

**Index to Additional Papers on Appeal
to New Jersey Court of Errors and Appeals**

	PAGE
Writ of Error to New Jersey Supreme Court	313
Opinion of New Jersey Supreme Court.....	314
Rule of Affirmance and Order of Remittitur	318
Assignments of Error.....	319
Joinder in Error.....	321

1. In the case of the ...
in New York ...

2. In the case of the ...

3. In the case of the ...

4. In the case of the ...

5. In the case of the ...

6. In the case of the ...

INDEX

	PAGE
Writ of Error	1
Return to Writ of Error.....	4
Indictment	4
Plea	6
Order	6
Venire	7
Record of Trial and Verdict.....	7
Judgment	8
Order on Application for Certificate of Reasonable Doubt	9
Certificate of County Clerk of Warren County	10
Transcript of Testimony	11
Motion to Quash Indictment.....	12
The Court's Charge	270
Defendant's Exceptions to Charge.....	277
Defendant's Requests to Charge.....	277
Certificate of Court Reporter.....	280
Certificate of Judge	281
Bill of Exceptions.....	297
Assignments of Error	302
Specification of Causes for Reversal.....	307

TESTIMONY

State's Witnesses

PAGE

Ramsey Reese:

Direct	23
Cross	44
Redirect	46
Recross	47

Margaret E. Lowe:

Direct	48
Cross	55
Redirect	56

Dayton Brugler:

Direct	57
Cross	69
Redirect	76
Recross	80

Elsa Becker:

Direct	81
Cross	92
Redirect	94
Recross	95

Gerald E. Christian:

Direct	97
Cross	117
Redirect	143
Recross	146

Defendant's Witnesses

John Larison:

Direct	151
Cross	166
Redirect	189

	PAGE
George M. Shipman:	
Direct	190
Cross	191
Redirect	198
Martha Larison:	
Direct	199
Cross	200
Lyman Lawson:	
Direct	201
Cross	203
Walter Jones:	
Direct	205
Cross	207
Charles J. Raub:	
Direct	208
Cross	210
Rolland Biles:	
Direct	211
Cross	213
Elmer Jones:	
Direct	215
Cross	216
George E. Mitchell:	
Direct	218
Cross	220
Dorothy Angle:	
Direct	225
Cross	226
William Angle:	
Direct	227
Cross	228

	PAGE
Samuel T. Beatty:	
Direct	229
Cross	231
Anna Dorst:	
Direct	235
Cross	236
Redirect	237
Recross	237
George D. Geis:	
Direct	238
Cross	238
Redirect	241
John Konkle:	
Direct	242
Cross	243
Grant Depuy:	
Direct	243
Cross	245
<i>State's Rebuttal Witnesses</i>	
William M. Cornwell:	
Direct	246
Cross	254
Redirect	262
James R. Dick:	
Direct	263
Cross	265
Redirect	266
Harvey S. Mowder:	
Direct	267
Cross	269

EXHIBITS

State's Exhibits

	ADMITTED AT PAGE	PRINTED AT PAGE
S-1.—Certificate of Warren County Board of Elections.....	25	282
S-2.—Oaths of Office.....	33	282
S-3.—Paper designated as "State- ment of Results".....	34	284
S-4.—Paper designated as "State- ment of Result of Re-count".....	37	286
S-5.—General Election Tally Sheet for District 1, Ward 1, of Blairstown Township.....	39	288
S-5.—Tally Sheet of Warren County Board of Elections.....	43	290
S-6.—Order revoking Certificate of Election and directing issuance of another Certifi- cate	44	292
S-7.—Certificate of Appointment of Board of Registry and Election	55	295

Defendant's Exhibits

D-1.—Sample Ballot	154	295
D-2.—Affidavit of Gerald E. Christian, sworn to Novem- ber 12, 1944.....	191	192
D-3.—Affidavit of Gerald E. Christian, sworn to Novem- ber 17, 1944	191	195

EXHIBITS

State's Exhibits

ADMITTED
ATLANTA

8-1--Certificate of Warren County Board of Elections	25
8-2--Order of Office	25
8-3--Paper designated as "State-ment of Issues"	24
8-4--Paper designated as "State-ment of Board of No-count"	37
8-5--General Election Tally Sheet for District 1, Ward 1, of Blairtown Township	39
8-6--Tally Sheet of Warren County Board of Elections	43
8-7--Order revoking Certificate of Election and directing issuance of another Certificate	44
8-8--Certificate of Appointment of Board of Registry and Election	55

Defendant's Exhibits

D-1--Sample Ballot	154
D-2--Affidavit of Gerald E. Christian, sworn to November 12, 1944	191
D-3--Affidavit of Gerald E. Christian, sworn to November 27, 1944	191

Writ of Error

NEW JERSEY, ss:

THE STATE OF NEW JERSEY TO CLARK C. BOWERS, Esq., Judge of the Court of Quarter Sessions in and for Warren (SEAL) County, New Jersey, holden at Belvidere in and for said County, of the term of December, 1944.

10

Because in the record and proceeding, and also in the giving of judgment upon a certain indictment against John Larison, late of the Township of Blairstown, in the County of Warren aforesaid:

“For that said John Larison on the seventh day of November in the year of our Lord Nineteen Hundred and Forty-Four at the Township aforesaid, in the County aforesaid, and with the jurisdiction of this Court, did, while acting as Judge of the District Board of Registry and Election, in and for the Township of Blairstown, in said County of Warren, at the general election held on the seventh day of November, 1944, in and for said Township, while under the statutory duty to take the ballots cast at said election singly and separately from the ballot box, and to audibly and publicly read the same in full view of the Inspector of the District Board of Registry and Election, aforesaid, did, in the discharge of his said duty,

20

30

40

Writ of Error

10 while reading said ballots audibly and publicly which were cast for one "William C. Cornwell", did, in fact, knowingly and fraudulently, announce that said ballots were cast for "Oscar S. Everitt", contrary to the form of the Statute in such case made and provided, and against the peace of this State, the Government, and dignity of the same."

20 Pro ut the said indictment whereof, before you, he the said John Larison, has been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said John Larison, as it is said, manifest error hath intervened to the great damage of the said John Larison, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said John Larison, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, and the entire record of the

30 proceedings had upon the trial, to our New Jersey Supreme Court, held at Trenton, on the 6th day of June next, and this writ, that the record and proceedings as aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

40 Witness, THOMAS J. BROGAN, Esq., our Chief Justice of our New Jersey Supreme Court of

Writ of Error

Judicature at Trenton, New Jersey, this 17th day of May, Nineteen Hundred and Forty-Five.

JAMES J. GAVIN

Clerk

WILLIAM A. DOLAN

Attorney for Plaintiff in Error

10

Writ served in open court this 18th day of May, A. D. One Thousand Nine Hundred and Forty-Five.

CLARK C. BOWERS

Judge of the Court of Quarter Sessions in and for the County of Warren.

20

30

40

Return to Writ of Error

10 The answer of Clark C. Bowers, Esquire,
Judge of the Court of Quarter Sessions, holden
in and for the County of Warren, and whereof
mention is made, the record and proceedings of
the indictment and the record of the proceedings
on the trial within named, with all things touch-
ing and concerning the same, I send to the
Justices of our Supreme Court of Judicature of
the State of New Jersey, at Trenton, the day
and year within mentioned in a certain schedule
to this return annexed, as within I am com-
manded.

CLARK C. BOWERS,
Judge.

20

Indictment

Presented and handed down to the Court of
Quarter Sessions.

WARREN OYER AND TERMINER

DECEMBER TERM, A. D. 1944

30

Warren County, to wit:

THE GRAND INQUEST for the State of New Jersey,
and for the body of the County of Warren upon
their respective oaths Present, That JOHN LARI-
son late of the Township of Blairstown in the
said County of Warren, on the Seventh day of
November in the year of our Lord Nineteen
Hundred and Forty-Four at the Township afore-
said, in the County aforesaid, and within the

40

Return to Writ of Error

Indictment

jurisdiction of this Court, did, while acting as Judge of the District Board of Registry and Election, in and for the Township of Blairstown, in said County of Warren, at the general election held on the Seventh day of November, 1944, in and for said Township, while under the statutory duty to take the ballots cast at said election singly and separately from the ballot box, and to audibly and publicly read the same in full view of the Inspector of the District Board of Registry and Election, aforesaid, did, in the discharge of his said duty, while reading said ballots audibly and publicly which were cast for one, William C Cornwell, did, in fact, knowingly and fraudulently, announce that said ballots were cast for Oscar S. Everitt, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the Government, and dignity of the same.

10

20

SAUL N. SCHECHTER

Prosecutor of the Pleas.

A True Bill

CARL S ROSENE

Foreman.

30

40

Return to Writ of Error

Plea

10 And afterwards that is to say, at a Court of
Quarter Sessions, held at the Court House, in
the town of Belvidere, in and for the said County
of Warren, on Wednesday the 20th day of De-
cember, in the year of our Lord one thousand
nine hundred and forty-four, before the Honor-
able Clark C. Bowers, Judge of the Court of
Quarter Sessions of said County, the said John
Larison cometh, and forthwith being demanded
of and concerning the premises in the said in-
dictment above specified and charged upon him,
how the said defendant will acquit himself
thereof, the said John Larison, protesting that
20 he is not guilty of the premises charged in the
said indictment; and therefore, John Larison puts
himself upon the country, and Saul N. Schechter,
Prosecutor of the Pleas of the said County, who
prosecutes for the State of New Jersey in this
behalf doth the like.

Order

30 And in order to expedite the business of the
Court it is ordered by the Court that the above
stated indictment, together with all other indict-
ments presented by the Grand Inquest of said
County of Warren at said term, be received and
tried in the Court of Quarter Sessions of said
County of Warren, according to the form of the
statute in such case made and provided.

40

Return to Writ of Error

Venire

Wherefore let a jury come, to wit: on Tuesday, the 10th day of April, in the year of our Lord, one thousand nine hundred and forty-five, to which day the trial of the above stated indictment had been continued from day to day before the Honorable Clark C. Bowers, Judge of the Court of Quarter Sessions of said County of Warren, of good and lawful men and women of said County, by whom the truth of the matter may be better known, to recognize upon their oaths whether the said John Larison be guilty of the premises aforesaid or not, because as well the said Saul N. Schechter, Prosecutor of the Pleas aforesaid, as the said John Larison has put himself upon the said jury and the same day is given as well to the said Saul N. Schechter, to prosecute the Pleas as aforesaid, as to the said John Larison.

10

20

Record of Trial and Verdict

At which time, to wit: on Tuesday, the 10th day of April, in the year of our Lord one thousand nine hundred and forty-five, at the said Court of Quarter Sessions of the said County of Warren, before the Honorable Clark C. Bowers, Judge of the Court of Quarter Sessions of said County cometh as well the said Saul N. Schechter, Prosecutor of the Pleas as aforesaid, as the said John Larison, by William A. Dolan, his attorney, and the jurors of the jury, by Edward T. Reilly, Esquire, Sheriff of said County

30

40

Return to Writ of Error
Record of Trial and Verdict

10 of Warren, for this purpose empannelled and
returned, agreeably to the statute in such case
made and provided, to wit: Katherine A. Seip,
John P. Ulmer, Daisy W. Henderson, Fred
Beech, Arthur G. Boettiger, Florence Prall, Jo-
seph Waicicki, Wilbur Rush, Mary Tingley,
Myrtle Phillips, Joseph A. DeMont and Frank
A. Yobe, Sr., being called, who, being chosen,
tried and sworn to speak the truth of and con-
cerning the premises in the indictment above
specified, do say, upon their oath, that the said
John Larison is guilty of the premises in the
20 said indictment on it above charged, in manner
and form as in and by the indictment aforesaid,
alleged against him.

Judgment

30 And afterwards, to wit: on the 16th day of
May, in the year of our Lord one thousand nine
hundred and forty-five, at a Court of Quarter
Sessions of the County of Warren, before the
Honorable Clark C. Bowers, Judge of the Court
of Quarter Sessions of said County of Warren,
cometh as well the said Saul N. Schechter, Prose-
cutor of the Pleas of said County of Warren, as
the said John Larison, by William A. Dolan, his
attorney as aforesaid, and all and singular the
premises being seen and by the Court as afore-
said fully understood, the Court doth order and
adjudge that the said John Larison pay a fine
of five hundred dollars (\$500), and stand com-
40

Return to Writ of Error*Judgment*

mitted to State Prison for a term of not less than one (1) year and not more than two (2) years.

Judgment signed the 29th day of May, nineteen hundred and forty-five.

10

CLARK C. BOWERS,
Judge.

**Order on Application for Certificate of
Reasonable Doubt**

The defendant having been convicted in this Court and having been sentenced thereon and now having made application for a certificate of reasonable doubt pursuant to the statute and pending the prosecution of a writ of error:

20

It is on this 18th day of May, 1945, ORDERED that the application be and the same is hereby denied, because I do not entertain a reasonable doubt concerning the validity of such conviction.

CLARK C. BOWERS
Judge.

30

40

Return to Writ of Error

Certificate of County Clerk of Warren County

State of New Jersey. }
 Warren County Clerk's Office. }

10

I, RAMSEY REESE, Clerk of the County of Warren, and also Clerk of the Court of Quarter Sessions in and for said County, said Court being a Court of Record,

20

Do HEREBY CERTIFY, That the foregoing is a true, full and correct copy of a certain judgment of said Court in the case of The State of New Jersey against John Larison, on indictment for Neglect of Duty While a Member of the Election Board of Blairstown Township, as the same is taken from and compared with the record thereof, in Book of Quarter Sessions.

30

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Belvidere, this 1st day of June, in the year of our Lord, one thousand nine hundred and forty-five.

RAMSEY REESE
 Clerk.

40

Return to Writ of Error

Transcript of Testimony

COURT OF QUARTER SESSIONS
WARREN COUNTY

DECEMBER TERM — 1944.

10

THE STATE	} Sur Indictment for neglect of duty.
<i>vs.</i>	
JOHN LARISON	

20

Transcript of shorthand notes of testimony, etc., taken in the above entitled matter, on the trial thereof, before Hon. Clark C. Bowers, Judge, at the Court House, Belvidere, New Jersey, on Tuesday, April 10, 1945.

Appearances:

Saul N. Schechter, Prosecutor of the Pleas,
for the State.

30

William A. Dolan and Edward R. McGlynn,
for the defendant.

Mr. Schechter: Your Honor, I will move the case of The State *vs.* John Larison, on indictment for neglect of duty.

Mr. Dolan: In this case, if your Honor please, I would like to have the privilege

40

Return to Writ of Error
Transcript of Testimony

of withdrawing the plea of not guilty, for the purpose of making a motion addressed to the indictment.

The Court: It may be granted.

10

Mr. Dolan: And I should like to also ask that Mr. Edward R. McGlynn, of the Bar of New Jersey, be entered as associate counsel with me. He is directly representing one of the other defendants in these matters and is here, because we did not know the order in which the cases might be moved, and I shall be very happy to have the benefit of his association. He has indicated his willingness to cooperate with me and I should like to have him entered as counsel.

20

The Court: Have you any objection, Mr. Prosecutor?

Mr. Schechter: I have none. I would be glad to have him.

The Court: The motion will be granted.

I understand that for the purpose of the motion addressed to the indictment the plea of not guilty is withdrawn, temporarily.

30

Mr. Dolan: Will your Honor hear it here or in chambers?

The Court: Mr. Schechter?

Mr. Schechter: I think the motion should be made outside of the hearing of the jurors.

(The Court and counsel retire to chambers.)

40

Return to Writ of Error
Transcript of Testimony

Mr. McGlynn: If your Honor please, I understand that this indictment which is now the subject matter of this motion is founded on the Revised Statutes, 19:34-48: "Every person charged with the performance of any duty under the provisions of any law of this State relating to elections who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, shall be guilty of a misdemeanor."

10

Your Honor will note, in reading the indictment, the charge there: "While under the statutory duty to take the ballots cast at said election singly and separately from the ballot box, and to audibly and publicly read the same in full view of the Inspector of the District Board of Elections, aforesaid, did, in the discharge of his said duty, while reading said ballots audibly and publicly, which were cast for one William M. Cornwell, did, in fact, knowingly and fraudulently, announce that said ballots were cast for Oscar S. Everett."

20

30

The first point with respect to the motion to quash is that the indictment fails to set forth with clearness and certainty a definite charge and fails to sufficiently identify the occasion, so as to enable the defendant to prepare his defense.

40

Return to Writ of Error
Transcript of Testimony

10

The second formal charge of the motion is that the indictment charges that the defendant did, in the discharge of his duties, do certain things, for which he could not be held liable as he was responsible only for acts contrary to the discharge of his duties.

20

Your Honor will recall that I said, "in the discharge of his duty". Now, it is rather unusual to charge a man with the commission of a crime and say that he did something in the discharge of his duty. My theory is that it should be that he did things contrary to what he should have done in the performance of his duties.

30

Third, the indictment fails to define what kind of a general election was held on the day in question. In other words, this reads, "At the general election held on the 7th day of November, 1944". The cases seem to indicate that there should be something more descriptive of the character of the election, in order to comply with what the courts have held to be the proper language.

40

The next ground: The indictment fails to allege the appointment of the defendant as a member of the District Board of Elections.

The indictment fails to charge whether or not he was qualified for such office.

The indictment fails to charge whether or not he was selected as Judge of said Board.

Return to Writ of Error
Transcript of Testimony

The indictment fails to charge that he was acting as such Board member on said date.

The indictment fails to charge due appointment and qualification of the defendant to such Election Board. 10

The next ground: The indictment fails to charge that what the defendant did he did in his official capacity.

Now, the next ground: This ground takes into consideration a study of Section 19:16-7. That is the section of the law upon which, apparently, this indictment is based.

“The Board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the Judge of the election, and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the Inspector. The Inspector shall be satisfied that the ballot is being correctly read by the Judge.” 20 30

Now, as is so true with a great many of the provisions of our election law, the language sometimes makes one wonder what the Legislature had in mind. Now, here, the thing that strikes me is the fact that in defining the duties of the Judge it says, “He shall audibly and publicly read the same in full view of the Inspector”. Whereas, it says, in the reference 40

Return to Writ of Error
Transcript of Testimony

to the Inspector, it contains the words, "The Inspector shall be satisfied that the ballot is being correctly read".

10 Now, with that in mind, the next section I call to your Honor's attention is 19:17-5, which has the heading, in full capitals, "Penalty for failure to deliver proper statements, books and other articles." And in the body of the section it reads, "If any district board neglects to give the following information," and so forth, and it says, "or fails to perform any duties provided by this title," meaning, I assume, the general election title, and it then imposes the penalty, "The
20 payment of part or all of the compensation of the members of the Board shall be withheld by the County Treasurer or Collector, as the case may be, by order of the County Board or the Commissioner, as the case may be, or may be forfeited by like order," and so forth.

30 Now, my argument is that the Legislature, having defined in 19:17-5 the penalty for failure of the Board members to perform the duties imposed on them by title 19:34-48, if it is to be considered at all, must be considered and construed very, very strictly, and, in construing it strictly, your Honor will remember that I put special emphasis on the words "wilfully neglects", which is the first part, and then, "knowingly and fraudulently acts".

40

Return to Writ of Error
Transcript of Testimony

Now, the Prosecutor, apparently, in drafting the indictment, had part of that in mind, because in the fourth or fifth line he says, "Did, in fact, knowingly and fraudulently announce;" and there is no charge of a wilful neglect of his duties. In view of what I just said about the other penalty imposed by the Legislature, it makes this section one that has to be construed absolutely strictly and literally, and it is my contention that the indictment now before your Honor is not one on which a judgment of conviction should stand, even if the jury should find him guilty, because of the defects I have pointed out, and I respectfully ask an order to quash the indictment.

I would further like to state on the record that, as your Honor knows, an application was made by Mr. Dolan and myself to Justice Porter of the Supreme Court for a writ of certiorari to remove this indictment, together with the companion indictments in these matters, to the Supreme Court for the purpose of addressing to the Supreme Court a motion to quash the indictments, and, in addition to the grounds I have outlined here, there was in the petition another ground for the application, namely—two grounds, that were rather material and substantial—one was that Justice Porter in his charge to the Grand Jury went far beyond what the cases hold to be proper in a charge

10

20

30

40

Return to Writ of Error
Transcript of Testimony

10

to the Grand Jury, because he practically directed, in very plain words, the Grand Jury to find an indictment in this case, irrespective of what they felt about the proof which might be offered by the Prosecutor.

20

And the second substantial ground was that we took the position that the Grand Jury did not have legal and competent evidence upon which to base this indictment before it.

That application, as your Honor recalls, was denied. I would like to urge those two grounds, in addition to the ones I have already urged.

(Mr. Schechter replied.)

The Court: The Court has carefully examined the indictment and listened to the arguments of counsel here, and it appears to set forth sufficient facts to meet the legal requirements of the charge mentioned, and, therefore, the motion to quash is denied.

30

Mr. McGlynn: Your Honor will allow an exception?

The Court: An exception will be noted.

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

(The Court and counsel return into Court.)

40

The Court: Do you again enter a plea for your client, Counsellor Dolan?

Return to Writ of Error
Transcript of Testimony

Mr. Dolan: Yes, I will enter a plea of not guilty.

The Court: It will be so recorded.

(Mr. Schechter proceeded with opening on behalf of the State and in the course of addressing the jury made the following statement:

10

Mr. Schechter: Now, going back to the actual counting of these ballots, they started, and when they had counted one hundred ballots, the boys got a little tired and they decided they would go out and have a smoke and a breath of air. So that the tally clerks remained in the room where the ballots were being counted and Christian, the Inspector, and Larison, who was the Judge, walked out into another room. While they were there they were approached, and I think the testimony will show there were several people there, and asked how the first hundred were being counted, and it seems as though Mr. Cornwell was leading in the first hundred. I do not have the figures in mind, but I think the evidence will disclose all those facts.

20

30

When it was announced, and when it was discussed, Larison, the Judge of the election, said to Christian, the Inspector, "Well, I guess it is about time that we drop a few".

Then a man by the name of "Sparky" Mitchell, who runs a tavern, came into this room and asked the boys to go over

40

Return to Writ of Error
Transcript of Testimony

10 to his place. They did. Christian and Lar-
ison went over there and had a drink.
While they were there Sam Beatty came
into the place and he discussed this elec-
tion with them. We will show you the con-
versation there, that at that time they
entered into an agreement—

Mr. Dolan: If your Honor please, may
I interrupt? In fairness both to the Court,
to the jury and to this defendant, it seems
to me that the Prosecutor is now about
to outline what is involved in another in-
dictment upon which we are not asked to
be tried at this time.

20 This charge against us now, and which
we are responding to is that we did know-
ingly and fraudulently announce that cer-
tain ballots were cast for Everett which
should have been announced as having
been cast for William M. Cornwell.

Now, what transpired anywhere else,
or what involved anything else, can only
be confusing to the jury on the issue which
is now before them, and I feel that the
State should be limited to such evidence
as will help to establish that fact and
nothing should be admitted in this case
which might be involved in some of the
other charges that they are hoping to be
proved here.

30 I therefore ask that the Prosecutor re-
frain from making any statement other
than about the charge we are now called
upon to defend.

40

Return to Writ of Error
Transcript of Testimony

Mr. Schechter: If the Court please, I submit that any arrangement made by this defendant with others to perpetrate an alleged crime which the State intends to prove certainly is material.

10

It is my understanding that this matter to which I was going to refer directly refers to the motive and the reason which the State contends this crime was committed.

I respectfully submit that is certainly part of the case and we are entitled to show it.

The Court: Are you prepared to back up all of the statements you make?

20

Mr. Schechter: I certainly am, Sir.

The Court: I think that in fairness you should not go too specifically into other charges, just enough to show the conversation which might tend to establish the facts you intend to prove in this particular case.

Mr. Schechter: Yes, sir.

(Mr. Schechter continued with opening on behalf of the State and in the course of addressing the jury made the following statement:

30

Mr. Schechter: As a result of this arrangement and as a result of this misreading of the ballots, the Board got done approximately 8 o'clock the next morning and, as is the usual case, they filed with the County Clerk a statement showing the result of the election and on this par-

40

Return to Writ of Error
Transcript of Testimony

ticular sheet, which we will show you and mark in evidence, they allege that when they counted the votes that Everett had 330 and Cornwell had 329.

10 Now that is the result that was announced to the County Clerk. Based upon that count the election was normally determined. Now, there came about certain matters, I do not know whether they will be brought out or not, but for reasons known to Mr. Cornwell he initiated a move in this Court technically known as a re-count proceeding in which he alleged certain facts and, based upon his allegations to this Court, this Court, following the necessary legal procedure, ordered that particular ballot box from Blairstown Township be opened and the ballots cast in the election between Cornwell and Everett recounted.

20

Under the Statute that re-count was made, under the direction of the Court, by the County Board of Elections, which is the one designated by the Governor to supervise the elections in Warren County.

30

Mr. Dolan: May I interrupt again, if your Honor please? I do not want to be captious or technical about this, and I do not know whether the Prosecutor has in mind making any further statements about a re-count, but my objection to that is this, that if that is his intention we feel it is erroneous, because it is a collateral proceeding in which this defendant had

40

Return to Writ of Error

Ramsey Reese—for State—Direct

no part, had no opportunity to participate or to be represented, and any finding by that body, irrespective of what the result has been, can in no wise help to establish the charge that is made against this defendant, that he knowingly and fraudulently read certain names in a different manner than if he were performing his duties as an election official. 10

(After argument.)

The Court: I feel the Prosecutor is still within his rights in his opening remarks. You may proceed.

Mr. Dolan: May I have an exception?

The Court: You may have an exception. 20

(Exception allowed and the same is Judge.)

signed and sealed accordingly.

(Mr. Schechter continued with opening on behalf of the State.)

(Mr. Dolan opened for the defendant.)

(At 12 o'clock noon a recess was taken until 1:15 o'clock in the afternoon.) 30

RAMSEY REESE, sworn for the State.

Direct examination by Mr. Schechter:

Q. Mr. Reese, you are Clerk of the County of Warren? A. I am.

Q. And have been for how long? A. Twenty-five years, approximately. 40

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. Were you the County Clerk of the County of Warren in November 1944? A. I was.

10 Q. Under the Election Law you are charged with certain duties, is that correct? A. That is correct.

Q. Now, in 1944, upon the appointment of certain members of District Board of Elections, did you receive a copy of such appointments? A. I did.

Q. Do you have it? A. I do.

Q. May I have it? A. (Witness produces paper.)

Q. You have handed me two papers? A. I did.

20 Q. Which is the original one which you received? A. This (indicating) is the certificate certifying the names and addresses of the District Boards of Elections of Warren County.

(Certificate referred to is marked S-1 for Identification.)

30 Q. Now, referring to S-1 for Identification, will you advise the Court and jury when you received this? A. It is a certificate, certifying names and addresses and political affiliations of the members of the District Boards of Registry and Election in forty-five districts, comprising Warren County.

Q. Can you tell from that paper when you received it? A. It was filed in my office on May 2, 1944.

Q. Is that part of the County records? A. It is.

40 Q. From whom did you receive it? A. From the County Board of Elections, signed by James

Return to Writ of Error

Ramsey Reese—for State—Direct

R. Dick, Secretary, Margaret E. Lowe, Chairman, Harvey S. Mowder and Clara F. Sexton.

Mr. Schechter: I offer it.

Mr. Dolan: No objection.

10

(Certificate referred to and offered in evidence is marked Exhibit S-1.)

Q. Now, referring to Exhibit S-1, will you kindly inform me, in 1944, who comprised the Board of Elections in Blairstown Township? A. In accordance with this certificate, John M. Jones, Blairstown, Democrat; John Larison, Blairstown, Democrat; Gerald E. Christian, Blairstown, Republican; Dayton Brugler, Blairstown, Republican.

20

Q. Was there any change in the Board after you received this, Mr. Clerk? A. There was.

Q. Did you receive any official notification to that effect? A. I did.

Q. Do you have it with you? A. Yes, sir. (Witness produces paper.)

(Paper produced is marked S-2 for Identification.)

30

Q. Referring to S-2 for Identification, will you inform us when you received this paper? A. This paper was received from the Warren County Board of Elections and filed in my office December 11, 1944.

Q. Is that the paper which informs you of the change? A. That is correct.

Q. How do you account for the fact that the

40

Return to Writ of Error

Ramsey Reese—for State—Direct

paper was not filed in your office until after election? A. I cannot recall, really.

10 Q. Was there another paper received by you showing the change? A. I have a paper showing it. (Producing paper.)

(Paper last produced is marked S-3 for Identification.)

Q. Now, referring to S-3 for Identification, which purports to be certificate of appointment to Board of Registry and Election, where and when did you receive that? A. The filing notation is received in my office December 12, 1944.

20 Q. Do you know where that paper came from to your office? A. It is signed Margaret E. Lowe, Chairman of the County Board, James R. Dick, Secretary of the County Board.

Q. What does it purport to show? A. A certificate of appointment to the Board of Elections, "This is to certify that the County Board of Elections of the County of Warren has this day appointed the following persons: Elsa F. Becker replaces John M. Jones, Ward No. (Blank), Township of Blairstown.

30

Mr. Dolan: If your Honor please, if I understood this witness correctly, this paper was filed in December.

The Witness: That is correct.

Mr. Dolan: The election, against which this protest is made, occurred in November. I cannot see what a certificate dated in December can possibly have to do with that.

40

Return to Writ of Error

Ramsey Reese—for State—Direct

Mr. Schechter: The filing date is December. The paper is dated the first day of April 1944.

Mr. Dolan: My objection is that you should not read it until it is a relevant document. That is all.

10

Q. Can you explain how this got to you in December, since it is dated the first day of April?

A. I cannot, no.

Q. Do you know how you got it? A. I cannot recall at the present time, no.

Q. Well, how are these things normally brought to your attention?

Mr. Dolan: I object.

20

The Court: Objection sustained.

Q. You cannot tell us now, Mr. Clerk, how this paper, marked S-3 for Identification, came to your hands? A. Not at the present time, no.

Q. By whom is it signed?

Mr. Dolan: I object. It speaks for itself.

The Court: Read the name.

30

Q. By whom is it signed? A. Margaret E. Lowe, Chairman of the County Board, and James R. Dick, Secretary of the County Board.

Q. In your official capacity as County Clerk do you know the duties of the Chairman and Secretary of the County Board? A. I do.

Q. As a matter of fact, does not the Statute provide for this paper to be filed with you by them?

40

Return to Writ of Error

Ramsey Reese—for State—Direct

Mr. Dolan: If your Honor please, I do not know that this witness is called as a lawyer or expert on what the Election Law says.

10 The Court: It would seem proper for him to answer that—after twenty-five years.

Q. If you do not know—— A. I will say, No.

Q. Are you familiar with the election laws?

A. To a certain extent, yes.

Q. Are you familiar with 19:6-13, referring to “Vacancies: filling?” A. I will have to refresh my memory on it. (Referring to book) 19:6-13

20 —shall I read it?

Q. Read it to yourself.

Mr. Dolan: I still think it is not the duty or the province of the County Clerk to interpret the law for us. I assume that is a prerogative for the Court.

Mr. Schechter: I am asking if he is familiar with the law.

30 A. Yes; I read it.

The Court: Can you answer, then, Mr. Clerk, how this paper came into your possession?

The Witness: I cannot just recall now, your Honor; but the paper certifies that this appointment was made on October, I think, the 26th.

40 The Court: The appointment was made before the paper came into your possession?

Return to Writ of Error

Ramsey Reese—for State—Direct

The Witness: I cannot just recall. There are a lot of papers in my office that are filed there that do not come to my hands personally.

Q. Do you mean they are filed with your deputies? A. It might have been or it might have been filed in my office.

Q. Well, as far as your recollection is concerned, forgetting for the moment S-2 for Identification and S-3 for Identification, in 1944 who comprised the Election Board in Blirstown? A. According to that certificate that I just had, these comprised the Board on May 2, 1944. The first certification I had, I think, was that certificate I just had, which certifies that that person replaced—Mrs. Becker replaced Jones, I believe.

Q. But you did not receive that until December, after the election was over? A. I did not.

Q. As far as the election of 1944 was concerned, officially, your office had knowledge of the membership of the Board, did it not? A. Yes.

Q. What is that membership? A. John M. Jones, Democrat, John Larison, Democrat, Gerald Christian, Republican and Dayton Brugler, Republican.

Q. So that, as far as your office knew officially, in November of 1944, John Larison was a member of the Board of Elections of Blirstown Township? A. That is correct.

Q. Now, under the Statute, it is necessary for these members of the Board to take certain

Return to Writ of Error

Ramsey Reese—for State—Direct

oaths and file them in your office, is that correct?

A. That is correct.

Q. Has such an oath been received by you?

A. Yes, sir.

10 Q. Do you have it? A. I do. (Producing paper)

(Paper last produced is marked S-4 for Identification.)

Mr. McGlynn: May I see it? Does your Honor have the Election Law there, 19:6-11, Revised Statutes, 19:6-11?

20 I object to the introduction of this exhibit on the ground the Statute has not been complied with, because the oath was not taken before a duly qualified officer, as your Honor will see by an examination of this paper.

Mr. Schechter: I have not offered it yet, Mr. McGlynn.

Mr. McGlynn: Oh, I am sorry. That is all.

30 Q. Now, referring to S-4 for Identification, was this filed with you? A. It was.

Q. When? A. December 12, 1944.

Q. And that was after the election? A. That is right.

Q. Do you know where you got this paper from? A. I do.

Q. Where? A. It was filed with the Municipal Clerk of Blairstown Township and I received it from him.

40

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. At that time, do you know who the Clerk was? A. Yes. William Cornwell.

Q. Is that the Cornwell mentioned with reference to this particular case? A. Yes.

Q. Can you tell as to—Is that a Notary Public there (indicating)? Can you make out that signature? A. It is signed, "William M. Cornwell, Notary Public of New Jersey". 10

Q. Is that Cornwell's signature? A. That is right.

Q. William M. Cornwell? A. That is right.

Q. And it was filed in your office? A. That is right.

Mr. Schechter: I offer it. 20

Mr. McGlynn: I object to the introduction of S-4 for Identification on two grounds. First, on the ground that it did not reach the County Clerk before the election. Second, because it is not executed in accordance with Revised Statutes 19:6-11.

The Statute reads: "Each member of the District Board shall before entering upon the performance of his duties take and subscribe an oath or affirmation in writing, before a duly qualified officer, faithfully and impartially to discharge all his duties as such officer to the best of his skill and ability. Such oaths and affirmations shall be forthwith forwarded to the County Clerk and by him filed in his office." 30

S-4 for Identification is not executed in accordance with that provision of the Statute. 40

Return to Writ of Error

Ramsey Reese—for State—Direct

10

Mr. Schechter: It would seem to me the material part of this affidavit is not when it was filed in the County Clerk's office, but when the oath was taken, and this is dated the 8th day of May 1944.

Now, the Statute reads: "Each member of the District Board shall before entering upon the performance of his duties take and subscribe an oath or affirmation in writing."

I offer it to show that each member did take the oath of office before the date of filing.

20

The Court: I do not understand this argument that he was not a duly qualified officer, that it was not before a duly qualified officer. What was your thought?

(Court and counsel confer at side bar.)

30

The Court: As to the point of when it was filed, of course, that may or may not be some part of his duty, but it certainly would not affect the standing of Mr. Larison, having taken the oath within the time mentioned, before he entered upon the duties.

As to the question as to whether it was subscribed properly or not, the sworn statement by the Notary Public—

Mr. Schechter: The witness says it was William M. Cornwell.

The Court: —is another argument.

40

However, it is a paper that has been duly filed in the Warren County Clerk's office and it speaks for itself, and I see

Return to Writ of Error

Ramsey Reese—for State—Direct

no reason why the Court should eliminate it from these proceedings, and it will be admitted in evidence.

An exception may be entered.

Mr. McGlynn: Your Honor will allow an exception? 10

The Court: Yes.

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

(Paper referred to as oath of office, offered in evidence and marked Exhibit S-2.) 20

Mr. Schechter: With your Honor's permission I would like to read this to the jury.

(Mr. Schechter reads Exhibit S-2 to the jury.)

Mr. Schechter: The second oath was not taken by the Notary Public.

Q. Now, after the election held in the Township of Blairstown in 1944, did you in compliance with the Statute, receive a statement of results? A. I did. 30

Q. Do you have that? A. (Witness produces paper.)

(Paper last produced is marked S-5 for Identification.)

Q. Now, can you tell from this paper when it was received in your office? A. I can. November 8, 1944. 40

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. That is the date it was filed? A. That is correct.

Mr. Schechter: I offer it.

10

Mr. Dolan: We object to it on the ground that this certificate apparently was made by these people who were not qualified in accordance with the provisions of the Statute and, therefore, it is not admissible.

20

Mr. Schechter: If your Honor please, I do not understand the defense to be that this defendant was not a member of the Board. I am offering in evidence a document filed by the Board, which we contend consisted of this defendant and others, and in accordance with the Statute the paper was filed and it is a public record in this County, and I cannot see any objection to its admission.

(After argument.)

The Court: It is a public, duly recorded paper in the County Clerk's office and it will be admitted in evidence.

30

Mr. Dolan: I pray an exception.

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

(Paper referred to as statement of results, offered in evidence and marked Exhibit S-3.)

40

(Mr. Schechter reads Exhibit S-3 to the jury.)

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. Now, after the election, there came in your office some papers in connection with a petition and order for re-count, is that correct? A. That is correct.

Q. And, based upon those papers, was there a re-count?

10

Mr. Dolan: I object to any evidence relating to a re-count. The basis of my argument is similar to that at the time of the opening: that it is a collateral proceeding to which this defendant was not a party and had no opportunity to appear to see that the law was observed as directed by Statute. It was subsequent to the time of the alleged offense charged in this indictment and is absolutely immaterial to this issue.

20

Mr. Schechter: Now, may it please the Court, as I contended previously, it seems to me to be a very limited issue, as to whether or not these votes were mis-counted, and the matter of whether or not they were mis-counted is shown by the re-count, and I contend it is very material to the State's case and should be admitted.

30

(After argument.)

The Court: The purpose, Mr. Prosecutor, of presenting this before the Court now—

Mr. Schechter: Is to show the count after the re-count, sir.

The Court: I suppose Counsellor Dolan is correct in not wanting to go into the

40

Return to Writ of Error

Ramsey Reese—for State—Direct

10 proposition of the re-count. That is well taken. But I assume from your statement, Mr. Prosecutor, that you are going to show there is a difference in the result of the election, from the original count and the re-count.

Mr. Schechter: That is my purpose. That is the only purpose.

The Court: I see no objection to it, and for that purpose I will permit the question to be answered.

20 Mr. Dolan: Your Honor will allow an exception to any evidence relative to the re-count and its result.

The Court: You may object from time to time as the evidence is offered.

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

30 Mr. Dolan: I do not like to take up the time of the Court or to be in the position of appearing to be captious about it. I will ask your Honor to note an exception to each question as propounded.

(Last question read.)

A. There was.

Q. Now, based upon that re-count was there a statement of result of such re-count filed with your office? A. There was.

Q. Do you have that? A. I do. (Produces paper).

40 (Paper produced is marked S-6 for identification.)

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. Can you tell from this paper when it was filed in your office? A. I can. December 6, 1944.

Q. By whom was it filed? A. By James R. Dick, Margaret E. Lowe, Harvey S. Mowder and Clara F. Sexton.

10

Q. And the titles? A. They did not attach the titles.

Q. There is nothing to indicate their official position on the sheet? A. No, not unless it is on here (indicating) "In witness whereof we have hereunto set our hands the 30th day of November 1944". And "Board of Registry and Election".

Mr. Schechter: I offer this.

20

Mr. Dolan: I object on the same ground as before. And, in addition, it shows on its face, having been filed December 6, 1944, subsequent to the time when this alleged offense was committed.

The Court: The document being an official record in the County Clerk's office, it may be admitted in evidence.

Mr. Dolan: I pray an exception.

The Court: Exception granted.

30

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

(Paper last referred to and offered in evidence is marked Exhibit S-4.)

Mr. Schechter: (Reads Exhibit S-4 to the jury.)

40

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. Now, Mr. County Clerk, after this election held in Blairstown was there filed with you a tally sheet used by the clerks, tabulating this vote in Blairstown Township? A. There was.

10 Q. Do you have that with you? A. I do. (Producing paper).

(Paper produced is marked S-7 for Identification.)

Q. Now, can you tell from this paper when it was filed with you? A. November 8, 1944.

Q. As part of your official election records? A. Yes, sir.

20 Mr. Schechter: I offer this.

Mr. Dolan: I object. It was stated in the opening that this tally sheet was kept or prepared by two members of the Board, other than Larison, the defendant. There is nothing on there to show that he had anything to do with this tally sheet, and there is no proof of its accuracy or inaccuracy; and there is no proof that would mean anything at all as to what was said by Larison in the reading of the ballots. We urge it is an improper document and should not be admitted.

30

Mr. Schechter: The evidence is this document is signed by John Larison, the defendant, as a member of the Board of Elections.

The Court: Counsellor, did you see that?

40

Mr. Dolan: I did not, no sir.

Return to Writ of Error

Ramsey Reese—for State—Direct

Mr. Schechter: I offer it, Sir.

The Court: Does the objection still stand?

Mr. Dolan: He had nothing to do with the preparation of it and therefore it should not be admitted. 10

The Court: What is the signature?

Mr. Schechter: "John H. Larison, Gerald Christian, Dayton Brugler and Clara F. Sexton."

