared at the polling place to vote, because the 59 Ballot had been spoiled.

Q But would the Inspector, when a man came up and presented Ballot 125, enter it on his book at 126? A. He entered it on his books, the number of the ballot this man received, but he was the 125th elector that had appeared.

Q Now, did they count them "1, 2, 3" as they came in? A. Yes, sir.

Q Who keeps that? A. The Poll Clerk.

Q Where does he put it? A. In the first column, the number of the elector. That is the 125th elector, but he did not receive the 125th ballot.

BY THE COURT:

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Q Then why is it changed on the Poll Clerk's book to 126?

A. We made a record of the fact that he had spoiled his ballot.

Q There is no record in this case? A. I made it on my book.

BY MR. WEEKS:

Q I understand you to say that you did find No. 125? A. Yes, sir.

Q On Baker? A. Yes.

Q And that is, you found that as the number of the elector?

A. Yes, sir.

Q That he was the 125th elector that came in? A. Yes.

Q But what was the number of the ballot he received, 126, was it not? A. The ballot he received was Ballot 126.

Q What was the number of the ballot he voted? A. 126.

Q Now, can you find anywheres in your book anybody who received Ballot 125, or who voted Ballot 125? A. Yes, I can.

Q Where? A. I can find that easy enough. It is right here in the poll book.

Q Turn over to the "B"s. A. The man that voted Ballot 125 was named Frank Viscardi. He was the 124th elector.

Q Then Ballot 125 was voted, then? A. Yes.

BY THE COURT:

Q Then how do you account for the entry in the Inspector's

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book in front of McGrath's name of 125, and then crossed out? A. Well, that was this way: When this man appeared to vote, naturally the Ballot Clerk handed him the ballot and called "125", but when he was challenged, he said he was going to get somebody to identify him, and he never came back; so consequently, the next elector got 125, and this man Viscardi happened to be the man that came in and got it.

BY MR. WEEKS:

Q What time did Viscardi vote? A. I could not tell you that now.

P A U L B O R C H A R D, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLAU:

Q Where do you reside? A. 42 Amsterdam Avenue.

Q How long have you resided there? A. Nine years.

Q What is your business? A. Pharmacist.

Q At 42 Amsterdam Avenue? A. Yes.

Q How long have you been a pharmacist? A. Five years.

Q In business for yourself? A. Yes, sir.

Q On November 7th, 1905, Election Day, were you in the polling place of the 2nd Election of the 19th Assembly District?

A. Part of the day, yes.

Q Were you there in the morning? A. Several hours.

Q Were you there in the afternoon? A. Several hours.

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Q What time in the afternoon were you there? A. I do not remember exactly. From two o'clock on; from two until about eight.

Q From two until eight? A. Yes.

Q Did you challenge anybody? A. I did.

Q Do you know the defendant? A. I think I know him.

Q Well, do you know that you know him? A. Well, I know him from seeing him, yes.

Q How long do you know him? A. I know his whole family for years.

Q Have you seen him in the polling place of the 2nd Election of the 19th Assembly District on Election Day? A. I think I seen him there.

BY THE COURT:

Q Testify to what you know, not what you think. Did you see him there? A. (No answer.)

BY THE FIRST JUROR:

Q Didn't you say you think you know him, at first? A. Yes, sir, I think I did. I know his whole family, yes.

BY MR. BLAU:

Q Then you know that you know him? A. I know that I know him, yes.

Q Now, when you say you think you saw him in the polling place on the afternoon of November 7th, do you think so or do you

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know so? A. I think so.

Q Do you not know? Now, look at me when you answer questions; do you know that you saw him there? A. Yes.

Q Why did you not say so right away? A. Because I have to think of what I say.

Q You are here to testify to the truth, are you not? A. Well, that is what I am going to do.

Q And you are sworn to tell the truth? A. That is what I am going to do.

Q What time of day did you see Haggerty in that polling place? A. I do not know the time exactly. It was in the afternoon some time.

Q Can you tell approximately? A. Probably around two o'clock. It was shortly after I got back from luncheon.

Q In the neighborhood of two o'clock? A. I think it was.

Q What did the defendant do in that polling place? A. He came in to vote, I guess.

Q Do you guess or do you know? A. He came in to vote.