The Court: It may be admitted in evidence. It is an official record of the County, signed by the defendant.

Mr. Dolan: I except.

The Court: Exception granted. 20

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

(Paper last referred to and offered in evidence is marked Exhibit S-5.)

(Mr. Schechter reads Exhibit S-5 to the jury.)

Mr. Schechter: It is headed, "General Election Tally Sheet. Municipality, Blairs-town Township. District 1. Ward 1." Certified to the County Clerk. 30

Now, there are other matters, other counts. I do not know whether Mr. Dolan wants me to read all of this at this particular time.

Mr. Dolan: I indicated that I do not care to have any of it read. You can go 40

Return to Writ of Error

Ramsey Reese—for State—Direct

as far as you like now, since you cannot do any more harm.

10 Seriously, of course, I feel this document has nothing to do with the charge made. It does not establish anything. The Prosecutor said in his opening that it was prepared by two members of the Board who looked on and made certain marks. Whether they were put on correctly or not, I do not know. I suppose it was presented to John Larison and he signed it as a matter of course, along with Christian. Certainly, I do not want to
20 concede anything that can be construed as an admission of the offense charged against him.

Mr. Schechter: As a matter of fact, the Court has admitted it in evidence.

The Court: Read all or any part of it, Mr. Prosecutor, as you choose.

Mr. Schechter: Unless there is objection I will read what it says with reference to this election.

30 It says, "O. S. Everett" and certain marks on the side, and "328". "William M. Cornwell," and certain marks, as they keep score,— Perhaps you would like to see that (indicating). The result is, Everett, 328; Cornwell, 327. Signed "John H. Larison, Gerald Christian, Elsa Becker, Dayton Brugler, Board of Elections."

Return to Writ of Error

Ramsey Reese—for State—Direct

Q. Now, as I understand the law, this is filed with you and one is filed in the ballot box? A. That is correct.

Q. Now, together with the statement of results filed with you by the County Board after the re-count, did you also get a tally sheet from them? A. I did.

10

Q. Was that filed in your office? A. It was.

Q. Do you have it? A. I do. (Producing paper.)

(Paper produced is marked S-8 for Identification.)

Q. Can you tell from this paper when it was filed in your office? A. December 11, 1944.

20

Mr. Schechter: I offer this.

Mr. Dolan: I certainly cannot see the relevancy of the document. His Honor has ruled that the result of their efforts should appear, but it is a document prepared by them, again, with no notice to this defendant, no opportunity to be heard on what they were doing, and it is an entirely collateral proceeding and is improper and irrelevant and can only confuse the issue rather than help explain it.

30

The Court: What is this?

Mr. Schechter: This document is the tally sheet kept by the County Board of Elections, from which they certify the result obtained by them after a re-count. This is their score sheet.

The Court: Is it signed by the County Board?

40

Return to Writ of Error
Ramsey Reese—for State—Direct

Mr. Schechter: It is, Sir.

10

Mr. Dolan: If your Honor please, our serious contention is that there has been some very flagrant action in connection with these ballots. The very documents which the Prosecutor produces here show that there is something irregular and improper. The number of ballots certified to that were cast at this election appears on one tally sheet as 655. This shows 658, a substitution or addition of at least 3 ballots. How many more there may have been, of course, we cannot tell. We know that they were prepared under very peculiar circumstances, and that fact itself, it seems to me, should warrant the Court in rejecting this document.

20

Mr. Schechter: May it please the Court, is not Mr. Dolan attempting to limit the State's case by matters which should be part of his case?

30

The Court: It is an official record of the County, duly filed, and it is signed by every official of the County Board. It is certainly a proper instrument to be admitted into evidence, and it may be admitted.

Mr. Dolan: I pray an exception.

The Court: Exception granted.

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

40

Return to Writ of Error

Ramsey Reese—for State—Direct

(Paper referred to and offered in evidence is marked Exhibit S-5.)

(Mr. Schechter reads Exhibit S-5 to the jury.)

10

Q. Now, based upon the re-count was there filed in your office the order of this Court in connection with that re-count? A. There was.

Q. Do you have this? A. (Witness produces paper.)

(Paper produced is marked S-9 for Identification.)

Q. Was this filed in your office? A. It was.

20

Q. Can you tell when? A. On December 1, 1944.

Q. By whom? A. By George M. Shipman, attorney of petitioner.

Q. By whom is that order signed? A. The order was signed by Clark C. Bowers, Judge.

Mr. Schechter: I offer this.

Mr. Dolan: I object on the same ground.

The Court: On what ground?

30

Mr. Dolan: That this is a document which relates to a re-count which was a proceeding in which the defendant had no opportunity to appear and was not represented, and has no relevancy or bearing on the issue before the Court now, which is that this man in the performance of his duty read ballots improperly.

The Court: It may be admitted in evidence.

40

Return to Writ of Error
Ramsey Reese—for State—Cross

Mr. Dolan: I pray an exception.

(Exception allowed and the same is signed and sealed accordingly.

10

Judge.)

(Paper last referred to and offered in evidence is marked Exhibit S-6.)

Mr. Schechter: Cross examine.

Cross examination by Mr. Dolan:

20

Q. As I understand your testimony, Mr. Clerk, it is that the records in your office show that on the date of the election the members of this election board in the Township of Blairstown were, Larison, Christian, Becker and Jones? A. I think that is correct, according to the certificate marked No. 1, I think.

Q. This is the only certificate that has ever been filed in your office? A. There were two certificates, the original filed in May and the subsequent one filed in December, noting the changes in the personnel of the Board.

30

Q. Has there ever been any certificate filed with you with reference to the members of the Board of Elections of Blairstown Township since that time? A. No, there has not been.

Q. There is no certificate of revocation of the appointment of those four, as to the Election Board? A. No.

40

Q. So that so far as your records indicate, or have indicated since December, Larison, Christian, Becker and Jones were the members of the Board? A. That is true.

Return to Writ of Error

Ramsey Reese—for State—Cross

Q. I think, perhaps, that is wrong. Brugler was in there somewhere, was he not? A. He was one of the members.

Q. There has been no change or no notice of any revocation or other action as to the Board in Blairstown Township? A. Not to my knowledge.

10

Q. And so far as your records now disclose, they are still members of the Board? A. That is true.

Q. Each and every one of them? A. That is true.

Q. I think you said this was brought into your office by Mr. Cornwell, the successful candidate for election? A. What is that?

20

Q. This certificate you speak of, which was filed some time in December by Mr. Cornwell, was it not? A. What certificate are you speaking of?

Q. The one that you testified to was the one that Cornwell brought in, was it not? A. I cannot recall.

Q. Did anybody else ever bring in any of these certificates, that you know of? A. I do not recall. I presume one of the members of the Election Board noted the substitution.

30

Q. Did you not testify that was done by Cornwell? A. I am speaking of the oath now. I obtained the oath of the members of the District Board from Mr. Cornwell without any certification pertaining to the Election Board.

Q. Do you know who did bring in these certificates? A. I cannot recall.

40

Return to Writ of Error
Ramsey Reese—for State—Redirect

Q. Do you know who brought in the tally sheets showing the result of the election? A. I understand they were handed to Mr. Geis by Mr. Cornwell.

10 Q. Do you know who brought in the keys to the ballot box? A. I understand, Mr. Cornwell.

Q. You are familiar with the law? A. Yes, sir.

Q. And you know the law says he shall not have the keys? A. I do, yes.

Q. And that was the law at the time, was it not? A. That is true.

Q. And the Mr. Cornwell you speak of is the same man who was certified as the successful candidate in this election, was he not? A. That is correct.

20 Q. Now, as I understand it, not one of these certificates was filed in your office until after this re-count? A. Apparently not.

Mr. Dolan: That is all.

The Witness: Now, wait. I am speaking—

Redirect examination by Mr. Schechter:

30 Q. Did you understand the question? He said no certificates were filed until after the re-count. A. I thought he was referring to those two subsequent certificates.

Q. As a matter of fact, the statement itself was filed before the re-count? A. Yes, sir.

Q. The tally sheet of the local Board was filed before that? A. Absolutely.

Q. The statement showing the selection of the

Return to Writ of Error

Ramsey Reese—for State—Recross

members of the Board of Blairstown Township was filed before? A. Yes.

Q. The only thing that was not filed was the certificate of change? A. That is right.

Q. And you filed it when you received it? A. 10
I certainly did.

Q. And if a man hands you a tally sheet you note you receive it when you get it, is that right?
A. I receive it as of that date.

Recross examination by Mr. Dolan:

Q. Well, the oath of office that was filed by Mr. Cornwell on behalf of this Board was certainly not filed until after the election, was it? A. It 20
was not, no, not in my office.

Mr. Dolan: That is all.

By the Court:

Q. Mr. Dolan asked you a question, saying that so far as your records are concerned the four original appointees are still the only election officers in that township. Is that right? A. No. The original certificate was filed with me in May, when the Board was appointed, consisting of Jones, Brugler, Larison and Christian, I think. If I can refresh my memory from it —And then, later on, there was substituted Jones, I think—I think they appointed Mrs. Becker for Mr. Jones. 30

Mr. Dolan: I have no quarrel with that. I do not mean to confuse the issue. If I may clarify it I would be glad to do so. 40

Return to Writ of Error

Margaret E. Lowe—for State—Direct

By Mr. Dolan:

10 Q. As I understand it now, the Election Board in Blairstown Township is exactly the same as it was, with the exception that Becker was substituted for Jones? A. That is correct.

Q. There has been no revocation of Christian and Larison? A. That is the idea.

Q. And they still remain members of the Board so far as your record is concerned? A. That is true.

MARGARET E. LOWE sworn for the State.

20 Direct examination by Mr. Schechter:

Q. Mrs. Lowe, do you hold any official position in the County of Warren? A. I am Chairman of the Warren County Election Board.

Q. Were you such Chairman in November of 1944? A. I was.

30 Q. Under the statute, if I understand the law correctly, referring to Exhibit S-1, you certified the members of the different election boards to the County Clerk? A. Yes, sir.

Mr. Dolan: I object to any testimony relating to a re-count conducted by the County Board.

Mr. Schechter: I am not at that point, Mr. Dolan.

Mr. Dolan: You referred to the record.

Mr. Schechter: I am referring now to the local board.

40 (Last question and answer read.)

Return to Writ of Error

Margaret E. Lowe—for State—Direct

Mr. Dolan: I am sorry. I misunderstood it.

The Witness: Yes, sir, I did.

Q. And is this the paper you filed, signed Dick, Lowe, Mowder and Sexton? A. That is a paper that I signed, and the Clerk takes them to the County Clerk's office. 10

Q. When you say "clerk", do you refer to your clerk? A. The clerk of the Election Board, yes.

Q. Now, referring to S-2 for Identification, I ask you if you know who signed that paper? A. The members of the Warren County Board of Election signed this paper, this change in the District Election Board, naming Mrs. Becker to replace Mr. Jones, who had resigned. 20

Q. Do you know, officially, how that change came about? A. I would not say positively, but those changes are made by a recommendation of the committee man or committee woman in the respective districts.

Q. Do you have authority under the Statute to make changes? A. Yes, we have. 30

Q. Now that paper which you hold in your hand was filed, according to its stamp, on December 12, 1944. Can you account for that? A. Well, it has probably been in our possession, in our desk, and I felt that it was an important matter to file it with the County Clerk, we having had Mr. Jones' resignation. Mrs. Becker had received her certificate.

Q. Now, referring to S-3, is this the certificate to which you refer? A. Yes, this is a cer- 40

Return to Writ of Error

Margaret E. Lowe—for State—Direct

tificate, signed by Mr. Dick as Secretary and myself as Chairman of the Board.

10 Q. Now, as of November 8, 1944, in your official capacity— You are Chairman of the Board, is that correct? A. That is correct.

Q. Did you have knowledge of the persons comprising the Blairstown Board of Elections? A. Yes, I did.

Q. Who were they? A. Mr. Larison, Mr. Brugler, Mrs. Becker and Mr. Christian.

20 Q. As far as you know, are they still members of that Board? A. As far as I interpret the law, there are no members at the present time on any district election board. Their appointments are made from April 1, 1944 to March 31, 1945. The new boards are being made up at this time.

Q. Then do I understand that the Blairstown Board is in no better or worse position than any other board in the County? A. No. At the present date there are no boards. Our law says that we appoint them from April 1st to March 31st of the following year.

30 Q. Was there anything done by your Board to remove Christian and Larison? A. We are simply naming the new boards.

Mr. Schechter: Now, do you still object to these?

Mr. Dolan: I would like to make the same objection as before.

40 Mr. Schechter: I will offer these, since we have proved that at the time of the election Elsa Becker had replaced John M. Jones, and the date of filing is not

Return to Writ of Error

Margaret E. Lowe—for State—Direct

material. The fact is that after the election Elsa Becker had replaced John M. Jones and signed in an official capacity.

The Court: Do you object, Counsellor?

Mr. Dolan: It seems to me that that document, filed contrary to law, and their failure to file anything as they should have filed it, the fact their records are kept until after the time the re-count was conducted, should justify this Court in rejecting the whole thing. 10

After all, this boy is charged with a very serious offense here, and I feel we ought not to be burdened by documents certified absolutely out of time. To my mind this is definite proof of violations by officials themselves of their obligation, and if there is any charge to be made it should be against this Board or somebody, who had a chance to correct it and it should not be charged against this boy who is brought in here to defend on this issue. 20

Mr. Schechter: All I am trying to do is to prove as to whom the Board consisted of on the date of the election. 30

The Court: Do I understand, Counsellor, your position is somewhat this: That if anybody, any official, failed to take the oath of office and some papers are not filed or signed in time, and if he enters upon his duties and he does something wrong that he is free from any prosecution therefor? 40

Return to Writ of Error

Margaret E. Lowe—for State—Direct

10 Mr. Dolan: Oh, no, sir. It is quite the reverse. My position is this, that in the first instance—and I can see that this is a technical objection—this Board was never properly constituted. Technically, he cannot be guilty of any offense of the nature described in the allegation against him. It says, "In the performance of his duty," he did so and so. Now he is not guilty of performing anything if he is not charged with the duty or sworn to do it.

20 And I do say that these documents, improperly prepared and filed—I assume the Prosecutor feels it is going to have some influence on this jury. That kind of a document never ought to be here. To my mind, we ought to confine ourselves to the one issue: did this boy read these names wrong, wilfully and deliberately, and it seems to me you are going far afield when you bring into it documents of this character, many of them prepared entirely outside of any possible knowledge on his part and without any opportunity of being explained, and certified by

30 people who may be perfectly honest in their efforts to produce a result, and which I say disagrees entirely with what their record shows, and it is bound to create a feeling in the minds of the jury and can only confuse and cannot help.

40 The Court: Then you feel that his own record, a paper which he has signed and submitted here, the official County Board

Return to Writ of Error

Margaret E. Lowe—for State—Direct

count showing there was a different count, rightfully or wrongly, that is not proper evidence?

Mr. Dolan: I feel we are bound by the record we signed. When I objected to that I did not know he signed it. I will have to explain that and accept the consequences.

10

I feel it is illegal to produce before this Court and jury documents with which he had nothing to do, documents prepared by people whose intentions may have been all right and who may rightfully have gone wrong.

20

The Court: It would all depend on the work of the Warren County Board, their results, that is he was bound by their decision.

Mr. Dolan: They could appeal from the result of the County Board. If no appeal is taken the people must accept the work that was done to put Mr. Cornwell on that committee, but certainly we cannot be bound by something—they produce a lot of documents that he had nothing to do with at all, he was not mentioned in these documents.

30

The Court: How about the document he signed, you admit the document he signed is all right.

Mr. Dolan: No sir, I do not. I admit he signed that document. I admit it was prepared by two clerks of the Board. Right or wrong, this young man said,

40

Return to Writ of Error

Margaret E. Lowe—for State—Direct

“All right; if you say that is all right I will put my name down there.” And he put it down.

10 The Court: He did not say that, did he?

Mr. Dolan: I think that is what his signature could be construed as meaning, so far as being binding on the municipality, but I think it has no further binding effect. How do you have the right to assume those ballots counted by the County Board and removed afterward are the same ballots and in the same condition they were when the Board finished that night or the next morning?

20

The Court: We assume it until it is shown to the contrary.

Mr. Schechter: I am now attempting to prove solely the fact that Elsa Becker replaced John M. Jones and was a member of the Board at the time of the November election. I do not get the argument about all these documents and so on, which the Court has admitted.

30

Mr. Dolan: I have endeavored to express my views. If I have not made it clear to Mr. Schechter, maybe I cannot express it very well, but I do want the Court to note an objection and I will discontinue any further argument.

Mr. Schechter: I offer in evidence the certificate of the Board of Registry and Election, showing that Elsa Becker replaced John M. Jones, signed by the members of the County Board.

40

Return to Writ of Error

Margaret E. Lowe—for State—Cross

The Court: It is filed in the office of the County Clerk?

Mr. Schechter: Yes, sir.

The Court: Yes.

Mr. Dolan: I object on the ground it is incompetent, irrelevant and immaterial, and I ask an exception if your Honor allows it. 10

The Court: Objection overruled and it will be admitted in evidence.

Mr. Dolan: I pray an exception.

The Court: Exception granted.

(Exception allowed and the same is signed and sealed accordingly. 20

Judge.)

(Paper referred to and offered in evidence is marked Exhibit S-7.)

Mr. Schechter: Cross examine.

Cross examination by Mr. Dolan:

Q. Mrs. Lowe, how do you get the names which you finally certify as members of the different election boards? A. They are usually submitted to our County Chairman from the district committeeman or woman in the respective districts. 30

Q. Do you happen to recall who submitted the names of the members of the Blairstown Board which you finally certified? A. I would not be able to recall, because usually that is taken care of by the man who represents the upper end of the county, and I look after the lower end, in Warren Glen and other places. 40

Return to Writ of Error

Margaret E. Lowe—for State—Redirect

10 But I do know that they are certified, or, rather, presented by members of the committee to our County Chairman, who, the present and past year, has been Sheriff Reilly, and all appointments are handed to the Democratic members of the Election Board through the Chairman.

Q. And you cannot explain why these papers were not put on file until some time in December? A. That I cannot explain. It is something that very, very rarely ever happens. But I know Mrs. Becker had her certificate and was authorized to serve in the place of Mr. Jones, who resigned; but just who recommended her I could not tell you.

20 Q. And all members are appointed in May, are they? A. All members are appointed in April.

Q. So that in April 1944 this entire group in Blairstown was designated by your Board? A. Yes, sir.

Q. And Mrs. Becker was substituted for Mr. Jones? A. Yes, sir.

30 Q. And your usual practice is to file the certificate with the County Clerk immediately? A. Yes, sir.

Q. But for some reason it was not filed or he did not get it until December? A. Well, I do not know the reason why.

Redirect examination by Mr. Schechter:

40 Q. These appointments of the members of the Board come to you on recommendations from the County Chairman? A. That is the general

Return to Writ of Error

Dayton Brugler—for State—Direct

rule. That is not the law, but it is the general rule.

Q. Does that apply also to the Republican party? A. I believe the Republican party permits their State Committeemen to do it.

10

Q. The Republican members of the County Board take care of the Republican appointments, and the Democratic members take care of the Democratic appointments, in other words, neither party receives any benefit from the other, does it? A. No.

DAYTON BRUGLER sworn for the State.

20

Direct examination by Mr. Schechter:

Q. What is your full name, please? A. Dayton Brugler.

Q. Where do you live, Mr. Brugler? A. Blairstown, High Street.

Q. How long have you been a resident of the Township of Blairstown? A. About 37 years.

Q. In November 1944, were you a member of the Blairstown Board of Election? A. I was.

30

Q. How long have you been a member of the Blairstown Board of Election? A. Sixteen or eighteen years; I do not remember exactly.

Q. Consecutively, prior to this? A. I was off one year, about five or six years ago.

Q. And then reappointed the year thereafter? A. Yes, sir.

Q. Do you recall having an organization meeting of your Board in Blairstown in the year 1944? A. I do.

40

Q. Did you attend? A. I did.

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. Who was appointed at the election of the Blairstown Board, who was appointed Judge of Elections? A. Mr. Larison.

10 Q. Is that the defendant, John Larison? A. Yes, sir.

Q. Who was appointed the Inspector of Elections? A. Mr. Gerald Christian.

Q. And who were the Poll Clerks? A. Well, John Jones and myself were the two clerks that were elected at that time. I might say that Jones left the Township and that was the reason for this substitution about which we are hearing.

20 Q. In other words, Jones resigned and Mrs. Becker replaced him? A. Well, he could not be on the Board when he left the Township.

Q. That means he resigned? A. I do not know the reason, I do not know whether he resigned or not. He just left the Township.

Q. Did you hear Mrs. Lowe say he sent in his resignation? A. I did not hear that.

Q. Now, at the organization meeting, who were the tally clerks? A. The clerks—

30 Q. Who were appointed tally clerks of the organization? A. Mr. Jones and myself were the clerks.

Q. Jones then left the Township? A. Yes, sir.

Q. At the November election, 1944, who were the tally clerks? A. Mrs. Becker.

Q. Was she the only one? A. With myself. I was appointed. Mrs. Becker was substituting for Jones.

40 Q. So that at the November election who were the tally clerks? A. Mrs. Becker and myself.

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. What time did the polls open that morning?

A. Seven o'clock.

Q. And I assume the Board functioned all day? A. Yes.

Q. What time did the polls close? A. At 8 o'clock in the evening. 10

Q. Now, after the voting was over did you immediately start to count the ballots or not? A. Yes, as soon as we could get things arranged in the voting place, as we changed some tables around and like that. I imagine that the counting began fifteen or twenty minutes after the polls closed.

Q. Now, before proceeding to count these ballots that were cast, how did you arrange yourselves? A. Well, we had a long table, probably six or eight feet long, I don't know, and it was about two and a half feet wide. The Judge of Election and the Inspector were on one side of the table and the two clerks, the people who did the tallying, on the other side of the table; the ballot box, of course, was on the table next to the Judge of Election. 20

Q. Now, in this particular case, the election we are talking about, do I understand that Mrs. Becker and yourself were on one side of the table? A. Yes, sir. 30

Q. And Larison and Christian on the other side? A. That is right.

Q. And was that the seating arrangement when you commenced to count the ballots? A. It was.

Q. Where is the polling place in Blairstown? A. It is the Hose House, or Fire House. 40

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. What street is it? A. I do not know what they call it. They used to call it—since the concrete road is there I think it has some other name. It is right next to the main highway.

10 Q. Was that the same room in which the election was conducted? A. Yes, it was.

Q. How many polling places do you have in Blairstown? A. Only one.

Q. Is that the place to which we refer? A. Yes, sir.

Q. And were the ballots counted in that same room? A. They were.

20 Q. Now, you say you and Mrs. Becker were on one side and Larison and Christian on the other? A. That is right.

Q. When you started to count the ballots where was the box? A. It was across the table from us, at the left hand side of the Judge.

Q. Which side was Christian sitting on? A. The same side the Judge was on.

30 Q. With reference to the ballot box, I mean? A. Well, the ballot box was the other side of the Judge. Mr. Christian was there (indicating), then the Judge of Elections and then the ballot box.

Q. Now, I assume the box was opened as usual? A. Yes, sir.

40 Q. And how did the counting proceed? A. As near as I can say, as it always has. Mr. Larison took one ballot out at a time and unfolded it and read it and Mrs. Becker and I tallied on the other side. I did the calling, that is, we call the number of tallies in the spaces so as to keep checking as we go along.

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. Now do I understand that Larison would take the ballot from the box? A. Yes, sir.

Q. Then what would he do? A. He would unfold it and read off the names that were voted.

Q. Announce the result of that ballot, is that correct? A. Yes. 10

Q. When he did that what did you and Mrs. Becker do? A. We had the tally. Then we put down "1" in the squares on the tally sheet. We would put down one mark for the names he would call off, the names that were voted.

Q. Do I understand, then, that upon this sheet marked Exhibit S-5 you or Mrs. Becker made a mark each time a name was called by the Judge of Elections? A. That is right. 20

Q. Can you tell me about this sheet, whether you or Mrs. Becker used this one? A. (Referring to paper) Well, I think that is mine.

Q. Have you any way of telling? A. Oh, just in a general way, the way the things are put in.

Q. You would say this is your sheet? A. I am quite sure it is, yes.

Q. Now, referring particularly to the election between Everett and Cornwell, these crosses, as I understand them, indicate one vote for each of the candidates? A. That is right. 30

Q. Where would you get the name of the person who was to receive one vote? A. From the Judge of Election, as he read it off.

Q. As he read each ballot off did you mark down the names that he called? A. We marked down just one mark against the name.

Q. Each time he called a name? A. Each time he called a name. 40

Return to Writ of Error
Dayton Brugler—for State—Direct

Q. Was he in good voice that evening? A. He was.

Mr. Dolan: Who do you mean?

10 Mr. Schechter: I am referring to the Judge of Election.

Q. He is the man who called out the names, was he not? A. Yes, sir.

Q. Was he in good voice? A. Yes.

Q. Apparently in good physical condition or not? A. He seemed to be.

20 Q. Now, what happened after a hundred names were called off, Mr. Brugler? A. Well, at each hundred—There was quite a few people in the——

Q. I am talking about the first one hundred. A. We gave to the people who were in the polling place the result of all of the candidates at the end of the first hundred.

Q. You made an announcement as to who was leading? A. Yes, sir.

30 Q. Can you tell from this sheet who was leading, between Everett and Cornwell? A. Well, you cannot from that sheet.

Q. Do you recall of your own knowledge who was leading? A. No, I do not.

Q. You do not? A. I do not remember just exactly who was leading. I know that all through the election that the two names in question here, that is Everett and Cornwell, ran very close together. I do not think there was ever more than ten or twelve votes different in the two during the entire election.

40

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. Now, at any time this evening did Larison leave the room while these ballots were being counted? A. Well, yes; I think it was at the close of the second hundred; I think it was after we had completed two hundred votes.

10

Q. He did leave the room? A. He did.

Q. Did anyone else leave with him? A. Yes, Mr. Christian.

Q. Did Mr. Larison leave the room where the ballots were being counted? A. Yes. Well, the ballots were not being counted. At the close of that we took a recess.

Q. You say you reached two hundred ballots? A. Yes, sir.

20

Q. Did you stop? A. Yes.

Q. Now you say Larison and Christian left that room? A. Yes, sir.

Q. Did the vote counting go on? A. No.

Q. Were there any votes counted that evening when all four members were not present? A. There certainly were not.

Q. At no time? A. At no time.

Q. Now, when Mr. Larison and Christian left the room do you know where they went? A. No.

30

Q. Where were you when they left the room? A. We stayed in the room, because we would not leave the ballot box alone.

Q. Was there any member of the Election Board with you? A. No other member of the Election Board. There were other people in the room.

Q. What happened to Mrs. Becker? A. She was there.

40

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. So you and Mrs. Becker stayed in the room? A. That is right.

10 Q. And at any time that evening was that ballot box unattended by any member of the Election Board? A. It was not by itself at any time.

Q. And at any time that evening were any ballots counted unless all four members were present? A. There was not any ballot counted unless all four members were present.

Q. When Larison and Christian left have you any idea how long they were gone? A. Well, it was a good while. It was at least a half hour, I should think.

20 Q. And while they were gone this half hour you stayed in the room? A. Yes.

Q. When they returned, what happened? Did you go on counting? A. We did.

Q. And did you record the votes as called by Larison? A. Yes.

Q. There is no question about that? A. No question at all.

30 Q. And while these votes were being counted I assume Christian was sitting at his side? A. Yes.

Q. After Larison counted the ballots what would he do with them? A. He would throw them down in front of Mr. Christian, unfolded, or just one fold over, and Mr. Christian very often picked them up and opened them and looked at them.

40 Q. Now, at any time during that evening were you in a position to determine the name on the ballot that was being read? A. No.

Return to Writ of Error

Dayton Brugler—for State—Direct

Q. If you know, was Mrs. Becker in a position to see any ballot? A. She was not in a position to see anything.

Q. So that as far as you were concerned you just marked on this tally sheet as the votes were called by Larison, is that correct? A. Yes, I think that was accurate.

10

Q. Would you say that you were a good tally clerk? A. Well, I think that we are. It was Mrs. Becker's first time on the Board, yet I think it is really a very accurate record of the names as they were called.

Q. Now you had some check with Mrs. Becker during the course of the evening, did you? A. Yes.

20

Q. Suppose you explain to the Court and jury and to me, how you would check one against the other? A. Every time a name is called we put down the tally and then one of us—I did the calling, myself—we would call the number of tallies in that square. If you will look at the sheet there you will see—

Q. Would you like to step down and make a demonstration there, Mr. Brugler? A. (The witness goes to the jury box.) This tally sheet is ruled in squares, and when a name is called we put down a number in the right. Now, right there there is "4". If that name was called another time we would put down a "5" and call "Tally". There is one (indicating). That (indicating) has one "3" and if that name was called another time we would put down "4" and call out "four", for that name, so that the two

30

40

Return to Writ of Error

Dayton Brugler—for State—Direct

of us would check, one against the other, and if we could not tally we would stop there and find out what the trouble was.

10 Q. On this particular evening is that how your checking took place? A. Yes.

Q. When you reached the end of the vote counting did you both come out even? A. Yes, because we had checked and if there was any difference as we went along we corrected it as we went; we checked it up as we went along.

Q. Now, after this interruption in the counting of the ballots, when Christian and Larison left and returned, did you go on counting the bal-
20 lots? A. We went on then.

Q. Did you complete the counting or was there another interruption? A. We had been on duty since 6 o'clock that morning and we would very often recess for five or ten minutes at the end of probably a hundred.

Q. In other words, the count was uninterrupted except for a few-minute recess? A. That is right.

Q. Now, when you had completed the count, particularly of the election between Everett and
30 Cornwell, referring to Exhibit S-5, after the word "Everett", we have "328" and after the word "Cornwell" we have "327". Where did those figures come from? A. We added up these tallies that were over here (indicating).

Q. In other words, as each ballot was counted, you made a mark? A. Yes, sir.

Q. And when you got done you counted the marks? A. Yes, and they are easy to count be-
40

Return to Writ of Error

Dayton Brugler—for State—Direct

cause they are numbered up here (indicating) and you follow down this line and you have got the number there without very much chance of any mistake.

Q. So that the vote as you tallied it, as announced by the Judge of Elections, was, Everett 328, and Cornwell, 327? A. I think that is right, yes. 10

Q. Did both tally sheets come out the same? A. Yes, sir.

Q. This signature on the last line, "Dayton Brugler", is that your signature? A. Yes, that is my tally sheet too, because that is my writing there. 20

Q. Did you see John Larison sign his name? A. Yes, sir.

Q. And Gerald Christian? A. Yes, sir.

Q. And Elsa Becker? A. Yes, sir.

Q. And yourself? A. Yes.

Q. When was that signed? A. At the close of the counting of the ballots.

Q. Approximately what time was that? A. Well, I imagine about 8 o'clock the next morning.

Q. That would be November 8th? A. November 8th, about 8 o'clock we got through and we were then until about quarter of 9 making out the return sheet and so forth. 30

Q. Now I show you exhibit S-3 and ask you if you recognize that? A. Yes.

Q. What is that? A. That is the return. We made two copies of that. One is given to the Township Clerk and the other came here to the County Clerk's office. 40

Return to Writ of Error

Dayton Brugler—for State—Direct

10 Q. Now, that purports to have some signatures. Did you see that signed? A. I do not know whether I saw all of that signed or not. There were a good many of these. I think that this year there were fifteen returns of different kinds, and I was the Clerk and was writing, so I cannot say I absolutely saw every person put down his name.

Q. Does that paper have your signature on it? A. Yes, sir.

Q. Did you ever see Larison write? A. Yes, sir.

Q. Is that his signature? A. Yes, sir.

20 Q. Did you ever see Mrs. Becker write? A. There is no question in my mind that these are the signatures of the people who were on the election board.

Q. And the figures there are, how many for Everett? A. 328.

Q. And Cornwell? A. 327.

Q. And that certificate is the same as the figures here on the tally sheet, is that correct? A. Yes, it is.

30 Q. Where did you get these figures to insert here? A. From the tally sheet.

Q. Now, as far as the count proceeded there was nothing unusual that you noticed, was there? A. I noticed nothing unusual.

Q. As the ballot was called off you marked it down? A. We did, yes.

40 Q. Do I understand you to say that the vote, after Larison and Christian left, at the two hundred mark, went on uninterrupted after that? A. Yes, after they returned.

Return to Writ of Error

Dayton Brugler—for State—Cross

Q. By the way, did you stop at any time in the evening to have any refreshments, food or drinks? A. I think we did. I think there were a few sandwiches brought in. I do not know whether they were sandwiches or whether it was just some pop. 10

Q. Soda pop? A. Yes, sir.

Q. Do you recall who brought it in? A. I do not, no.

Q. "Sparky" Mitchell brought it in, did he not? A. It seems to me it was he, but I am not so sure.

Mr. Schechter: Cross examine.

Cross examination by Mr. Dolan: 20

Q. How long did you say you had been a member of the Election Board? A. About sixteen or eighteen years.

Q. I show you this document and ask you if you recognize this as one of the sample ballots which your Board used that fall? A. I think it is, yes.

Q. And the actual ballots used at the election were actually the same, save with the exception of the color, were they not? A. That is right. 30

Q. In counting the ballots, as I understand the arrangement, you had a table longer than this (indicating)? A. Yes, sir.

Q. With the ballot box at this end? A. Yes.

Q. And then Mr. Larison? A. Yes.

Q. And Mr. Christian? And you and Mrs. Becker on the opposite side? A. That is right. 40

Return to Writ of Error

Dayton Brugler—for State—Cross

Q. After the box was open these ballots were taken out one at a time? A. One at a time.

Q. And Larison read them? A. Yes, sir.

Q. You said he was in good voice? A. Yes.

10 Q. You understood him—How far away from you was he, just across the table? A. Yes, he was just across the table.

Q. And this side of Mr. Christian? A. Yes, sir.

Q. What was the method that he followed in reading these names? A. Well, he began at the top and read the candidates that were crossed as he went down the ballot.

20 Mr. Dolan: May I have that marked for identification?

(Sample ballot referred to is marked D-1 for Identification.)

30 Q. Now, you say he began at the top and read down. Do you mean he began at the top of the first column or the second or third or fourth? A. He began with the first person for whom there was a vote marked. Then the next candidate, regardless of whether he was a Democrat or a Republican, he would give the next name, and continue going all the way down that column and then go back up there and he took each candidate that was voted for as he went down the page.

Q. Was there anything done to indicate that you had heard and reported what he had read? Would either you or Mrs. Becker say "O.K.", or anything else? A. We called the check there.

Return to Writ of Error

Dayton Brugler—for State—Cross

Q. That was at the end of every fifth ballot, was it not? A. No. Every time a name was called we called the number of tallies in that square after we had tallied that one. Is that plain? If a candidate had two tallies against their name and his name was called another time we would put a third tally in that square and say "3".

10

Q. Oh, you called the number each time? A. Every time a name was called we called the number of tallies in that particular square for his name, in each square that was not filled up.

Q. So that every time he read a name, you or Mrs. Becker or both of you announced the number of votes is that correct? A. Yes, sir.

20

Q. Now, you did not always agree on the number, did you, you and Mrs. Becker? A. Well, once in a while you would——

Q. Many times, was it not? A. No.

Q. Was it not at least fifty times that you and she disagreed? A. Oh, no.

Q. How many times did your Board stop until you and Mrs. Becker reconciled the difference between your tally sheet and her's? A. The majority of the times we stopped was because you would want the number that was in the box and you put down the tally. There was no difference in us two. Once in a while your mind would not work right and we would stop then. I do not think there was a quarter of that many interruptions.

30

Q. Do you mean that during the course of the whole night, from 8 o'clock in the evening until 8 o'clock in the morning, there were not more

40

Return to Writ of Error

Dayton Brugler—for State—Cross

than a dozen occasions when you disagreed on the number you put down? A. No. Once in a while we would have a full box and he would call a name before we had been able to tally the first one.

10

Q. He never called any name twice that you recall? A. No, I do not recall that he called any name twice.

Q. Either you or Mrs. Becker or both of you would immediately give the number. If she would say "3" opposite "Roosevelt"—and I suppose you had that more frequently than any other? A. Yes.

20

Q. Every time you put the number down you said "3" or "4" or "5"? A. Yes, that is right.

Q. Now, you say that sometimes you called a number before you put it down, and sometimes afterward. A. Yes, and then the other would immediately call "check" right there. But in the majority of cases it was just simply because we had one wrong rather than because there was any discrepancy in our tally.

30

Q. Well, you did not intentionally call them wrong, did you? A. Not hardly.

Q. It was just one of those slips—You were all getting pretty tired, were you not, toward morning? A. Well, it was a long hard pull.

Q. Yes, you had twenty-four hours continuous service? A. Yes, sir.

40

Q. And you and Mrs. Becker had only had a little pop and sandwich to kind of carry you through? A. Yes. Well, we had not had anything else, so far as we know, or anybody else had anything else.

Return to Writ of Error

Dayton Brugler—for State—Cross

Q. But in spite of that, you did call it wrong several times, you say? A. Yes, a few times, and she would immediately say—even though I had tallied it I had only the number that I put down already tallied and she would immediately stop me and we would check it right away. 10

Q. Can you give any reason for calling the number out before you put it down? A. Yes. When you are working that way it is very easy to do. It is working under pressure, and a pretty monotonous job.

Q. How many people were in that room? A. Well, they varied. When we began there were probably thirty or forty. Toward morning there were not very many there, probably half a dozen or so. I think there was someone there practically all the time. 20

Q. Mr. Cornwell was there all the time, was he not? A. No, he was not.

Q. Pretty much of the time? A. No, he was not there—he showed up every hour or hour and a half, I think.

Q. He was there when you started, was he not? A. Yes, I think he was. 30

Q. Do you recall—You are familiar with this Election Law, are you not? A. Well, some of it.

Q. You know what your duties are? A. Pretty well.

Q. Do you know Section 19:16-7, "The Board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the Judge of the election, 40

Return to Writ of Error

Dayton Brugler—for State—Cross

10 and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the Inspector. The Inspector shall be satisfied the ballot is being correctly read by the Judge. After the reading of the ballot and before taking another ballot from the box the Judge shall fold the ballot to a size about five inches square and shall deliver the same so folded to the Inspector, who shall write on the back thereof the number of such ballot from one onward"? A. Yes, sir.

20 Q. That has been the rule during all the period you have served on that Board, has it not? A. That apparently has been the law, yes.

Q. On this particular occasion you did not see that was done, did you, for the first thirty-five ballots, is that not true? A. I noticed when they had the re-count that——

Q. Did you not notice that that night? A. I do not recall.

Q. Do you not recall the fact Mr. Cornwell was there and he said, "Never mind about this. Begin with the one after that"? A. No, sir.

30 Q. Do you not know you did not number the first thirty-five ballots? A. It was not my job.

Q. You know you did not do it. A. When they came out, the first thirty-five that came out of the box was not numbered.

Q. You knew that was the law? A. Yes, and I called attention to it.

40 Q. Yes, but you did not see it was done, did you? You did not see that that first thirty-five was ever numbered, did you? A. No.

Return to Writ of Error

Dayton Brugler—for State—Cross

Q. No, of course you did not. You know that when you had finished that Mr. Cornwell, who gets the benefit of this thing, was present, was he not, after you finished your count? A. Yes, I think he was.

10

Q. You know that you locked the box up? A. Yes, sir.

Q. Do you know if he opened it up again? A. No.

Q. With a key? A. No.

Q. Do you not know that you delivered the keys to him? A. I was not Judge of Election.

Q. Do you know that your Board did it? A. I cannot swear to it, no.

20

Q. What is your best recollection about it? A. I haven't any recollection, because, as I told you, I am one of the clerks.

Q. Do you remember—— A. Just listen.

Q. All right. I will listen to you. A. I was one of the clerks and I was filling out these returns, we had fifteen or sixteen. The rest of the Board were taking care of the ballot box and so on. I cannot swear I ever saw that ballot box locked up.

30

Q. As a member of the Board for sixteen or eighteen years, you knew one of the regulations was 19:18-4, which reads, "Every municipal clerk to whom the ballot boxes shall be delivered shall thereupon keep the same, with their contents, but shall not have the keys thereof in his possession until required for the next ensuing election". Now you knew that, did you not? A. Yes, in a way.

40

Return to Writ of Error

Dayton Brugler—for State—Redirect

Q. Did he have you appointed on this Board?
A. No.

10 Q. When did you find out that he had the keys for this ballot box? A. Well, I knew that as he was going to take——

Q. When did you find out that he had the keys to the ballot box? A. I think probably it was at the close or just before we left.

Q. You knew that he took the ballot box and put it up in that room upstairs to which he had the only key, did you not? A. Yes.

20 Q. You knew he had the keys to the ballot box, contrary to that provision of the law? A. Yes.

Q. You made no objection to that, neither then nor any other time? A. No.

Q. Now, on this tally sheet, those four names are there? A. Yes.

Q. You think that is your tally sheet? A. I know it is.

Q. Did John Larison check with you in any way before he signed his name? A. I do not know whether he checked it or not.

30 Q. Did you see him check it? A. No. I saw him sign it.

Q. He took your word for it that it was all right, did he not? A. Yes.

Mr. Dolan: That is all.

Redirect examination by Mr. Schechter:

40 Q. When you got done counting was there an announcement made of the number of votes each had received? A. Yes, sir.

Return to Writ of Error

Dayton Brugler—for State—Redirect

Q. Was that done before this paper was signed? A. Yes. We added it up and the numbers were announced and then this one was signed.

Q. So that Larison and the rest of the Board knew that as far as this tally was concerned that Cornwell was the loser and Everett the winner? 10
A. Yes, sir.

Q. Before this tally sheet was signed? A. Yes, sir.

Q. And before the statement of the result was signed? A. Yes, sir.

Q. Now, Mr. Dolan referred to some room where the ballot box was kept. Where was that, in the same building? A. Yes, it was in the hose house. Instead of taking the box to the—It is the duty of the Township Clerk to keep the box, I believe, and instead of taking it to his house there in Blairstown there was an arrangement by which it is to be kept upstairs in a closet. 20

Q. So that, if I understand the law correctly, after the counting of the ballots the ballots are replaced in the ballot box, sealed up and locked up and the box legally delivered to the Township Clerk? A. Yes. 30

Q. And in this case the Township Clerk was Cornwell? A. Yes, sir.

Q. So that when the box was delivered to him it was being done according to law? A. Yes, sir.

Q. Do you know how Cornwell got the keys to this box? A. No, I do not know exactly how he got them.

Q. Do you know who had the keys to the box 40

Return to Writ of Error

Dayton Brugler—for State—Redirect

during the time the voting was taking place? A. No, I did not have any.

Q. Did you see the ballot box opened that morning? A. Yes.

10 Q. Who opened it? A. The Judge of Election.

Q. Who was that? A. Mr. Larison.

Q. Did he have the keys in his possession when he opened the box? A. He did when he opened the box, but whether he carried them all day or not I do not know.

Q. Well, some member of that Election Board, I assume, gave the keys to Cornwell, is that correct? A. Yes.

20 Q. Nobody else had the keys? A. Nobody else had them.

Q. And it was not you who gave them to him? A. No.

Q. Do you know whether Mrs. Becker gave him the keys? A. She would not have them.

Q. Do you know whether it was Christian gave him the keys? A. No, I do not know.

Q. So that, as far as you were concerned, neither Christian nor Larison gave him the keys? A. No.

30 Q. Did you give him the statements and everything else? A. Everything was turned over to Mr. Cornwell.

Q. Were all the members of the Board there when that was done? A. They were.

Q. Larison did not object to the fact that Cornwell was delivered the papers and the keys, did he? A. No.

40 Q. And as far as you know did he know Cornwell had the keys? A. Why, surely.

Return to Writ of Error

Dayton Brugler—for State—Redirect

Mr. Dolan: I object. How does he know what somebody else knew?

Q. Were the keys delivered to Cornwell in your presence? A. I do not remember the actual passing over, but the material that came down here to the County Clerk's office was all given into Mr. Cornwell's hands. 10

Q. By whom, do you know? A. Well, I do not know exactly.

Q. Was it a member of your Board? A. It would have to be, yes.

Q. Well, was it? A. Yes.

Q. And the Board consisted of Larison, Christian, Becker and yourself? A. Yes, sir. 20

Q. So that one of the four of you, omitting yourself—was it? A. Yes.

Q. And you did not give him the keys? A. No, I did not give him the keys.

Q. When he got the keys, naturally, they would go to the Clerk? A. Yes, sir.

Q. Were you there when he was told to deliver them to the Clerk or not? A. I do not know whether he was told to deliver them to the Clerk. He knew enough for that himself. He knew it was the duty of the County Clerk to have a copy of those results. 30

Q. How long had Mr. Cornwell been Clerk of Blairstown Township in November 1944? A. I think it was the close of a three-year term.

Q. Was it not the custom of the Clerk of Blairstown Township to send the papers to the County Clerk? 40

Return to Writ of Error

Dayton Brugler—for State—Recross

Mr. Dolan: I object. This man took an oath to do his duty according to law. It is not what the custom was in Blairstown or anywhere else.

10 The Court: The custom would have no bearing on it. Objection sustained.

Q. Did not Cornwell while he was Town Clerk deliver those papers to the County Clerk every year?

Mr. Dolan: I object. If he did, he ought to be indicted for it.

20 Mr. Schechter: Now, Mr. Dolan, I am willing to listen to your argument.

Mr. Dolan: I object to the question.

Mr. Schechter: I submit that I have a right to show that what was done this time was done for years past, before that.

The Court: Objection sustained.

30 Q. Are you sure that your tally sheet correctly shows the votes as called by the Judge of Elections, Mr. Larison? A. I think it is pretty nearly a hundred percent correct.

Q. Is it not a hundred percent? A. As far as I know, yes.

Mr. Schechter: That is all.

Recross examination by Mr. Dolan:

40 Q. Do you know this section of the law that says, "Not later than noon of the day following the canvass of the votes the keys to each ballot box shall be deposited by a member of the Dis-

Return to Writ of Error

Elsa Becker—for State—Direct

trict Board with the County Clerk?" A. I saw that in the Law.

Q. Now, within a few minutes after this election closed, about eight o'clock in the morning—or the count closed—you knew that Mr. Cornwell had the keys? A. Yes. 10

Q. Did you make any attempt to see that those keys got into the hands of any member of your Board so that they could be delivered to the County Clerk by you? A. I made no attempt, but I might say—

Q. No. You have answered the question. You say that everything was delivered to the County Clerk. The blank ballots were not, were they? A. No. They are put in the ballot box. 20

Q. They were put in the ballot box that was delivered to Mr. Cornwell? A. Yes, sir.

Q. And the keys were left with him? A. Yes, sir.

Q. At 8 o'clock in the morning? And then you washed your hands of the whole transaction, did you not? A. Yes, sir. It was not 8 o'clock. It was about quarter of nine.

Mr. Dolan: That is all. 30

ELSA BECKER, sworn for the State.

Direct examination by Mr. Schechter:

Q. Where do you live, Mrs. Becker? A. Cedar Lake Road, Blirstown.

Q. Township of Blirstown? A. That is right. 40

Return to Writ of Error
Elsa Becker—for State—Direct

Q. What county? A. Warren.

Q. How long have you lived there? A. Ten years.

10 Q. Were you a member of the Blairstown Board of Elections in November, 1944? A. Yes, sir.

Q. You replaced somebody, did you not? A. Mr. Jones.

Q. Do you recall when you replaced him? A. Well, it was the end of October, when Mr. Jones moved away, and I got a certificate then from the County Board to serve on the Board in Blairstown.

20 Q. And did you serve as a member of that election board at the last general election, in November, 1944? A. Yes, sir.

Q. Who were the other members of that board on that day? A. Mr. Brugler and Mr. Larison and Mr. Christian.

Q. What time did the polls open? A. Seven o'clock, I believe, and closed at eight.

Q. Were you present all during the day? A. Yes.

30 Q. Were all the other members there too? A. I went out for lunch; but, otherwise, I was present all during the day. We took turns out for lunch.

Q. You say the balloting stopped at eight o'clock? A. That is right.

Q. How soon after that did you start counting the ballots? A. In a little while, when we got the tables and things fixed.

40 Q. How did you fix the tables? A. We placed

Return to Writ of Error

Elsa Becker—for State—Direct

the table across the room and put the ballot box on one corner, and Mr. Larison sat on that side and Mr. Christian on that side, and Mr. Brugler and I sat on this side (illustrating).

Q. Were you on the scene when the box was opened? A. Yes, sir. 10

Q. Who opened the box? A. Mr. Larison.

Q. Do you know who had the keys to the box during the period from seven in the morning until eight in the evening? A. I do not know. They may have been just stuck in the box. I know we opened it and that is the last I remember seeing them.

Q. You know Mr. Larison opened the box for the purpose of starting the count? A. That is right. 20

Q. At any time during that day did you have any of the keys? A. No, sir.

Q. And you do not know, actually, who had the keys in their possession during the day, do you? A. No, sir.

Q. When you started to count the ballots, where were you sitting with relation to Larison and Christian? A. Across from Mr. Christian. 30

Q. Immediately alongside of Brugler? A. Yes, across the table.

Q. How wide a table was this? A. Something like that table there (indicating), only it was a little longer.

Q. The width is about the same? A. Yes.

Q. About three feet? A. Something like that, yes, sir.

Q. And about how long, approximately? A. With enough room for our two tally sheets. 40

Return to Writ of Error

Elsa Becker—for State—Direct

Q. Side by side? A. That is right, and then it was folded.

Q. Who took the ballots from the box? A. Mr. Larison.

10 Q. Did he announce them? A. That is right.

Q. And as he did that, what were you doing? A. When he called a name we checked on our tally sheet.

Q. Who is "We?" A. Mr. Brugler and myself.

Q. As each name was announced did that candidate receive a mark on this tally sheet? A. That is right.

20 Q. Now, referring to S-5, can you tell from looking at that whose tally sheet that is? A. That is Mr. Brugler's tally sheet.

Q. Mr. Brugler's, is it? A. Yes, sir.

Q. Do you know what happened to the tally sheet you kept? A. They put it in the box, in the ballot box.

Q. Now, referring to S-5, do you see what purports to be some signatures in the corner? A. Yes.

30 Q. What is the first one? A. Mr. Larison, Mr. Christian, Elsa Becker and Dayton Brugler.

Q. Did you see all these people sign? A. No, I did not.

Q. Do you know Mr. Larison's signature? A. No, I do not.

Q. Did you see him sign any instrument that evening or the next morning? A. No, sir.

Q. Did you see Christian sign? A. No.

Q. Brugler? A. No.

40

Return to Writ of Error

Elsa Becker—for State—Direct

Q. You did not see anybody sign it? A. I signed mine; that is all I know.

Q. First or last? A. Mr. Larison signed last. We signed ours before he signed his.

Q. Were there any signatures on this paper when it was handed to you for your signature? A. Yes, I was second. 10

Q. Do you recall who was first? A. Mr. Christian's name was there before I put mine there.

Q. Now, referring to Exhibit S-3, Statement of Results," I refer you to the second page and ask you if you see your signature there? A. Yes.

Q. Did you see Mr. Larison sign? A. No.

Q. Mr. Christian? A. No, I do not remember him signing this. 20

Q. Were there any names there when you signed it? A. There may have been but I do not recall.

Q. When you got through counting the votes, did you add them up on the tally sheet, particularly referring to the Cornwell-Everett election? A. I do not know what you mean.

Q. After you got through counting the ballots, Everett and Cornwell had a certain number each? A. Yes, sir. 30

Q. Were they added up? A. Yes, I added my sheet up and Mr. Brugler added his sheet up.

Q. Did they come out even? A. Yes, sir.

Q. What was the result? A. I do not recall the numbers. They are here.

Q. Is it your recollection that your sheet showed, Everett 328, or not? A. I do not recall that, no. 40

Return to Writ of Error

Elsa Becker—for State—Direct

Q. Was your sheet the same as Brugler's? A. Yes, I checked with him at the time.

10 Q. Were these figures, Everett 328, Cornwell 327, on there when you signed the paper? A. When I signed it?

Q. Were the figures, O. S. Everett, 328, and William Cornwell, 327, on Exhibit S-3 when you signed it? A. No.

Q. Did you know the result of the election, between Everett and Cornwell, when you got through counting the ballots? A. What do you mean?

20 Q. Who was the winner? A. They did not know who was. The soldiers' votes had not come in yet and we did not know who had won.

Q. As far as you people were concerned, who was the winner? A. Mr. Everett.

Q. As a matter of fact, Everett had won by one vote, on your count, is that not so? A. Yes, but we did not know who was the winner until the soldiers' votes came in.

30 Q. I am talking about the work you had to do. When you got done, Everett was the winner by one vote? A. Yes, sir.

Q. And you certified to that on S-3, that he was the winner? A. Yes.

Q. Is that correct? A. Yes.

Q. As you made a mark on your tally sheet where did you get the name from? A. Mr. Larison called it.

40 Q. Do I understand correctly, that as he called a name of a candidate you made a mark? A. That is correct.

Return to Writ of Error

Elsa Becker—for State—Direct

Q. And did that same practice continue during the evening? A. Yes, sir.

Q. Did you make any marks on that tally sheet which were not called by Larison? A. Oh, no.

10

Q. So you are satisfied that each time you made a mark on your tally sheet that name was called by Larison? A. Yes, sir.

Q. And when you got through the next morning each sheet, yours and Mr. Brugler's, showed the same result? A. That is right.

Q. Do you recall an interruption after you got to one or two hundred? A. Do you mean a recess?

20

Q. Yes. A. Yes, sir.

Q. Do you remember when it was—the first hundred or the second hundred? A. I believe it was the first hundred.

Q. What happened then? A. Mr. Cornwell had brought in some sandwiches and coffee, and I was hungry and I had some of them, and the other boys went outside.

Q. Who were the other boys? A. Mr. Larison and Mr. Christian.

30

Q. Who stayed in the room? A. Mr. Brugler was in the room with me, but I do not believe he ate any sandwiches, because he went to the end of the firehouse.

Q. Was there any time during the course of that evening or morning when this ballot box was unattended by members of the election board? A. No.

40

Return to Writ of Error

Elsa Becker—for State—Direct

Q. When they went outside, you stayed in the room? A. Yes, sir.

Q. Were any ballots counted while Larison and Christian were out? A. Oh, no.

10 Q. At any time that evening were any ballots ever called, counted or marked unless all four members of the board were there? A. Not that I recall.

Q. How long was this recess? A. They stayed about fifteen minutes, and when they came back we started in again.

Q. Does that seem about right to you, fifteen minutes? A. That is what I think it was.

20 Q. And did the same process continue—Mr. Larison read them off? A. Yes, sir.

Q. And you marked them down? A. Yes, sir.

Q. Now did you go through the rest of the evening uninterruptedly? A. No, we stopped for rest periods in between.

Q. Did any of the board leave the room? A. They went out for a walk, outside the firehouse, yes; I do not know where they went.

30 Q. Who were "They?" A. Mr. Larison and Mr. Christian went out.

Q. They went out more than once during that evening or morning? A. I believe they did. I did not keep track of them.

Q. Can you give us an idea? Was it twice or three times? A. I know they went out. I could not tell you how many times.

Q. But it was more than once? A. I believe it was, yes.

40 Q. Had you ever served on an election board prior to this time? A. No.

Return to Writ of Error

Elsa Becker—for State—Direct

Q. You were a new member? A. That is right.

Q. And during the course of the tallying with Mr. Brugler did you stop to check your figures?

A. That is right.

Q. When did you do that? A. Whenever we knew there was a mistake.

10

Q. What do you mean? A. If he called "Tally" and mine was not just the same, I stopped and I asked Mr. Christian to please read the last ballot over, so I would be sure to get it right.

Q. So that you checked one against the other? A. That is right.

Q. And I assume that happened more than once during the evening? A. A few times, not too much.

20

Q. Are you satisfied that when you got through with the count your tally sheet correctly portrayed the votes called out by Larison? A. That is right.

Q. What time did you get done counting? A. Around eight o'clock in the morning. I do not know exactly, but it was some time around eight o'clock in the morning.

Q. And I assume you signed all these papers to which we referred? A. Yes, sir.

30

Q. As did the other members of the board, if you know? A. Yes, sir.

Q. Did you see the box locked up? A. No.

Q. Were you in the room all the time? A. Yes, I was there, but I did not see it.

Q. And you do not know who locked it up? A. I haven't any idea.

Q. Do you know who had the keys when it was locked? A. No, I do not.

40

Return to Writ of Error
Elsa Becker—for State—Direct

Q. Did you see Mr. Cornwell there in the morning? A. Yes, sir.

10 Q. Do you know whether or not he received any papers from any member of the board? A. Well, he took our books, with the names in, and the papers, to be brought down to the Court House, and he said he was going to take charge of the election box.

Q. That is the ballot box? A. Yes, where the ballots were.

Q. And they were delivered to Mr. Cornwell? A. Yes, sir.

20 Q. Who gave him the papers and keys and so forth? A. I did not see the keys.

Q. Who gave him the papers? A. Mr. Brugler was writing the papers out, and Mr. Christian, and I do not know who gave them to him, but Mr. Cornwell said, "I am going down to the Court House and I might as well take them down."

Q. Was that said to the board—— A. That was said to the board that was around that table there.

30 Q. Who delivered the keys to Cornwell? A. I do not know who delivered the keys, but Mr. Larison hesitated a little and asked for the book, and he said, "I am going down anyway," and he gave him the books.

Q. What do you mean by "Books?" A. Where the names are.

Q. Do you mean the poll books? A. Yes, sir.

40 Q. Larison gave those to Cornwell? A. Yes, sir.

Return to Writ of Error

Elsa Becker—for State—Direct

Q. Do you remember any other documents? A. He gave the papers to Mr. Cornwell. He said he was going to take them to the Court House.

Q. Did you give him any papers? A. No.

Q. Did you hear Mr. Brugler say he did not give him any papers or keys? A. He said something about the keys. I did not hear what was said about the papers.

Q. Did you give him any papers? A. No.

Q. But they were given to him by some member of the election board? A. That is right.

Q. So that, by the process of elimination, it must have been either Christian or Larison, is that right?

Mr. Dolan: I object to the introduction.

The Court: Objection sustained. We will let the jury decide that.

Q. Are you sure it was a member of the board gave these things to Mr. Cornwell? A. I know Mr. Larison gave him the poll books, but I do not recall the other things at all.

Q. Now, does this statement of result conform with the tally sheet that you kept?

Mr. Dolan: I object, if your Honor please; this witness has already testified that they did not total it up at that time and did not know what the result was, because the soldier vote had not been counted and they had no way of knowing what the result was; and this question, of course, she cannot possibly answer.

The Court: Do I understand you to say you did not tally the number of votes?

Return to Writ of Error
Elsa Becker—for State—Cross

The Witness: Yes, what we had, but we did not know who the winner was.

10 Q. I am referring to the Blairstown count. A. Well, they asked who was the winner—There was a lot of people there—and we told them we did not know who was the winner, because the soldier vote had not come in yet.

Q. But, as far as the certification to the County Clerk, S-3, does that conform to the votes counted by you people? A. Yes, sir.

Q. Showing, Everett, 328, and Cornwell, 327? A. That is right.

20 Q. Where did you get those figures from? A. From the tally sheet.

Q. And where did you get the figures on the tally sheet? A. Mr. Larison called them off from the ballots.

Mr. Schechter: Cross examine.

Cross examination by Mr. Dolan:

30 Q. As I understand it, Mrs. Becker, when you finished up, you had one of these sheets and Mr. Brugler had another? A. That is right.

Q. During the course of the evening you had times when you and he disagreed on the number? A. That is right.

40 Q. And before you went on, you call on Mr. Christian, you say, to read the last ballot back? A. If I felt that I had not heard it correctly, if I felt that I made a mistake, or that Mr. Brugler—I asked him to please read the last ballot over again. Sometimes he had to take it off the nail and read it for us and we had to check it and see that it was right, if it did not tally with him.

Return to Writ of Error

Elsa Becker—for State—Cross

Q. Did Christian do that, or Mr. Larison? A. Mr. Christian, did that for me.

Q. And in any instance did you discover that Larison had read it erroneously? A. What do you mean?

10

Q. Did he make any mistakes? A. No, not that I know of.

Q. Not at any time did you find there was anything different? A. No.

Q. At any time during the course of the evening did Mr. Christian complain about the reading by Mr. Larison? A. No.

Q. Did he at any time call Mr. Larison's attention to the fact that he was reading names than correctly? A. No.

20

Q. Could you always understand Mr. Larison? A. Yes, sir.

Q. He read so you could hear him without any difficulty? A. Yes, sir.

Q. At the time you signed these sheets, of course, you did not know the result, or that there was just a difference of one between those two, between Cornwell and Everett? A. Yes.

Q. There were several soldiers' votes, were there not? A. Yes.

30

Q. So that the result of the election might be determined and might depend on the result of the poll that was there? A. Yes, sir.

Q. And you did not know what that was at that time? A. No; it was not returned from the County Board.

Q. Do you recall the men signing that tally sheet for you, the names appearing on this ex-

40

Return to Writ of Error

Elsa Becker—for State—Redirect

hibit, S-5, the names appear in the lower right hand corner? A. Yes.

10 Q. Did the two members, Mr. Christian and Mr. Larison take your word for it and sign their names, or did they add these all up? A. No, they just took our word for it.

Q. Now, Mr. Cornwell was there all the time, was he not? A. No, he went home once in a while. I do not know where he went, but he went out.

Q. He was the man that brought in the coffee and sandwiches? A. That is right.

20 Q. And the man that took charge of the books and the keys at the finish? A. Yes, sir.

Q. And when Larison started to protest he said he was going to Belvidere the next day and he would take care of it? A. He just protested about the poll books. I do not remember that.

Q. You do remember the keys were turned over to him? A. I do not know about that.

Q. Were the blank ballots put in the ballot box? A. I do not recall.

30 Q. Was not everything put inside that box, except your sheet showing the result? A. I couldn't really tell you.

Q. You do not recall about that? A. No.

Mr. Dolan: That is all.

Redirect examination by Mr. Schechter:

Q. Was Larison in good voice that night? A. Yes, sir.

Q. You heard him all right? A. Yes, sir.

40 Q. There was nothing the matter with you, as far as you remember, in the count? A. No.

Return to Writ of Error

Elsa Becker—for State—Recross

Q. Did you see the ballots opened? A. I saw the ballots, but I could not read them across the table.

Q. You saw them from the back? A. Well, he did not hide them, but I could not see them; I was on this side of the table and he was on that side of the table (indicating). 10

Q. Did you see any of the markings on the ballots that he called? A. No.

Recross examination by Mr. Dolan:

Q. You were all right there in a little group? A. Yes, sir.

Q. And he was reading so you could hear? A. Yes, sir. 20

Q. But there were occasions when you and Mr. Brugler did not agree on the number of votes cast for candidates on that ticket? A. What do you mean?

Q. Well, you and Mr. Brugler at times disagreed? A. Yes, sir.

Q. And you asked to have the ballot read over again? A. That is right.

Q. Do you recognize this (indicating) as the sample ballot that was sent out for that election? A. Yes, sir. 30

Mr. Dolan: I think that is all.

Mr. Schechter: If your Honor please, the next witness will be quite lengthy, so that unless your Honor wants to start and stop during the examination——

(After discussion.)

Mr. Dolan: May I suggest that the witnesses we have will come back, and the 40

Return to Writ of Error

Elsa Becker—for State—Recross

jury will be instructed not to talk to anyone?

10 The Court: The jurors in this case will return, of course. The witnesses will return without being further subpoenaed, and the case tomorrow morning will start at ten-thirty, because it is necessary to draw a jury between nine and ten-thirty.

And I wish you to be very careful not to discuss this case with anybody, members of the jury. If anybody approaches you, I ask you to report it to the Court immediately tomorrow morning.

20 The Court will stand adjourned until ten-thirty tomorrow.

(At 4:10 o'clock in the afternoon, a recess was taken until Wednesday, April 11, 1945, at ten-thirty o'clock in the forenoon.)

30

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Belvidere, N. J., April 11, 1945.

(Case resumed pursuant to adjournment.)

(Appearances as before noted.)

10

The Court: Now, whenever you wish to proceed.

GERALD E. CHRISTIAN, sworn for the State.

Direct examination by Mr. Schechter:

Q. Mr. Christian, what is your full name? A. Gerald Elmer Christian.

20

Q. Where do you live? A. Cedar Lake Road.

Q. What township is that in? A. Blairstown.

Q. What county? A. Warren.

Q. How long have you lived there? A. All my life.

Q. So you are a native of the Township of Blairstown? A. That is right.

Q. Were you, in November of 1944, a member of the Blairstown Election Board? A. I was.

Q. When were you appointed? A. In April.

30

Q. Of what year? A. 1944.

Q. Is that your first year on the Board? A. Yes.

Q. I show you Exhibit S-2 and ask you if your signature appears there. A. Yes, it does.

Q. On the second line, is that correct? A. That is right.

Q. "Gerald E. Christian?" A. Yes.

Q. Were you present when the other persons,

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Larison, Brugler and Jones, signed that paper?
A. I do not think I was, no.

10 Mr. Dolan: May I inquire what this
 paper is—the original oath of office?
 Mr. Schechter: Yes.

 The Witness: I do not recall whether
 anyone else was there when I signed it.

 Q. Did you sign that paper? A. I signed it,
 yes; that is my signature.

 Q. In both places? A. That is right.

 Q. Did you ever see Mr. Larison sign his
 name? A. I would not say I had, no.

20 Q. You do not know whether that is John Lari-
 son's signature on that? A. I never seen him
 sign that there, and I never seen him sign his
 name.

 Q. Did you see him sign his name on the morn-
 ing after Election, when he signed a lot of pa-
 pers?

 Mr. Dolan: I object. He cannot put
 words in the witness' mouth. He said, "I
 never saw him sign his name."

30 A. I never saw him sign his name.

 Q. Did you ever see Larison sign his name?
 A. No.

 Q. There is no question that your signature
 appears on here? A. That is my signature.

 Q. Now, during the Election held in 1944, did
 you serve as a member of your Board in Blairs-
 town? A. I did.

40 Q. Do you recall the organization meeting
 some time after the month of April and before
 the first of June? A. I do.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. Where was that meeting held? A. In the Hose House, or Fire House, in Blairstown, New Jersey.

Q. Who was there? A. John Larison, Mrs. Elsa Becker, Mr. Dayton Brugler and Mr. Cornwell and myself. 10

Q. Were officers of the Board selected at that time? A. They were.

Q. Who was appointed Judge? A. Mr. Larison.

Q. And who was appointed Inspector? A. I was.

Q. Who were the tally clerks? A. Mr. Brugler and Mrs. Becker.

Q. Did those same officers act in those capacities at the November Election? A. Yes. 20

Q. So that Larison was the Judge? A. That is right.

Q. You were the Inspector? A. Yes.

Q. Brugler and Mrs. Becker were the clerks, is that right? A. Yes.

Q. What time did the polls open in November, 1944? A. Seven o'clock.

Q. Were you there at that time? A. I was.

Q. Were all the members of the Board there? A. They were. 30

Q. Did you stay there all day? A. Well, I went home for lunch.

Q. Do I understand that you went out to get your lunch? A. Yes.

Q. Other than that, were all the members there? A. Yes.

Q. When did the polls close? A. Eight o'clock. 40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. How soon thereafter did you start to count the votes cast at that Election? A. As soon as we got the tables arranged; about fifteen minutes after eight o'clock.

10 Q. Then before you proceeded to count the votes, how did you arrange yourselves? A. We arranged ourselves so that the ballot box was over to my left, to the left of Larison, and Larison sat to the left of me, and I sat here and Mrs. Becker sat over there, and Mr. Brugler over there (illustrating).

Q. Indicating the other side of the table? A. Yes.

20 Q. How wide a table was this? A. Oh, about as wide as that one there (indicating).

Q. Indicating the table I am sitting at? A. That is right.

Q. Would you say three feet is about correct? A. About three feet wide.

Q. And how long? A. A little bit longer than that one.

Q. Would you say this is about five feet long? A. It is a good five feet.

30 Q. This table I am sitting at? A. Yes.

Q. How about the table you were sitting at at that time? A. It was a little longer, I think.

Q. Now, you say you started to count these ballots about quarter after eight? A. That is correct.

Q. How far did you get before you stopped? A. We got to one hundred.

Q. How were those first hundred ballots counted? Who announced the votes on the ballot?

40 A. Larison announced them. He was Judge.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. How would he announce them? A. Well, he would just call them out, whoever got the vote.

Q. Did he call them all together or separately?

A. One by one.

Q. Did he take each ballot from the box separately? A. That is right. 10

Q. As he did that, would he call the names that appeared on it? A. Yes.

Q. Did he call them clearly? A. Yes.

Q. Could you understand what he was saying? A. Yes.

Q. As far as you know, could he be heard by the other persons in the room? A. Sure he could be heard.

Q. Could he be heard by the tally clerks? A. Yes. 20

Q. Now, when you got to one hundred votes, you say you stopped? A. That is right.

Q. And what did you do? A. Well, at one hundred votes, we stayed in the room and we had sandwiches and coffee.

Q. How long did that take? A. Oh, maybe fifteen minutes.

Q. Did the other members of the Board stay in the room? A. They did, at one hundred votes. 30

Q. Then what did you do? A. Then we resumed counting the votes.

Q. In the same manner as you had done before? A. That is right.

Q. How far did you get with them? A. We got to two hundred votes.

Q. And were the ballots picked out of the box in the same fashion? A. That is right.

Q. Read by Mr. Larison? A. Yes. 40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. And tallied by Brugler and Mrs. Becker?

A. Yes.

10 Q. Now, when you got to two hundred votes, what happened? A. Well, we went outside. We stopped counting and Larison and I stepped outside.

Q. When you said outside, where did you go? A. Outside the firehouse.

Q. On the street or in the firehouse? A. Outside of the firehouse, on the street.

Q. On the street? A. Yes.

20 Q. Can you give us an idea what time that was? A. Well, it must have been between ten and eleven o'clock. I wasn't so sure about the time; I was counting the time by the votes.

Q. Was it prior to midnight of that night? A. Oh, yes.

Q. When you got out there, what did you do? A. Well, we stepped outside the door and, just as we got outside the door, George "Sparky" Mitchell, who runs a tavern across the street, we ran into him.

Q. Was Larison with you? A. Yes, sir.

30 Q. Was there any conversation at that time? A. Yes, there was.

Q. What was the conversation, then, and between whom? A. Well, Mr. Mitchell asked Mr. Larison how the voting was going, and Mr. Larison said Cornwell was twelve ahead, and then I heard Larison say, "It is about time we drop a few."

Q. What did he say? A. "It is about time we drop a few."

40 Q. Who said that? A. Mr. Larison.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. To whom? A. To Mr. Mitchell.

Q. Were you there? A. I was.

Q. And heard it? A. I heard it.

Q. Did you say anything at that time? A. I did not say a word.

10

Q. What other conversation took place at that time? A. I do not think there was any other conversation.

Q. Well, from there, where you were standing, did you go anywhere? A. Yes, we went across the street.

Q. Was there any talk about going across the street? A. Well, they just suggested it, and I thought to be sociable I would go across the street with them.

20

Q. Who suggested it? A. I am not sure whether Mitchell or Larison suggested it.

Q. As the result of a suggestion by someone, either Larison or Mitchell, you went across the street? A. Yes.

Q. Where did you go? A. In Mr. Mitchell's tavern.

Q. How far is that from the place where you were standing in front of the firehouse? A. Just across the state highway, or the state road.

30

Q. Is the tavern directly opposite the firehouse? A. Yes.

Q. When you got to the tavern, what did you do? A. Well, we went in and Sparky treated us to a drink.

Q. A drink of what? A. Well, I had a highball.

Q. When you say "highball" I suppose you

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

mean whiskey and ginger ale? A. Whiskey and 7-up.

Q. Did Larison have anything to drink? A. The same as I.

10 Q. Were you both standing at the bar together? A. We were.

Q. Who waited on you? A. Well, there was Lyman Lawson, was one of them, and the other was Dorothy Angle.

Q. Where were you in the tavern, at the bar or seated? A. No, we were standing at the bar.

Q. Now, you mentioned the names of Lawson and Angle. Did they both wait on you? A. Yes.

20 Q. Who waited on you first? A. Lawson poured the 7-Up for me, and Angle poured a little drink for me.

Q. Whiskey? A. Yes.

Q. So that they both waited on you for the same drink? A. Yes.

Q. How many drinks did you have while you were there? A. I had one.

Q. How many did Larison have? A. He drank two.

30 Q. Did you have any conversation with Larison at the bar? A. Well, no. We didn't have nothing to talk about.

Q. Did anyone join you in conversation at the bar? A. Well, Mr. Beatty; he came in.

Q. What Beatty? A. Sam Beatty.

Q. Samuel T. Beatty, of Blairstown? A. That is right.

Q. How long after you were in the bar did he come in? A. Well, during the first drink.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. Have you any idea as to the time? A. Well, at the time that we went across the road, at the two hundred votes.

Q. I am talking about the time after you got to the tavern, how long had you been there? A. 10
Oh, maybe five or ten minutes.

Q. Were you with Larison when Beatty came in? A. I was.

Q. Did you have any conversation with Beatty that evening? A. Yes.

Q. Did Larison have any conversation with Beatty that evening? A. Yes.

Q. When this conversation took place, where was it in the tavern? A. Right in front of the bar. 20

Q. At the same place you were standing? A. That we got the drink.

Q. What was that conversation with Beatty and yourself?

Mr. Dolan: I object unless it was in the presence and hearing of Larison.

Q. This conversation I am speaking about took place between whom? A. Beatty, Larison and Sparky Mitchell, or George Mitchell. 30

Q. Were you there? A. I was.

Q. And did you hear this conversation? A. I did.

Q. Was it within the hearing of the defendant, Larison? A. Yes.

Q. Now, relate the conversation, please. A. Well, Mr. Beatty came in and he asked us, the ones that were standing at the bar, how the voting was going, and Larison says, "It don't look 40

Return to Writ of Error

Gerald E. Christian—for State—Direct

10 so good. Cornwell is twelve ahead." And right away Beatty says to me, "You don't mind if John changes a few of them around, do you? There is big money in it—a hundred dollars." And I didn't say nothing—Oh, I did say something. I said, "Do you call that big money?" Because I didn't want to accept it or refuse it, because I wasn't so sure Cornwell would have won anyway. Or he would get a dishonest defeat. I thought it would be an honest defeat and I didn't want to go against him. And Beatty right away said, "A hundred and fifty." I said, "Don't you think you are getting into trouble?"

20 And Beatty says, "What do you mean? What do you mean?" And I said,—I didn't say anything. Larison says, "He don't mean you." He says, "He means all of us." And right away Beatty says, "There is no bond. There is no bond."

Q. Is that word "Bond"? A. "Bond."

Q. Go ahead. Was that all that was said? A. That was about all that was said.

30 Q. Did that end the conversation? A. That ended that conversation, as far as I know.

Q. Then after that I assume you went back to the voting place. A. That is right.

Q. Did you go back with Larison? A. I did.

Q. And did you or not resume the same position at the counting place? A. The same position.

Q. Now, up until that time had you checked the ballots that were being read by Larison?

40 A. Yes.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. Were they being properly and correctly read? A. Up to two hundred they had been read properly.

Q. As each name appeared on the ballot which was called by Larison it was properly read by him, is that right? A. That is correct. 10

Q. Now, after you had returned from the tavern and after you resumed the counting, what happened then? A. Well, we started to count the votes.

Q. In the same manner as you did previous to that? A. Well, the only thing, Larison called them out wrong.

Q. Well, he would take a ballot from the box— 20

Mr. Dolan: Please do not tell him what he did. It is a very vital part of this case.

Q. How would the ballots get out of the box? A. Larison would pick them out of the box on his left.

Q. How? A. With his fingers.

Q. Using his hand? A. Yes.

Q. Would he insert it in the box, or not? 30

Mr. Dolan: If your Honor please, this is the vital part of this case, and I do not think the Prosecutor should prejudice our situation by putting the words in the witness' mouth. I object to the question.

The Court: Well, you are technically correct, I suppose. Take care, Mr. Prosecutor.

Q. How did the ballots get out of the box? 40
A. Larison picked them out of the box.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. How many at a time? A. One at a time.

Q. Was that done all the time as the total ballots were counted? A. It was.

10 Q. When he removed a ballot from the box, what did he do? A. He reached for them, unfolded them and read them off.

Q. Were they being read correctly, as the markings appeared on the ballot?

20 Mr. Dolan: I object. Of course, that immediately puts the question and the answer right in this witness' mouth—Yes or No. I think, at this crucial stage, this witness should tell what he remembers, if he remembers anything, and not have the Prosecutor say he did this or he did that. I object to that form of examination.

Mr. Schechter: It calls for a Yes or No answer.

The Court: It would seem that you could add "Correctly or incorrectly read." Do not lead the witness.

30 Q. Now, after you returned and started the count, after the two hundred you have told us about, the operation of counting the ballots went on the same as before, is that correct? A. That is right.

Q. When a ballot was taken from the box by Larison, were any of those ballots counted correctly or incorrectly? A. They were counted incorrectly, some of the votes.

40 Q. I am referring particularly to the election between Cornwell and Everitt. After the first ballot was taken from the box, after the two

Return to Writ of Error

Gerald E. Christian—for State—Direct

hundred, were you in a position to determine whether or not that ballot had been cast for Cornwell or Everitt? A. I was.

Q. Were you in a position to see every ballot taken after the two hundred? A. I was.

10

Q. When did you first notice, if you did, a ballot being incorrectly called or counted? A. After the two hundred.

Q. How soon thereafter? A. I am not sure about that; it was between two and three hundred.

Q. Did you notice any ballots in the hands of Larison, cast for Cornwell, which were announced by him for Everitt?

20

Mr. Dolan: Now, if your Honor please, there again it is practically putting the answer in the witness' mouth. It seems to me that at this crucial stage of this examination this witness should tell what he remembers, if he remembers anything, and not just be put in a position to say Yes or No.

Mr. Schechter: My command of the English language does not permit me to ask the question in any other way. I asked the man whether, between two and three hundred, he saw any ballots cast for Cornwell which were counted for Everitt. I cannot see there is anything wrong.

30

The Court: The Court does not either. Answer the question.

Mr. Dolan: Will your Honor allow an exception?

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

The Court: Certainly.

10 Mr. Dolan: My conception of the English language is more simple than the Prosecutor's. I may not have the same extensive vocabulary. But my understanding of the rule is that when you reach the point where the alleged offense is being described, you say to the witness, "What did they do?" That is the simplest fashion in which it can be put. The Prosecutor is apparently doing the testifying.

20 The Court: I have ruled on the question. Proceed.

 Mr. Dolan. I ask an exception.

 The Court: An exception may be entered.

 (Exception allowed and the same is signed and sealed accordingly.

 Judge.)

 (Last question read.)

A. I did.

30 Q. How many, during the course of this evening were there, of such ballots? A. Well, I counted them up to six hundred and he shifted thirty-three from Cornwell over to Everitt, which made a total of around sixty-six.

 Q. I assume you are multiplying 33 by 2. A. Yes; he took thirty-three from Cornwell and gave Everitt thirty-three, which was sixty-six votes.

40 Q. How often was that done between two hun-

Return to Writ of Error

Gerald E. Christian—for State—Direct

dred and six hundred? A. Well, thirty-three times it was shifted.

Q. Was there any particular period of time between one calling and the other? A. What do you mean by that?

10

Q. Was there any particular set pattern used by Larison when these votes were called? A. No.

Q. Were Brugler and Mrs. Becker in a position to see these ballots? A. Oh, I don't believe so.

Q. When Larison opened a ballot was the front or back to Brugler and Mrs. Becker? A. Well, he would lay them on the table or hold them in his hands, and they wasn't paying any attention to him anyway. They had enough to do to take care of the tally sheet.

20

Q. After you got to the six hundred did you stop counting then? A. It was around the six hundred; I would not say it was right on the six hundred.

Q. Do you know whether or not the ballots were correctly counted after six hundred? A. Well, they wasn't, no.

Q. But you paid no attention to it? A. I paid no attention. I just seen that they were read and Cornwell didn't get them all. I just wanted to watch to see whether they had give him a dishonest defeat.

30

Q. Who do you mean by "He"? A. Well, Larison. He was the one that was reading.

Q. You say, "Give him a dishonest defeat." Who do you mean by that? A. Cornwell.

Q. I show you Exhibit S-5 and ask you if you know what that is. A. This is the tally sheet.

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. Can you tell from this whose tally sheet it was? A. No, I cannot. I didn't notice the writing.

10 Q. I refer you to the lower right hand corner and ask you if you see that signature there? A. Yes, I do.

Q. Who signed this paper first, if you know? A. Well, the last three of us signed it first; Mrs. Becker and Mr. Brugler and myself.

Q. Who was the first one to sign, do you recall? A. Well, that was because we signed that in the morning.

20 Q. Who was the first of the three? A. I could not tell you who was the first of the three of us.

Q. Did you see any of the other persons sign? A. I did not.

Q. That is your signature there? A. That is my signature.

Q. And, if you know, were these figures on the right, announcing the result of these elections, on it when you signed it? A. No, they wasn't, because I signed it in the morning and it wasn't on there.

30 Q. When you got done tallying the vote did the tally clerks announce the result of the election between Cornwell and Everitt? A. That is right.

Q. What was the total amount? A. 328 to 327, I believe. There was one point difference, anyway.

Q. Who had the extra point? A. Everitt.

40 Q. So that, as far as the Board's count was concerned, you declared Everitt the winner.

Return to Writ of Error

Gerald E. Christian—for State—Direct

Now, referring to S-3, I ask you if you see your signature on that paper? A. Yes, that is my signature.

Q. When was that signed? A. That was signed—I do not know whether it was signed on the morning of election or the morning afterward.

10

Q. When you refer to the morning afterward, you did not get done until the next morning, did you? A. No, but Mrs. Becker and Mr. Brugler and I all signed our names on the day of the election, in the morning. They said if we signed then it would not take so much time when we got over counting the election.

20

Q. Do these figures 327 and 328 represent the result of the count that evening or that morning? A. Yes.

Q. And you certified that that was the count, is that right? A. That is right.

Q. And these figures are the same as appear on the tally sheet, are they not, Everitt 328 and Cornwell 327? A. That is right.

Q. After you got done with your election duties that morning where did you go? A. What do you mean? After everything was through?