Q And what name did he give? A. I am mixed up with the two names; I do not know if it was McGrath ----

THE COURT: I think you had better dispense with this witness.

THE WITNESS: I do not remember exactly which name it was, because there were two names.

Q Can you not tell? A. I could not say positive whether it

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was Mathews or McGrath, or what the other party's name was.

Q Was it one of the two names? A. I suppose so.

Q What did you do then? A. Challenged the man.

Q Challenged him? A. Yes, sir.

Q What did he do then? A. Walked out.

Q Are you a commissioner of deeds? A. Yes, sir.

Q And you have the power and right to administer oaths? A.  
Yes, sir.

Q Do you know one Fritz Cousin? A. I do.

Q Did you swear him to an affidavit?

MR. WEEKS: I object to all this.

(Question withdrawn.)

NO CROSS EXAMINATION.

F R I T Z C O U S I N, a witness called on behalf of the  
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLAU:

Q Mr. Cousin, where do you reside? A. 42 Amsterdam.

Q How long have you resided there? A. I live in 42  
Amsterdam two years now.

Q What is your business? A. Silk weaver.

Q How long have you been in that business? A. Since a  
little boy.

Q And are you a citizen of the United States? A. Yes, sir.

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- Q You voted at the last Election? A. Yes, sir.
- Q On November 7th, 1905, Election Day, were you in the polling place of the 2nd Election of the 19th Assembly District?
- A. Yes, sir.
- Q Were you there the entire day? A. I was watcher for the Municipal Ownership Party.
- Q And you attended there the entire day? A. Yes, sir.
- Q Do you know the defendant Peter Haggerty? A. Yes, sir.
- Q How long have you known him? A. I know him from years back, the way the boys around there, moving out.
- Q You have known him for years? A. Yes, sir.
- Q Do you know any other member of his family? A. Yes, he got a couple of brothers more.
- Q And you know the brothers? A. Yes, sir.
- Q Now, on Election Day, November 7th, 1905, did you see this defendant in the polling place of the 2nd Election of the 19th Assembly District? A. Yes, sir.
- Q How many times? A. I saw him there twice.
- Q When did you see him the first time? A. Before noon.
- Q About what time? A. Well, it was before noon. There was no clock in the place and I got no watch in my pocket.
- Q Well, about? A. Well, around eleven o'clock, around that hour; maybe ten or eleven, I don't know sure.
- Q And what did he do there? A. He voted under the name of

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William Mathews from 219 West 60th Street.

Q Did he get a ballot? A. Yes, sir.

Q And go into the booth? A. Yes, sir.

Q And bring it out? A. Yes, sir.

Q And hand it to the Chairman? A. Yes, sir.

Q And what did the Chairman do with it? A. Put it in the box.

Q Now, when he first came in to vote, did he announce his name? A. He did not announce his name as Peter Haggerty.

Q What name did he announce? A. William Mathews of 219 West 60th Street.

Q William Mathews of 219 West 60th Street? A. Yes.

Q You remember that distinctly? A. Yes.

Q Now, when did you see him in the afternoon? A. It was around, maybe two o'clock or half past one or two. It may be half past two.

Q And what did he do when he came in then? A. He attempted to vote under the name of McGrath, and he was challenged.

Q Who challenged him? A. Mr. Borchard.

Q And did you have any conversation with Mr. Borchard in the presence of this defendant in the afternoon when he came in?

A. I told Mr. Borchard that he voted in the morning.

MR. WEEKS: One moment. I object.

THE COURT: Strike it out.

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Q Do you know what it means to say something in the presence of somebody? A. No. Not exactly. If you explain me a little better I may understand it.

Q You had a talk with Mr. Borchard? A. Yes, sir.

Q And was the defendant Haggerty there when you had that talk with Borchard? A. He walks the second time and intended to vote, and I told him he voted already this morning, and he says somebody else told him already.

Q You told Borchard that? A. Yes.

MR. WEEKS: I move to strike that out.

BY THE COURT:

Q How long had you known him? A. For a couple of years.

Q You saw him come in and vote under the name of Mathews, and you were a challenger, and you knew his name was Haggerty?

A. Yes, sir.

Q And you said nothing, and you saw him get his ballot, you heard his name announced, and you saw him go in? A. Yes, sir.

Q Why did you not say something, if you were there as a challenger for the "M. O."? A. Will you allow me to answer.