30

Q. Yes. A. Well, I went home.

Q. What time was it? A. I left at twenty minutes after nine. We all left at that time.

Q. That was at the polling place? A. That is right.

Q. Prior to your leaving did you see Mr. Cornwell at the firehouse? A. Yes, he was there all the time.

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. And I assume all the members of the board were there? A. That is right.

Q. Anybody else, in the morning? A. Oh, there were a few around there.

10 Q. Did you see the constable, Mr. Cramer? A. Yes, he was there; he was taking down the booth that they voted in.

Q. Did you see anybody hand Mr. Cornwell any papers that morning? A. I did not take particular notice.

Q. Do you know anything about the keys? A. I never had the keys.

Q. Did you hand the keys to Mr. Cornwell that morning? A. No.

20 Q. Did you see anybody hand him any keys? A. No.

Q. Was the ballot box removed from the fire-hall before you left? A. Yes, they took it upstairs.

Q. Who is "They?" A. I do not remember who took it up. One was Mr. William Bair, I believe.

Q. Do you know where the box was taken? A. It was taken upstairs.

30 Q. And you did not go up, did you? A. No.

Q. Now, when did you next see Larison? A. When did I see Larison next?

Q. After the morning of the election, yes. A. I seen him the next morning.

Q. Where? A. At the garage where he worked.

Q. Did you go to the garage? A. Yes, I went to the garage.

Q. Did you have any conversation with him? A. I did.

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. What was said by him or by you? A. Well, I went up and I told him, "I don't like the looks of this thing." I said, "I am going to talk." And he said, "Don't do that, because we would both get in a lot of trouble." I said, "It don't make any difference to me. I don't like a dishonest election." And he said, "Don't do that. Don't do that." I said, "I am going to talk." And I said from the second Saturday, I seen in the election book there they could call a re-count, and so I went home.

10

Q. Was that all the conversation between you at that time? A. It was.

Q. When did you see Larison again? A. On the Monday night following election.

20

Q. Now, Tuesday was Election, and you finished on Wednesday morning, is that correct? A. That is right.

Q. Was it the next Monday after that that you saw him? A. Yes, the second time was the next Monday afterward.

Q. The first conversation you had with him was on Thursday morning, is that right? A. That is right.

30

Q. And was it the next Monday after that that you spoke to him again? A. That is right.

Q. Where did this conversation take place? A. At my farm, where I work on my father's farm, about three and a half miles out of Blairstown.

Q. Did Larison come to your place? A. He did.

Q. Was anybody with him? A. His wife.

Q. Did you have a conversation with him at that time? A. I did.

40

Return to Writ of Error

Gerald E. Christian—for State—Direct

Q. In the presence of his wife? A. She was in hearing distance of him. She was sitting in the car about ten or fifteen feet away from us.

10 Q. Did Larison leave the car? A. He left the car about ten or fifteen feet.

Q. And this conversation took place ten or fifteen feet from the car in which his wife was sitting? A. Yes.

20 Q. What was the conversation? A. Well, he said to me, "Did you hear about they are going to have a recount?" I said, "I don't know." And then he says, "Don't you think we better stick together?" I said, "I don't know." And he said, "Didn't Sam take care of you?" I said, "Yes, in his way." And he said, "Don't you think we better stick together?" I said, "I don't know."

Q. When he mentioned the name "Sam," to you, what did you understand that to be? A. Beatty.

Q. And when you said to him, "He did, in his way," what did you mean that to be?

30 Mr. McGlynn: I object. It is very apparent we are getting into a situation that is not in issue here, and which would be extremely prejudicial to the defendant in the other case, that is not involved in the transaction that is apparently now to be talked about. It seems to me that we have a very serious and substantial ground for an application for a mistrial, because it brings into the case an issue that has never been spoken of in the open-

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

ing or in the indictment, and with which the defendant now on trial has nothing to do.

The Court: You are referring to the words, "In this way?"

10

Mr. McGlynn: I assume, by using my own common sense, I have a right to assume we are going into something—

Mr. Schechter: I do not want to mention the fact, because it might be prejudicial to the defendant to be tried later, but I think I am entitled to show the conversation between the defendant and the witness.

20

Mr. McGlynn: That is not what the question was. It was, "What do you mean by 'in his way?'"

The Court: In order to save time, I agree that the objection is well taken and it is not for this witness to interpret such meaning. Objection sustained.

Q. Now, after this conversation about Sam and you said, "Taken care of in his way," what else happened? A. I left and I went to the barn and I suppose he went on home.

30

Q. Did you see Larison any more after that? A. No.

Mr. Schechter: Cross examine.

Cross examination by Mr. Dolan:

Q. When the oath was administered to you by the Clerk, what did you understand you were to do? A. What was this?

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. When you went on the stand, and the Clerk said to you, "Will you tell the truth, the whole truth and nothing but the truth." A. What was I supposed to do?

10 Q. Yes. A. To tell the truth.

Q. And that is what you are attempting to do now, is it? A. Attempting? I am doing it.

Q. When you took this affidavit which was first identified by you, administered by Mr. Cornwell, that you would faithfully, impartially and justly perform the duties of the office of member of the Board of Elections, what did you understand that to mean? A. Well, to do the job right.

20 Q. Did you mean that oath when you took it? A. I meant that oath.

Q. In the same way you meant the oath which you have taken now? A. Yes.

Q. You had the same mental attitude toward that— A. At the time I took the oath.

Q. You changed your mind about that, did you not? A. Well, it seems that way. Not to my credit, though.

30 Q. Have you changed your mind about the oath that you had administered by the Clerk yet? A. No, I did not change my mind about that.

Q. Now you are sticking by what is the fact, I suppose. A. Yes.

Q. How many times have you changed your mind about this situation? A. What do you mean?

40 Q. About what occurred the night of the election, and since then? A. I do not know what

Return to Writ of Error

Gerald E. Christian—for State—Cross

you mean. Do you mean to tell the truth about the matter?

Q. Well, you first took an oath to do your duty as a member of the election board, did you not? A. Yes.

10

Q. And you continued to do that until there were two hundred votes counted, according to your story now. A. That is not a story; that is the truth.

Q. That is what you now say you did, up to the time two hundred votes were counted, you did your duty? A. Yes.

Q. And then you say somebody outside said, "Do you mind if we drop a few?" or "Do you mind if we read some names differently than they are on the ballot?" A. Yes.

20

Q. Indicating that you might get some money out of it? A. Yes, sir.

Q. And suggesting a hundred dollars might be the reward? A. Yes, sir.

Q. That was not quite enough to get you to change your mind, was it? A. It didn't make any difference.

Q. You were wavering, then, as to whether you would do your duty or whether you would not? A. Money didn't make any difference to me.

30

Q. You came back with a proposition that if he would give you \$150 that might do the trick, did you not? A. I did not mean it that way.

Q. What did you mean when you said a hundred dollars was too little, but maybe \$150 would do it? What did you mean by that? A. I thought maybe they would refuse it and drop it on account of the money.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. Then you had changed your mind about the oath you had taken? A. Yes.

Q. Then you were willing to do anything even though they had not offered the \$150? A. Yes.

10 Q. Then you went back and you say Larison took these ballots out of the box and sometimes laid them on the table in front of them? A. Yes.

Q. And the others were right across the table, and the table was about as wide as the table on which this ballot appears now? A. Yes.

Q. They could see what was happening on the other side? A. I do not think so. They had enough to do to attend to their business there.

20 Q. Well, you had some things to do too, did you not? A. That is right.

Q. (Referring to paper) Will you identify this as one of the ballots, or a sample ballot, that was used in the election? A. Yes, that is one of them.

Q. The ones Larison took out of the box were practically the same as this, except as to color? A. Yes.

30 Q. And he would lay them on the table and read them? A. That is right.

Q. You saw what he was doing in each instance from the two hundred to the four hundred? A. From one hundred to the end.

Q. Well, you spoke particularly of a count of thirty-three of them between two hundred and five hundred. A. No. Between two hundred and approximately six hundred.

Q. What were you doing at that time? A. I was checking them.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. You were supposed to fold this ballot, were you not? A. That is right.

Q. And fold it so it got to be a five inch square, weren't you? A. Yes, that is the regulation in the book.

10

Q. You had read those regulations, incidentally, had you not? A. Some of them.

Q. And then you were supposed to number them, beginning with "1" on? A. Yes.

Q. And then you were supposed to string them? A. Yes.

Q. You were to do that while Larison was taking the next one out of the box? A. That is right.

20

Q. You overlooked one feature of that, did you not? Right at the beginning you failed to number the ballots, did you not? A. Yes. I had forgot about it.

Q. Well, you had read the rules, had you not? A. Yes, I had read the rules. I had done it in the Primary.

Q. And you knew that was done? A. Yes.

Q. And you failed to number thirty-five of them? A. That is right.

30

Q. That is exactly the number of votes by which this election is changed, is it not? A. Thirty-five votes?

Q. Yes, and with the figure of three it makes a difference of seventy-six votes. A. Approximately.

Q. Mr. Cornwell was there at the time? A. Yes.

Q. Do you remember a conversation about that and the other members of the Board saying you

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

were not stringing the ballots the same as you should? A. Yes.

10 Q. Do you remember Mr. Cornwell saying, "That is all right. Begin now with the new numbers"? A. Cornwell said, "You are not numbering them," and I said I would go back and number them, and Larison said, "You needn't bother about it."

Q. Was it not Cornwell who said you need not number them? A. No. As I remember it, Cornwell was checking(?) the election.

Q. Was he not everything? A. I would not say that.

20 Q. Who helped you organize? A. Cornwell.

Q. He told you what to do, did he not? A. He was Township Clerk.

Q. Did he read this section of the law to you, or had you ever read it, that, "On or before the first day of June next preceding the primary election," they shall "meet and organize by the election of one of the members as judge, who shall be chairman of the board, and another of its members as inspector?" You knew that, did you not? A. Yes.

30 Q. And, "such judge and inspector shall be members and voters of different political parties." A. Yes.

Q. "In case of failure to elect a judge as herein provided, after balloting or voting three times, the senior member of the board in respect to the length of continuous service as a member of such district board shall become judge." A. The senior member, yes.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. John Larison was the senior member, was he not? A. According to the——

Q. Yes, he had served longer than anybody else, and he was made judge according to that, was he not? A. Yes.

10

Q. Then it goes on to say, "The next senior member of the board in respect to length of continuous service as a member of such district board shall become inspector." You know that, too, do you not? A. Yes.

Q. Now, you were the youngest member on the board, were you not, in point of time of service? A. No, I was not.

Q. Mr. Brugler was certainly older than you. A. Yes.

20

Q. In time of service? A. Yes.

Q. Cornwell insisted on you going in as inspector, did he not? A. I do not remember that.

Q. Is your memory conveniently forgetful on a question as vital as this? A. It wasn't so vital.

Q. It was vital whether you numbered those thirty-five ballots, was it not? A. Oh, yes.

Q. It was if someone else was substituted for them, was it not? A. How would you substitute them?

30

Q. You put a lot of blank ballots in that box? A. Yes.

Q. You did not have numbers on those? A. There was numbers onto them.

Q. No, in the ballots that came out of the box there were numbers supposed to be on them which you did not put on. A. No, I didn't.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. And you knew Cornwell had the keys? A. I didn't know he had the keys.

10 Q. Do you know anybody else that did? A. I do not know anybody else that did. I know I didn't have them.

Q. Do you know if any member of the election board had them? A. I don't know.

Q. Do you not know Cornwell was the one who brought the keys back to the County Clerk, not at noon, as directed, but at two or three o'clock in the afternoon? A. I don't know if he brought them back.

20 Q. During all this time you never raised your voice in objection? A. No, sir.

Q. You did not say at any time that John Larison was not performing his duty? A. No, sir.

Q. He was reading them so everybody could hear, and laying them out in front of you so everybody could see, and there was never a time, was there, when that did not happen? A. No.

Q. Did Mrs. Becker stop you several times? A. About the vote?

30 Q. And go back and check certain counts? A. Certain times.

Q. You read them back? A. Yes.

Q. You invariably read them, did you? A. That way I read them, yes.

Q. Do you mean to say you read them wrong? A. No, I did not read them wrong. What would I read them wrong for?

40 Q. Oh, you would not do anything wrong, I know that! All you did wrong was first violate the law as inspector. You did not put Brugler

Return to Writ of Error

Gerald E. Christian—for State—Cross

in, as you should have; you kept that job to yourself. A. I didn't want that job. I was not interested in it.

Q. What you wanted was \$150, was it not? A. \$150? For crying out loud!

10

Q. Well, that is what you say they said. A. What?

Q. That they wanted to give \$150. A. They wanted to give it to me for changing the election.

Q. You say now that that night after you went out of the polling place they said a hundred dollars and you wanted \$150? A. That is right—I didn't say I wanted \$150.

Q. When did you first think of that \$150 proposition? When did it first occur to you to swear to that? A. What do you mean, to tell the truth?

20

Q. When did it first occur to you to say, as you say here now, that Sam Beatty said something about \$150? A. When I found out the soldier vote had went in Oscar Everitt's favor.

Q. When was that? A. That was the next morning.

Q. Then your conscience began to trouble you, is that so? A. That is right.

30

Q. And then you went to somebody and made an affidavit, did you not? A. Yes.

Q. And did you tell them this fact about the \$150 being offered? A. I did not.

Q. Why did you withhold that? A. Because it was none of their business, I felt.

Q. Oh, you did not think the \$150 made any difference? A. No.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. You did tell them at that time that somebody said something about dropping some votes, did you not? A. Yes.

10 Q. You felt that was important? A. That was important, yes.

Q. And the fact they offered you \$150, or you asked for \$150, was not important? A. I didn't have \$150.

Q. Well, the fact it was talked about was not important? A. No.

20 Q. And the fact somebody said to you, "You don't mind if he changes those votes; there will be money in it," was not important? A. No, not at that time.

Q. So that is why you did not put that in that affidavit you first made, did you? A. Is that why?

Q. You knew it at that time, of course, did you not? A. Sure.

30 Q. Now, that affidavit was thrown out on the first proceeding, which was made following the time when you discovered this soldier vote had changed the election, the following Sunday, was it not? A. What was that, now?

Q. You made the first affidavit, setting forth what you now say was the truth between the time that you found out the soldier vote had changed the election and when you made the affidavit? A. That is right.

Q. That was the following Sunday? A. That is right.

40 Q. Now, that proceeding was thrown out, was it not? You learned of that? A. Yes.

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. Then you made another affidavit a week later? A. That is right.

Q. Did you think then it was important to say anything about this \$150? A. I did not.

Q. Or the hundred dollars? A. No.

10

Q. You did not think that meant anything at all? A. No, I didn't know anything about the law.

Q. As a matter of fact it never occurred, and that is why you did not put it in, did it? A. What?

Q. It never occurred, this talk about \$150 or \$100? A. Do you mean it never happened?

Q. Yes. A. Do you think I forget it?

20

The Court: Answer the question.

Mr. Dolan: If your Honor please, I have asked Mr. George M. Shipman to be here. I would like to have the affidavit produced at this time, if I may, so I may cross examine on it.

The Court: Have you subpoenaed it?

Mr. Dolan: Yes, sir.

The Court: Counsellor Shipman, will you come forward?

30

Mr. Dolan: May I ask the Court to impound it at this time, so I can cross examine the witness?

The Court: Have you any objection to producing it, Counsellor? Or would you like to take the stand?

Mr. Shipman: I would like to take the stand and produce it that way.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Mr. Dolan: Do I understand Mr. Shipman refuses to produce it now?

Mr. Shipman: I will produce it as I was subpoenaed to produce it.

10

Q. Was Mr. Shipman the lawyer that you first went to? A. Yes.

Q. How soon after you discovered that the soldier vote had changed the result of the election?

20

Mr. Schechter: Now, maybe I am mistaken, or misinformed. I do not understand the soldier vote had changed the election. The Blairstown board declared Everitt the winner, and the soldier vote added to it, so that he was still the winner.

The Court: Mr. Everitt lost in the township and the loss in the number of votes was increased by the soldier vote return?

30

Mr. Schechter: No. As I recall, Everitt was declared the winner by the Blairstown board, by one vote, and the result of the soldier vote was that he was still the winner.

The Court: If I said "Everitt," change it to "Cornwell" lost by one vote.

Mr. Schechter: I think Everitt had a majority of either two or three in the soldier vote.

40

Mr. Dolan: Well, he said something about the soldier vote, and I am using that as the period of time when he decided he was going to make some disclosure or make some complaint.

The Court: Well, go over it again.

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. When was it you made up your mind that you wanted to make some change in what you had certified as correct as a member of that board? A. Thursday morning.

Q. Then did you go to George Shipman, this attorney who just stood up here? A. No, I did not. 10

Q. When did you go to him? A. That was on Sunday, I think.

Q. And you made an affidavit for the purpose of setting forth what change you claimed had happened at this election, did you not? A. That is right.

Q. Did you, if you know, put in there the things that indicated that this election was not to your knowledge an honest election? A. Did I indicate? 20

Q. Yes. A. Why, yes.

Q. Why did you not put in there something about this hundred dollars or this \$150? A. I just didn't think it was important.

Q. That had no bearing on it? A. No.

Q. After that proceeding was thrown out and the second proceeding started you went back and made another affidavit, did you not? A. Yes. 30

Q. That was a week later? A. A week later, yes.

Q. You still did not think it was important to tell about the hundred dollars, or the change of votes, and you said nothing about it? A. No.

Q. You did not tell Mr. Shipman the story that you have told here at all, did you? A. Yes, I did. 40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. Did you tell Mr. Shipman that this was the way it happened, the way it appears in this affidavit of the seventeenth of November, 1944? A. Yes, I said that.

10 Q. That is your signature on that affidavit, is it not? A. Yes.

Mr. Dolan: I ask this be marked for identification.

(Affidavit referred to is marked D-2 for identification.)

20 Q. In this affidavit you say this is the way the thing happened: "After the first one hundred ballots were read the members of the board stopped to rest for a few minutes. John Larison and I went outside the firehouse and some of the people asked him how the vote was going, and Larison said that William M. Cornwell was leading in the contest for township committee by about twelve votes." Is that right? A. That is right.

Q. "I then heard him say, 'I think it is about time to drop a few out.' " A. That is right.

30 Q. "We then returned to the voting room and resumed counting the ballots." A. That is right.

Q. That is true? A. No, that is not true.

Q. You say here, "We then returned to the voting room and resumed counting the ballots." That is true, is it not? A. No, that is not true.

Q. And you never had this conversation with Sam Beatty that you tell about? A. I never did?

40 Q. Why did you not say something about that? A. Because I didn't want to say any more than

Return to Writ of Error

Gerald E. Christian—for State—Cross

I had to. Why should I let the other fellow be punished?

Q. That is the only motive you had for not telling the story to George Shipman either the first or second time? A. Yes.

10

Q. And you swore that was true? A. Yes.

Q. Was that one of the times you took an oath and meant to tell the truth, as you say you are now? A. Was that one of the times?

Q. Yes. A. I try to tell the truth all the time.

Q. Oh, fine! Did you go to Shipman's office alone? A. No, I did not.

Q. Who went with you? A. Mr. Cornwell.

20

Q. Both times? A. The first time.

Q. Who went with you the second time? A. My wife and children.

Q. Following that, you were indicted? Do you remember that? A. Yes, I remember that.

Q. And notified to appear in this court room, were you not? A. That is right.

Q. To plead to that indictment. Do you remember what date that was? A. I think it was December nineteenth or twentieth. It was the twentieth, I believe.

30

Q. How long before that had you had your notice to appear here? A. Well, the night before.

Q. And you appeared right here in this court room, before his Honor, the present Judge, and presiding Judge? A. Yes.

Q. Do you remember the Prosecutor reading this indictment to you? A. Yes.

Q. Which charged that you had participated in a fraudulent election? A. That is right.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. And you understood he meant this election?

A. That is right.

Q. Do you remember what you said to the Court? A. I pleaded not guilty.

10 Q. You said it was not true, did you not? A. I did not say it was not true. I pleaded not guilty.

Q. Not guilty to what? A. The indictment.

Q. You had not concealed anybody, had you? A. No, I had not concealed anyone in particular.

Q. Do you remember what the Prosecutor charged you with having done? A. Yes.

Q. Were the statements in the indictment true or false? A. They were true.

20 Q. Did you mean to tell the truth then, when the Prosecutor and the Judge asked you about it? A. Asked about what?

Q. Whether the statements in this indictment were true?

Mr. Schechter: If your Honor please, I do not understand that to be the effect of the plea. The fact remains he was not asked whether they were true. He was asked to plead guilty or not guilty. That is a matter of record.

30

Q. What did you understand the indictment to mean when it said—I call your attention now to the indictment against you, found at the December Term, which says that “Gerald Christian did, while acting as Inspector of the District Board of Election, in and for the Township of Blairstown, in said County of Warren, at the general election held on the seventh day of November, 1944, in and for said township, while

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

under the statutory duty of being satisfied that the ballots so cast had been audibly and publicly read correctly by the judge of said election, failed and neglected so to do, resulting in said ballots being incorrectly counted." Do you remember that being read to you by the Judge or the Prosecutor? A. I do. 10

Q. What did you understand that to mean? A. Well, what it says there.

Q. That you had neglected to do your duty as an officer? A. Yes.

Q. And you plead not guilty? A. That is right.

Q. What do you understand those words to mean? A. Not guilty. 20

Q. That you had not done what this says you did, in other words? A. Well, I——

Q. Is that what you meant those words to mean? A. I had no counsel and I pleaded not guilty.

Q. Well, you meant to tell the truth, did you not? A. Yes, sir.

Q. And did "Not guilty" mean the truth or a falsehood? A. Well, that was all I had to say. 30

Q. You understood that "Not guilty" meant denying what was said in that indictment, did you not? A. Well, maybe.

Q. Did you not know? A. I don't know.

Q. You don't know? A. No.

Q. All right. Here is another indictment, read to you at the same time, charging something about—I will withdraw that, because that involves the other case. Since then you let your plea stand, did you not; you made no attempt to 40

Return to Writ of Error

Gerald E. Christian—for State—Cross

change your plea at any time until yesterday morning? A. Well, I made no attempt to, no.

10 Q. You were willing to have it appear that you were not guilty of doing any of these things? A. That is right.

Q. And yesterday morning, when this trial started, did you have in mind what you say now, that you were not willing to stand alone in this thing and wanted the other boys to be punished if you were going to be? A. I did not want to see anybody punished.

20 Q. You would not like to go to State Prison unless you saw John Larison go? A. I do not want to see anyone go.

Q. But you are telling a very different story than you certified to the night of the election, are you not? A. I am telling the story of what happened the night of the election and the next day after and from then on.

Q. Has anyone offered you anything to come here and testify as you are testifying now? A. They have not.

30 Q. Have you ever talked to anyone about what will happen to you if you come here and plead guilty, as you did yesterday morning? A. No.

Q. Not a soul? A. No; not about that.

Q. Not to your lawyer? A. No, it was never discussed.

Q. Nor to the Prosecutor? A. No.

Q. Nor to Mr. Albrecht? A. No.

Q. You never talked to him, did you? A. Oh, yes, I talked to him.

40 Q. You made a statement to him, did you not? A. Yes, that is right.

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. How long ago? A. Oh, I don't know whether it was January or February. I do not just exactly remember the time.

Q. You never went before the Grand Jury, did you? A. No.

10

Q. How many statements had you made up to that time? A. What do you mean, statements?

Q. When the indictment was found, written statements. A. Well, I made the two affidavits.

Q. Have you talked to Mr. Albrecht since the indictments? A. Not as I remember.

Q. You never have talked to him? A. Oh, maybe once he stopped by.

Q. Or twice? A. No.

Q. Or a dozen times? A. No; once.

20

Q. How long before this trial started did you talk to him? A. Oh, about a week or two after the indictment was drawn up.

Q. What was that about? A. He just stopped in and wanted to know whether we had been out twice that evening and what we had to drink.

Q. You had not told him that before? A. What about that?

Q. You had not told Mr. Albrecht that before? A. Told him what?

30

Q. You had not included that in your statement, that you had been out for drinks twice before. A. No, he did not ask me.

Q. How long before this trial have you talked to him? A. Oh, two months.

Q. Not within the last week? A. No, not in the last two months, anyway.

Q. Nor anybody else, about this case? A. No, only my lawyer.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. Who was that, George Shipman? A. No; Mr. Pursel.

Q. When did he become your lawyer? A. It was some time in the first part of January.

10 Q. Was that prior to the time you came here and said you were not guilty of any of these offenses? A. No, that was after.

Q. And you told him then the story you are telling now? A. That is right.

Q. And then he said, "Of course, you should plead guilty"? A. No, he did not say that. After all, I had signed a statement that I was guilty.

20 Q. Well, you had signed a statement that you were guilty before the first plea, had you not? A. Before the first plea?

Q. Yes, before you stood up here in court and said you were not guilty. A. That is right.

Mr. Dolan: Now, if I may, if your Honor please, go into one or two matters that I am not sure have been fully covered.

30 Q. You told the Prosecutor that you kept a record of the number of votes that were changed by John Larison between the 200 count and the 600 count? A. Yes.

Q. How did you keep that record? A. In my head.

Q. And you are sure it was thirty-three? A. It was around thirty-three.

40 Q. In your affidavit you said thirty-five, did you not? A. Let us see it. I do not know. It was approximately—

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. I am calling your attention to the affidavit you made on the seventeenth day of November.

A. It was thirty-three or thirty-five; I would not say for sure.

Q. Did you mark them down as you went along, in any way? A. No. 10

Q. You just kept it in your head? A. That is right.

Q. Did you keep in your head also the fact that the first thirty-five ballots on that string were not numbered? A. That is right.

Q. That had nothing to do with the reason for your putting thirty-five in this affidavit, did it? A. No.

Q. When you stopped at a hundred, nothing had been done that was wrong? A. No. 20

Q. Then Mr. Cornwell came in with some sandwiches and some coffee, and you counted another hundred? A. Yes.

Q. And there was nothing wrong then? A. No.

Q. Then you go outside and you meet "Sparky," as you call him? A. As we know him, yes.

Q. And told him what it was? A. I did not tell him. 30

Q. Larison told him? A. Yes.

Q. Did he tell him the truth about it? A. About there being twelve difference?

Q. Yes. A. Yes, there was twelve difference, up to 200.

Q. Did he ask any questions about any other candidate? A. No.

Q. Who was it said, "We better drop a few?" A. Mr. Larison. 40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. Did he explain what he meant? A. No, he did not explain it.

10 Q. You say in this affidavit, "We then returned to the voting room and resumed counting the ballots." That is not true? A. No, that is not true. We did in time, but not at that moment.

Q. Then you went over to Sparky's tavern? A. That is right.

Q. Sparky's tavern is a comparatively small room, is it not? A. It is quite small for a bar room.

20 Q. The whole space where customers are is no larger than from the rail to where you sit? A. No.

Q. And it was pretty well filled with people, was it not? A. Quite a few.

Q. And there were two behind the bar? A. They wasn't behind the bar, only when they served the drinks.

Q. You and Mr. Larison went up to the bar, and about in the center, I think you said. A. Around the center, yes, sir.

30 Q. And there were people around you? A. No.

Q. Well, the room was filled, was it not? A. No, it was not so jammed you couldn't move in it.

Q. Well, there were twenty or thirty people in there, were there not? A. There was less than twenty.

Q. And all those people in this space you indicated? A. Yes.

40 Q. You were standing at the bar, with the two

Return to Writ of Error

Gerald E. Christian—for State—Cross

bar tenders on the other side? A. They wasn't on the other side, only when they served the drinks.

Q. Then you say Sam came up to talk to you?

A. That is right.

10

Q. And who was near you? A. Larison stood with his back turned toward the bar and Sparky stood on the right and Larison on my left, and Beatty stood between Sparky, Larison and I.

Q. And the rest of these twenty were standing around? A. No. Four of them was playing cards, and a couple of them was over there against the wall, and there were two couples dancing, I think.

Q. Now, will you tell us what happened? A. Well, just what I told you before.

20

Q. See if you can tell it the same way again. A. Beatty came in and asked how the election was going, and Larison said, "Not so good. Cornwell is twelve ahead." Beatty said to me, "Do you mind if John changes a few of them around? There is big money in it, say, a hundred dollars." And I said, "Do you call that big money?" I didn't want to accept it or refuse it, because I thought maybe Cornwell would get an honest defeat. And then he offered me \$150, and I said, "Aren't you afraid you will get into trouble?" And he said, "What do you mean? What do you mean?" And Larison said, "He means the whole bunch of us get into trouble." And Beatty said right away, "There is no bond. There is no bond." And that is all there was said.

30

Q. Nothing more was said? A. Not as I remember.

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. Nobody else took part in the conversation?
A. Only the four of us.

10 Q. You and Larison and Beatty? A. And Mitchell. If he heard it, I wouldn't say for sure now, but he was close enough to hear it.

Q. Well, he heard it the same as Larison heard it? A. That is right.

Q. Larison did not take any part in it except to say, "You will get us in trouble?" A. He did not say that. I said that.

Q. Larison did not say anything at all, then? A. He said, "He don't mean that," when I told Beatty he would get in trouble.

20 Q. Larison said that to Beatty? A. What?

Q. "He don't mean that." A. Yes.

Q. Was that the only thing that Larison said? A. That is right.

Q. Did any of the rest of the people sitting around there take any part in it? A. No.

Q. You were not whispering, were you? A. We were talking, not very loud, and there was a juke box playing, and it is quite loud in a little room like that.

30 Q. You were talking as loud as you are now, do you think? A. No, not as loud as that; it wasn't necessary.

Q. Not with the juke box playing? A. No. We were standing right together.

Q. That was all that was said? A. Yes.

Q. You had in mind that Cornwell would be defeated? A. I wasn't sure about it.

40 Q. But you wanted him defeated honestly, you say? A. I didn't care how it was. I was not interested in politics.

Return to Writ of Error

Gerald E. Christian—for State—Cross

Q. You were anxious to have Cornwell win, were you not? A. It didn't make any difference to me.

Q. He put you on the election board, did he not? A. No.

10

Q. Who did? A. Mr. Lambert.

Q. Cornwell was the Republican candidate for Town Committee? A. Yes.

Q. You did not care whether he won or not? A. I was not interested in politics.

Q. What were you interested in? A. I was just interested in staying out and minding my own business.

Q. You did not see Larison after that and talk to him, did you, after that night? A. No, we never talked about that after that first time.

20

Q. How many times were you back at Sparky's that night? A. We were there twice.

Q. Was there anybody else in there? A. Oh, yes.

Q. Will you give me the names of those who were there when Beatty was there? A. Well, playing cards at the table and the bar was Walter Jones, Fred Cook and Raymond Smith, his wife, Charley Raub and William Angle and Dorothy Angle and Lyman Lawson, is all I remember.

30

Q. That is the only time you talked with Beatty during that night? A. About election? That was the only time I talked to him.

Q. Just that one occasion? A. That one time.

Q. Then you say you saw Larison once at the garage, two days later? A. Yes.

Q. And you said you were afraid you would

40

Return to Writ of Error

Gerald E. Christian—for State—Cross

get in trouble, and you said you were going to do something? A. I said I was going to talk.

10 Q. And you said you would get everybody in trouble? A. No. He said we would get into trouble.

Q. Was anything else said? A. He told me not to talk.

Q. Did you say anything to him about what you were going to talk about? A. Well, he knew.

Q. Did you say anything to him about what you were going to talk about? A. No.

Q. Did you say anything else? A. No.

20 Q. Then you say you saw him Monday at your house, when his wife was with him? A. That is right.

Q. You are sure that was not on Sunday? A. It was on Monday night.

Q. He was pretty mad about the thing then, was he not? A. He didn't act so mad, no.

Q. Did he not tell you he understood you had gone and started a recount or something? A. He did not.

Q. And made that false affidavit about him? A. He did not.

30 Q. He wanted to talk to you and you said, "I am too busy; I can't talk to you," and ran into the barn? A. No, I did not.

Q. Who was there when he talked to you then? A. She could have heard it. I do not say she did. He asked, "Did you hear about the recount?" And I said I heard something about it. And he said, "Don't you think we better stick together?" And I said, "I don't know." And he asked, "Did Sam take care of you?" And

40

Return to Writ of Error

Gerald E. Christian—for State—Redirect

I said, "In his way." And he asked me, "Don't you think we better stick together?"

Q. Is that the whole conversation? A. As I remember it, yes.

Mr. Dolan: If your Honor please, I have had no chance to examine the affidavit which Mr. Shipman has. I assume that ultimately it will come under my observation; and I feel it may be vitally important to cross examine this witness further, and I would like now to make application to the Court to reserve the right to cross examine him when that affidavit is produced, in case it is.

The Court: Certainly, I will grant that permission.

Mr. Dolan: That is all.

Redirect examination by Mr. Schechter:

Q. Is it true that you told these stories in these two affidavits before the Prosecutor or any police authorities came in contact with this case? A. Yes, the affidavit.

Q. You told the story that was contained in the affidavit you made originally, and the subsequent affidavit, before there was any complaint or Grand Jury investigation, is that correct? A. That is right, yes.

Q. When was the first time you told anybody about this miscount? A. It was on a Saturday, that Saturday night.

Q. Was that the first Saturday after the election? A. The first Saturday after the election.

Return to Writ of Error

Gerald E. Christian—for State—Redirect

Q. Who did you tell? A. Mr. Cornwell.

Q. Why did you go to Mr. Cornwell?

Mr. Dolan: I object.

10

Mr. Schechter: If your Honor please, Mr. Dolan brought this out quite fully on his cross examination, and I say I have a right to go into it.

The Court: It would seem fair. Mr. Cornwell seems to have his name quite a bit in the matter, and you indicate he was interested, Counsellor.

20

Mr. Dolan: He is the only man who is interested. It is his election. He can tell what the fact is, but he cannot tell why he did, or what operated in his mind. He can explain what he did. I object to the "Why."

Q. You went to Mr. Cornwell first? A. And told him, yes. He was the first one I told.

Q. Was he the first one who knew about what you say was a miscount? A. No. I told my wife about it.

30

Q. Prior to Cornwell? A. Yes.

Q. Why did you go to Mr. Cornwell's house with this story?

Mr. Dolan: I object. He cannot tell the reason. He is here to testify to the facts and not the reasons.

40

Mr. Schechter: If your Honor please, I say, as I understand the cross examination, I would like to show by the witness that he certainly had something to do with the election, because he was a candidate

Return to Writ of Error

Gerald E. Christian—for State—Redirect

and he had a perfect right to be interested in the result or the outcome, and it would be perfectly normal for this man to contact him and advise him of these irregularities. That is what I intend to prove by the witness.

10

Mr. Dolan: Now, having told the witness, it is not necessary to have the testimony; but it still is highly improper. Mental operations are not competent.

The Court: I think he may answer the question.

Mr. Dolan: I ask an exception.

The Court: An exception may be entered.

20

(Exception allowed and the same is signed and sealed accordingly.

Judge).

Q. Why did you go to Mr. Cornwell?

Mr. Dolan: The same objection.

The Court: Objection overruled and exception granted. Answer the question.

(Exception allowed and the same is signed and sealed accordingly.

30

Judge).

A. Well, I didn't know who else to go to.

Q. Did you know that Mr. Cornwell was a candidate at that election? A. I did.

Q. Did you know that he had been counted out?

A. I did.

Q. Did you know that, according to the ballots

40

Return to Writ of Error

Gerald E. Christian—for State—Recross

cast in the Blairstown box, he was the winner?

A. Yes, sir.

Q. And when the result was published officially by your board he was declared not the winner?

10 A. Yes.

Q. You knew that, did you not? A. Yes.

Mr. Schechter: That is all.

Recross examination by Mr. Dolan:

Q. This was on the Saturday night following the election? A. That is right.

Q. Now, you knew it, of course, that night, did you not? A. I knew what?

20 Q. That there had been a dishonest count. A. Oh, yes.

Q. And that he had been counted out? A. Yes.

Q. And Cornwell was right there? A. Where?

Q. At the polling place, all night long, was he not, and the next morning. A. He wasn't there all night long, no, not steady.

Q. Well, pretty much all the time? A. Yes, as well as a few others.

30 Q. You saw him on many occasions that night, did you not? A. Yes, sir.

Q. And you came to Blairstown every day, did you not, following that, until Saturday? A. I came to town on Thursday morning, and I didn't come again until Saturday night.

Q. Did you go right by Cornwell's house on Thursday? A. I did not.

40 Q. How far was it from the point where you came in Blairstown to Cornwell's place? A. Well, about a mile.

Return to Writ of Error

Gerald E. Christian—for State—Recross

Q. Did you make any attempt to get in touch with him on Thursday morning? A. No, not Thursday morning.

Q. When was it this conscience of yours began to operate so that you thought you must go to Cornwell and tell him something? A. It started to operate when I saw Larison counting them wrong.

10

Q. But it did not reach its climax until Saturday night? A. It reached its climax when I seen he was counted out by the soldiers' vote.

Q. Did it not reach that point because nobody came around to give you the \$150 you thought you were going to get? A. I wasn't interested in that.

20

Q. As a matter of fact, there was not \$150 involved, nor a hundred dollars, nor anything else. A. Oh, yes.

Q. You are sure it was not somebody else except Sam who said something about money being available in the event the election was changed by the recount? A. I am sure.

Q. That Thursday morning you got the idea there could be some money gotten out of this, did you not? A. I was not interested in that.

30

Q. And that is what you went to Johnny Larison for. A. No, I did not.

Q. You knew the election was so close that a recount might change it? A. I knew it was real close.

Q. And John Larison said, "You will get in trouble if you make any such statement as that," did he not? A. He said "We will." He didn't say I would.

40

Return to Writ of Error

Gerald E. Christian—for State—Recross

Q. You were involved in it? A. That is right.

Q. You hadn't any money had you? John did not say anything to you about money? A. No, he did not.

10 Q. Somebody had talked to you about money? A. That is right.

Q. You now say it was Sam Beatty. A. Yes.

Q. You did not say it when you made either one of the affidavits? A. No, I did not.

Q. And you go to Cornwell. Now, he is the only man to be affected by a change in the vote. A. It is beneficial.

Q. Now, you did not tell that to him? A. No.

20 Q. And then you go to see a lawyer that Cornwell selects? A. That is right.

Q. You did not tell him about the money, did you? A. No.

Q. It was the most vital thing, in your opinion, was it not? That was the thing that indicated there might be something wrong about this election, was it not?

30 Mr. Schechter: I object. The witness is asked the question and not given time to answer.

Q. Now, nothing was said about money when you talked to Johnny Larison at any time? A. Not after the election was over.

Q. Nobody at that time had offered you any money or talked about money? A. When?

Q. Between the time that the polls closed and the time you went to Cornwell on Saturday night.

40 A. Oh, yes.

Return to Writ of Error

Gerald E. Christian—for State—Recross

Q. Well, certainly not Larison. A. No, he never talked about money.

Q. Somebody did, you say? A. Yes.

Q. Then you go to Cornwell. A. Yes.

Q. There is no one else that either will be influenced or affected by this story you tell, is there? A. What do you mean? 10

Q. Their position affected. A. Not beneficially.

Q. Cornwell is the only one? A. No. There is other people in the Town of Blairstown.

Q. How soon after that did Cornwell take you to this lawyer, Mr. Shipman? A. It was on the following Sunday, after the Saturday night.

Q. And you did not mention the fact about the money to Mr. Shipman at that time? A. I did not. 20

Q. And you did not mention it the following Sunday, or Monday, when you made another affidavit? A. No.

Q. At no time did you mention money when either affidavit was made? A. No.

Mr. Dolan: That is all.

By Mr. Schechter:

Q. What do you mean, that there were other people interested? 30

Mr. Dolan: I object.

Mr. Schechter: If your Honor please, Mr. Dolan asked the question and got an answer. He asked him if Mr. Cornwell was the only beneficiary, and the witness said there were other people in Blairstown. I think this jury is entitled to 40

Return to Writ of Error

Gerald E. Christian—for State—Recross

know what he meant by that. Mr. Dolan brought it out on cross examination and I think the jury is entitled to know what the witness meant by that.

10

(After discussion.)

The Court: It does seem to be responsive, Counsellor.

Mr. Schechter: It was Mr. Dolan's own question.

The Court: Proceed.

Q. What did you mean when you said that other people in the Town of Blairstown would be interested in the election?

20

Mr. Dolan: I object.

The Court: Objection overruled and exception allowed.

(Exception allowed and the same is signed and sealed accordingly.

Judge).

30

Q. What did you mean by that? A. Well, Cornwell had a lot of people that really wanted to see him get in, because he had sent out a lot of propaganda about the other crowd in our town that very much embarrassed him.

Q. In other words, he was trying to win, is that so? A. That is right.

Mr. Dolan: I am sorry I objected!

Mr. Schechter: That is all.

The Court: And you, Counsellor?

40

Mr. Dolan: Except for the right to

Return to Writ of Error

John Larison—for Defendant—Direct

cross examine when Mr. Shipman produces that affidavit.

The Court: Yes, naturally, you should have the right to do that.

Now, the hour is getting a little late— 10

Mr. Dolan: I think the witness should be directed to remain until I have an opportunity to cross examine on that.

The Court: You may remain in court, Mr. Witness—You may go out for dinner, but do not leave the jurisdiction of the Court.

Court will recess until one-thirty.

(At 12:15 o'clock in the afternoon a recess was taken until 1:30 o'clock in the afternoon). 20

(After Recess)

Mr. Schechter: If your Honor please, the State rests.

30

JOHN LARISON, the defendant, sworn.

Direct examination by Mr. Dolan:

Q. You are the defendant in this case, Mr. Larison? A. That is right.

Q. Where do you live? A. Blairstown.

Q. With whom? A. With my wife and boy.

Q. How long have you lived in Blairstown? A. It will be fifteen years, I believe, next month. 40

Q. You were a member of the Board of Elections of Blairstown Township in the Fall of 1944? A. Yes.

Return to Writ of Error

John Larison—for Defendant—Direct

Q. How long have you been serving as such member? A. I don't know; seven or eight years, I guess.

10 Q. And the other members of the Board were whom? A. Mrs. Becker, Mr. Christian and Mr. Brugler.

Q. Do you remember when you organized in the Spring of the year? A. Yes.

Q. Was the Board then constituted as it was at the time of the election? A. No. We had a member by the name of Jones on the Board.

Q. And what happened to him? A. He resigned; he moved to Frelinghuysen Township.

20 Q. Mrs. Becker was substituted in his place? A. That is right.

Q. Do you recall the election of 1944? A. Yes, I do.

Q. Were you acting as a member of the Board during that entire day? A. Yes.

Q. What time did you start in that morning? A. Seven o'clock.

30 Q. And served continuously until what time? A. Oh, I would say around eight-thirty the next morning.

Q. I beg your pardon? A. Between eight-thirty and nine o'clock, something like that.

Q. What position did you hold or occupy on the Board? A. Judge of the Election.

Q. Do you know how you happened to be selected for that position? A. By being the oldest member of the Board; that is, according to the years that you serve consecutively.

40 Q. Do you know what the rule is about the

Return to Writ of Error

John Larison—for Defendant—Direct

Inspector? A. He is the one that checks the ballots as I read them off.

Q. What were your duties as Judge of the Election? A. To take the ballots separately out of the box and read them.

10

Q. What time did the polls close that night, did you say? A. They closed at eight o'clock.

Q. Did you start to count the votes after that? A. Oh, probably fifteen or twenty minutes after that.

Q. Did you hear the other members of the Board describe the position in which you were located after the polls closed? A. Yes, sir.

Q. Did they correctly describe the way you sat at the table? A. That is right.

20

Q. The ballot box was on the end next to you and at your left? A. That is right.

Q. And you sat there next to that, and beyond you was Mr. Christian? A. That is right.

Q. And, across the table, Mrs. Becker and Mr. Brugler? A. Yes.

Q. Will you describe what you did after you started the count, or as you started the count? A. I took each ballot out of the box and read it and then handed the ballot to Mr. Christian.

30

Q. I show you this paper marked D-1 for identification and ask you if you recognize that as a sample ballot. A. Yes, sir.

Q. Is that similar to the official ballot that you used at that election? A. That is right, except the color.

Mr. Dolan: I offer this in evidence.

Mr. Schechter: No objection.

40

Return to Writ of Error

John Larison—for Defendant—Direct

(Sample ballot referred to and offered in evidence is marked Exhibit D-1).

10 Q. Do you recall how many ballots there were cast at this election, Mr. Larison? A. I believe, 673.

Q. Will you indicate to the Court and jury how you performed your duties as the count started? A. Well—

Q. The box is at your left, now. A. I would take the ballot out of the box, and there was the table in front of me (indicating). I usually laid them on the table and swung them over to Christian.

20 Q. Was it open, as this is? A. Yes.

Q. And was that followed throughout the entire count? A. Yes, sir.

Q. Was there any time when the count was interrupted in anywise? A. Well, outside of the clerks—they got confused quite a few times and had to be straightened out.

30 Q. What was done to straighten them out? A. They would want to know, probably, what the last name was, and then Christian would help them out by reading the ballot over to them, because he would have the ballot.

Q. Do you recall a recess being declared after the first hundred votes were counted? A. Yes, we had some coffee and sandwiches, I believe.

Q. Do you remember who brought those in there? A. I believe it was Mr. Cornwell.

40 Q. He was the man who was a candidate for election as a member of the Town Committee? A. That is right.

Return to Writ of Error

John Larison—for Defendant—Direct

Q. Do you recall the fact that before you got to your first hundred votes somebody discovered that Christian was not numbering the ballots?

Mr. Schechter: If your Honor please, I do object to the leading. Mr. Dolan was quite anxious that I refrain from leading, but I never heard a question more leading than the one just put to the witness.

10

Mr. Dolan: I am trying to direct his attention to the particular event, if I can get it fixed in his mind, that I expect to have him testify to occurred.

Mr. Schechter: That is what I was trying to do.

20

Mr. Dolan: I will withdraw the question.

Q. Was there any time before you got to the hundred count when the counting stopped for any purpose? A. It was stopped about the thirty-fifth or thirty-sixth ballot, because they were not numbered.

Q. What was the trouble? A. They were not numbered.

30

Q. Whose duty was it to number the ballots? A. The Inspector.

Q. And that was Christian? A. Yes, sir.

Q. And he was not numbering? A. No, he had not numbered up to thirty-five, I believe it was.

Q. Was there any talk or controversy about that? A. Well, not that I know of. I believe Mr. Cornwell was there and he said he couldn't

40

Return to Writ of Error

John Larison—for Defendant—Direct

see why it wasn't all right to start with thirty-six and go on, and not go back and number the thirty-five.

10 Q. Were the first thirty-five numbered at all?
A. No.

Q. Now, you got to the hundred, and you say Mr. Cornwell came in with some sandwiches and coffee? A. Yes, sir.

Q. And you stopped and had those? A. Yes, sir.

Q. Now, did anything occur between then and the second hundred? A. No, I guess not.

20 Q. Do you recall a recess being declared at that time? A. At the end of the second hundred?

Q. Yes. A. Yes.

Q. What happened? A. Well, we went outside and went over to "Sparky's".

Q. Did you hear Mr. Christian testify this morning? A. Yes, I did.

Q. Did you hear him testify that somebody met you when you got outside and said, "It is time we dropped a few"? A. That is right.

30 Q. Did any such thing as that occur? A. No.

Q. You say you went to "Sparky's"? A. That is right.

Q. What is "Sparky's"? A. Well, it is a small, little gin mill, I call it.

Q. Right across the street from the firehouse, is it not? A. Yes.

Q. How much space is there in front of the bar? A. In front of the bar?

40 Q. Yes. How long is the bar? A. Well, not too much. There isn't much space, because he

Return to Writ of Error

John Larison—for Defendant—Direct

has tables running along the wall, which don't give you much chance to stand in between the bar and the tables. It is a small room, probably twenty-five feet long.

Q. Do you remember about what time it was when you went over there? A. Oh, I would say in the neighborhood of ten o'clock. 10

Q. Who went? A. Christian and I.

Q. Anybody else? A. No.

Q. Did you meet anybody before you got there? A. No.

Q. After you got in there where did you go? A. We stepped up to the bar and had a drink.

Q. Do you remember what part of the bar you stepped up to? A. Oh, probably centerway of the bar. 20

Q. Is the bar any longer than this rail in front of the jury? A. Well, it is as long as that, I believe.

Q. About how many people were in there, as you recall? A. Well, there was quite a number, probably twenty-five or thirty.

Q. Can you give us the names of any of them? Did you notice who they were? A. I didn't in particular, no. There was some playing cards. Elmer Jones was in there, and Walter Jones and Charley Raub; some of those I remember seeing. 30

Q. Did you have anything to drink while you were there? A. Yes, sir.

Q. What did you have? A. Well, I had a drink of liquor.

Q. Straight or a highball? A. Straight. 40

Return to Writ of Error

John Larison—for Defendant—Direct

Mr. Dolan: I am going to take it for granted the Court and jury know what that means.

10 Q. Who drank with you? A. Gerald Christian.

Q. Was anybody else drinking with you? A. No, I do not think so.

Q. Who served the drinks? A. Mr. Lawson and Dotty Angle served the drinks.

Q. Both of them were behind the bar serving? A. Yes.

Q. Were there people standing on each side of you? A. Well, the bar was full.

20 Q. Do you remember whether Mr. Beatty was there or not? A. I do not remember that, no.

Q. Did you talk to Mr. Beatty while you were there or did he talk to you? A. No.

Q. Do you remember "Sparky" being there? A. Well, he was there, in and out.

Q. Did he talk to you? A. Oh, I don't know whether he did or not. We had so much to talk about.

30 Q. Again I want to ask you if you were present in the court room and heard Mr. Christian testify as to an alleged conversation that took place while you and Christian were over there. You heard Christian swear this morning about some statement concerning a hundred dollars? A. Yes.

Q. And you say you had no conversation with Mr. Beatty at all there? A. No, I did not have any conversation with him.

40 Q. Christian says that Beatty said to you, "How is it going?" And you said, "Cornwell

Return to Writ of Error

John Larison—for Defendant—Direct

is leading by twelve." Was any such statement as that made? A. No.

Q. And that then Beatty said, "You don't mind if John changes a few votes around?" Was any such statement as that made if you recall? A. No.

10

Q. And then, Christian said, "Somebody said there would be money in it—a hundred dollars." And that he said, "That isn't much." Did you hear any such statement as that made? A. No, I didn't hear nothing like that.

Q. And did you hear Christian say, "Well, there ought to be \$150"? A. No.

Q. Was there any talk about money? A. No.

20

Q. Between you and Beatty or between you and anybody else? A. No.

Q. Was there any suggestion made about dropping any names? A. No.

Q. Did you go back to the polling booth right after that? A. After we had the drink?

Q. Yes. A. After we had the drink we went back.

Q. What did you do then? A. Why, we started to count the votes.

30

Q. In the same manner in which you had before? A. That is right.

Q. Did you read them out loud? A. Yes.

Q. And did you read them correctly? A. I did. I read them as I called them.

Q. Every ballot? A. That is right.

Q. Did you at any time change the name of the person for whom the vote was cast to somebody else? A. No.

40

Return to Writ of Error

John Larison—for Defendant—Direct

Q. Did you specifically change the name, as read by you, from Cornwell to Everett? A. No.

Q. At any time? A. No.

10 Q. Were you ever interrupted at any time by any of your colleagues for misreading a ballot? A. No.

Q. Did Christian himself ever say anything to you? A. No.

Q. At any time throughout the proceeding? A. No.

Q. Or the other clerks that were there? A. Not a word.

20 Q. Were these ballots read correctly, as far as you know? A. That is right.

Q. When you got through was there a certificate made of the number of ballots cast for each of the persons whose names appeared on the ballot? A. Yes.

Q. You signed the tally sheet, did you not? A. That is right.

Mr. Dolan: May I have that, please?
(Paper produced.)

30 Q. (Showing witness paper.) Do you recognize this as one of the tally sheets used that night by the other members of the Board? A. (Referring to paper.) Yes.

Q. Is that your signature on there? A. Yes, sir.

Q. How did you happen to sign that, and when did you sign it? A. In the morning, after election.

40 Q. After the election? A. Yes.

Return to Writ of Error

John Larison—for Defendant—Direct

Q. My recollection of Mr. Christian's statement is that he signed this on the morning before the election took place. A. It was signed on the morning after election.

Q. And not before the election? A. No.

10

Q. Did you have anything to do with any of these numbers that are on here, or did you count the numbers on the right-hand margin of that sheet? A. No. That is the clerks' job.

Q. When you signed that did you know what the numbers were on there? A. Yes.

Q. You agreed with that count? A. Yes, sir.

Q. Did you have anything to do with the count at all? A. No.

20

Q. Did you at any time have anything to do with that tally? A. No.

Q. You say there were differences that arose at different times throughout the proceeding. What were they? A. Well, they were differences between Mr. Brugler's and Mrs. Becker's count.

Q. Do you mean they had not agreed as to the number of votes that had been cast? A. Well, at different times, quite a few times, their tally sheet did not check; therefore, they would have to be straightened out.

30

Q. Was that after you had read the name just once? A. That is right.

Q. And that was straightened out between them? A. Yes.

Q. So far as you know, did this tally sheet correctly set forth the number of votes cast at that election, and for the persons for whom they were cast? A. That is right.

Q. And there was also a tally sheet or a state-

40

Return to Writ of Error

John Larison—for Defendant—Direct

ment that you signed, I believe. I show you this paper, marked Exhibit S-3, which purports to be a statement of the election result. Is that your signature on there? A. Yes.

10 Q. You signed that when? A. The morning after election.

Q. Did you prepare that? A. No.

Q. In whose handwriting is it? A. I do not really know whether that is Brugler's or Mrs. Becker's.

Q. You had nothing to do with it? A. No.

Q. Did you all sign that as a correct transcript of what had transpired at that election? A. Yes, sir.

20 Q. After you had signed it what was done with the books and the unused ballots? A. The unused ballots were put in the ballot box.

Q. And how about the ballots that were cast? A. They were put in the ballot box.

Q. And what was done with the box then? A. It was sealed and taken upstairs.

Q. How was it sealed? A. With a ribbon, like, around it, and then you put wax on the knot.

30 Q. After it was locked what was done with the keys? A. Well, the keys and the returns as they were made out and everything laid on the table there, and Mr. Cornwell took charge of the keys and the returns and the poll books and everything that went to Belvidere.

Q. Was the box opened after you closed it at any time? A. I think it was, once, right after it was locked.

40 Q. Who opened it? A. Mr. Cornwell opened

Return to Writ of Error

John Larison—for Defendant—Direct

it. He thought there was a paper of some kind missing, and thought it was in the ballot box.

Q. And he opened the box? A. That is right.

Q. Did anybody protest against his taking all of these papers and keys and so on? A. Well, I really did not know whether it was all right for him to take them or not, but I was so tired and sleepy that I was glad someone was going to take them.

10

Q. Who did take the keys? A. Mr. Cornwell.

Q. Did you see them at any time after that?

A. After he took the keys?

Q. Yes. A. No.

Q. And before they were delivered to the County Clerk? A. No.

20

Q. Now, will you describe this seal that you say was put on the box after it was closed? A. After the box was closed?

Q. Yes. A. Well, it was tied in like a tight knot, with a pretty good gob of wax on it, probably the size of a nickel.

Q. Did you see the box again before it was opened at the recount? A. I saw it right here.

Q. Did you see it any time in between? A. No.

30

Q. What was the condition of the seal on the box at that time as compared with the condition when you closed the box and put the seal on? A. Well, the knot wasn't the same, and there was only just a little speck of wax on the string.

Q. You say you were pretty tired and had gone home about what time in the morning? A. Oh, I don't know. It was probably nine-thirty when I got home, or a little after nine, something like that.

40

Return to Writ of Error

John Larison—for Defendant—Direct

Q. Did you see any of the parties involved after that, that day? A. No. I went home and went to bed.

10 Q. Was the firehouse open or closed after you left? A. I don't know.

Q. What was done with the ballot box before you left? A. It was taken upstairs and put in what we call the township closet.

Q. Who has control of that closet? A. The Township Clerk.

Q. And who was that at that time? A. Cornwell.

20 Q. Did anybody else have any keys to it? A. Not that I know of.

Q. And the keys were delivered to him and the box went up there, is that right? A. That is right.

Q. Now, again, I want to direct your attention to the testimony of Christian. He says he saw you on Thursday morning following the election. Did he? A. He did, yes.

Q. Where? A. At the garage where I work.

30 Q. Did you have a talk with him? A. Well, it wasn't much of a talk.

Q. What was said by either of you, if anything? A. Well, he said he wanted something out of this here deal or he was going to talk, and I asked him what he was talking about, and he said he wanted something besides cigarette money, and that was about all there was said, and he got in his car and drove away.

40 Q. What was the next thing you heard about the election? A. Oh, later on, I guess it must have been around Sunday, there was a lot of talk and gossip going around.

Return to Writ of Error

John Larison—for Defendant—Direct

Q. Did you hear about a recount having been started? A. No.

Q. What was the talk that you heard? A. Well, that there was going to be a recount, things didn't tally up correct, and things to that effect.

10

Q. Did you do anything? A. I went over Monday night to see Christian, yes.

Q. What did you say to him? A. I asked him what was going on, what was all these here rumors about, and he said he was told not to talk, that he would be taken care of, and started walking back toward the barn; he said he had to go finish his milking. And then I got him to come back again and tried to ask some questions, but it did no good, and I told him, "I don't know what you have got to talk about, but I don't think it is very nice." And he left.

20

Q. Was anybody with you on that occasion? A. My wife.

Q. Could your wife hear what was said between you and Christian? A. Very well.

Q. John, the accusation against you here is that as a member of the Board of Election of Blairstown Township, on the seventh day of November, 1944, while acting as judge of that board, in the discharge of your duty, while reading the ballots audibly and publicly, which were cast for one William C. Cornwell, you did in fact, knowingly and fraudulently announce that said ballots were cast for Oscar S. Everett. Is that true or untrue? A. That is not true.

30

Q. Did you announce any ballots fraudulently or erroneously? A. No.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Did you announce them as they were, so far as you could see and tell? A. That is right.

10 Q. Were you guilty of any improper action in the performance of your duty, as far as you know? A. Not as far as I know.

Mr. Dolan: Cross examine.

Cross examination by Mr. Schechter:

Q. You say that at the organization meeting you were selected as judge? A. Yes, sir.

Q. How did that take place? A. The selection as judge?

20 Q. Yes. A. Well, I guess it is usually done—It is the senior member of the Board.

Q. As a matter of fact, you are familiar with the law, I assume, are you not? A. Well, I don't know too much about it.

Q. Where did you get the idea that the senior member automatically became judge of election?

Mr. Dolan: 19:6-10.

30 Q. Well, that is the usual case, is it, in Blairs-town? A. The senior member of the board is judge of the election board.

Q. Is that the way it was done, as far as you know? A. Yes, sir.

40 Q. Do you know this to be the law, "19:6-10, Organization meeting; judge and inspector; clerks of election. Each district board shall, on or before the first day of June, and in presidential years on the third Tuesday next preceding the primary election for the election of delegates or alternates to the national convention,

Return to Writ of Error

John Larison—for Defendant—Cross

meet and organize by the election of one of its members as judge, who shall be chairman of the board, and another of its members as inspector. Such judge and inspector shall be members or voters of different political parties. In case of a failure to elect a judge as herein provided, after balloting or voting three times, the senior member of the board in respect to length of continuous service as a member of such district board shall become judge"? Did you know that was the law? A. No.

10

Q. You took no ballots? A. No. Usually one of the members of the board nominates somebody, and that was the way it was done.

Q. You did not know, then, that any member of the board could become judge on a majority of the votes? A. No.

20

Q. And, to go on: "and in case of failure to elect an inspector after balloting or voting three times, the next senior member of the board in respect to length of continuous service as a member of such district board shall become inspector." You did not know that was the law? A. No. I knew that the inspector had to be of the opposite party.

30

Q. But not as to the manner of electing him? A. He is elected by the members of the board. That is all we ever did.

Q. Did you know when you organized that the inspector could be any of the members of the board other than the judge, who had been elected before him? A. I did not understand that.

Q. Did you know at the time you organized that any of the three members, outside of the

40

Return to Writ of Error

John Larison—for Defendant—Cross

person who was elected judge, could be elected inspector by the vote of the board? A. No.

Q. You did not know that? A. No. Do you mean regardless of party?

10 Q. No. You understood the inspector had to be of the opposite party to the judge? A. Yes, sir.

Q. And it could be any one of the other members of the board of opposite political faith, is that correct? A. Yes.

Q. It is a misunderstanding if you thought the law to be that the senior member on the board had to be the judge, is that correct? A. Well, that is the way it was always done, I guess.

20 Q. Did you understand that to be the law, that the senior member of the four had to be the judge? A. That is the way I understood it, yes.

Q. And the next man in seniority, of the opposite political faith, must be the inspector? A. Well, I don't know about that.

Q. Was that your understanding? A. No, I don't know about that. I always took it for granted the judge had to be the senior man, that is all, regardless of party.

30 Q. And you knew nothing at all about the election of the judge and the inspector, as provided in 19:6-10 of the statute, is that correct? A. Well, as far as that law goes, I guess not.

Q. That is, you were not familiar with that chapter? A. No.

Q. But, regardless of how it was done, you were picked as judge and Christian was picked as inspector, is that right? A. That is right.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. And the remaining two, Brugler and Mrs. Becker, were clerks, is that right? A. Yes, sir.

Q. Do you recall how many ballots were cast at that election? A. I think in the neighborhood of 673.

10

Q. Did you not tell Mr. Dolan 672? A. No, 673.

Q. You are sure of that? A. I am quite sure of it, yes.

Q. You say now there were 673? A. I am quite sure there were 673, yes.

Q. Were there any ballots rejected? A. I think there was one ballot, if I remember right.

Q. Now, as I understand it, there was nothing unusual about the election during the day? A. Everything went as usual, yes.

20

Q. And when the ballots were cast, nothing unusual happened? A. What do you mean by that?

Q. I mean anything that would arouse your curiosity, or anybody else's, in connection with the election. A. No.

Q. Everything was in order, was it not? A. Yes, sir.

Q. Did you think it was unusual for Mr. Cornwell to be around the election board, or booth?

30

A. No, I couldn't say that that was unusual, no.

Q. He was a candidate at that election, was he not? A. Yes, and Township Clerk.

Q. So that the fact he was in and about did not arouse any suspicion or curiosity on your part, did it? A. It did not make any difference to me.

Q. Was Mr. Everett around during the day? A. Oh, he might have been in and out; I don't know.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. If he was, you did not think that was unusual, did you? A. Why, no.

10 Q. So that everything was in perfect order until the polls closed, at any rate, was it not? A. Yes, I thought everything went all right there.

Q. And then Christian and the other members of the board are correct in saying you started to count the votes about fifteen minutes after the polls closed? A. Well, approximately that; as soon as we arranged the room around.

Q. Between fifteen minutes and a half hour, is that about it? A. Yes, sir.

20 Q. So you proceeded to count the ballots as described? A. That is right.

Q. You took each ballot from the box, read it, handed it to Christian, and the tally clerks took the tallies as you read them? A. Yes, sir.

Q. You had no reason to believe they were tallying incorrectly, did you? A. No.

Q. Did you know at the time that you were counting these ballots, when you started, in what manner you were to hand these ballots to Christian? A. In what manner?

30 Q. Yes. A. Well, I did it the same as I have always done it.

Q. Did you know that the law provides that after you read the ballot you are to fold it and hand it to him? A. I do now.

Q. You did not do it that way? A. No.

Q. Were you familiar with that law? A. At the time I wasn't, no.

40 Q. Were you familiar with much of the election law at this time, in November, 1944? A. Well, a little bit of it.

Return to Writ of Error

John Larison—for Defendant—Cross

Q. You were not familiar with the manner in which the judge and inspector were selected?

A. No.

Q. You were not familiar with the manner in which the judge of election was to hand the ballot to the inspector? A. Well, I will tell you. I did it as it has been done there for years. 10

Q. I am talking about your knowledge of the law. Referring to 19:16-7, "The board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the judge of the election, and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the inspector. The inspector shall be satisfied that the ballot is being correctly read by the judge. After the reading of the ballot and before taking another ballot from the box the judge shall fold the ballot to a size about five inches square and shall deliver the same so folded to the inspector, who shall write on the back thereof the number of such ballot from one onward, in the order in which the same shall have been taken from the box; and shall string the ballot as one ticket in the order in which the same shall be taken from the box and numbered, by means of a needle and string to be provided for that purpose. Void ballots shall be strung in the same manner as valid ballots but on a separate string." Were you familiar with that section of the law when you counted these ballots? A. No. I did it the same as we always had done it for years. 20 30 40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Did you know that when you handed these ballots to Christian that they were to be numbered and strung? A. Yes, I knew that.

10 Q. When did you discover that Christian was not numbering some of the ballots? A. Well, I think it was after about thirty-five had been read and strung, when it was discovered, I think.

Q. You did not know he was not numbering? A. No, I did not.

Q. And were you sitting as close to him as Sergeant Albrecht is to me? A. Oh, yes.

Q. A little closer? A. Well, I do not think it was any closer.

20 Q. Now, up to the first thirty-five ballots to which you have referred, you called them in the usual fashion did you not? A. Yes, sure.

Q. So that before each ballot was to have been numbered you were to read it, is that correct? A. I did not get that.

Q. You read the ballot before it was to be numbered, is that correct? A. Yes.

30 Q. So that when you read number one ballot, the tally clerks took that, did they not? A. Oh, yes, sure.

Q. And when you read number two the tally clerks took that? A. Yes.

Q. Do you have any reason to believe they did not tally the first thirty-five correctly? A. Do I have any reason to believe it?

Q. Yes. A. No, of course not.

Q. As far as you knew, they were taking the tally as you read them? A. Yes, sir.

40 Q. Including the first thirty-five? A. That is right.

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Now, Christian is correct, that at some point in the proceedings there were sandwiches brought in, and coca-cola or coffee? A. Well, I think it was coffee and doughnuts.

Q. We can agree that it was refreshments? A. 10
That is right.

Q. He is correct in that? A. After the first hundred, yes.

Q. And he is correct in stating that after the second hundred you took a recess and went outside? A. That is right.

Q. Was it just you and Christian? A. Yes.

Q. Brugler and Mrs. Becker stayed inside? A. Yes, they stayed inside.

Q. Of course, you would not leave the ballot 20
box unprotected, would you? A. I thought it was all right.

Q. You were satisfied the ballot box was in good hands? A. Yes, sir.

Q. Otherwise you would not have left? A. That is right.

Q. Up to that point you agree with Christian as to the events, is that correct, as he stated it from the stand? A. How is that?

Q. Up to the point when you and Christian 30
went out, you agree with Christian as to the events up until that point? A. Yes.

Q. Now, Christian says that when you went outside Sparky Mitchell asked you how the vote was going. You say that is not correct? A. That I don't remember, no.

Q. Would you say now, Mr. Larison, that that is incorrect? A. I would say it is incorrect, 40
yes.

Return to Writ of Error

John Larison—for Defendant—Cross

Q. You just said you do not remember. Now, which is it? A. I would say it is incorrect.

Q. You would say, then, that Sparky Mitchell was not there? A. Do you mean outside?

10 Q. Yes. A. No.

Q. And you would say that you or Christian, or both, did not have any conversation with Sparky Mitchell outside, is that correct? A. That is right.

Q. Now, then, Christian is correct in saying you went over to Sparky's tavern for a drink? A. That is right.

Q. Nobody invited you? A. To have a drink?

20 Q. To go to the place. A. No.

Q. Whose idea was it? A. I don't know. It could have been mine.

Q. It was sort of mutual, was it? A. Yes.

Q. You thought it was all right while you were counting the ballots to take a recess and go get a drink of whiskey? A. I couldn't see any harm in that, no.

30 Q. Are you familiar with the law which says that upon starting to count the ballots you shall forthwith count the ballots? Are you familiar with that law? Do you understand that to be the law, that after the balloting closes, or the polls are closed, that you are to immediately count the ballots? A. Do you mean not even stop for rest or anything?

Q. Yes. A. No.

Q. You do not understand that to be the law? A. No.

40 Q. You thought it was all right to go outside and leave these two members in charge, to have some refreshments? A. Yes.

Return to Writ of Error

John Larison—for Defendant—Cross

Q. When you entered you say there were twenty or thirty people in Sparky's place? A. Oh, yes; there were twenty-five or thirty, I would say.

Q. And at no time while you were there did Mr. Beatty come in? A. I did not see Mr. Beatty in there. 10

Q. Will you say now that you did not see Sam Beatty in Sparky's tavern when you were with Gerald at the bar? A. I didn't see him, no; not then, no.

Q. Did you see him at any time that evening in Sparky's bar? A. I saw him come in the fire-house where we were counting the votes.

Q. When was that? A. Oh, different times during the night, to find out how the election was, the same as lots of people did. 20

Q. As a matter of fact, there was a good deal of interest in that election at that time, was there not, between Cornwell and Everett? A. Well, there is always interest in elections, naturally; there is always a lot of people around.

Q. Would you say there was the usual amount of interest in this election that you always have in Blairstown? A. Oh, I don't know about that. 30

Q. What was unusual about this one? A. Oh, I don't know.

Q. You say you do not know? A. Well, it was a local political fight, I guess that occurs in all towns.

Q. It was a pretty well warmed up fight, was it not? A. What do you mean by that?

Q. There was a good deal of electioneering and agitating between both parties, was there 40

Return to Writ of Error

John Larison—for Defendant—Cross

not? A. Well, it could have been. I didn't pay much attention to it. It didn't make much difference to me.

10 Q. Now, coming back to Sparky's, you were in there with Gerald for a drink of whiskey at approximately ten o'clock? A. That is right.

Q. And you say he is not telling the truth when he says that you and he had a conversation with Beatty? A. I had no conversation with Beatty.

Q. Did he have a conversation with Beatty? A. No, because he was right with me.

Q. If he had a conversation with Beatty, you would have known it, would you not? A. I should. I stood right next to him.

20 Q. You were with him? A. That is right.

Q. How long did you stay in Sparky's? A. I guess just time enough to have a drink and go on out.

Q. Give us an idea. A. It didn't take long to have a drink.

Q. What did you do: walk in and have a drink and walk out? A. It didn't take long.

Q. You got good service? A. Yes.

30 Q. In spite of the fact it was quite crowded? A. Well, Christian told you he had two bartenders, so it didn't take long to get two drinks.

Q. Can you give us an idea now how long you were in there? A. Oh, five minutes, I should say.

Q. And you had your whiskey and Christian had his whiskey and you went back? A. That is right.

40 Q. When you got back were the two members

Return to Writ of Error

John Larison—for Defendant—Cross

that you had left still there? A. At the fire-house, yes.

Q. And as far as you knew nothing was wrong with the ballot box or anything when you returned, was there? A. No.

10

Q. Then I understand that you proceeded to count the votes as you had done prior to that, taking them out and reading them, and so forth? A. Yes.

Q. And you say that you read every one that you pulled out correctly? A. That is right.

Q. If Christian says that you did not read them correctly he is not telling the truth? A. He is not telling the truth, no.

20

Q. What did your board announce as the result of the election between Cornwell and Everett? A. 328 to 327, I believe it was.

Q. And who was the winner? A. Everett.

Q. You were present at the recount proceeding here, were you not? A. Yes, sir.

Q. As a matter of fact you were subpoenaed, under the law, to be present, were you not? A. Yes; I guess the whole board was.

Q. Did you hear the result announced by the County Board after the recount? A. Yes.

30

Q. Do you know what that result was? A. I do not remember now, no.

Q. Now, according to Exhibit S-3, according to the result as you announced it, William Cornwell received 327 votes, is that correct? A. That is right.

Q. Now, referring to Exhibit S-4, when the recount result was announced, Cornwell received 367, is that correct?

40

Return to Writ of Error

John Larison—for Defendant—Cross

10

Mr. Dolan: I object, if your Honor please. This statement speaks for itself. We felt that it was not proper to begin with, and certainly it is not for him to interpret what the County Board might have found.

Mr. Schechter: If your Honor please, I am only talking about the result. I am only reading the figures. I am not interpreting anything.

20

The Court: You asked if that is correct. What do you mean by "correct?" The lettering on the paper itself, or a correct recount?

Mr. Schechter: I am trying to determine if this witness recalls the announcement made by the County Board after the recount.

The Court: Ask it more directly, then.

Q. Were you present at the recount? A. Yes.

Q. Did you hear the Board announce the result of the recount? A. Yes, sir.

30

Q. Who was declared the winner, after the recount?

Mr. Dolan: I object to that as immaterial.

The Court: Overruled.

Mr. Dolan: I ask an exception.

The Court: Exception granted.

(Exception allowed and the same is signed and sealed accordingly.

40

Judge).

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Will you answer the question, please? A. Cornwell.

Q. By how many votes, do you know?

Mr. Dolan: Objected to on the same ground: it is immaterial.

10

The Court: Objection overruled.

Mr. Dolan: Your Honor will allow an exception?

The Court: Exception granted. Answer the question, if you know.

(Exception allowed and the same is signed and sealed accordingly.

Judge).

20

A. I do not remember the number. I really do not know.

Q. As a matter of fact, there was a good deal of press releases on this thing at the time, was there not? There was a good deal of publicity about this, was there not, in the paper? A. Yes, sir.

Mr. Dolan: If your Honor please, we recognize that, but it is no part of this witness' cross examination to inquire of him as to whether there was any publicity. Everybody knows there was publicity. So I do not think it is proper cross examination, and certainly it is not within the scope of this man's knowledge.

30

Mr. Schechter: If your Honor please, I am trying to determine whether or not this witness can refresh his recollection about

40

Return to Writ of Error

John Larison—for Defendant—Cross

the result from a reading of the newspapers.

10

The Court: On direct examination, the witness has been asked whether—and he also stated—his count of the ballots was proper. It is still within the purview of the Prosecutor to show that the count he made and the count made by the County Board is different, and I think the question is all right.

20

Mr. Dolan: May I suggest this to your Honor: If this could have any purpose at all, it would be to impeach this witness. Now, the fact he reads in the newspaper that some other group, not selected by him, finds some other result, after this ballot box has been out of his hands for some length of time, certainly does not impeach him, nor is it proper.

Mr. Schechter: Your Honor has already ruled, have you not?

The Court: I think so. Go ahead.

Mr. Dolan: I ask an exception.

30

The Court: Exception granted.

(Exception allowed and the same is signed and sealed accordingly.

Judge).

Q. Do you know now that after the recount Cornwell was declared the winner? A. Do I know that?

Q. Yes. A. Yes.

40

Q. Do you know by how many votes? A. To be exact there, I do not.

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Was it over or under fifty? A. Yes, it was over fifty, I know.

Q. As a matter of fact, was it under or over seventy? A. I think it was around seventy, yes.

Q. It was somewhere between seventy and a hundred, was it not? A. I think it was around seventy; I do not know whether it was any more or not. 10

Q. So that at no time during the course of this evening after you came back from Sparky's did you misread any ballots? A. Not intentionally, no.

Q. Would you say now that you misread none? A. Oh, I am not saying a man couldn't make a mistake. 20

Q. However, if you were mistaken, it was not done intentionally by you, is that right? A. That is correct.

Q. Do you say now you are not sure whether or not you counted all the ballots correctly? A. I say I am not sure there wasn't mistakes made.

Q. And as far as you know you counted every ballot that you took in your hand as it appeared to be marked? A. I am talking about doing it intentionally. 30

Q. I am asking you: As far as you know, when you picked up a ballot and read it, your reading was the same as it appeared on the ballot, is that correct? A. That is right.

Q. Now, you say you got done about eight or eight-thirty the next morning? A. In the neighborhood of eight-thirty, I would say it was, yes.

Q. Up until that time who had the keys to this ballot box? A. They were in the ballot box in the envelope they came in. 40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Therefore, nobody had possession of the keys? A. How is that?

Q. Nobody had actual possession of the keys; no one held them in their hand or in their pocket?

10 A. During the day?

Q. Or during the night. Were the keys always in the ballot box? A. Oh, no. You had to unlock the ballot box to read the ballots.

Q. Who took the keys out from in the ballot box? A. I did.

Q. And you conceived that to be your duty as judge, did you not? A. To unlock the ballot box?

Q. Yes. A. Yes.

20 Q. After you unlocked the ballot box, what did you do with the keys? A. Laid them beside the ballot box.

Q. How many keys are there to a ballot box? A. With this type box I think there were three keys.

Q. Is it necessary to use all three keys to open the box? A. Yes, sir.

Q. One will not do it and two will not do it? A. No.

30 Q. When you opened it, did you use all three keys yourself? A. Yes.

Q. You did? A. Yes.

Q. And when you got done with them you laid them, in an envelope, under the box again, is that right? A. No, alongside of the box. The box was all unlocked.

Q. So there was no purpose in keeping the keys with you until the box was again locked, is that right? A. That is correct.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Who locked the box in the morning after you got done counting? A. I think I locked it the first time.

Q. What did you do with the keys then? A. Put them in the envelope and laid them on the table with the rest of the returns and things that were to go to Belvidere.

10

Q. And do I understand that Cornwell volunteered to take those things to Belvidere? A. That is right.

Q. Did you object? A. Well, I didn't know for sure whether he should take them or not, but, as I said before, I was tired and sleepy. I think we worked twenty-five hours, and I was glad to have someone take them down there.

20

Q. In other words, as far as you were concerned at that time, you were glad to have Cornwell do you a favor? A. I was glad for him to take the things to Belvidere, yes.

Q. Did you know that he was the Town Clerk at that time? A. Township Clerk?

Q. Yes. A. Yes.

Q. Did you know that the Township Clerk was not entitled to the keys? A. No, I did not.

30

Q. Then you were not familiar with 19:18-6, which reads, as follows: "Ballot box keys deposited with county clerk. Not later than noon of the day following the canvass of the votes the keys of each ballot box shall be deposited by a member of the district board with the county clerk." You did not know that to be the law? A. No.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Was it the custom while you were on the board to send the keys down with somebody else? A. Well, I guess it has been that way for years, yes.

10 Q. So there was nothing unusually suspicious about this, was there? A. Why, nothing suspicious to me, no.

Q. So that do I understand that Cornwell had the keys and returns and so forth, not with your permission but not against your consent? Does that state it about right? A. I would say so, yes. We were not going to fight over them. I couldn't see any point to fighting over that.

20 Q. There was not any fight, was there? A. No.

Q. There was no force used by anybody, was there? A. No.

Q. Is that correct? A. That is right.

Q. Now Christian is correct that thereafter, on Thursday, you had a conference or a conversation in your garage? A. Outside the garage, by the garage.

Q. In front of the garage, was it? A. Yes.

30 Q. And at that time he told you he did not like the looks of things and was going to talk, is that correct? A. He said he was going to talk, yes.

Q. Did you know what he was talking about? A. I asked him what he was talking about.

Q. You had no knowledge of what he could talk about, did you? A. No.

Q. Did you ask him what he meant? A. I told him to go ahead and talk.

Q. He had your permission to talk? A. I couldn't see what he was going to talk about.

40 Q. Did you not want to know what he would

Return to Writ of Error

John Larison—for Defendant—Cross

talk about? A. We didn't have much of a conversation there at all, no.

Q. Your curiosity was not sufficiently aroused to make an attempt to determine what he could talk about, is that correct? A. Oh, I wouldn't say that. He said he wanted something out of this, and I asked him what he meant by that, and he wanted some money, and he didn't mean cigarette money either, and I said, "I don't know what you are talking about."

10

Q. Was that the end of the conversation? A. He said, "I want some money out of it."

Q. He did not tell you what to do about the money? A. No.

20

Q. Were you trying to see that he got the money? A. I don't know what he wanted money for.

Q. But there was talk about money? A. He asked about the money, yes.

Q. Then this occurred, when he says that you came to his place on the Monday following? A. Yes, around milking time.

Q. You and your wife? A. That is right.

Q. And the conversation was that you had heard there was going to be a recount, is that right? A. Well, there had been a lot of gossip going around about things being done at election.

30

Q. Did you hear that gossip? A. Why, it was general talk.

Q. It was pretty well talked about in the township? A. That is right.

Q. Go on. A. And I went over to find out what it was all about, and I asked him what it was all about.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Why did you think you could find out from Christian? A. The general talk was that he was the one that was creating all this.

10 Q. You heard them mention the gossip that you heard on the street? A. That is right.

Q. Did you go and consult Mrs. Becker? A. I did not hear anything about Mrs. Becker at all.

Q. Did you speak to Dayton Brugler? A. No.

Q. And you did go to Christian, is that correct? A. My wife and I, on Monday night, yes, sir.

20 Q. Now, tell us what was the conversation on this Monday evening. A. I asked him what all this here gossip was and what he was trying to hatch up, and he said, "I was told not to talk." He said, "I would be taken care of." And he started back toward the barn. I tried to talk to him there, but he wouldn't talk, and he went back and started milking again, I suppose.

Q. When he says you asked him if he had been taken care of he does not tell the truth? A. He does not.

Mr. Dolan: What is that?

30 Q. When he said from the stand that you said, "Have you been taken care of?" That is not so? A. No, he said he would be taken care of; that he was told not to talk.

Q. Did he tell you who told him that? A. No.

Q. What about the unused ballots that were left over after the election, what did you do with them? A. They were put in the ballot box.

40 Q. Is that in proper order? A. Well, that is

Return to Writ of Error

John Larison—for Defendant—Cross

the way we have always done it; I presume it is right.

Q. 19:18-1 provides: "As soon as the election shall be finished and the votes canvassed and the statements made and certified by the district board as herein required, all ballots which have been cast, whether the same have been canvassed and counted or rejected for any cause, and one tally sheet, spoiled and unused ballots, shall be carefully collected and deposited in the ballot box." That is what you did, is that correct?

10

A. Unused ballots—

Q. "Spoiled and unused ballots, shall be carefully collected and deposited in the ballot box."

20

A. And one tally sheet.

Q. That is what you did? A. Yes.

Q. There was nothing wrong about that, was there? A. Nothing wrong about what?

Q. You were complying with the law when you did that? A. Yes, sir.

Q. So that the fact the unused ballots were placed in the box by the board—there was nothing wrong about that; you were complying with the law, were you not? A. Yes, sir.

30

Q. The unused ballots were properly in the ballot box when you locked it? A. Yes, sir.

Q. Who actually took the ballot box from the room where you were using it to the upstairs?

A. Mr. Cornwell and Bill Bair.

Q. Was the constable there, Kramer? A. At the time?

Q. Yes. A. I believe he was. I think he was in there tearing booths down, if I remember right.

40

Return to Writ of Error

John Larison—for Defendant—Cross

Q. Did he not assist in carrying the box upstairs? A. As I recall, it was Bair and Cornwell.

10 Q. When the box was taken upstairs, do you know where it was placed? A. Do I know where it was placed?

Q. Yes. A. There was only one place to place it, and that is in the township closet.

Q. I assume you are basing that upon past experience? A. Yes.

Q. On this particular night you did not know actually where the box was taken? A. This morning after election, do you mean?