Q Yes. A. I was all alone for the Municipal Ownership Party there and I had to stand so much that I was afraid for my life, and I couldn't do nothing.

Q You, knowing him for years as Haggerty, permitted him to

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vote, with four Inspectors and two Poll Clerks there, and you never challenged him or said, "This is not Mathews; this is Haggerty"? A. I couldn't do it.

Q What inspired you with courage in the afternoon when he came back to vote as McGrath? A. Because then I told Mr. Borchard, "This is a little far", and Mr. Borchard was captain of that district, and I says, "Mr. Borchard, that man was voting this morning already and now he comes again". He says well, somebody told him already that he voted this morning.

BY MR. BLAU:

Q Borchard said that? A. Yes, sir.

Q Then he challenged him? A. Yes.

Q Then, the reason that you did not say anything in the morning was because you were afraid ----

MR. WEEKS: Objected to as leading.

(Objection sustained.)

Q Then he was challenged in the afternoon? A. Yes, sir.

Q And what did the defendant do after he was challenged? A. He walked right out and he says, "I will go and get some of my friends and they will make me to vote", and we didn't see him no more.

Q Did he come back to vote? A. No, sir.

Q So that he did not vote under the name of McGrath at all?

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A. No, sir.

CROSS EXAMINATION BY MR. WEEKS:

Q Now, Mr. Cousin, you were in the habit of reading the New York Journal, were you not, just before Election? A. Oh, I read every paper.

Q Yes, you read every paper. I suppose you read about these rewards that people were going to get? A. I never looked for that. I work for my living.

Q You did not read about that? A. No, sir.

MR. BLAU: I object to this line of examination.

Q Did you say that you did or that you did not read about these rewards for violators of the Election Law? A. I never took notice to that.

Q Well, did you read about it? A. I don't know about rewards and so on. I read the Journal and I read any other paper. I never look for nothing; I work for my living hard.

Q Did you read in the paper that a reward was offered for those who would give information in regard to the violation of the Election Law? A. No.

Q Did not read that? A. No, sir, I did not notice that.

Q Now, what time of day was it, you say, that you saw this boy coming there first? A. Before noon.

Q When he came in there, how many people were waiting to vote?

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A. Well, I couldn't exactly say how many people; there was a whole lot of people there.

Q There were plenty of voters on the line, were there not?

A. Yes, there was a whole bunch coming from Amsterdam Avenue, from Mr. McGee, and the whole gang come all at once.

Q Now, there was a whole line of people in there, was there not? A. Yes, sir.

Q And you knew that this was Peter Haggerty and that it was not Mathews? A. Sure; I was looking over the names, and I stood right in the front there.

Q You did not say a word? A. No, sir.

Q He walked off just as though nothing had happened? A. Yes, sir.

Q Then you say he came in later in the afternoon under the name of McGrath? A. Yes, sir.

Q And you say that between the time Mathews voted and the time McGrath voted, was how many hours? A. Well, I says I couldn't say exactly. There was no clock in the place and I got no watch with me.

Q Well, about half past two or three o'clock? A. Something around that.

Q And the other was before twelve? A. Yes, sir.

Q Now, Mr. Cousin, that is true, is it? A. Well, so far

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as I know.

Q Well, so far as you know, that is true? A. I did not look on the clock, I tell you. I did not know what time it was, only it was in the afternoon when he voted, and in the afternoon he come to vote again, when he was challenged.

Q Under the name of McGrath? A. Yes.

Q That was the name he applied for the ballot under? A. Yes.

Q Was the ballot handed out to him? A. Yes, sir.

Q And then he went out and left the ballot there? A. Yes, sir.

Q And that occurred in the afternoon between two and three?

A. Yes, sir.

Q And the Mathews occurrence was in the morning before twelve?

A. Yes, sir.

BY THE TENTH JUROR:

Q Do you mean to say that the second time he came to vote was after dinner time? A. After dinner.

Q You do not recollect the time? A. No, sir.

REDIRECT EXAMINATION BY MR. BLAU:

Q You are a married man, are you not? A. Yes, sir.

Q And you have a family? A. A big family.

Objected to; objection sustained.

Q You are a workingman, are you not?

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Objected to; objection sustained.

Q Was there a lull in the proceedings -- kind of a let-up in the voting?

Objected to; objection sustained.