20 Q. Yes. A. I don't know where it was taken?

Q. That is right. Did you go upstairs with them when they took the box up? A. The closet is right at the top of the steps; you can see up the steps.

Q. Did you see where they put the box? A. I presume they put it in that closet.

30 Q. I am trying to find out whether you know they actually put it in there or not. A. Well, I presume they did. It might have been such a thing that they set it outside until the election booths were put in the closet, I don't know.

Q. Did you later learn where the box was, after that morning? A. No, I just took it for granted it was there where it was always, that is all.

40 Q. This is township property at the place where the election was held, is it not; the fire hall is owned by the township? A. I don't know. I think the firehouse is owned by the fire company.

Return to Writ of Error

John Larison—for Defendant—Redirect

Q. Well, this township room you speak of, is that designated for official storage? A. Yes, for election supplies.

Q. Do you know by whom designated? A. No, I do not.

10

Mr. Schechter: That is all.

Redirect examination by Mr. Dolan:

Q. Who is this Bair, who went upstairs with Mr. Cornwell? A. Mr. Cornwell's nephew.

Q. As you recall, when you finished the election, you reported that Everett had one more vote than Cornwell—your board? A. That is right.

20

Q. The soldier vote had not been counted as yet, had it? A. No, not that I know of.

Q. Where was the soldier vote? A. I think it was in Belvidere, if I remember right.

Q. Do you know how many votes there were? A. I do not know, no.

Q. Were there enough to swing the election one way or the other? A. I do not know what you mean by that.

Q. Was there more than one soldier's vote? A. Oh, yes, there were several; I should say there was a hundred.

30

Q. And you did not know that morning how they were cast? A. No.

Q. The count had not been brought to your attention, in other words, at the time you finished your count of the election? A. No, it had not.

Mr. Dolan: That is all.

40

Return to Writ of Error

George M. Shipman—for Defendant—Direct

GEORGE M. SHIPMAN, sworn for the defendant.

Direct examination by Mr. Dolan:

10 Q. Mr. Shipman, you are an attorney and counsellor at law of the State of New Jersey?
A. Yes.

Q. And have been how long? A. Since 1919.

Q. With offices located where? A. Belvidere, New Jersey.

Q. Do you know Gerald Christian? A. Yes, I know him.

Q. And William Cornwell? A. Yes.

20 Q. Did they come to your office in Belvidere on Saturday following the general election in 1944? A. They came to my office on Sunday.

Q. While they were there did you prepare for them an affidavit in connection with the election held in Blairstown that Fall? A. Yes, I did.

Q. Have you that affidavit with you? A. Yes, sir.

Q. Will you produce it, please? A. Yes (Producing paper).

30 Q. While Mr. McGlynn is checking that, I will ask you whether about a week later you prepared another affidavit for the same parties. A. That is right.

Q. Is the second affidavit the one that is marked D-2 for identification in this case? A. Yes.

Q. And that affidavit was prepared, I assume, from information which you obtained from Mr. Cornwell and Mr. Christian while they were at your office on one or both of those occasions?

40

Return to Writ of Error

George M. Shipman—for Defendant—Cross

A. Mr. Christian was there alone on the second occasion.

Mr. Dolan: We might save time if we can compare this together, if your Honor please. 10

The Court: Certainly.

Q. Mr. Shipman, will you tell whether, as you recall, there is any difference in these affidavits?

A. There is no substantial difference. There may be some difference in a few words.

Q. Do you know in what particulars they do differ?

The Court: If you wish to go in the side room and compare it, that is all right. 20

The Witness: They are the same, except that possibly a few words may be altered, is all.

Mr. Dolan: I offer both affidavits in evidence. Have you any objection?

Mr. Schechter: I have none, sir.

The Court: They may be marked.

(Affidavits referred to and offered in evidence are marked, respectively, Exhibit D-2 and Exhibit D-3.) 30

Cross examination by Mr. Schechter:

Q. What was the purpose of drawing these affidavits?

Mr. Dolan: I object, if your Honor please. It is not proper cross examination. I simply inquired whether the affidavit had 40

Return to Writ of Error

George M. Shipman—for Defendant—Cross

been prepared, and the question of Why is again asking for the mental process, which is not involved in this case.

10

Mr. Schechter: If your Honor please, here are two affidavits, offered in evidence. I think the jury is entitled to know what they purport to show.

The Court: The affidavits speak for themselves. You may read them if you wish, or read them to the jury. They may disclose the purpose.

20

Q. I hate to impose on you, Mr. Shipman, but, since you have drawn these, do you mind reading them? A. Not at all. Do you want me to read one of them, or both?

30

Q. Both affidavits. Read the first one, the one that you drew first. A. (Reading) "State of New Jersey County of Warren ss. Gerald E. Christian, being duly sworn upon his oath according to law, deposes and says: I reside in Blairstown Township, Warren County, New Jersey, and am twenty eight years of age. I live on a farm on the road leading from Blairstown to Lake Susquehanna. I am a member of the Board of Elections of the Township of Blairstown, in the county of Warren and State of New Jersey and was such member at the time of the general election which was held on November 7th, 1944. My position on said Board of Elections is that of inspector. The other members of said Board of Elections at the general election were John Larison, who is judge of elections, and Dayton Brugler and Mrs. Elsa Becker,

40

Return to Writ of Error

George M. Shipman—for Defendant—Cross

who are clerks. The balloting at said election was held at the fire house in the village of Blairstown. The polls closed at 8 P. M. and immediately thereafter the said members of the Board proceeded to count the ballots. The counting of ballots was done in the same room where the balloting was done. In counting said ballots, the members of the Board were seated at a table. John Larison and I were seated side by side on one side of the table and Dayton Brugler and Mrs. Elsa Becker were seated on the other side. John Larison sat with the ballot box at his left and I sat on his right. John Larison took each ballot out of the box and opened it and read aloud the marking of the ballot for each candidate who was voted upon in said ballot. As he read said marking of each of said ballots, the two clerks wrote same down on their tally sheets. After he had read each ballot, the said John Larison handed the ballot to me and I refolded same and numbered it and strung them on a string. I was in such a position that I could see the marking on each ballot as it was opened and read by said John Larison. After the first one hundred ballots were read, the members of the Board stopped to rest for a few minutes. John Larison and I went outside the fire house and some of the people asked him how the vote was going and Larison said that William M. Cornwell was leading in the contest for Township Committeeman, by about twelve votes. I then heard him say, 'I think it is about time to drop a few out.' We then returned to the voting

10

20

30

40

Return to Writ of Error

George M. Shipman—for Defendant—Cross

room and resumed the counting of the ballots. John Larison and I were seated in the same position as before and I could see that at certain times, the said John Larison would announce to the clerks that a vote had been cast for Oscar E. Everitt, who was the candidate for Township Committeeman opposing the said William M. Cornwell, whereas I could see that, according to the marking on the ballot, said vote had actually been cast for the said William M. Cornwell. According to my estimation and count, during the counting of the first five hundred votes, the said John Larison called out that votes had been cast for Everitt when said votes were actually cast for Cornwell on about thirty five ballots. In other words, I counted that about thirty five votes which were actually cast for said Cornwell were announced by said John Larison as having been cast for Everitt and were thus tallied by the two clerks. Said clerks did not see the ballots but marked the vote down as same was called out by said Larison. The counting of the ballots was carried on from the time when the polls closed at 8 P. M. on November 7th until 8:15 A. M. on November 8th. Toward the end of the counting, when the members of the Board were tired, the said John Larison continued to announce votes as having been cast for Everitt, when in fact they were cast for Cornwell. There were 673 votes cast altogether for Township Committeeman and, to the best of my knowledge, about fifty votes altogether were announced by said Larison as

Return to Writ of Error

George M. Shipman—for Defendant—Cross

having been cast for Everitt when, in fact they were cast for Cornwell.

Gerald E. Christian

Gerald E. Christian

Subscribed and sworn to
before me this 12th day
of November, 1944,

10

(Seal) Charles G. Van Ness
Notary Public of N. J.

Notary Public of New Jersey

My Commission Expires Aug. 28, 1947."

Q. Are you able to read the other one, Mr. Shipman? A. Oh, yes. This is the second one:

20

(Reading)

"State of New Jersey }
County of Warren } ss.:

Gerald E. Christian, being duly sworn upon his oath according to law, deposes and says: I reside in Blairstown Township, Warren County, New Jersey, and am twenty eight years of age. I live on a farm on the road leading from Blairstown to Lake Susquehanna. I am a member of the district board of election of the Township of Blairstown, in the County of Warren and State of New Jersey, and was such member at the time of the general election which was held on November 7th, 1944. My position on said board of election is that of inspector. The other members of said board of election at the said general election

30

40

Return to Writ of Error

George M. Shipman—for Defendant—Cross

10 were John Larison, who was the judge of election, and Dayton Brugler and Mrs. Elsa Becker, who were the clerks. The balloting at said election was held at the fire house in the village of Blirstown. The polls closed at 8 P. M. and immediately thereafter the said members of said board of election proceeded to count the ballots. The counting of ballots was done in the same room where the balloting was done. In counting said ballots, the members of the Board were seated around a table. John Larison and I were seated side by side on one side of the table and Dayton Brugler and Mrs. Elsa Becker were seated on the other side. John Larison sat with the ballot box at his left and I sat on his right. John Larison took each ballot out of the box and opened it and read aloud the marking of the ballot for each candidate who was voted upon in said ballot. As he read said marking of each of said ballots, the two clerks wrote the same down on their tally sheets. After he had read each ballot, the said John Larison handed the ballot to me and I refolded the same and numbered it and strung it on a string. I was in such position that I could see the marking on each ballot as it was opened and read by said John Larison. After the first one hundred ballots were read, the members of the Board stopped to rest for a few minutes. John Larison and I went outside the fire house and some of the people asked him how the vote was going and Larison said that William M. Cornwell was leading in the contest for Township Committeeman by

20

30

40

Return to Writ of Error

George M. Shipman—for Defendant—Cross

about twelve votes. I then heard him say, 'I think it is about time to drop a few out.' We then returned to the voting room and resumed counting the ballots. John Larison and I were seated in the same position as before and I could see that at certain times, the said John Larison would announce to the clerks that a vote had been cast for Oscar E. Everitt, who was the opposing candidate to William M. Cornwell, whereas, I could see that, according to the marking on the ballot, said vote had actually been cast for the said William M. Cornwell. According to my estimate and count, during the counting of the first five hundred votes, the said John Larison called out that votes had been cast for Everitt when said votes were actually cast for Cornwell on about thirty five ballots. In other words, I counted that about thirty five votes which were actually cast for said Cornwell were announced by said John Larison as having been cast for Everitt and were thus tallied by the two clerks. Said clerks did not see the ballots but marked the vote down as same was called out by said Larison. The counting of the ballots was carried on from the time when the polls closed at 8 P. M. on November 7th until 8:15 A. M. on November 8th. Toward the end of the counting, when the members of the board were tired, the said John Larison continued to announce votes as having been cast for Everitt, when in fact they were cast for Cornwell. There were 673 votes cast altogether for Township Committeeman and, to the best of my knowledge,

10

20

30

40

Return to Writ of Error

George M. Shipman—for Defendant—Redirect

about fifty votes altogether were announced by said Larison as having been cast for Everitt when, in fact they were cast for Cornwell.

10

Gerald E. Christian

Gerald E. Christian

Subscribed and sworn to
before me this 17th day
of November, 1944,

(Seal) Charles G. Van Ness,

Notary Public of New Jersey

My Commission Expires Aug 28, 1947."

20

Mr. Schechter: Thank you, Mr. Shipman. That is all.

Redirect examination by Mr. Dolan:

Q. I think you said that on the first occasion Mr. Cornwell came there with Mr. Christian? A. That is my recollection, yes.

Mr. Dolan: That is all, sir.

30

40

Return to Writ of Error

Martha Larison—for Defendant—Direct

MARTHA LARISON, sworn for the defendant.

Direct examination by Mr. Dolan:

Q. Mrs. Larison, you are the wife of John Larison, the defendant here? A. That is right. 10

Q. Where do you live? A. On High Street, in Blairstown.

Q. Who are the members of your family? A. My husband and my son, Bob.

Q. How old is he? A. Fourteen.

Q. How long have you lived there? A. Fifteen years.

Q. Do you have your own home? A. No. 20

Q. Do you recall the election that was held in Blairstown last Fall? A. I do.

Q. After the election, did you hear rumors about the manner in which it was conducted? A. I certainly did.

Q. Do you recall how that case came to your attention? A. I was driving a taxi for Floyd Reed—he owns several taxis in Blairstown—and I was up around the station quite a bit, and around town different places, and I heard several reports and, naturally, I was interested on account of my husband. 30

Q. Did you do anything about it? A. We went over to Mr. Christian's house on Monday night following the election. I was driving the car and we pulled up in front of Mr. Christian's house. My husband went to the door, and Mrs. Christian said he was out in the barn. So he walked on out and I turned the car around, and 40

Return to Writ of Error

Martha Larison—for Defendant—Cross

10 I was parked on the right hand side of the road, Mr. Christian was in the corner of the barn, and my husband asked him about the rumors that were going around, we had heard so many, and wanted to know if it was true, and just what it was all about; and he didn't say much of anything, he was so nervous, about all he could say was, "I was told not to talk, I would be taken care of." And he started back into the barn, and he could come back out and it would be the same thing over.

20 Q. Did he repeat more than once, "I was told not to talk, I would be taken care of"? A. He did.

Q. And what was John's question to him? A. He asked him about the rumors that were going around. He said, after all, he would like to know what was going on.

Q. You say Christian was quite nervous? A. I would say he was.

Cross examination by Mr. Schechter:

30 Q. What were the rumors? A. Well, that there was going to be a recount.

Q. Is that all? Did you hear your husband say there was a lot of gossip and rumors about a crooked election? A. No.

Q. You did not hear him say that? A. Not about a crooked election, no.

Q. Did you hear anything about a crooked election? A. Well, I wouldn't say crooked. I wouldn't use that word.

40 Q. Tell us what you did hear him say. A. Mr.

Return to Writ of Error

Lyman Lawson—for Defendant—Direct

Christian had went to Mr. Cornwell and sworn out an affidavit and there was going to be a recount.

Q. Did you hear him say there was going to be a recount? A. I did not.

10

Q. And that is all you heard? A. Yes, sir.

Q. And as far as you know is that what your husband heard? A. Well, my husband never talked to me about anything.

Q. He did not discuss that with you? A. No.

Mr. Schechter: That is all.

Mr. McGlynn: With your Honor's permission, may I take over the next few witnesses and relieve Mr. Dolan?

20

The Court: Yes.

LYMAN LAWSON, sworn for the defendant.

Direct examination by Mr. McGlynn:

Q. Mr. Lawson, where do you live? A. Jacksonburg, New Jersey.

Q. What is your business? A. I am a telephone man.

30

Q. Employed by whom? A. West Jersey Telephone Company.

Q. How long have you lived in Blairstown Township? A. Well, I was born in it and practically lived there all my life.

Q. How old are you? A. I am thirty-four years old.

Q. Married? A. Yes, sir.

40

Return to Writ of Error

Lyman Lawson—for Defendant—Direct

Q. Do you know John Larison? A. I do.

Q. Gerald Christian? A. Yes.

Q. Samuel T. Beatty? A. I do.

10 Q. What were you doing on the night of election, November 7, 1944? A. I was tending bar for Sparky Mitchell.

Q. Is that in Sparky's tavern? A. Opposite the fire house, yes.

Q. Now, you heard a description here by two or three witnesses, of the size and character of the place. Do you agree with the general description that has been given? A. Yes, I do. It is a small place.

20 Q. And is it a fact that there were very many people or a few people there that night? A. I would say it was quite a number of people.

Q. Beside you, who was assisting in tending bar? A. Well, for a few minutes, Dorothy Angle was behind the bar, but not very long.

Q. Do you recall seeing Mr. Larison and Mr. Christian in there during that evening? A. I do.

30 Q. Once or more than once? A. I would say three times.

Q. Do you recall what time it was the first time you noticed them there? A. Oh, I would say maybe ten o'clock, along in there somewhere.

Q. Do you recall whether you waited on them or not? A. I did. I helped wait on them.

Q. During the time that you say you saw them there on three occasions, did you at any time see them talk to Samuel T. Beatty? A. I did not.

40 Q. Did you see them in close proximity to

Return to Writ of Error

Lyman Lawson—for Defendant—Cross

him, so there could be conversation? A. I can't say that I did.

Q. You saw Mr. Beatty in there? A. I don't recall.

Q. You do not recall seeing him in there? A. 10
I do not.

Q. If he had been standing in the middle of the bar with Mr. Christian and Mr. Larison and Mr. Mitchell, who I understand has that bar, do you think you would recall it? A. I do not think I could help but notice it.

Q. I think you told me it was fairly well crowded that evening, did you? A. Yes. There 20
is tables along the wall, and it is very narrow between the bar and the tables.

Q. Is it a long bar? A. No, it is a short bar.

Q. About how many would it accommodate? A. I would say, standing elbow to elbow, they could get maybe twelve to the bar. Then there is a Coca-cola bin attached to the bar, that they could lean against, maybe five on that.

Q. And there are tables on the side wall? A. That is right.

Mr. McGlynn: Cross examine. 30

Cross examination by Mr. Schechter:

Q. When did you go to work that evening at that place? A. Oh, I would say between eight and nine o'clock; maybe eight-thirty.

Q. When you got there were there any people in the place? A. Oh, yes.

Q. As a matter of fact, there were people in 40

Return to Writ of Error

Lyman Lawson—for Defendant—Cross

and out all night, were there not? A. The place did not open until eight o'clock.

10 Q. Can you give an idea how many were in and out that evening until closing time? A. Quite a few people.

Q. What is your idea of "quite a few"? A. Do you mean in the course of the whole evening?

Q. Yes. A. Well, I would say, maybe thirty or thirty-five people.

Q. At the time Larison and Christian first came in how many people were there? A. I would say probably twenty or in that neighborhood.

20 Q. And did those people with the other ten constitute the entire patronage of the place that night? A. Well, they would take up most of it.

Q. Do I understand these twenty that were there when Christian and Larison were there first continued through the whole evening? A. Oh, no, there was a lot of people there until I imagine midnight; some would go out and some stayed a while and were playing cards.

30 Q. As a matter of fact, there was a good deal of interest in the election in that place this evening, was there not? A. It wasn't discussed much in the barroom.

Q. This was also presidential election? A. It was.

Q. And there was no discussion—— A. If there was, I didn't notice it.

Q. You say you are employed by whom? A. The West Jersey Telephone Company.

40 Q. Is that the company in which Mr. Beatty is the principal stockholder?

Return to Writ of Error

Walter Jones—for Defendant—Direct

Mr. McGlynn: I object.

Mr. Schechter: If your Honor please, I have a right to show interest.

Mr. McGlynn: Mr. Beatty is not the defendant here. Mr. Larison is the de- 10
fendant.

The Court: I think the objection is well taken, Mr. Prosecutor. It will be sustained.

Q. When you were asked by Mr. McGlynn whether or not Beatty was there, you said you did not remember, is that correct? A. That is right.

Q. So he could have been there and you would not know it, is that correct? A. Well, he may have come in the place, yes. I wouldn't say he was not in the place. 20

Q. You would not say now that he was not in the place that evening, would you? A. I would not say he was or he was not, no.

WALTER JONES, sworn for the defendant. 30

Direct examination by Mr. McGlynn:

Q. Mr. Jones, where do you live, please? A. In Blairstown Township.

Q. And you are, I understand, a member of the Township Committee of the Township of Blairstown? A. That is right.

Q. Chairman of it? A. That is right.

Q. You have been in and around Blairstown all your life? A. That is right. 40

Return to Writ of Error

Walter Jones—for Defendant—Direct

Q. On the night of the election in November, 1944, around the hour of ten o'clock, were you in Sparky's place, which we understand is across the street from the fire house? A. I was.

10 Q. Did you see Mr. Samuel T. Beatty of Blairstown come in there that night about that time? A. I noticed him being in there. I could not say that I saw him come in.

Q. You saw him after he got in there? A. I saw him in there.

Q. Do you recall whether you saw him standing at the bar? A. I wouldn't say he was standing at the bar. He was standing near the Coca-Cola stand.

20 Q. Where was that with reference to the center of the bar? A. That would be on the west end, sort of.

Q. Do you mean it is near or past the end of the bar? A. That is right.

Q. It is not near the center of the bar as you face it? A. No.

Q. Do you know Larison and Christian? A.

30 Q. Did you see them in there that night? A. I do.
I did.

Q. Did you see them before or after you saw Beatty? A. I believe, the way I remember the thing, they were in there together, and Mr. Larison and Christian were at the center of the bar and Mr. Beatty was at the other end of the Coca-Cola place, talking to some fellows there.

40 Q. Did you see them there more than once or on just one occasion? A. I only remember seeing them there once.

Return to Writ of Error

Walter Jones—for Defendant—Cross

Q. And that was at or about ten o'clock? A. I presume slightly after ten o'clock.

Q. During the time you saw them at the center of the bar in Sparky's at or about ten o'clock on the night of election, did you see either one or both of them engaged in conversation with Samuel T. Beatty? A. No, sir. 10

Mr. McGlynn: Cross examine.

Cross examination by Mr. Schechter:

Q. Are you one of the men who were playing cards there that night? A. I was playing pinochle in there.

Q. Were you playing pinochle when Beatty was in the place? A. I could not say positively about that. That may have even been before we started the pinochle game, or while we were playing; I could not say. 20

Q. Do you now say you were playing, or not, when Beatty was in there? A. It could be either way.

Q. And you would not be paying particular attention to what was going on in the place, would you? A. I noticed the boys at the bar, and Mr. Beatty was in there. 30

Q. Did you hear Larison testify that when he was in there Beatty was not in Sparky's?

Mr. McGlynn: I object to the witness being asked to characterize the testimony of another witness.

Mr. Schechter: He can testify to whether he heard it or not. 40

Return to Writ of Error

Charles J. Raub—for Defendant—Direct

The Court: The question will be admitted. The objection is overruled.

Mr. McGlynn: I pray an exception.

(Exception allowed and the same is signed and sealed accordingly.

10

Judge.)

The Witness: What is the question, please?

(Last question read.)

The Witness: I heard Larison testify that he don't remember seeing Beatty in there.

20

Q. That he does not remember, that is your recollection? A. That is the way I recall Larison testified.

Q. But there is no question in your mind that when Larison and Christian were in Sparky's at about ten o'clock that Beatty was in the tap-room? A. I think Beatty was in the far end.

Q. Was he in the taproom? A. That is right. It is all one room.

30

Q. That is right. He was in there? A. Yes, sir.

CHARLES J. RAUB, sworn for the defendant.

Direct examination by Mr. McGlynn:

Q. Mr. Raub, where do you live? A. Blairstown.

40

Q. Have you lived there all your life? A. Yes, sir.

Return to Writ of Error

Charles J. Raub—for Defendant—Direct

Q. Do you know Mr. Christian, Mr. Larison and Samuel T. Beatty? A. I do.

Q. Have you known them all a long time? A. I have known Beatty all my life.

Q. Were you in Sparky's place on election night, between the hours of ten and eleven? A. I was. 10

Q. You are also a member of the Blairstown Township Committee, is that right? A. I am.

Q. Where were you in the tavern? A. I was sitting back in the corner behind the music box there.

Q. At a table? A. At a table.

Q. Facing the bar? A. Facing the bar. 20

Q. Did you see Beatty in the barroom? A. I saw him come in.

Q. Where did you see him stand? A. He came over and was talking to me in the corner.

Q. Is that where the Coca-Cola box was? A. No, it was back in the far corner, toward the road from the bar.

Q. That is not near the center of the bar? A. No.

Q. Did you see Larison and Christian in there? A. I saw them come in. 30

Q. Where did you see them standing? A. They was about the middle of the bar.

Q. Did you see them leave? A. I saw them leave.

Q. At any time after you saw them come in, and before you saw them leave, did you see them talk to Mr. Beatty? A. Beatty come in when they were standing there at the bar and came 40

Return to Writ of Error

Charles J. Raub—for Defendant—Cross

over to the corner and was talking to me, and they went out before he had stopped talking to me.

10 Q. He was still talking to you and had not left? A. He was still talking to me.

Cross examination by Mr. Schechter:

Q. What were you doing there? A. I have a right to go around and see that the place was running all right.

Q. Were you there on official business? A. I was sitting there a while.

20 Q. On official business as a member of the Township Committee? A. We issue the licenses and are supposed to go around to these places.

Q. Do you do that regularly? A. Once in a while.

Q. Would there be any particular reason why you should remember the presence of Larison and Christian in there that evening? A. I saw them come in there. I was not with them.

30 Q. How many people were in there when they came in? A. There must have been around twelve or fifteen, something like that.

Q. Can you tell me who all were in there? A. Somewhere around there.

Q. Tell us. A. I can't explain who they all were, but they were scattered around over the whole bar.

Q. You cannot tell now who they were? A. No.

40 Q. Can you tell us what gives you such a good recollection that Larison and Christian were in there? A. I saw them come in. I was looking

Return to Writ of Error

Rolland Biles—for Defendant—Direct

at them playing pinochle and I looked out at the bar and there they were at the bar. I was watching the pinochle game and saw them come in, both at once.

Q. Was there anything unusual, any distinguishing mark, about Larison and Christian which would attract your attention to them? A. No. 10

Q. They were just another customer? A. Yes.

Q. As was Beatty? A. Yes. Beatty was not drinking. He just came in there and was talking to me.

Q. There is no question Beatty was in the taproom when Larison and Christian were there, is there? A. He was talking to me when they came in. 20

Q. I am asking you if there is any question that Beatty was in the taproom when they were there? A. He was in there when they came in.

ROLLAND BILES, sworn for the defendant.

Direct examination by Mr. McGlynn: 30

Q. You live in Blairstown? A. I do.

Q. And have for some years? A. About twenty or twenty-one.

Q. Do you know John Larison, Samuel Beatty and Gerald Christian? A. I do.

Q. On the night of election, last November 7, 1944, were you in Sparky's place around the hour of ten o'clock? A. Yes, and maybe a little before. 40

Return to Writ of Error

Rolland Biles—for Defendant—Direct

Q. Where were you standing? A. I and my boss was standing next to the Coca-Cola stand.

Q. Where is that with reference to the bar?

10 A. It is on the lower end of the bar, toward John Hill's.

Q. The entrance to the place is right across the street from the fire house? A. Yes, there is one there; and then there is one on the side.

Q. When you enter the door the Coca-Cola box is away from the front door? A. That is right.

Q. And away from the end of the bar? A. Yes, sir.

20 Q. You say you were with your boss? A. Yes, sir.

Q. Who is that? A. Grant Depuy.

Q. Which way were you facing as you stood there? A. Most of the time I was leaning over the box with a glass of beer in front of me.

Q. Which way would that make you face, toward the entrance or away from it? A. Well, away from it. I had to turn around to look toward the entrance.

30 Q. Did you see Sam Beatty come in the place while you were there? A. Yes.

Q. Where did you see him go? A. He came down by the table where the men was playing cards, by me and Mr. Depuy.

Q. Where was he with reference to you and Depuy? A. He stood right there talking to us a little bit.

40 Q. While he was talking to you and Depuy did you see Christian and Larison? A. I didn't particularly take notice of them then, no.

Return to Writ of Error

Rolland Biles—for Defendant—Cross

Q. Well, you saw Beatty come in? A. That is right.

Q. Did you see Beatty, at any time while you were there, talk to Christian or Larison? A. No, I did not.

10

Q. Did you see Beatty, at any time you were there, at the center of the bar? A. No.

Q. Do you recall whether you saw him go out? A. Well, no, I can't say about that, when he went out. When he left us I turned around this way (illustrating) say this is the bar, along here, and the Coca-Cola is here, and the main door is there, and as he came around there I was talking to him, I and Grant, and he went on back of us, and I faced the Coca-Cola stand there.

20

Mr. McGlynn: Cross examine.

Cross examination by Mr. Schechter:

Q. What time was it Beatty was in the place? A. While I was in there?

Q. That you saw Beatty in there. A. Well, I don't exactly know. I would say around ten o'clock, maybe a little before or after; I didn't take particular notice.

30

Q. Did you notice who else was there in the place when Beatty was there? A. When I came in I came in the side door, I and Grant, and we naturally—The place was pretty well filled up and I didn't pay much attention to who was in there. And I walked up to the Coca-Cola stand, and walked up like that (indicating) coming in the door on the side here, and on the left as we came in I saw Charley Raub, Walter Jones and

40

Return to Writ of Error

Rolland Biles—for Defendant—Cross

his brother and—I don't know whether Mr. Angle was in there or not. His daughter, Dorothy, was there.

10 Q. How many people altogether were in the place? A. I would not exactly know. I know there was quite a few for a small room like that.

Q. Did you notice everybody that was in there? A. No, I wouldn't say that I did.

Q. Was there anything unusual about Christian or Larison which would attract your attention to them? A. No.

Q. There was nothing unusual about Beatty which would attract your attention to him? A. No.

20 Q. What were you doing in the place that night? A. Well, I and Grant had been unloading a load of steers, and after we got finished we went over there and had a few beers.

Q. How many beers? A. Well, maybe two or three, I drank, and I left before he did; I don't know how many he had.

Q. Have you ever been convicted of crime? A. Me?

30 Q. Yes. A. I do not know as I have.

Q. Were you not convicted of crime? A. No, I was not convicted. I pleaded guilty to a charge, yes.

Q. A charge of what? A. Possession of sugar and mash, in a bootlegging racket.

Q. Do you mean a still? A. Yes.

Q. You pleaded guilty to possession of a still, did you? A. I did.

40 Q. On the farm of Mr. Caspar(?) A. Not on that farm, no.

Q. Were you living on that farm at the time the still was found? A. No, not on that farm.

Return to Writ of Error

Elmer Jones—for Defendant—Direct

ELMER JONES, sworn for the Defendant.

Direct examination by Mr. McGlynn:

Q. Mr. Jones, you have lived in Blairstown Township practically all your life? A. Approximately, yes.

10

Q. I understand you are the rural carrier of Route 1 from Blairstown? A. That is right.

Q. For quite some time? A. About twenty-five years.

Q. Do you know Gerald Christian and John Larison and Sam Beatty? A. I do.

Q. Were you in Sparky's place on election night, November 7, 1944? A. I was.

20

Q. Where were you sitting or standing? A. When we went in there, there was a pinochle game in progress and I sat around hoping I would get in the game of pinochle.

Q. Was your back to the bar or facing the bar? A. I was facing the bar.

Q. Did you see Gerald Christian and John Larison at the bar? A. I did.

Q. Do you recall about where they were at the bar? A. Approximately at the center of the bar.

30

Q. Did you see Sam Beatty in there too? A. I did.

Q. Where did you see him? A. The road end of the bar, near the "Coke" machine.

Q. Did you see Sam Beatty at any time while Larison and Christian were there, talking to them? A. No, sir.

Q. Did you see Beatty at any time at the cen-

40

Return to Writ of Error

Elmer Jones—for Defendant—Cross

ter of the bar where they were standing? A. I did not.

10 Q. In other words, he stood at the end of the bar you describe as the Coca-Cola stand? A. Yes.

Cross examination by Mr. Schechter:

Q. You say you were looking for a game of pinochle? A. I was waiting for a chance to play pinochle.

Q. Did you get a game that evening? A. I did.

20 Q. How many people were in the place when Beatty, Christian and Larison were there? A. Oh, I would say fifteen or twenty.

Q. Do you remember all the people that were there that night? A. Well, I would say they were mostly local people.

Q. Can you tell us now who was there? A. Well, there was about the usual run that was in there.

Q. Can you give the names of the ones that were there? A. I would not be too sure about that.

30 Q. What do you say? A. They were local people, that were in there plenty of times.

Q. Can you tell us now who they were? A. Well, I could not tell you all of them and be sure.

Q. What was unusual, then, about Beatty, that would make you sure he was there? A. Well, he happened to walk in right beside me when I was sitting in the pinochle game.

40 Q. Did Christian and Larison walk in beside

Return to Writ of Error

Elmer Jones—for Defendant—Cross

you? A. No, they stood up near the center of the bar.

Q. Was there anybody else standing along that bar while they were there? A. Well, there was some people on both sides of them, yes.

10

Q. Who? A. I don't know.

Q. But you do remember distinctly that they were there? A. I do.

Q. What makes your recollection so clear about that? A. Because there was a vacant space on both sides of them. They stood there directly in front of me and every time I looked up I could see them.

Q. You could see the other people too, could you not? A. Well, they had their backs to me, most of them, and Larison and Christian were facing each other, leaning their elbows on the bar; they seemed to be talking.

20

Q. There is no question in your mind that Beatty was in this tap room while they were there? A. Well, I saw him.

Q. All three were in the tap room at the time? A. Yes, sir.

Mr. Schechter: That is all.

30

Mr. McGlynn: That is all, I think, for this afternoon, if your Honor please. We can resume tomorrow morning.

The Court: We will adjourn until tomorrow morning at ten o'clock.

(At 4 o'clock in the afternoon a recess was taken until Thursday, April 12, 1945, at 10 o'clock in the forenoon.)

40

Return to Writ of Error

George E. Mitchell—for Defendant—Direct

Belvidere, N. J., April 12, 1945.

(Case resumed pursuant to adjournment.)

(Appearances as before noted.)

10

GEORGE E. MITCHELL sworn for the defendant.

Direct examination by Mr. McGlynn:

Q. Mr. Mitchell, I understand you are not feeling very well. A. I am not.

Q. You are the gentleman in Blairstown known as "Sparky"? A. That is right.

20

Q. You conduct a tavern, called "Sparky's Tavern"? A. That is right.

Q. And have for some time? A. Since July 1936.

Q. Do you know John Larison, the defendant in this case? A. Yes, sir, I do.

Q. Gerald Christian? A. Yes, I do.

Q. Sam Beatty? A. Yes, sir.

30

Q. On the night of election your tavern opened after the polls closed, about 8 o'clock. A. It opened about ten after 8, because I always leave it about five or ten after, to be sure.

Q. After it opened, and between then and up to and after 10 o'clock, were there many people in your place of business? A. Well, there was a few.

Q. Were there just a few or quite a few? A. There were quite a few. It was just the ordinary crowd.

40

Return to Writ of Error

George E. Mitchell—for Defendant—Direct

Q. Is it a very large place? A. No, it is a small place; it is only one room.

Q. Mr. Christian said yesterday on the stand that you were on the outside of the Fire House at the end of the Board's count of the first two hundred ballots, and that you invited him to your tavern for a drink. A. He is a liar.

10

Q. Take it easy. A. I seen something in the Easton paper about it last night and I was burned up about it. Well, he——

The Court: You will respond to your lawyer.

Q. The question is very simple: Did you invite him to your place to have a drink, or not? A. I did not.

20

Q. Now, he further said yesterday that he and Larison walked into your place and stood at about the center of the bar and that, while there, Mr. Beatty came in and that Larison and Christian, you and Beatty engaged in a certain conversation. Do you have any recollection of any such conversation of those four men being present, at one and the same time? A. That is absolutely not the truth.

30

Q. Did you see Mr. Beatty in your place at or about the time they were there? A. I don't recollect seeing Sam Beatty in my place at all that night.

Q. Do you recall seeing Christian and Larison? A. Yes, I do.

Q. And do you recall now where they were at the bar? A. Well, yes, they were—they wasn't

40

Return to Writ of Error

George E. Mitchell—for Defendant—Cross

exactly in front of the bar, but they was close to it.

Q. It was not at either end, was it? A. No.

10 Q. Were they anywhere near the end or what the people describe as being the further end, nearer the Coca-Cola box? A. Well, I wouldn't say—off to one side from that.

Q. The Coca-Cola box is at the end of the bar is it? A. Yes, sir.

20 Q. When you saw these two men standing there, Larison and Christian, were they at the end of the bar or were they nearer the center of the bar? A. Well, it was just right off from the center, I would say, toward the Coca-Cola, maybe, about that far from the center, I would say, (indicating).

Cross examination by Mr. Schechter:

Q. Do I understand you to say Sam Beatty was not in your place that evening? A. I said I didn't see him in there, myself.

30 Q. Well, would you say that you saw everybody that was in the place that evening? A. No, I won't say I seen everybody.

Q. Well, do you say now that he was not there? A. I didn't say he wasn't there. I said I didn't see him there.

Q. If he was there, you did not see him? A. I absolutely did not recognize Sam Beatty in the place.

Q. You know him quite well, do you? A. Yes, sir.

Return to Writ of Error

George E. Mitchell—for Defendant—Cross

Q. How long have you known him? A. Since I was knee high to a grasshopper.

Q. Which, I assume, is most of your life? A. Well, since I have been around Blairstown regularly, since I was about fifteen years old and knee high to a grasshopper. 10

Q. When you say "knee high to a grasshopper" you mean you were fifteen years old? A. Yes, sir.

Q. This election that they had between Cornwell and Everett was pretty well contested in Blairstown, was it not? A. What do you mean?

Q. It was a pretty hot election, was it not? A. All elections are hot there once in a while. 20

Q. What do you mean, "once in a while", last November? A. Well, no more than usual.

Q. Were you interested in the election? A. I always am, all elections.

Q. Because it was a local affair, is that correct? A. Yes.

Q. And there was more interest in it, because they were voting for a President last November, is that correct? A. Yes, sir.

Q. Did that arouse any interest on your part? A. Oh, yes. I am always interested in the President, as far as that goes. 30

Q. And were you interested in the Cornwell-Everett election? A. Well, as far as that goes, yes, I am interested in all elections.

Q. Were you at the Fire Hall any time that evening, checking the count as it progressed? A. I was over there, yes, I was.

Q. And, as a matter of fact, you were in and out a good deal were you not? A. Oh, not too often, I wouldn't say, no. 40

Return to Writ of Error

George E. Mitchell—for Defendant—Cross

Q. You say you did not inquire as to how the count between Everett and Cornwell was going?

A. What?

10 Q. You say you did not inquire about how the count was going while they were counting the ballots? A. How it was going? Why, certainly; I always do; when any election is going on up there I ask about that.

Q. I am talking about this particular election. On the evening of November 7, 1944 and the morning of the 8th, of November 1944, did you go over to the Fire Hall and inquire how the election was going between Cornwell and Everett?

20 A. I absolutely did, yes.

Q. Did you know that Larison and Christian were Judge and Inspector of that election? A. Well, certainly. I seen them there, didn't I?

Q. And when they were in your place you saw them there? A. Yes, sure.

Q. There is no question about that? A. No.

Q. Did you have any conversation with them while they were in your place? A. No, I don't believe I had any conversation with them.

30 Q. Did you see anybody talk to them while they were standing at the bar? A. Oh, they were talking to different ones, as far as that goes.

Q. Who? A. I don't care about mentioning the names of different people that was in the bar, because I don't like to advertise the people that is in my bar and those that was there that night. I don't see where I have to say that. If somebody comes in my bar, I don't have to go around town saying they was in my place, drink-

40

Return to Writ of Error

George E. Mitchell—for Defendant—Cross

ing. I don't see why I have to advertise things like that.

Q. Are you through? A. Yes, sir.

Q. For your information, there have been about ten or fifteen names mentioned already, and some of the patrons of your place that night were on the stand yesterday; so I do not see why you should feel badly about mentioning the people who were there. A. I don't want to mention people that were in my place.

10

Q. You run a legal place, do you? A. Yes, I run a straight place.

Q. And I assume it is perfectly legal for someone of age to come in and buy a drink, is it not? A. Absolutely.

20

Q. Now will you tell us who you saw speaking to Larison and Christian that evening? A. What is that?

Q. Will you tell us who you saw speaking with Larison and Christian that evening, in your place? A. Well, now, listen. I can't tell you. I want to tell the truth. I don't know.

Q. I want the truth. A. I don't know.

Q. Is that your answer, "I don't know"? A. I don't know.

30

Q. How many times were Larison and Christian in your place that evening? A. I don't know that. I didn't tally it.

Q. What? A. I didn't do nothing on the tallying. I wasn't even paying much attention to them.

Q. Let me know when you are through, please. A. I wasn't paying no attention to them.

Q. Are you through? A. Yes.

40

Return to Writ of Error

George E. Mitchell—for Defendant—Cross

Q. But you do know that they were in there once, do you not? A. Yes, I do.

10 Q. Did you keep any tally of that? A. No, I didn't keep no tally of that, but I do remember seeing them once.

Q. Let me know, again, when you are through. A. I want you to let me off here. I don't feel good.

The Court: The Prosecutor did not subpoena you, did he?

Mr. Schechter: No.

20 The Court: He is entitled to cross examination. I am sorry if you do not feel well, and if you feel so badly, we will adjourn and let you testify later.

The Witness: I would rather testify now than at another time, while I am here.

The Court: Do not talk so much. Answer the questions, and do not ramble in your answers.

Go ahead, Mr. Prosecutor.

30 Q. How many people would you say were in and out of your place that evening? A. I couldn't give you any definite idea on that.

Q. It has been mentioned here that there were anywhere from twenty to thirty. Is that about right? A. Oh, there must have been that many, I should judge, yes.