Q Was there any time of the day that the voting did not progress as speedily as at any other time?

Objected to; objection sustained.

BY THE COURT:

Q Now, when he came in, Mr. Cousin, in the afternoon, can you tell us just what he said and what the Inspector said in his presence; was there a line; were there any people waiting to vote when he came in in the afternoon? A. There was maybe two or three people in the box, you no.

Q And when he came up what did he say? A. He did not say anything.

Q What was said to him? A. Nothing was said to him. He took his ballot and went in the box.

Q Well, they did not give him a ballot unless somebody said, "Where do you live? Are you registered?" and some other preliminary questions that are usually asked; now, what was asked him? A. Your Honor, I tell you, if you was on that day when I was there ----

MR. WEEKS: Do not go on and give a history of your life..

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Q The question is, what occurred in your presence when this young man came in in the afternoon. Who spoke to him and what was said? A. There was nothing said. They handed him a ballot and that was all.

Q Why did they hand a ballot to him any more than they would hand it to you or to Mathews or to any other stranger that came in? A. I could not say, I could not answer you on that.

Q He did not say anything, then? A. No, sir.

BY MR. BLAU:

Q He announced the name "McGrath"?

THE COURT: Do not lead him, because I asked that for a purpose.

Q When the defendant came in in the afternoon what was the first thing said or done?

THE COURT: I have asked him that twice and he said "Nothing".

THE WITNESS: He said the name "McGrath".

THE COURT: Strike that out, because he was asked twice and he said most distinctly that nothing was asked him, but that they handed him a ballot, and I asked him, "Was not the name mentioned; why should they hand him a ballot any more than they handed it to you or anybody else". To

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ask him was there a name asked is a leading question with your own witness.

BY MR. BLAU:

Q What was said at the time?

THE COURT: I have asked him that twice.

Q Now, will you describe what happened from the first moment that this defendant came in to the polling place in the afternoon until he left the place?

MR. WEEKS: Objected to as not proper redirect examination.

THE COURT: Objection sustained, the question having been twice asked him by the Court.

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

DIRECT EXAMINATION BY MR. BLAU:

Q Mr. Mathews, where do you reside? A. 219 West 60th Street.

Q How long have you resided there? A. About three years.

Q What is your business? A. Bookkeeper.

Q You are a citizen of the United States? A. Yes, sir.

Q In what election and Assembly district is your residence located? A. The 19th Assembly, 2nd Election.

Q Were you one of the registered voters of your election and Assembly district for the Election of November 7th, 1905?

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A. Yes, sir.

Q Did you appear at the polling place of that election and Assembly district on Election Day, November 7th, 1905?

A. Yes, sir.

Q Did you personally appear there? A. Yes, sir.

Q And did you vote? A. No, sir.

MR. WEEKS: Objected to as immaterial, whether this man voted or not, on the indictment on which this trial is being had.

THE COURT: That is what I was going to ask. On which indictment are you trying him?

MR. WEEKS: He is trying him on the indictment for attempting to vote a second time.

MR. BLAU: That is the indictment we are trying now.

THE COURT: Then I will sustain the objection, if you are trying for attempt to vote a second time.

MR. BLAU: Yes, sir.

THE COURT: I sustain the objection, because it is immaterial as to what this man did or did not do.

MR. BLAU: Has it not some bearing upon the question of whether or not the defendant voted the first time?

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THE COURT: No. You cannot prove that by negative testimony.

BY THE COURT:

Q You registered at the polling place of the 2nd Election of the 19th Assembly District? A. Yes, sir.

Q About what hour did you register -- I mean, what day did you register? A. I do not remember. I think it was Monday. I am not sure, I could not swear to it.

Q And what hour did you go to the polls to vote? A. Between three and four.

Q In the afternoon? A. Yes, sir.

Q And was your vote challenged? A. No, it was not challenged. I was simply told I had already voted.

NO CROSS EXAMINATION.

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

DIRECT EXAMINATION BY MR. BLAU:

Q Mr. McGrath, where do you reside? A. 30 West End Avenue.

Q How long have you resided there? A. About eight months, now.

Q That is in the 2nd Election of the 19th Assembly District, is it? A. Yes, sir.

Q Were you one of the registered voters of that election and Assembly district? A. Yes, sir.

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Q For the last Election, November 7th, 1905? A. Yes, sir.

Q Where were you on November 7th, 1905, on Election Day?

A. I was home in bed.

Q From when until when? A. Until about, I guess it was half past four in the evening.

Q And where did you go when you left your house? A. Went up to vote.

Q And what did you find when you came to the polling place?

A. The polls were closed.

Q Was that the time only time that day you had been to the polls? A. Yes, sir.

NO CROSS EXAMINATION.

T H O M A S P. B R E N N A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLAU:

Q Mr. Brennan, where do you reside? A. I live at present at 9 East 131st Street.

Q How long have you resided there? A. About five months.

Q What is your business? A. Mechanical draughtsman and estimator.

Q I show you three books and ask you to pick out the one in your handwriting? A. That is it (indicating).

Q I show you the third line from the top in your book, and ask you if that is in your handwriting? A. Yes, sir.

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Q When did you write that line? A. When did I write that line?

Q On what day, what year did you write that line? A. 1906.

BY THE COURT:

Q 1906? A. No, 1905, -- I beg pardon.

BY MR. BLAU:

Q On what day? A. That has been torn out there, since I wrote that.

MR. WEEKS: We object to this book being received in evidence. It has nothing whatever to do with the 2nd Election District of the 19th Assembly District.

MR. BLAU: I have not offered that book in evidence as yet.

THE COURT: But what is this examination for?

MR. BLAU: For the purpose of showing the admission of the defendant, that he resides at a certain place. That is the only purpose; not for the purpose of proving this book as a registry of electors or qualifying this man as an Inspector of Elections.

MR. WEEKS: What difference does it make where this defendant resides, if he is not the man that came in and attempted to vote under the name of

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McGrath.

MR. BLAU: Because he is indicted ----

THE COURT: For attempting to vote illegally.

MR. BLAU: Yes, and when a man votes from a residence not his own he votes illegally.

THE COURT: Objection sustained. The fact that this is in his handwriting and was written down has nothing to do with the other facts.

MR. BLAU: Will your Honor permit me to proceed, and I will connect it? I am offering it for that purpose only.

BY THE COURT:

Q What do you say is torn out? A. The numbers.

BY MR. BLAU:

Q I ask you for the date when you wrote that entry? A. That I do not remember.

BY THE COURT:

Q When that entry was made, could you recall the person?

A. I could, and I know him very well.

THE COURT: Then you may ask.

BY MR. BLAU:

Q Look at that line you wrote and tell me when and under what circumstances you wrote it? A. He was a resident of 149 West 62nd Street, and I have known him for about twenty-two

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years, and I have served on the Election Board before.

THE COURT: Now, wait.

BY MR. BLAU:

Q How come you to write down that line, that entire line; why did you write that line down? A. Because he was a resident of 149, and I have known him to be a qualified voter.

Q Well, who told you to write the line down? A. Which line?

Q That line (indicating)? A. (No answer.)

BY THE COURT:

Q Who told you to keep that book? A. Who told me to keep this book?

Q Yes; you were an Inspector? A. Yes.

Q Sworn to do Inspector's duties? A. Yes.

Q What was the Inspector's duty, to keep the book? A. No, to look after those who came in and were qualified voters.

BY MR. BLAU:

Q And you say you wrote that line (indicating)? A. Yes, sir.

Q Was the defendant present when you wrote that line? A. He was.

Q And did you ask him any questions? A. I asked him his name and his address.

Q So that the line that appears there in your handwriting was put down by you in pursuance to answers he gave to your questions; is that right? A. Yes, sir.

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MR. BLAU: I offer that line in evidence.

MR. WEEKS: We object to it. That does not make the line competent; the evidence as to what he stated. If the man can testify to it, is the best evidence.

THE COURT: I will allow it.

BY MR. BLAU:

Q Was that line made at the time the defendant presented himself for registration?

MR. WEEKS: I understand your Honor only admits so much of it as was made at that time?

A. It was.

BY MR. WEEKS:

Q All of it? A. Yes, sir.

BY THE COURT:

Q Will you look at the last column? A. Where?

Q The last column in the book there, called "Consecutive number of stubs"? A. Yes, sir.

Q What is the entry made in that column? A. "509 West 51st".

Q That is not the consecutive number, is it? What is the entry in that column, opposite that name? A. That is "202" here.