Q. As a matter of fact, was not your place that evening headquarters for a good many of the boys interested in this election? A. Yes.

40 Q. And there was a good deal of election talk in your place that night, was there not? A. I wouldn't say that, no.

Return to Writ of Error

Dorothy Angle—for Defendant—Direct

Q. Do I understand you that it was headquarters for the election boys, for some of the boys interested in the election, but they did not talk about it in your place, is that it? A. Yes.

Q. Is that your answer? A. That is right.

10

Mr. Schechter: That is all.

DOROTHY ANGLE sworn for the defendant.

Direct examination by Mr. McGlynn:

Q. Miss Angle, where do you live, please? A. Blairstown.

20

Q. What is your occupation? A. Secretary-bookkeeper, First National Bank.

Q. Do you know Gerald Christian and John Larison? A. Yes.

Q. And Sam Beatty? A. Yes.

Q. On the night of November 7th, election night, were you with your father at "Sparky's" about 10 o'clock that evening? A. Yes, sir.

Q. And were you assisting Mr. Lawson, the gentleman behind the bar, in some way? A. Yes, sir. I washed glasses and poured out soda water.

30

Q. Do you recall seeing Larison and Christian there that night at or about 10 o'clock? A. Yes, I saw them come in once.

Q. Was that the first time that evening you saw them? A. Yes, sir.

Q. Do you recall at or about where they stood at the bar? A. I would say near the center.

40

Return to Writ of Error

Dorothy Angle—for Defendant—Cross

Q. Do you recall whether they came in together or whether somebody else was with them?

A. As near as I remember, they came in, just the two of them.

Q. Was Mr. Beatty there before or after that?

10 A. I do not recall seeing Mr. Beatty there at all that night.

Q. Do you recall having seen Christian and Larison, at any time during the time you say you saw them at the bar, engage in conversation with Mr. Mitchell, who is known as "Sparky"? And Mr. Beatty, the four of them being in one group at or near the center of the bar? A. I do not remember seeing any group. I was washing glasses most of the time, with my head down behind the bar.

20

Mr. McGlynn: That is all.

Cross examination by Mr. Schechter:

Q. Do I understand you to say that Beatty was not in the place at the same time that Christian and Larison were there? A. I did not see him, no.

Q. So he might have been there and you would not see him? A. Yes, he might have been there, but I did not see him.

30

Q. And if he was there, he could have had this conversation with Christian and Larison and you would not know it?

Mr. McGlynn: Objected to as purely speculation. It is more of an argument by the Prosecutor.

40

Return to Writ of Error

William Angle—for Defendant—Direct

Mr. Schechter: If your Honor please, it seems to me that Mr. McGlynn tried to prove that Mr. Beatty was not there or they did not have any such argument.

The Court: I think you have asked some questions, also, Mr. Prosecutor, whether he might have been in there and she did not see him. Objection sustained. 10

Q. So I understand that you were engaged in washing glasses and while you were washing these glasses your head was in a position where you could not see the people in the place? A. Yes. Mr. Lawson handed me two glasses with ice in them and said, "Will you pour some soda in this one and water in the other?" and I tried to pour it. The faucet is underneath the bar where I was washing glasses, and I drew the water into the one glass and poured 7-Up I think it was, it was a soda bottle, and ice, into the other glass and set them up on the bar, and as I put them up I saw Mr. Larison and Mr. Christian. 20

Q. And that is all you know about it? A. Yes, sir. 30

WILLIAM ANGLE sworn for the defendant.

Direct examination by Mr. McGlynn:

Q. Where do you live, sir? A. I live in Frelinghuysen Township.

Q. And that was your daughter who was just on the stand? A. Yes, sir. 40

Return to Writ of Error

William Angle—for Defendant—Cross

Q. Were you in "Sparky's" on the night of election, last November? A. Yes, sir.

Q. Where were you standing or sitting? A. I was seated at a table.

10 Q. In what part of the room? A. The most of the time, in the far corner.

Q. Away from the front entrance? A. Yes, sir, away from the front entrance.

Q. Was your back to the front entrance or were you facing it? A. My back was to the door.

Q. Did you look around at any time? A. Maybe, occasionally.

20 Q. Do you know John Larison and Gerald Christian? A. Yes, I have known them since they were boys.

Q. And Sam Beatty, do you know him? A. I knew Mr. Beatty.

Q. At any time around 10 o'clock that night of election did you see Larison and Christian in there? A. I saw them when they came in the side door but I did not pay any attention to them afterward.

30 Q. Did you see Sam Beatty while they were in there? A. No, sir; I did not see Sam Beatty all evening.

Mr. McGlynn: That is all.

Cross examination by Mr. Schechter:

Q. Were you in court yesterday? A. How is that?

Q. Were you in court yesterday? A. No, sir.

40

Mr. Schechter: That is all.

Return to Writ of Error

Samuel T. Beatty—for Defendant—Direct

SAMUEL T. BEATTY sworn for the defendant.

Direct examination by Mr. McGlynn:

Q. Mr. Beatty, you live where? A. Blairstown.

10

Q. How long have you lived there? A. All my life.

Q. Do you know Gerald Christian? A. I do.

Q. And John Larison? A. Yes.

Q. On the night of election last November, November 7, 1944, Mr. Christian said yesterday that in "Sparky's", at the end of the count of the second hundredth ballot, that he and Larison were at the bar, about the center of the bar, when you came in with Mr. Mitchell and engaged the two of them in conversation. Is that so or not? A. That is not true.

20

Q. Do you recall being in "Sparky's" at or about the time the Board had finished the second two hundred votes counted? A. Yes, I do. Do you want me to tell—

Q. Tell the jury your recollections of the events about that time. A. I had been over with Postmaster Brugler to Brugler's store, listening to the radio. We had been to the polls several times before to get the count but things were going very slow, so we went over there and listened to the radio. Then we figured the second hundred must be out and went over to the Fire House where the election was held. I went in with Brugler, in the Fire House, and Mr. Dayton Brugler, a member of the Election Board, and Mrs. Elsa Becker, another member of the

30

40

Return to Writ of Error

Samuel T. Beatty—for Defendant—Direct

10 Election Board, were both sitting there, and I asked them, and Mr. Dayton Brugler gave it to me, the result of the election on the second hundred. I tarried in there probably five minutes, getting it, or something like that. Then I went over and went in "Sparky's" side door, the door that goes in from the Hose House, and walked on over and said something to some people there, standing back of the juke box, and passed on in and went in "Sparky's" back room and telephoned the result over to the office, because they were telephoning different parts of the county that night and receiving, in turn, information from the county of what was going on in different places in the county. I went back there and telephoned over to our office, which was where we were using for headquarters, to telephone in and receive messages from other parts of the county. After I had telephoned over I came out and Mr. Depuy and Rolland Biles stood at the end of the bar, over the Coca-Cola box, which was right by the door where I went in. They were on the end facing the door and I turned around and was talking to them and I talked to them for some time and then I went on over to the office, and that is the only time I was in "Sparky's" bar that night.

20

30

Q. Then as a fact you had no conversation with Larison or Christian at the end of the second one hundredth count? A. It certainly is. I do not remember seeing Larison or Christian that night. They might have been there but I did not pay any attention to them. When I went in I was going to make a telephone call, and I was

40

Return to Writ of Error

Samuel T. Beatty—for Defendant—Cross

engaged in conversation with Biles and Depuy and I came out.

Q. While there or at other places that night, the night of election, did you say to Christian, "You don't mind if John changes a few of them around, do you?" A. I did not say any such thing. 10

Q. Did you say to them, either there or at any other time or place that night, that there was big money in it, a hundred dollars? A. I did not say anything like that.

Q. Did you also say \$150, either there or at any other place that night? A. I never had any conversation about money that night, with Christian or Larison, that night or at any other time. 20

Q. He also said that you said at the end of the alleged conversation at the bar, "There is no bond, there is no bond." Did you have any such conversation? A. I do not know what he would mean by that; I do not know. I never had any conversation about it, anyhow.

Cross examination by Mr. Schechter:

Q. I assume you had a good deal of interest in this election, had you not? A. Well, you know I have always been interested in elections. 30

Q. You are considered a leader up there, are you not? A. No.

Q. You would say that you are not? A. I would say that I am not a leader, no.

Q. You deny that you are a political leader in Blairstown? A. Well, I work at election time, but I am not a leader. 40

Return to Writ of Error

Samuel T. Beatty—for Defendant—Cross

10 Q. You spoke of calling the office. What office do you mean? A. I meant Rosecrans' office, where we were receiving telephone calls. I think I was talking to you that night, later on, when we were getting the Belvidere vote.

Q. Was I receiving returns that night? A. You were somewhere on the wire at one time.

Q. So you were sufficiently interested to be making calls back and forth about the results? A. Yes, because the different people in Washington, Hackettstown, Phillipsburg, and different people in our office who got them; and we gave them what we had and got what they had. We were checking all over the county.

20 Q. How far from the Fire House is your office and that of Judge Rosecrans? A. Well, you know where the office is.

Q. I know where the office is but I do not know where the Fire House is, Mr. Beatty. A. I could not tell you exactly. It is no great distance. It is probably as far out from the Fire House to the main street as from here to the corner, or farther.

30 Q. Can we say a block or half a block? A. Oh, a block and a half probably. I could not exactly tell you.

Mr. McGlynn: It is right on the highway, Mr. Prosecutor.

Q. Do I understand the Fire House is on the concrete highway and Judge Rosecrans' office is on the main street, in other words, about one block? A. Opposite the Post Office, we were

40

Return to Writ of Error

Samuel T. Beatty—for Defendant—Cross

receiving the returns. You come down here one block (indicating) and over about one block, it would be, probably.

Q. Christian is right, that he and Larison were in "Sparky's" at the same time as you? A. Well, I do not remember seeing Christian or Larison in "Sparky's"; and they were not in the Fire House when I went in or at any time while I was getting the vote from Mr. Brugler.

10

Q. And that was after two hundred? A. That was at the end of two hundred. I do not know how long they had been out when I went in, but there was nothing doing at the time, except to get the vote from Mr. Brugler.

Q. When you entered the Fire House they were not there? A. There was no one there.

20

Q. And when you got in "Sparky's", you say you did not see them there? A. I did not see them there. I saw a number of people and I spoke to some, but I do not recall them all, and I went right on in to make the telephone call.

Q. You have heard all this case? A. Yes.

Q. You have heard several witnesses say that you were in the bar at the same time as Christian and Larison? A. Well, I probably was.

30

Q. And this is a small place? A. Yes.

Q. And you did not see them? A. I did not notice them, no.

Q. And, that being so, you could not have had any conversation with them about money? A. Well, I did not have any conversation with them about money.

40

Return to Writ of Error

Samuel T. Beatty—for Defendant—Cross

Q. You did not have any conversation, about
“You don’t mind if John changes these”, or
anything? A. Absolutely not.

Q. None of that happened? A. No.

10 Q. When was the first time after election that
you saw Christian, do you remember? A. I
wouldn’t know; I do not remember.

Q. What is it? A. I do not remember just
now.

Q. You know him quite well? A. Yes.

Q. And I assume you see him quite often, do
you not? A. Not very often, no.

Q. What is it? A. Not very often, no.

20 Q. Do you remember seeing Christian on the
morning of November 9th?

Mr. McGlynn: I object, if your Honor
please. This witness’s testimony is lim-
ited to the events of November 7th, and I
do not see how anything that happened on
November 9th can have any bearing on the
indictment now on trial. I do not even
see how it could have any effect on that
time honored catch-all of “credibility”.

30 Mr. Schechter: I will withdraw the
question and refrain from further cross
examination.

The Witness: I have no objection to
answering it.

Mr. McGlynn: That is all. Is Mr.
Depuy in the court room?

(No response.)

40 The Court: Has Mr. Depuy been sub-
poenaed?

Return to Writ of Error

Anna Dorst—for Defendant—Direct

Mr. McGlynn: Yes, he is one of the witnesses I spoke to your Honor about. They expected to bring him down this morning.

The Court: Officer Wieder, go outside and see if you can find Mr. Depuy.

Do you have any other witness, counsel?

Mr. McGlynn: Yes, your Honor.

10

ANNA DORST sworn for the defendant.

Direct examination by Mr. Dolan:

Q. Mrs. Dorst, where do you live? A. Branlawn Avenue, (?) Blairstown, N. J.

20

Q. In Blairstown? A. Yes, sir.

Q. Do you know where the Fire House is in Blairstown? A. I live right next door.

Q. That is where your home is? A. Yes.

Q. Were you living there on November 7th last, the day of election? A. Yes, sir.

Q. And the following day? A. Yes, sir.

Q. Do you know Mr. Cornwell, the man who was a candidate for a member of the Town Committee and was Township Clerk prior to that? A. I do.

30

Q. Did you see him at any time the morning after election? A. I did.

Q. Where and when? A. The first time I seen him was between eight-thirty and nine, with Mr. Larison and Mr. Christian. They came out of the Fire House.

Q. Between that and twelve o'clock did you see him again that day? A. I did.

40

Return to Writ of Error

Anna Dorst—for Defendant—Cross

Q. How often? A. I saw him twice.

Q. Where was he then? A. He came out of the Fire House and got in his car and went up-town.

10 Q. Then did he come back again? A. Between 11 and 12 he did.

Q. Was anybody with him when he came out of the Fire House? A. No, sir.

Mr. Dolan: Cross examine.

Cross examination by Mr. Schechter:

Q. Did you know that Mr. Cornwell was the Township Clerk? A. Yes, I did.

20 Q. And does the Town use the Fire Hall for any of their municipal offices? A. As far as I know, they use it for all their meetings.

Q. In other words, the Fire Hall is the Town Hall too, is it not? A. Yes.

Q. Was there anything unusual about Cornwell going in the Town Hall? A. No.

Q. Had you seen him do that on other occasions? A. Yes, I did.

30 Q. Often? A. I did. I saw him the day before election.

Q. So there was nothing particularly unusual about his going in that morning after election? A. No.

Q. You did not know what he did when he got in there, you did not know where he went in the building, did you? A. No.

Mr. Schechter: That is all.

Return to Writ of Error

Anna Dorst—for Defendant—Redirect—Recross

Redirect examination by Mr. Dolan:

Q. I understood you to say this was the Town Hall. Do you mean that? It is the Fire House, is it not? A. Well, I mean the Township holds their meetings there when they have their Township meetings, as far as I know. 10

Q. And you are clear in your recollection that Mr. Cornwell was there the morning after election? A. Yes, sir.

Q. And came out alone? A. Yes, sir.

Recross examination by Mr. Schechter:

Q. Is there a Town Hall other than the Fire House in Blairstown? A. No. 20

Q. Therefore, in fact, the Fire House and Town Hall are one and the same building? A. As far as I know. I have not been in that building in about eight years, but as far as I know, that is it.

Q. And when the Township Committeemen meet they meet there? A. Yes, sir.

Q. Do you know whether they keep the Township records and books in that building? A. No, sir. 30

Mr. Schechter: That is all.

Return to Writ of Error

George D. Geis—for Defendant—Direct

GEORGE D. GEIS sworn for the defendant.

Direct examination by Mr. McGlynn:

10 Q. You are the Deputy County Clerk of the County of Warren, Mr. Geis? A. Yes, sir.

Q. Do you recall who delivered to you, if it was you, the keys and ballot box of the Blairstown Board of Election? A. Yes.

Q. Who was it? A. Mr. Cornwell.

Q. What is your recollection as to the time when the keys were so delivered? A. To the best of my recollection when I waited on Mr. Cornwell it was about 2 o'clock.

20 Q. On the afternoon of what day? A. November 8th, the day following election.

The Court: 1944?

The Witness: 1944.

Q. Mr. Cornwell, the gentleman you mention, was then the Town Clerk of Blairstown? A. Yes, sir.

Q. And he is here in the court room now? A. Yes, sir.

30 Q. There is no question of identity? A. No, sir.

Mr. McGlynn: That is all.

Cross examination by Mr. Schechter:

Q. Did he give you anything else? A. He gave me the returns.

Q. What do you mean by "the returns"? A. Where the votes are certified, the names of the candidates.

40

Return to Writ of Error

George D. Geis—for Defendant—Cross

Q. I refer to Exhibit S-3 and ask you if that is one of the papers he handed you? A. Well, they were altogether. He had the municipal returns. This is one of them, yes.

Q. What do you mean by he had them all together? A. Well, he brought down the returns of the vote for the county offices, as well as the other offices; he brought down the returns for the entire election. 10

Q. How were they delivered by him, in an envelope, or how? A. Well, there were large envelopes that contained—We used to have the books, but we do not have the election books any more because it is under permanent registration; and we gave those envelopes out and they contained a smaller envelope for the returns and they used to use the big envelope for the books. 20

Q. Let us get down to this particular case. Do you recall whether or not these particular returns were delivered to you in an envelope separately, or how? A. There were so many came in that day—To the best of my recollection, there were two envelopes; there was a big envelope and another envelope was inside of the big one. 30

Q. In the normal course of events how many returns do you get from the municipal authorities after election? A. Well, there are forty-five voting districts.

Q. So there would be forty-five separate returns? A. Yes, sir.

Q. Each district follows the same practice, bringing the returns to the County Clerk? A. 40

Return to Writ of Error

George D. Geis—for Defendant—Cross

Yes, and we have to check each one of the tally sheets.

10 Q. Referring to S-5, was that one of the papers delivered to you, the general election tally sheet? A. Yes, because I checked the returns, to see that they were all there.

20 Q. What do you mean by that? A. I wanted to see that they were counted, the tally sheets, for the State offices, the county offices and the municipal offices. It has happened that sometimes if you take them as they come in and you say "O.K.", or something like that, you find that through inadvertence one return is left out, and the time for canvassing the vote and getting ready for the County Board of Canvassers is short, and those things come in—

Q. Are you trying to tell us that you are busy in your office? A. Yes, right after election.

Q. Were the things in proper order when they arrived there from Blairstown? A. Yes.

Q. If they had not been in proper order someone would have been told about it, would they not? A. Yes, sir.

30 Q. Do you know the section of the law which relates to the delivery of keys to the County Clerk? A. I have read it, yes.

Q. "Not later than noon of the day following the canvass of the votes the keys of each ballot box shall be deposited by a member of the District Board with the County Clerk." You understand that is the law? A. Yes.

40 Q. What do we mean when we say "the day following the canvass of the votes"? A. If I

Return to Writ of Error

George D. Geis—for Defendant—Redirect

were to interpret that myself, I would say that "the day following the canvass of the vote" would be the day after the election was concluded.

Q. And the Blairstown election count was concluded, roughly, the morning of the 8th? A. Yes, sir.

10

Q. Then do you say they have twenty-four hours after that time?

Mr. McGlynn: I object to that. The interpretation is very clear.

Q. "The day following the canvass". A. If it was not completed by November 8th at 8 o'clock, certainly the day following would be November 9th.

20

Q. So you contend the District Board has twenty-four hours after they are done with their work? A. Yes. I wasn't particular about when they come in, because I had plenty to do without that.

Redirect examination by Mr. McGlynn:

Q. Were these the last ones to be returned by the forty-five districts in that election? A. Well, I remember the time because I was late for lunch that day and when I sat down at the table the clock indicated that it was a little after two.

30

Q. Were the Blairstown returns the last ones in? A. I could not say they were or they were not, but I recall I waited on Mr. Cornwell before I went to lunch, and it was late.

40

Return to Writ of Error

John Konkle—for Defendant—Direct

JOHN KONKLE sworn for the defendant.

Direct examination by Mr. McGlynn:

10 Q. Mr. Konkle, do you live in Blairstown?

A. I do.

Q. And have been there all your life? A. Yes.

Q. What is your business? A. I am the produce clerk for the A & P Tea Company at Newton.

Q. And you were, on November 7, 1944, the janitor of the Fire House in Blairstown? A. I was.

20 Q. On election day what did you do with the fire apparatus? A. The day before, we take it and put it in John Hill's garage, the American garage.

Q. You did that? A. Yes.

Q. What did you do the morning after election? A. We brought them back and put them back in the Fire House at the usual place.

Q. What time was that? A. I would say between 11:30 and 12 o'clock in the morning.

30 Q. Now, the front doors, by which the fire apparatus goes in and out, are more or less automatic doors, are they not? A. Yes, sir.

Q. And the door for people to go in is on the side? A. Yes, sir.

Q. Was that door on the side, when you left there at 11 or 12 o'clock on the Wednesday morning following the election, locked or unlocked? A. When we returned with the trucks to put them away it was unlocked.

Mr. McGlynn: That is all.

40

Return to Writ of Error

*Grant Depuy—for Defendant—Direct**Cross examination by Mr. Schechter:*

Q. Are you a fireman? A. That is right.

Q. And do you, as fireman, have a key to the building? A. I do.

Q. Do all firemen have keys to the building?

A. They should have one.

Q. And is not the building locked at all times?

A. It should be locked at all times.

Q. And the admission by key by the firemen?

A. That is right.

Mr. Schechter: That is all.

10

GRANT DEPUY sworn for the defendant.

20

Direct examination by Mr. McGlynn:

Q. Mr. Depuy, you live in Blairstown? A. I do.

Q. You have lived there most of your life? A. Thirty years.

Q. What business are you in? A. Farming and poultry.

Q. Are you the gentleman who was with Mr. Biles the night of election? A. He is a friend of mine, yes. That is the man right there.

Q. Do you remember being in "Sparky's" somewhere between 10 and 11 that night? A. We stopped there for a few drinks, yes.

Q. What is your opinion as to whether the barroom was crowded or not crowded? A. There was quite a number of people in there.

Q. Do you know Gerald Christian? A. Yes, sir.

30

40

Return to Writ of Error

Grant Depuy—for Defendant—Direct

Q. John Larison? A. Yes, sir.

Q. Sam Beatty? A. Yes, sir.

10 Q. Did you see Sam Beatty in there that night when you and your friend Rolland Biles were there? A. I did.

Q. Did you see him come into the room? A. I seen him go by and he went in the next room in the telephone booth, I presume, yes.

20 Q. What did you say? A. I saw him go into the telephone booth, I presume it is a public telephone, and he went in there a few minutes and came out and talked a while to Mr. Biles and went out, and we drank a glass of beer there and I went on out about my business.

Q. Where were you and Biles standing? A. At the end of the bar, at the Coca-Cola counter.

Q. And that is where? A. The telephone booth is in a different room.

Q. I mean, toward that end of the bar? A. Yes.

Q. About that time do you remember seeing Gerald Christian and John Larison? A. Yes, they were at the other end of the bar.

30 Q. Do you recall whether they stayed there very long, or a short while? A. I don't know, but it drew my attention to seeing two of the election board at the bar.

Q. Did you see them leave the bar? A. They were there and I seen them, but we were talking and I wasn't paying much attention, and when Biles left and Beatty went out I went on out and I don't know just when they left.

40 Q. At any time, from the time you saw Beatty come in the room until he left the room, did you

Return to Writ of Error

Grant Depuy—for Defendant—Cross

see him at any time talk to either Larison or Christian? A. I did not see him talk to them.

Q. During the entire time you saw Beatty in the room was he anywhere near where they were? A. No. The first I discovered him was when he come in and he went to the telephone booth, and I did not see him speak to them when he came in.

10

Q. He went to this telephone booth at the end of the bar, and you saw Larison and Christian at some other point at the bar, and you do not remember seeing Beatty at any time there in their presence or near them? A. No, I did not, not while I was there.

20

Mr. McGlynn: That is all.

Cross examination by Mr. Schechter:

Q. Where is this telephone? A. In "Sparky's" place.

Q. Is it a public telephone; is it in the barroom proper? A. No, it is a private room in the back.

Q. How did you know what Beatty was going to do when he left the room? A. I presume he went in there to telephone. I have done it lots of times.

30

Q. Has it a door to it? A. I don't know. The telephone is off by itself. I don't know what he done there. I presume he telephoned.

Q. Where do you live, Grant? A. Blairstown.

Q. And you voted in Blairstown? A. Yes.

Q. You knew that Larison and Christian were on the Board that night? A. Yes, sir.

Q. Were you interested in this election at all? A. I had no interest in the election myself, no.

40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. Did you vote? A. I voted.

Q. That was your only interest, in getting your vote cast? A. That is right.

10

Mr. Schechter: That is all.

Mr. McGlynn: That, if your Honor please, is the defendant's case.

The Court: Have you any rebuttal testimony?

Mr. Schechter: Yes.

WILLIAM M. CORNWELL sworn for the State in rebuttal.

20

Direct examination by Mr. Schechter:

Q. You are the William Cornwell to whom a good deal of reference has been made, are you not? A. Yes.

Q. Where do you reside? A. In Blairstown.

Q. How long have you lived there? A. Thirty-five years.

Q. Continuously? A. No. The last sixteen years continuously.

30

Q. Prior to that where did you live? A. I was in China for a few years.

Q. Doing what? A. I was in business and I was with the Y. M. C. A. at that time.

Q. When you returned from China did you go directly to Blairstown? A. I did. That was my wife's home.

Q. And I understand you lived there for sixteen years. A. Continuously.

40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. Do you hold any official position in the Township of Blairstown at present? A. Yes, I am one of the Committeemen. At least I hope I am.

Q. Do you mean Township Committeemen? A. Yes, sir. 10

Q. Of what does the Township Committee consist? A. Of three men, elected by the town to supervise the activities of the community.

Q. And you are one of the three? A. That is right.

Q. Prior to your election to that position did you hold any position in the town? A. I was Township Clerk for three years.

Q. For three years prior to November 1944? A. Just prior. 20

Q. What sort of position is that, appointive or elective? A. It is elective.

Q. When were you elected Township Clerk? A. November 1941.

Q. And you were holding that position at the last general election, were you not? A. That is right.

Q. Who was your opponent in the election of Township Committeeman? A. In the general election? 30

Q. Yes. A. Oscar E. Everett.

Q. You were the Republican candidate? A. Yes, sir.

Q. And Oscar E. Everett was the Democratic candidate? A. That is right.

Q. It was quite a warm election, was it not? A. Very. 40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. Was it any warmer than usual? A. I would say so.

10 Q. Was there much interest aroused in the public in connection with this election? A. Normally, Blairstown is a Democratic stronghold—

Mr. McGlynn: I object. I cannot see how it is material in rebuttal in any way. The Court: Objection sustained.

Q. Was there any interest, particularly in this election? A. Considerable.

Q. And, I assume, as a candidate you espoused your cause, did you not? A. I did.

20 Q. On the night of the election you were in the Fire Hall? A. Once.

Q. Were you in there during the day? A. Once.

Q. I assume you voted? A. I did.

Q. Do you know of whom the Board of Election consisted? A. I do.

Q. Name the Board. A. John Larison, Gerald Christian, Dayton Brugler and Mrs. Elsa Becker.

30 Q. It has been testified that some time in the evening after they started to count the ballots that you came in and brought sandwiches and coke or some refreshments? A. I did.

Q. Did everybody on the Board get those refreshments? A. They were there for them.

Q. Were the refreshments requested by anybody? A. No. I had been doing it for the last two or three years.

40 Q. Am I correct in stating that you were doing a kindness? A. I hope so.

Mr. Dolan: Let us not draw inferences.

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. You were not asked to do it? A. No.

Q. How did they get there? A. I brought them there.

Q. Was it at your own suggestion? A. Nobody else.

Q. Did anybody pay you for these refreshments?

10

Mr. McGlynn: I object. I cannot see the relevancy.

A. Nobody.

The Court: Proceed.

Q. Now, Mr. Cornwell, after you brought the sandwiches and refreshments in what did you do?

20

A. I did not stay very long. I went home.

Q. Where is your home with reference to the Fire Hall? A. Almost a mile away.

Q. You live in the direction of Paulina, do you not? A. I live in Paulina.

Q. Is that part of Blairstown Township? A. That is right.

Q. After you returned to your home how long did you stay there? A. I figured it would be after 12 o'clock before they might come to a conclusion or counted the votes, so I went to bed and set the alarm clock and came back some time after 12 for the first time.

30

Q. Where to? A. To the polls, to the Election Board.

Q. Were they counting the ballots then? A. They were.

Q. Did you watch that operation? A. For a few minutes.

40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. Then what did you do? A. Then I went home again.

Q. How long did you stay at that time? A. About two hours.

10 Q. And did you go back again? A. I did.

Q. What did you do then? A. I stayed for a few minutes and went back home again after I saw they were not going to get through until at least 8 o'clock.

Q. Did you return to the Fire House again? A. About half-past seven.

Q. And were they still counting? A. They were still counting.

20 Q. To the best of your recollection when did they get through? A. Some time around 8 o'clock.

Q. And were the results between Everett and yourself announced? A. They were.

Q. What was the result? A. Everett was announced as having one vote more than I did.

Q. Do you remember the total? A. They were 328, I think, to 327.

30 Q. That was the situation when the Board concluded the count? A. Yes, sir.

Q. Tell us about the books and keys and so forth. What happened? A. Having served—this was my third year, and it was my custom—

Mr. McGlynn: I object to any explanation of his conduct.

40 Mr. Schechter: I remember distinctly the defendant himself telling all about these customs, how these elections were run in Blairstown. I think the jury is

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

entitled to know the facts. And I remember Mr. Larison telling how he did this, because it was the custom, and I respectfully submit that this man is entitled to tell the jury what was the custom there.

10

The Court: Mr. Prosecutor, the custom is not the law. When Mr. Larison testified about the custom, had you objected, I would have been pleased to sustain it.

Mr. Schechter: I did not want to object because I wanted the jury to get the picture and to know how this election was conducted, and what their manner was.

The Court: The custom should not prevail as against the law.

20

Q. Will you tell us what happened that evening. A. After the members of the Board signed their papers—

Q. I meant the next morning, not in the evening. A. After the election they usually complete signing their papers and documents and they are brought to Belvidere, and those that are signed—there are three sets. One set is left with the County Clerk. After they finish signing those they were collected and put in their respective envelopes, and while they were doing that the contractor who was engaged to dismantle the election booth was doing so.

30

Q. Who was that? A. James B. Kramer.

Q. You said, "the contractor". A. He is the contractor, yes.

Q. Is he not also a constable? A. He is Town Constable, yes.

40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. Go on. A. He was dismantling the booth, and after all the papers to be filed, the necessary papers were put in the election box, as is the law, the box was sealed.

10 Q. By whom? A. I do not just remember who. I am pretty sure Larison and my nephew, William Bair, did the sealing.

Q. Who locked the box? A. I do not remember who locked the box. I was there but I do not remember who locked the box.

Q. Go on. A. The box was taken upstairs to the closet where it was usually kept.

20 Q. Who took it up there? A. I may have taken it up, with Bill Bair. I do not remember whether I did or Mr. Kramer. Usually the box was placed in the front of the closet, and I had requested Mr. Kramer to leave the booth out so the box could be put in back of the booth because the booths were brought out before the election box, and this he did. The box was taken up and put in back and the booths were put in front and the closet was locked.

Q. Who had the key to the closet? A. I did.

30 Q. Anyone else? A. No.

Q. After the books were placed in the ballot box what happened then? A. Then everybody went out of the Hose House together.

Q. Who do you mean? A. The members of the Election Board, Bair, Kramer and myself.

Q. Did you return to the Fire House that morning? A. I did not return to the Fire House that morning.

40 Q. It has been testified that you were in and out of the Fire House that morning. A. I heard that, yes. That is impossible.

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Direct

Q. After you left the Fire House where did you go? A. I went home and got ready to go down to Belvidere. It was no later—it was about 9 o'clock.

Q. Did you go to Belvidere that morning? A. I did. In fact, my wife was planning to come with me, but it was fairly late in the morning and she did not come, and I got home about in time for the noon meal. 10

Q. After this box was sealed and locked in the closet did you ever see that box again? A. I did not.

Q. When was the next time that you saw it? A. The following Sunday afternoon when the Sheriff on an order of the Court came up to bring the box to Belvidere. 20

Q. From the Wednesday morning when the box was locked in the closet until it was delivered to the Sheriff on Sunday did you do anything to that box? A. I did not. I could not get into the Hose House.

Q. What do you mean by that? A. Nobody but members of the fire company had keys to the Hose House. 30

Q. If you wanted to get in the Hose House how would you do it? A. I would have had to go to some member of the Hose Company and get a key.

Q. Did you tamper with the ballots after the box was closed? A. Absolutely not. I think the recount showed that.

Q. Did you see the ballot box when it was delivered to the Court by the Sheriff? A. I did.

Q. Did you inspect it? A. I did. 40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

Q. What condition was it in with respect to the condition you saw it when it was placed in the closet the morning after the election? A. The same condition.

10 Q. You initiated re-count proceedings, did you not? A. I did.

Q. And, based upon the result of them, you are now Township Committeeman? A. That is right.

Q. Do you recall, after the re-count, by how many votes you were declared the winner? A. Seventy-six, I think it was.

20 Q. And what was the result in Blairstown the morning after the election? A. I lost by one vote.

Mr. Schechter: Cross examine.

Cross examination by Mr. McGlynn:

30 Q. The Township Clerk in Blairstown has quite a few responsibilities with the running of the election, do they not? A. They deliver the election supplies to the Election Board and, following the close of the election, receive from the Election Board the records that pertain to the election.

Q. What else? A. Outside of that there is nothing.

40 Q. Did you ever give any thought to the fact that you could have disqualified yourself because of the fact you were a candidate at this election, because you were the Township Clerk? A. No, I did not. I am surprised somebody did not mention it before.

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

Q. Do you know now that you could have had someone act in your place? A. I have not seen any law to that effect. It might be so.

Q. Now, several times in the last few minutes you were there you were very emphatic about saying, "I did not return to the Fire House that morning". Did you intend by emphasizing the word "morning"— A. I was not in the Fire House at all until the following Sunday, because I had no means to get into it. 10

Q. Now, the Election Board and you, you say, left there all together? A. That is right.

Q. The front doors of the Fire House were then open and the apparatus had not been returned, had it? A. No, it could not have been returned. 20

Q. When you left there at that time, which was some time after 8:30, the Fire House was actually open? A. I do not know how—

Q. Well, the doors were open, were they? A. No, they were not open. The doors were closed.

Q. Did you go out the side door? A. We went out the side door.

Q. Do you recall whether that door was locked or not? A. The side door? 30

Q. Yes. A. Yes, it was positively locked, because I shut it myself.

Q. You say you did not see the ballot box put in the closet upstairs? A. I said I did see it put in but I do not remember whether I helped take it up or not.

Q. That closet is, by arrangement with the Fire Company, available for Township records? A. That is right. 40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

Q. And only for Township records? A. That is right.

10 Q. You do not keep the Township records there, do you? You keep some at your house, do you not? A. Well, that has always been the way. The only records that are kept there are records pertaining to the election.

Q. Other Township records are not kept there? A. No; that is right.

Q. You have Township meetings in that building but no records other than Township election records are kept in that building? A. They are today, yes, but not then.

20 Q. Now, when the Election Board finished signing these papers they had to sign, three different sets, they delivered those sets to you? A. That is right.

Q. Who delivered to you the keys for the ballot box? A. I could not say.

Q. You do not deny that you had them? A. Absolutely not, because I brought them to Belvidere.

30 Q. You put them in an envelope? A. They were in an envelope with the other supplies.

Q. You took them with you when you left the Fire House? A. That is right.

Q. So that from the time you left the Fire House until you delivered them to the County Clerk, to the Deputy County Clerk in Belvidere, the keys were physically in your possession? A. That is right.

40 Q. Do you recall, when the box was first locked on the morning after election, when they had finished up their work, that there was some ques-

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

tion about some piece of paper and the box had to be reopened? A. No, I do not recall that.

Q. Now, leaving out the word "morning", did you go back to the Fire House after you left there with the Board and before you went to Belvidere? A. I did not. 10

Q. You were the only man who had the keys to the closet upstairs? A. That is right.

Q. You knew enough concerning the provisions of the Election laws to know the Board was not supposed to deliver to you the keys, did you not? A. No, I did not. I found that out later.

Q. You had been Town Clerk from November 1941? A. No, I assumed office in January 1942.

Q. Did you know these provisions of Revised Statutes, 19:18-4, which reads, as follows: "Every municipal clerk to whom the ballot boxes shall be delivered shall thereupon keep the same, with their contents, but shall not have the keys thereof in his possession?" A. No, I am afraid that there are a good many statements there I don't know. 20

Q. You recall quite distinctly that the tally on the Election Board's returns at the conclusion of their counting was 328 for Everett and 327 for you? A. That is right. 30

Q. That totaled 655, did it not? A. That is right.

Q. Do you recall that the count set forth in the certificate of the County Board of Elections here is 367 for you and 291 for Everett? A. That is right.

Q. And that totals 658, does it not? A. Apparently. 40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

Q. Have you any idea where those three extra ballots came from? A. I have no idea at all.

10 Q. There is no doubt about the numbers I just gave you? A. I did not do the tallying or the re-count.

Q. Here is the Exhibit S-3. That is 327 to 328? A. That is right, 655.

Q. And here is the other one, 367 for you and 291 for Everett. That is 658. Now, you say you have no explanation for the difference in the total, of the three votes? A. I do not know anything about it.

20 Q. Now, at some time during the counting by the Election Board do you recall a conversation between some of the members of the Board with reference to the fact that the first thirty-five ballots which had been taken out of the box for counting had not been numbered by the Inspector? A. I called his attention to it.

Q. And putting that number on the outside of the ballot after it is folded is the duty of the Inspector? A. That is right.

30 Q. He is supposed to put on the outside the number and to go along consecutively for each ballot that is taken out of the box? A. That is right.

Q. And do you recall it was thirty-five votes that had not been counted? A. I do not remember but I knew it was in the neighborhood of thirty.

Q. You knew it was somewhere between thirty and thirty-five? A. That is right.

40 Q. There is no significance in the fact those thirty-five that were not numbered just makes

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

practically the same difference as noted in that election? A. No. The number of ballots used and unused are in the ballot box, and the box was sealed when they were brought here to Belvidere.

10

Q. When you were handed your ballot by the Board to vote, the top part that has a number on is torn off? A. Well, it may be.

Q. I do not want any "may be". I want to know if that is not so? A. I do not recall.

Q. And you vote? A. Yes, sir.

Q. You are the Town Clerk? A. Yes, sir.

Q. And those things are delivered to you every year. A. I have never been a member of the Election Board to handle the ballots.

20

Q. You have voted a number of years? A. Yes, sir.

Q. Do you not recall the fact that the top part of the ballot furnished by the County Clerk has a printed number on it? A. Yes, sir.

Q. And that is torn off? A. Yes, sir.

Q. And the District Board is not supposed to know what you or I voted? A. That is right.

Q. So that the ballots that were counted by the Board from the ballot box after the close of election had no distinguishing number on them whatsoever? A. No.

30

Q. And the first thirty-five that were counted and strung on a string by the Inspector did not have the distinguishing number the law says should be on them? A. That is right.

Q. And the change in the result of your election was a change of 70 votes? A. Seventy-six votes.

40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

Q. Which made a change of 38 ballots? A. Yes, sir.

Q. And 35 were not numbered? A. No.

10 Q. And 3 additional votes were found by the County Board. Now, that is 38. Can you give any explanation of the fact the total of those two things adds up to the change of the result in the vote at that election? A. Yes, sir.

Q. Give it to me. A. A thousand ballots were delivered to the Election Board when the box was delivered, and after the re-count there were a thousand ballots in it, used and unused.

20 Q. Would it not have been possible for a person to take 35 of the unused ballots in that box and change those and have them in the box when it was handed to the County Board of Elections?

Mr. Schechter: I do not think we should go into the realm of possibilities. We are not dealing with possibilities.

The Court: The objection will be sustained.

Mr. McGlynn: I ask an exception.

30 The Court: Exception granted.

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

Q. Mr. Christian testified yesterday that he came to see you on the Saturday after election—I am not sure whether it was Saturday or Sunday. A. Saturday night after election.

40 Q. What he told you on that occasion was incorporated in an affidavit which Mr. Shipman prepared on Sunday? A. That is right.

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Cross

Q. You recall the contents of it? A. Yes.

Q. And that is the complete story that he told you on that occasion? A. That is right.

Q. And that affidavit was not used, for some reason, and another was prepared on the 17th? A. Yes, sir. 10

Q. And we had that read yesterday, and that is the same, substantially, as the other one? A. It seems so.

Q. And up to that time Mr. Christian had told you the same story he told you on Saturday night after the election? A. That is right.

Q. Did he ever amplify or add any details to the story he told you on this occasion? A. No, he did not, because I did not ask him for it. 20

Q. You arranged for him to go to Mr. Shipman on Sunday? A. That is right.

Q. Now, Mr. Larison says that he went to see him on Monday following the Sunday after election, and that Christian told him that he was told not to talk and that he would be taken care of. Did you talk to Christian after he was to Shipman's? A. We talked at Shipman's office, is all.

Q. Did you make any arrangements with him regarding anything? A. I made no arrangements with anybody regarding election. 30

Q. This is after election. A. It was dealing with election. I had no conversation with Mr. Christian except at Mr. Shipman's office.

Q. Did you at any time, in any of the conversations you had with Mr. Christian following his disclosure to you on Saturday night of the facts Mr. Shipman had put in his affidavit, talked to 40

Return to Writ of Error

William M. Cornwell—Rebuttal for State—Redirect

him about his personal situation, with reference to his participation in this so-called misdoing?

A. I did not.

10 Q. Did you tell him that you would assist him in any way? A. I did not.

Q. Or arrange for his being taken care of? A. I did not.

Q. The other two members of the Township Committee of which you are now a member by virtue of the re-count proceedings were here yesterday as witnesses for the defendant, were they not? A. That is right.