Q What does that mean? A. It looks as if these books were

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changed.

Q The books were changed, were they? A. Yes.

Q What would that ordinarily represent, that "202"; did you write these figures? A. No, that is not my handwriting.

Q Well, did you say all that line was written by you? A. That is not my handwriting, Judge (indicating).

MR. WEEKS: What is it you want to prove, that the defendant lived at 149 West 62nd Street?

MR. BLAU: Yes, sir.

MR. WEEKS: Conceded.

MR. BLAU: And that he so stated, and that he appeared there on Election Day and there voted?

MR. WEEKS: We do not concede that, because it is not material.

THE COURT: It is not material whether he voted in forty different places. We are trying him for attempting to vote in one place. All the entries on that line, he says, were made on the day he presented himself for registration, but as a matter of fact, the most material entry on it was made when he came there to vote, and it would appear from that book that he did vote, only the Inspector says he did not make that entry.

BY THE COURT:

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Q Now, who did make that entry in that book? A. I do not know. That is not my handwriting.

Q It is not? A. No, sir.

THE COURT: Then I will have to reject the whole book.

MR. BLAU: I offer so much of this entry as appears in the handwriting of this witness.

THE COURT: But when the witness testifies that in an official book, certified by him and kept by him according to his sworn duty, that it has been falsified ----

MR. BLAU: Will your Honor permit me to ask him one or two questions on that subject?

THE COURT: Yes.

BY MR. BLAU:

Q When you go out, when an Inspector goes out on a call of nature, does it happen that the other Inspector makes the entries? A. No. We are supposed to be on the Board.

Q But when you are out and a voter comes in to vote, does not sometimes the other Inspector make the entry on your book?

A. Sometimes, yes.

Q That frequently happens, does it not? A. Once in a while, yes.

Q And you were not Chairman of that Board, were you? A. I

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was.

Q You did not use a book on Election Day, did you? A. On Election Day, I did not.

Q And your book was kept by somebody else, was it not? A. Yes, sir.

Q So that the entry of the stub of the ballot ---p A. (Interposing) Was made by another Inspector.

Q And that is why it appears in another handwriting here?

A. Yes, sir, that is what I say; it is not my handwriting.

BY THE COURT:

Q Then you cannot say at what time the person referred to in that entry did come to the polls and vote? A. No, sir.

MR. BLAU: I just want to get this entry.

MR. WEEKS: I have conceded that the man lived there.

MR. BLAU: I will read it: "Peter J. Haggerty, residence 149 West 62nd Street, second floor; age 22; in State 22 years; in County 22 years; in Election District 20 years; born in the United States; State of New York; number and name of street or avenue, last voting place 509 West 51st Street; year of last registration, 1904, on the 9th; consecutive number of stub of ballot 17".

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THE COURT: He said "202".

THE WITNESS: "17" is right.

BY MR. BLAU:

Q What was that book (indicating)? A. That book there was the main book, the official book.

Q What is the official designation of it? A. That is to be placed in the polls during Election Day, after registration.

Q Of what district? A. Of the 35th Election of the 19th Assembly.

(The entry is marked People's Exhibit 8.)

THE COURT: Gentlemen of the jury: I am obliged at each adjournment to renew the statutory caution not to converse with each other or with anybody else, and of course, to come to no conclusion until the case is finally submitted to you.

(The Court accordingly took a recess until 2 P. M.)

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A F T E R   R E C E S S .

MR. BLAU: That is the People's case.

MR. WEEKS: I move to dismiss the indictment, if your Honor please, on the ground that the evidence here is not sufficient to warrant a conviction. If there is any such thing as a reasonable doubt in a case, it seems to me it exists in this case.

Here is a young man who is charged with a most flagrant and open violation of the law, right in the presence of people that must know him, if he was the man. Some of them say he did, and did not do anything to interfere with him. This occurred on the 7th of November, and the defendant is arrested on the 19th of March of this year. There is no evidence that the people who knew so much about it did anything to secure his apprehension at the time, or anything else, and the whole conduct of that Board there, the character of their books, etc., it seems to me, does not make such a case as should be submitted to the jury.

THE COURT: Motion granted.

MR. BLAU: Will your Honor give me an exception?

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THE COURT: I doubt whether you can appeal, but  
you have another indictment, if you want to try  
him on it.

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