Mr. McGlynn: That is all.

20

Redirect examination by Mr. Schechter:

Q. Did you tamper with any of these ballots after the box was closed? A. I did not touch the box after it was put in the closet.

Q. Did you change any of the ballots after the box was locked? A. I certainly did not.

Mr. Schechter: That is all.

30

Mr. McGlynn: There is nothing more for me.

Mr. Schechter: Now, if your Honor please, I would like to call several of the members of the County Board of Elections. Mr. Mowder told me—Oh, Mr. Dick is here.

40

Return to Writ of Error

James R. Dick—Rebuttal for State—Direct

JAMES R. DICK sworn for the State in rebuttal.

Direct examination by Mr. Schechter:

Q. Mr. Dick, you are a member of the Warren County Board of Elections? A. That is right. 10

Q. And have been for how long? A. Seven or eight years, I think; I am not just sure.

Q. Last past? A. Yes, sir.

Q. So that you were a member of that Board in November 1944, right before December 1, 1944? A. Yes.

Q. As the result of an order made by this Court were you a member of the Board of Elections which re-counted the ballots cast in Blairs-town? A. I was. 20

Q. Were you in the court room when the ballot box was brought in? A. I was.

Q. Did you inspect it? A. I did. I think all four members inspected it.

Q. All four members of what? A. Of the County Board of Elections.

Q. Who are they? A. Mrs. Lowe, myself, Mrs. Sexton and Harvey Mowder. 30

Q. Are they all still members of the Board? A. Yes.

Q. Now, you say you did inspect the ballot box in the presence of the Court? A. That is right.

Q. Who else was here at the time?

Mr. McGlynn: If your Honor please, I do not want to—

A. Oh, I do not know— 40

Return to Writ of Error

James R. Dick—Rebuttal for State—Direct

10

Mr. McGlynn: Wait. I cannot quite see the relevancy of this testimony on rebuttal. I have no objection to it particularly but it seems to me it does not get us anywhere. It seems to me there is no question about the condition of the box.

Mr. Schechter: I think I remember Mr. Larison testifying that when the box came in this Court the wax was just a little trifle and the ribbon was different.

20

Mr. McGlynn: How can you show that now? They did not see it until it was opened here. They did not see it when it was affixed—

The Court: Proceed, Mr. Prosecutor.

Q. Did you inspect the box, Mr. Dick? A. I cannot say that I did particularly inspect the box. Harvey Mowder took care of the box probably more than I did.

30

Q. What were your duties in connection with the re-count? A. Well, my duties—of course, we looked at the box, but to tell you just exactly how that box was, I could not.

Q. Were there any marks of any violence or tampering? A. No.

Mr. McGlynn: There is no contention that there was any tampering.

Q. Were you one of the members who recounted the ballots? A. That is right.

40

Q. What were your duties in that connection? A. I was the Inspector and Mrs. Lowe was the Judge and she called the ballots.

Return to Writ of Error

James R. Dick—Rebuttal for State—Cross

Q. Did you arrange yourselves in the same position in which the local Board was? A. The same thing practically.

Q. You inspected the ballots? A. That is right.

Q. And you saw the ballots counted? A. That is right. 10

Q. Do you recall the total number of ballots, used and unused? A. The total number of ballots as they were in the box when it came here for the re-count was exactly what had been sent to the Board by the County Clerk.

Q. It has been testified it was a thousand. Does that seem right to you? A. I think so.

Q. Now, did you inspect these ballots that came out of the box? A. That is right. 20

Q. Did you inspect the unused ballots? A. I did.

Q. Did any of them show any marks of tampering? A. No.

Q. Used or unused? A. No, they did not.

Q. Did you notice any erasures on any of the ballots? A. No, none.

Q. As far as you could observe was everything all right? A. Everything was right as far as I could see. 30

Mr. Schechter: Cross examine.

Cross examination by Mr. McGlynn:

Q. The number of ballots, Mr. Dick, looking at Exhibit S-4, it shows that the total number of ballots that you counted in the box was 674? A. Yes, sir.

Q. One they rejected, making 673? A. That is right. 40

Return to Writ of Error

James R. Dick—Rebuttal for State—Redirect

10 Q. So that is exactly the same as the number in the certificate S-3, filed by the District Board, which has 673 registered, 673 cast, and 1 rejected, making 674, is that right? A. That is right.

Mr. McGlynn: That is all.

Redirect examination by Mr. Schechter:

Q. Do you recall the result announced by the re-count?

Mr. Dolan: I object. It speaks for itself.

20 A. The re-count—

The Court: Wait. It is in the record many times.

Mr. Schechter: All right. I will withdraw the question. That is all, Mr. Dick.

30 HARVEY S. MOWDER called for the State in rebuttal.

(No response.)

Mr. Schechter: I do not believe he is here.

If your Honor please, Mr. Mowder is not here and, as I indicated to the Court, he said he would be here at 1 o'clock. I would like to put him on the stand.

40 The Court: Do you have any other witnesses, Mr. Prosecutor?

Return to Writ of Error

Harvey S. Mowder—Rebuttal for State—Direct

Mr. Schechter: That will be all, your Honor. We will rest then.

The Court: Is there anyone you wish to use at the present time, Counsellor?

Mr. McGlynn: No, we have nothing else, your Honor, in sur-rebuttal. 10

The Court: Then I believe the Court will stand adjourned until quarter after one, at which time the Prosecutor has one more witness.

(At 11:45 o'clock in the forenoon a recess was taken until 1:15 o'clock in the afternoon.)

20

HARVEY S. MOWDER sworn for the State in rebuttal.

Direct examination by Mr. Schechter:

Q. Mr. Mowder, you are a member of the Warren County Board of Elections? A. I am.

Q. And were such member in November of last year? A. I was. 30

Q. And in December of last year? A. Yes.

Q. Were you present in Court on the occasion of a certain re-count of votes cast in Blainstown at the last general election? A. I was, on order by the Judge.

Q. Who else was present? A. Mrs. Lowe, Mrs. Sexton and James Dick.

Q. Who are they? A. The three other members of the County Board of Elections. 40

Return to Writ of Error

Harvey S. Mowder—Rebuttal for State—Direct

Q. Were you in Court when the ballot box was brought in? A. Yes, sir.

Q. Did you inspect the box? A. I did.

10 Q. Tell the Court and jury what you found as to its condition? A. The Sheriff brought the box in and placed it in front of the Judge. We were asked to inspect it. I turned it over and looked on the bottom and examined the cords which were tied around the box and noticed that there was wax on it and, in company with Mr. Dick, we decided there had been no tampering whatsoever with the election box, as far as any evidence we could see there, from a physical standpoint.

20 Q. From your observation? A. That is right.

Q. Were you here when the box was opened? A. I clipped the cords on the box.

Q. You did that yourself? A. Yes, and turned those cords over to the Sheriff.

Q. Did you also assist in the act of re-count?

30 A. I placed the keys in the box in the presence of the Sheriff and the box was opened and placed there for the arrangement of the Board to take the ballots from the box.

Q. Who was your Chairman? A. Mrs. Lowe.

Q. And who was the Inspector on the re-count? A. James Dick.

Q. Were the unused ballots counted? A. There were unused ballots in the box, and the last ballot, which had had markings on by somebody in Blairstown Township, some voter, the next consecutive number being also there on the unused ballot.

40

Return to Writ of Error

Harvey S. Mowder—Rebuttal for State—Cross

Q. So that from your inspection of the unused and the used, the ballots, were all there? A. They were.

Q. Do you recall how many ballots were cast in Blairstown? A. No, I do not.

10

Q. Do you recall whether or not the unused ballots and the used ballots totaled a thousand? A. I do, yes. I remember it was in the six hundred seventies but I do not know the exact number.

Q. Six hundred seventies what? A. 672 or 673, something like that.

Q. What does that number have reference to? A. The ones that had been voted.

20

Q. And with the unused ballots added to that number did that make a thousand? A. It did, sir.

Mr. Schechter: Cross examine.

Cross examination by Mr. McGlynn:

Q. Did you actually count, Mr. Mowder, the unused ballots, or just assume because the next in consecutive number was 674 that they were all there? A. No, I counted them, because I expected some lawyer some time might ask that question.

30

Q. And you were right, were you not? A. Yes, I am now being asked that.

Mr. McGlynn: That is all, sir.

Mr. Schechter: We rest.

The Court: Both sides rest. You may proceed.

(Mr. Dolan proceeded with summation on behalf of the defendant.)

40

(Mr. Schechter proceeded with summation on behalf of the State.)

Return to Writ of Error

Charge

10 The Court (Bowers, J.) Members of the Jury.
The case before you is one in which the State
claims, through an indictment, that the defend-
ant, John Larison, "did, while acting as Judge
of the District Board of Registry and Elections,
in and for the Township of Blairstown, in said
County of Warren, at the general election held
on the seventh day of November, 1944, in and
for said Township, while under the statutory
duty to take the ballots cast at said election
singly and separately from the ballot box, and
to audibly and publicly read the same in full
view of the Inspector of the District Board of
20 Registry and Election, aforesaid, did, in the dis-
charge of his said duty, while reading said bal-
lots audibly and publicly which were cast for
one, William C. Cornwell, did, in fact, knowingly
and fraudulently, announce that said ballots were
cast for Oscar S. Everett, contrary to the form
of the statute in such case made and provided,
and against the peace of this State, the govern-
ment and dignity of the same."

30 That indictment arises out of a section of our
Law in New Jersey which states, "Every per-
son charged with the performance of any duty
under the provisions of any law of this state re-
lating to elections who willfully neglects or re-
fuses to perform it, or who, in his official ca-
pacity, knowingly and fraudulently acts in
contravention or violation of any of the provi-
sions of such laws, shall be guilty of a misde-
meanor."

40

Return to Writ of Error

Court's Charge

Apparently, one of the duties that the defendant Larison was to perform was in connection with the Statute also which says, "The board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the judge of the election, and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the inspector."

10

The charge here is that Mr. Larison did not perform his duty under the law.

Now, in this, as in most cases, of course, there is evidence pro and con. I do not feel that the Court should go at any length into the testimony given; so I will just briefly bring to your attention the facts as I remember them, not as you must find them, however.

20

It seems that in Blainstown Township the District Election Board at the general election last year counted for Cornwell 327 votes as against 328 for Everett, his opponent for the office of Township Committee, thereby Mr. Everett winning by one vote, in so far as the township votes were concerned, leaving the service-men's vote aside.

30

Through certain process of the law it was brought before the County Board of Elections where, in due course, the ballots that were in the box were counted and, according to the County Election Board recount, Mr. Cornwell received 367 votes as against Mr. Everett's 291, or a majority of some 76 votes, and, therefore, he was declared the winner and duly took office.

40

Return to Writ of Error

Court's Charge

This is one of the main facts that comes before you in the charge: that Mr. Larison counted the votes other than in the way they were cast, or a portion of the votes.

10 The principal witness was a Mr. Christian, a member of the Board, who claims that Mr. Larison did it intentionally; and Mr. Larison, in his testimony, claims innocence, and also claims that the ballots may have been tampered with by other people and, therefore, although the count was wrong, he was innocent of any wrong doing.

20 I wish to direct your attention to the statute in that case, that it must be shown that he knowingly and fraudulently counted these votes wrong, and that if he is innocent of counting the votes other than cast, of course, he would not come within the statute.

There seems to have been considerable testimony given relative to a conversation had outside of the township hall or firehouse, and also at a tavern called "Sparky's" across the street, with another man, Mr. Beatty, relative to the count.

30 Now there, again, we have the same situation: of some witnesses saying the conversation did take place, and others saying it did not; and some saying that Mr. Beatty was present, and others saying that he was not.

40 All these matters are facts for the determination of the jury, as to who is telling the truth, by listening to the evidence and observing the demeanor of the persons on the stand; and, of course, it is clearly your duty to determine the truth of the facts recited in your presence here.

Return to Writ of Error

Court's Charge

This case, as we all know, has been discussed, and there have been news items in the papers and all of us have read more or less concerning the case. And I wish to caution you now, ladies and gentlemen, to be fair and be guided by the evidence here in the court room. What someone may have told you on the street, or what you have gleaned from newspaper items, or what some person thought of what may have happened or what may not have happened at this time or other times, you should eliminate from your mind and be guided by the testimony elicited here before your body, which I am sure will be quite sufficient for you to decide the case upon its merits as it is duly presented according to law.

10

20

The defendant is presumed to be innocent until he is proven guilty beyond a reasonable doubt. Merely because he has been indicted by a grand jury of this county is no direct evidence of his guilt. That is a charge made by other persons without the defendant being present or being represented; and so, merely because of the indictment, there is no reason to weigh that against the defendant in the consideration of his guilt or innocence.

30

I have said that the defendant is presumed to be innocent until he is proven guilty beyond a reasonable doubt. Now, this question of reasonable doubt has appeared in so many cases, and over such a long period of time, and it has been before the courts and it has been the cause of reversals, and so there have been decisions determining what reasonable doubt is. So that

40

Return to Writ of Error

Court's Charge

there may be no misunderstanding in your mind I am going to read what a reasonable doubt is, from a case that is recognized as an authority.

10 "It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecution, and if upon such proof there be a reasonable doubt remaining, the accused is entitled to the benefit of an acquittal."

20 Now, even though I have commented upon the evidence, please bear in mind that whatever I have said is not binding upon you as to the evidential value of the matters mentioned. That is your prerogative; you pass upon the facts; I will instruct you in the law only.

30 The attorneys for the defendant, as a matter of right, have requested that I make certain charges to you, and I will read them, as outlined. They all seem to be in conformity with the law and they will be part of my charge.

"First: The Jury in considering the evidence must start with the legal presumption of the defendant's innocence, which presumption must continue throughout all their deliberations, unless the evidence establishes the defendant's guilt beyond all reasonable doubt.

40

Return to Writ of Error

Court's Charge

"Second: A reasonable doubt in law, is that state of mind which, after fairly considering all the evidence, leaves the mind of a juror in such condition that he cannot say that he feels an abiding conviction of the defendant's guilt as charged.

10

"Third: The defendant is not required to satisfy the Jury of his innocence, but the burden is always upon the State, and the State must prove beyond all reasonable doubt, that the defendant is guilty of the crime charged.

"Fourth: The burden of proof never shifts from the State in a criminal trial, but throughout the entire trial, the burden of proof is always upon the State to prove the defendant's guilt of the crime charged, beyond a reasonable doubt.

20

"Fifth: If there is in the mind of the jury one, or any number of theories, consistent with the defendant's guilt, fairly springing from the evidence in the case, which the jury believe, and but one theory consistent with the defendant's innocence, fairly arising from the evidence in the case, including the defendant's testimony, which the jury also believe, the jury must disregard and put aside all those theories of his guilt and adopt that one theory of his innocence, and render a verdict of not guilty. For, in such condition of the case there would be a reasonable doubt of the defendant's guilt, and the defendant should be acquitted.

30

40

Return to Writ of Error

Court's Charge

10 "Sixth: The jury are the sole judges of the facts, the weight of the testimony and the credibility of the witnesses. The jury must rely on their own recollections of the evidence and must not accept the statements of the court or the statement of counsel of what the evidence is, unless such statement coincides with their own recollection of the testimony.

20 "Seventh: If the evidence will support conclusions either of guilt or innocence, the jury should adopt the conclusion of innocence. If after weighing the evidence, the jury are not convinced beyond a reasonable doubt of the defendant's guilt, they should acquit.

 "Eight: The State must prove beyond a reasonable doubt that the defendant committed the crime with criminal intent. If the State fails to establish the evidence of criminal intent beyond a reasonable doubt, the defendant is to be acquitted.

30 "Ninth: An indictment is no evidence against the defendant, and the fact that it was found by the Grand Jury raises no presumption of guilt. The defendant is legally presumed to be innocent unless and until the State proves by the evidence beyond a reasonable doubt that he is guilty."

40 Now, ladies and gentlemen, you may take the case. The law, I hope, is clear. You will retire and reach such conclusion as you feel that the facts warrant, and return a verdict either of guilty or not guilty.

(The jury retired.)

Return to Writ of Error

Defendant's Requests to Charge

The Court: If the Court is not in session when the jury returns, I will direct the Clerk to receive the verdict.

Mr. Dolan: On behalf of the defendant, I desire to take a general exception to the charge.

10

(Exception allowed and the same is signed and sealed accordingly.

Judge.)

(Defendant's counsel requested the Court to charge, as follows:

First: The jury in considering the evidence must start with the legal presumption of the defendant's innocence, which presumption must continue throughout all their deliberations, unless the evidence establishes the defendant's guilt beyond all reasonable doubt.

20

Second: A reasonable doubt in law, is that state of mind which, after fairly considering all the evidence, leaves the mind of a juror in such condition that he cannot say that he feels an abiding conviction of the defendant's guilt as charged.

30

Third: The defendant is not required to satisfy the Jury of his innocence, but the burden is always upon the State, and the State must prove beyond all reasonable doubt, that the defendant is guilty of the crime charged.

40

Return to Writ of Error

Defendant's Requests to Charge

10 Fourth: The burden of proof never shifts from the State in a criminal trial, but throughout the entire trial, the burden of proof is always upon the State to prove the defendant's guilt of the crime charged, beyond a reasonable doubt.

20 Fifth: If there is in the mind of the jury one, or any number of theories, consistent with the defendant's guilt, fairly springing from the evidence in the case, which the jury believe, but one theory consistent with the defendant's innocence, fairly arising from the evidence in the case, including the defendant's testimony, which the jury also believe, the jury must disregard and put aside all those theories of his guilt and adopt that one theory of his innocence, and render a verdict of not guilty. For, in such condition of the case there would be a reasonable doubt of the defendant's guilt, and the defendant should be acquitted.

30 Sixth: The jury are the sole judges of the facts, the weight of the testimony and the credibility of the witnesses. The jury must rely upon their own recollections of the evidence and must not accept the statements of the court or the statement of counsel of what the evidence is, unless such statement coincides with their own recollection of the testimony. (102 Law 659.)

40

Return to Writ of Error

Defendant's Requests to Charge

Seventh: If the evidence will support conclusions either of guilt or innocence, the jury should adopt the conclusion of innocence. If after weighing the evidence, the jury are not convinced beyond a reasonable doubt of the defendant's guilt, they should acquit. (113 Law 53, O'Regan, page 342, No. 77.) 10

Eighth: The State must prove beyond a reasonable doubt that the defendant committed the crime with criminal intent. If the State fails to establish the evidence of criminal intent beyond a reasonable doubt, the defendant is to be acquitted. (O'Regan—page 343, No. 84.) 20

Ninth: An indictment is no evidence against the defendant, and the fact that it was found by the Grand Jury raises no presumption of guilt. The defendant is legally presumed to be innocent, unless and until the State proves by the evidence beyond a reasonable doubt that he is guilty. (O'Regan Criminal Law, page 346, No. 103.) 30

(Signed) William A. Dolan
Attorney for Defendant).

Return to Writ of Error

Certificate of Court Reporter

WARREN COUNTY COURT OF GENERAL
QUARTER SESSIONS

10

THE STATE OF NEW JERSEY

vs.

JOHN LARISON

On Indictment

20

30

I, JOHN G. VANBLARCOM, official stenographic reporter of the Warren County Court of General Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the above mentioned case, which trial was held before the Honorable Clark C. Bowers, Presiding Judge of the Warren County Court of General Quarter Sessions in and for the County of Warren, and a Jury, on Tuesday, April 10th, Wednesday, April 11th, Thursday, April 12th and Friday, April 13th, 1945 at Belvidere, New Jersey.

JOHN G. VANBLARCOM

Dated: August 25, 1945

40

Return to Writ of Error

Certificate of Judge

WARREN COUNTY COURT OF GENERAL
QUARTER SESSIONS

THE STATE OF NEW JERSEY

vs.

JOHN LARISON

On Indictment

10

I, CLARK C. BOWERS, Presiding Judge of the Warren County Court of General Quarter Sessions, and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

20

CLARK C. BOWERS
Judge

30

Dated: September 28, 1945

40

Return to Writ of Error

Exhibit S-1

WARREN COUNTY ELECTIONS BOARDS 1944

	<i>District</i>	<i>Name</i>	<i>Address</i>	<i>Party</i>
10	XXXXXX	XXX	XXXXXX	XXX
	Blairstown Township	John M. Jones	Blairstown	D.
	" "	John Larison	"	D.
	" "	Gerald Christian	"	R.
	" "	Dayton Brugler	"	R.
	XXXXXX	XXX	XXXXXX	XXX

James R. Dick Sec.

Margaret E. Lowe Chairman

20 Harvey L. Mowder

Clara Secton

Warren County Clerk's office

Filed

May 2, 1944

Ramsey Reese Clerk

30

Exhibit S-2

(Oaths of Office)

(See opposite )

40

EXHIBIT 3-2, face.

EX-5-2-24 45-25-4-4

OATHS

Members of District Boards of Registry and Election

ORGANIZATION

State of New Jersey,
County of Warren } ss.

We John H. Larison, Gerald Christian
Dayton Brugler and John M. Jones

do solemnly and sincerely promise and swear (or affirm) that I will faithfully and impartially discharge
all of the duties of a member of the Board of Registry and Election for Election District:

No. 1 in the City of Blairstown, in the County of
Township
Warren, to the best of my skill and ability.

Sworn and subscribed before me
this 8th day of May, A.D. 1944
Wm. C. Connel
NOTARY PUBLIC OF N.J.
My Commission Expires Dec. 21, 1948

John H. Larison
Gerald E. Christian
Dayton Brugler
John M. Jones

And shall also take and subscribe the following oath, to wit:
"I do solemnly swear (or affirm, as the case may be) that we will support the Constitution of the
United States and the Constitution of the State of New Jersey, and that I will faithfully, impartially
and justly perform all the duties of the office of Board of Elections
according to the best of my abilities and understanding. So help me God."

19-6-11
Pas. 60, Sec. 11, Laws 1920.

Sworn and subscribed before me
this 8th day of
May, A.D. 1944

District
Boards
of
Registry
and
Election

John H. Larison
Gerald E. Christian
Dayton Brugler
John M. Jones

ONE

TO

THE DIRECTOR, FBI

FROM THE DIRECTOR, FBI

100-100000

100-100000

100-100000

ONE

TO

THE DIRECTOR, FBI

RE: [REDACTED]

DO NOT

100-100000

RECEIVED

DEC 1 1964

[Signature]

Return to Writ of Error

Exhibit S-2

NOTICE

Let this be a return to writ of error for Municipal Officers.

(GENERAL ELECTION)

Two copies of this statement to be prepared immediately after canvassing ballots. One copy to be sent to the County Clerk and one to the Municipal Clerk.

Fill in blank spaces carefully.

A statement of the result of an election held in Election District No. 1 Ward No. 1 of the Town of Springfield in the County of Warren and State of New Jersey, on the _____ day of November, 19____.

(The whole number of names on the Registry List is 718)

(The total number of ballots cast at this election is 673)

(The whole number of ballots rejected (not including spoiled ballots) is 1

For the Office of Township Committee

(Name of Candidate)	Received	Votes
O. S. Everett	Three Hundred & Twenty-Eight	328
William M. Cornwell	Three Hundred & Twenty-Seven	327

Return to Writ of Error

Exhibit S-3**NOTICE**

Use this blank Only for MUNICIPAL OFFICES

10

(GENERAL ELECTION)

Two copies of this statement to be prepared immediately after canvassing ballots. One copy to be sent to the *County Clerk* and one to the *Municipal Clerk*.

Fill in Blank Spaces Carefully

20

A statement of the result of an election held in Election District No. 1 Ward No. 1 of the Township of Blairstown in the County of Warren and State of New Jersey, on the day of November, 19

(The whole number of names on the Registry List is 776

(The total number of ballots cast at THIS ELECTION is 673

(The whole number of ballots rejected (not including spoiled ballots) is 1

30

For the Office of Township Committee

(Name of Candidate)	Received	Votes
O. S. Everitt	Three Hundred & Twenty-Eight	328
William M. Cornwell	Three Hundred & Twenty-Seven	327

40

Return to Writ of Error

Exhibit S-3

For the Office of Township Clerk

(Name of Candidate)	Received	Votes	
George R. Searing Jr.	Four Hundred & Twenty-Four	424	10
Erwin J. L. Kohler	Two Hundred & Eleven	211	

IN WITNESS WHEREOF, we have hereunto set our
hands this day of November, One Thousand
Nine Hundred and

John H. Larison	)		
Gerald E. Christian)	Board of Registry and		
Elsa Becker	) Election		20
Dayton Brugler	)		

30

40

Return to Writ of Error

Exhibit S-4

RECOUNTE HELD AT THE COURT HOUSE BELVIDERE
Nov. 30, 1944

NOTICE

10

Use this blank only for MUNICIPAL OFFICES

(GENERAL ELECTION)

Two copies of this statement to be prepared immediately after canvassing ballots. One copy to be sent to the *County Clerk* and one to the *Municipal Clerk*.

20

Fill in Blank Spaces Carefully

A statement of the result of a recount of an election held in Election District of the Township of Blairstown in the County of Warren and State of New Jersey, on the day of November, 19

(The whole number of names on the Registry
(List is 776

30

(The total number of ballots recounted at This
(Election is 674

(The whole number of ballots rejected (not
(including spoiled ballots) is 1

For the Office of Member of Township Committee

Name of Candidate	Received	Votes
-------------------	----------	-------

Wm. M. Cornwell	Three Hundred and sixty-seven	367
-----------------	-------------------------------	-----

40

Oscar S. Everitt	Two Hundred and ninety-one	291
------------------	----------------------------	-----

Return to Writ of Error

Exhibit S-4

IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of November, One Thousand Nine Hundred and Forty-Four.

James R. Dick	)	
Margaret E. Lowe	)	Board of Registry & Election
Harvey S. Mowder	)	
Clara F. Sexton	)	

10

20

30

40

Return to Writ of Error

Exhibit S-5

(General Election Tally Sheet for
District 1, Ward 1, of
Blairstown Township)

(See opposite )

MUNICIPALITY Blairdown Twp DISTRICT 1 WARD 1

PUT ONE IN BALLOT BOX
SEND ONE TO COUNTY CLERK

[illegible]

John A. Lawrence	} BOARD OF ELECTION
Samuel E. Christianson	
W. A. Becker	
Wayton Brugh	

5-7 d 45-55

Return to Writ of Error

Exhibit S-5

Return to Writ of Error

Exhibit S-5

(Tally Sheet of Warren County
Board of Elections)

(See opposite )

65-5

BLAIRSTOWN TOWNSHIP'S RECOUNT FOR THE OFFICE OF MEMBER OF THE TOWNSHIP COMMITTEE.

GENERAL ELECTION TALLY SHEET

NOVEMBER 17, 1944.

MUNICIPALITY.....DISTRICT.....WARD.....

Put One in Ballot Box
Send One to County Clerk

NAMES OF CANDIDATES	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120	125	130	135	140	145	150	155	160	165	170	175	180	TOTALS
DEWEY and BRICKER																																					
WILLIAM M CORNWELL	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	
ROOSEVELT and STUBBINS																																					
WILLIAM M CORNWELL con't.	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	
H. ALEXANDER SMITH																																					
WILLIAM M CORNWELL con't.	///	///																																			
ELMER H. WENE																																					
J. DARNELL THOMAS																																					
JAMES J. GANNON																																					
G. LESLIE HUDSON																																					
OSCAR S EVERITT	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	
HARRY DUFFON																																					
OSCAR S EVERITT con't.	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	
ROBERT D. GROUT																																					
OSCAR S EVERITT con't.	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	///	
ROBERT E. FREDERICK																																					
DAVID M. VREELAND																																					
EDWARD T. REILLY																																					
CLAYTON WILLEVER																																					
ALBERT G. BIRDSON																																					
STEWART PATRICK																																					
WILLIAM D. CLUNNAUGH																																					
WILSON and JOHNSON																																					
FERGUSON and ALDAUGH																																					
THOMAS and HOOPES																																					

WARREN COUNTY CLERK'S OFFICE
DEC 11 1944
USED
Pamsey Rose
CLERK

Margaret E. Lorne
Clara J. Sexton
Harvey S. Howler
James P. White & Co.

Board
of
Election

GENERAL ELECTION TABLE

DATE OF ELECTION: 1912

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

NAME OF CANDIDATE: [Blank]

NUMBER OF VOTES: [Blank]

PERCENTAGE OF VOTES: [Blank]

Return to Writ of Error

Exhibit S-5

WARREN COUNTY COURT OF COMMON PLEAS

10

In the matter of the application of William M. Cresswell for a recount of votes cast for the office of Township Committee- man of the Township of Blairtown, in the County of Warren, at the general election held on November 7, 1944.

20

The Court having issued an order that the Warren County Board of Election do publicly recount the votes cast for the office of Township Committee-man of the Township of Blairtown, in the County of Warren, at the election held in the said Township of Blairtown on the 7th day of November, 1944, said recount to be made not later than November 30th, 1944.

30

And the said County Board of Election and the Court having together fixed the 30th day of November, 1944, at 10:30 A. M., at the Court House, Blairtown, N. J., as the date for making said recount, and the said Board of Election and the Court having agreed that the said

40

Return to Writ of Error

Exhibit S-6

Order Revoking Certificate of Election and
Directing Issuance of Another Certificate

10

WARREN COUNTY COURT OF COMMON
PLEAS

20

In the matter of the application
of WILLIAM M. CORNWELL for a
recount of votes cast for the
office of Township Committee-
man of the Township of Blairs-
town, in the County of Warren,
at the general election held on
November 7th, 1944,

On Petition

30

The Court having issued an order that the
Warren County Board of Election do publicly re-
count the votes cast for the office of Township
Committeeman of the Township of Blairstown,
in the County of Warren, at the election held in
the said Township of Blairstown on the 7th day
of November, 1944; said recount to be made not
later than November 30th, 1944;

40

And the said County Board of Election and
the Court having together fixed the 30th day of
November, 1944, at 10:30 A. M., at the Court
House, Belvidere, N. J., as the date for making
said recount;

Return to Writ of Error

Exhibit S-6

And, at the time and place aforesaid, the said William M. Cornwell having appeared in Court by his attorney, George M. Shipman, and the said Oscar E. Everitt, opposing candidate to said William M. Cornwell, having appeared in Court, by his attorneys, C. Lloyd Fisher and Peter Friedman;

10

And the Court having heard the arguments of counsel for said parties upon the petition and order for said recount, and having directed the said County Board of Election to proceed with said recount;

And the Sheriff of the County of Warren having thereupon delivered the ballot box from his custody into the custody of said County Board of Election, and the Clerk of the County of Warren having produced the keys to said ballot box and the said ballot box having thereupon been opened in the presence of the said County Board of Election, the District Board of Election of the Township of Blairstown, and the counsel for the opposing parties;

20

And the said County Board of Election having proceeded publicly to recount the ballots in said box and, at the conclusion of said recount, the said County Board of Election having stated to the Court that three hundred and sixty seven votes were cast for said William M. Cornwell and two hundred and ninety one votes for said Oscar E. Everitt and that twenty one military ballots were cast for said William M. Cornwell and twenty four military ballots for said Oscar E. Everitt;

30

40

Return to Writ of Error

Exhibit S-6

10 And it appearing upon said recount that an error has been made sufficient to change the result of the said election for Township Committeeman of the Township of Blairstown, in the County of Warren;

It is thereupon on this first day of December, 1944, ORDERED that the certificate of election already issued to Oscar E. Everitt for the office of Township Committeeman of the Township of Blairstown, in the County of Warren, be revoked;

20 AND IT IS FURTHER ORDERED that the chairman and clerk of the county board of canvassers do issue in its place another certificate in favor of said William M. Cornwell for the said office of Township Committeeman of the Township of Blairstown, he having received a plurality of the votes cast at said election for said office;

30 And it further appearing that errors have occurred in said election as a result of which the election is changed and the difference in the vote between the said William M. Cornwell and Oscar E. Everitt has been altered by more than ten per cent of the total vote cast in said district;

IT IS FURTHER ORDERED that the costs and expenses of said recount be paid by the Township of Blairstown, in which said election was held, in accordance with the statute in such case made and provided.

40

CLARK C. BOWERS
Judge

Return to Writ of Error

Exhibit S-7CERTIFICATE OF APPOINTMENT OF BOARD OF
REGISTRY AND ELECTION

THIS IS TO CERTIFY, That the County Board of Elections of the County of Warren have this day appointed the following persons, viz:

10

Elsie Becker replaces John M. Jones to be members of the Board of Registry and Election for Election District No. Ward No. of Blairstown from and including Oct. 26, 1944, to and including April 25th, 1945, or until their successors are appointed.

Dated, the First day of April, A. D. 1944

20

Margaret E. Lowe
Chairman of the County Board

James R. Dick
Secretary of the County Board

Exhibit D-1

30

This exhibit is a sample ballot used at 1944 general election in Blairstown Township.

40

Return to Writ of Error

Exhibit D-2

This exhibit is an affidavit of Gerald E. Christian, sworn to November 12, 1944, and read into the record of the trial and printed herein at pp. 192 to 195, *supra*.

10

Exhibit D-3

This exhibit is an affidavit of Gerald E. Christian, sworn to November 17, 1944, and read into the record of the trial and printed herein at pp. 195 to 198, *supra*.

20

30

40

Return to Writ of Error

Bill of Exceptions

COURT OF QUARTER SESSIONS

WARREN COUNTY

December Term, 1944

10

STATE OF NEW JERSEY

vs.

JOHN LARISON

Sur Indictment
for Neglect of
Duty as Election
Officer

20

WILLIAM A. DOLAN for the Defendant.
EDWARD R. MCGLYNN, of Counsel.

SAUL N. SCHECHTER,
Prosecutor of the Pleas,
Attorney for the State of New Jersey.

On the tenth day of April, 1945 the Court of Quarter Sessions held at Belvidere in and for the County of Warren, before the Honorable Clark O. Bowers, Judge of said Court, the issue joined in this cause between the State of New Jersey and the said John Larison on an indictment for neglect of duty as election officer, came on to be tried by a jury for the county, empaneled for that purpose.

30

40

Return to Writ of Error

Bill of Exceptions

10 1: Before the jury was empaneled the attorney for the defendant was given permission to withdraw the defendant's plea of non-guilty for the purpose of making a motion addressed to the indictment. A motion was thereupon made to quash the indictment. This motion was denied and an exception allowed.

20 2: During the trial of the case while a witness, to wit: Ramsay Reese was on the stand, a paper was produced by the Prosecutor and marked S 4 for identification. This exhibit was later marked S 2 in evidence. The following questions and answers were made concerning this exhibit:

 Question: Now, referring to S-4 for Identification, was this filed with you?

 Answer: It was.

 Question: When?

 Answer: December 12, 1944.

 Question: And that was after the election?

 Answer: That is right.

30 The Court: However, it is a paper that has been duly filed in the Warren County Clerk's Office and it speaks for itself, and I see no reason why the Court should eliminate it from these proceedings, and it will be admitted in evidence.

An exception to the Court's ruling was allowed.

40 3: During the trial of the case while a witness, to wit: Ramsay Reese was on the stand, the following questions and answers were then made:

Return to Writ of Error

Bill of Exceptions

Question: Now, after the election, there came in your office some papers in connection with a petition and order for re-count, is that correct?

Answer: That is correct.

10

Question: And, based upon those papers, was there a re-count?

Mr. Dolan: I object to any evidence relating to a re-count.

The Court: I see no objection to it, and for that purpose I will permit the question to be answered.

An exception to the Court's ruling was allowed.

20

4: During the trial of the case while a witness, to wit: Ramsay Reese was on the stand, a paper was produced and marked for identification by the prosecutor, S-6. This exhibit was later marked S-4 in evidence. The following question and answer were then made:

Question: Can you tell from this paper when it was filed in your office?

Answer: I can. December 6, 1944.

Mr. Schechter: I offer this.

30

At that time, objection was made to the offer.

The Court admitted the document in evidence as Exhibit S-4 and an exception to the Court's ruling was allowed.

5: During the trial of the case, while a witness, to wit: Ramsay Reese was on the stand, a paper was produced and marked for identifi-

40

Return to Writ of Error

Bill of Exceptions

cation by the Prosecutor, S-8. This later was admitted in evidence as Exhibit S-5. The following question and answer were then made:

10

Question: Can you tell from this paper when it was filed in your office?

Answer: December 11, 1944.

Schechter: I offer this.

At the time, objection was made to the offer.

The Court ruled that the document should be admitted into evidence and an exception to the Court's ruling was allowed.

20

6: During the trial of the case, while a witness, to wit: Ramsay Reese was on the stand, a paper was produced and marked for identification by the Prosecutor, S-9. This exhibit was later marked in evidence as Exhibit S-6. The following questions and answers were made:

30

Question: Now, based upon the re-count was there filed in your office the order of this Court in connection with that re-count?

Answer: There was.

Question: Do you have that?

Answer: (Witness produces paper, marked S-9 for Identification.)

Question: Was this filed in your office?

Answer: It was.

The document was offered at the time.

40

Objection was made.

Return to Writ of Error

Bill of Exceptions

The Court admitted it into evidence and exception to the Court's ruling was allowed.

7: At the conclusion of the Court's charge to the Jury, counsel for the defendant requested permission to take a general exception to the charge of the Court. This exception was allowed.

10

8: On the date the defendant herein appeared for the imposition of sentence there was not a court stenographer present and no record was made of the proceedings, but before imposition of sentence the attorney for the defendant moved an arrest of judgment on the same grounds urged for a quashing of the indictment, and also, on the ground that the indictment did not charge, and the record does not show a conviction of a criminal offense against the laws of the State of New Jersey.

20

The Court overruled and denied such motion, to which ruling of the Court the defendant prayed an exception. Exception allowed.

I, CLARK C. BOWERS, Judge of the Court of Quarter Sessions of Warren County and State of New Jersey, do hereby sign and seal the above as the bill of exceptions to become part of the record in the above entitled matter and to be considered as part of the return to the writ of errors allowed in the above entitled matter by the New Jersey Supreme Court.

30

CLARK C. BOWERS
Judge

40

Assignments of Error

NEW JERSEY SUPREME COURT

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> JOHN LARISON, <i>Plaintiff-in-Error.</i>	} In Error
----	---	------------

20 After the return of the writ of error issued in this cause, comes John Larison, the plaintiff-in-error, by William A. Dolan, his attorney, before the Justices of the Supreme Court of Judicature of the State of New Jersey, and says that in the record and proceedings aforesaid and also in the minutes recited and contained in the bill of exceptions, and further in the rendition and giving of judgment aforesaid, there is manifest error in this, to wit:

30 1. The Trial Court erred in denying the motion made to quash the indictment to the injury of the defendant, although moved so to do, and erred in ruling that the motion be denied (Stenog. Min. pp. 3-9; Case, p. 18).

40 2. Because the Trial Court erred in permitting answers to the following questions and to the admission into evidence of Exhibit S2. This occurred while a witness, to wit: Mr. Ramsey Reese, was on the stand. A paper was produced by the Prosecutor and marked S4 for identifica-

Assignments of Error

tion. This exhibit was later marked S2 in evidence. The following questions and answers were made concerning this exhibit:

Question: Now, referring to S4 for Identification, was this filed with you?

Answer: It was.

Question: When?

Answer: December 12, 1944.

Question: And that was after the election?

Answer: That is right.

This testimony was not admissible and the exhibit in question should not have been admitted because the defendant in this case was charged with negligence in the discharge of his duties as an election officer. It was therefore material to the issue that all the statutory requirements in connection with his qualification should have been complied with. Inasmuch as the provisions of RS19:6-11 have not been complied with, the evidence should not have been admitted and the exhibit should not have been put in evidence (Stenog. Min. pp. 22-25; Case, p. 33).

3. Because the Trial Court erred in permitting answers to the following questions asked by the Prosecutor of the witness, Ramsey Reese, on direct examination:

Question: Now, after the election, there came in your office some papers in connection with a petition and order for recount, is that correct?

Answer: That is correct.

Question: And, based upon those papers, was there a recount?

Answer: There was.

Assignments of Error

This testimony was not admissible and the Court should not have permitted the witness to answer the questions since the evidence was incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 26-27; Case, p. 36).

10

4. Because the Trial Court erred in permitting answers to the following questions, while a witness, Ramsey Reese was on the stand, and also admitted into evidence a paper produced by the Prosecutor marked originally S6 for identification and later marked S4 in evidence:

Question: Can you tell from this paper when it was filed in your office?

20

Answer: I can. December 6, 1944.

Mr. Schechter: I offer this.

At that time, objection was made to the offer.

The Court admitted the document in evidence as Exhibit S4 and an exception to the Court's ruling was allowed.

30

This testimony was not admissible and the Exhibit should not have been placed in evidence since the evidence and the Exhibit were incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 28-30; Case, p. 37).

5. Because the Trial Court erred in permitting answers to the following questions and also admitted into evidence a document marked for identification by the Prosecutor S8 and later admitted into evidence as Exhibit S5.

40

This occurred while the witness, Ramsey Reese, was on the stand:

Assignments of Error

Question: Can you tell from this paper when it was filed in your office?

Answer: December 11, 1944.

Schechter: I offer this.

This testimony was not admissible and the Exhibit should not have been placed in evidence since the evidence and the exhibit were incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 30-31; Case, p. 39). 10

6. Because the Trial Court erred in permitting answers to the following questions and also admitted into evidence a document marked for identification by the Prosecutor S9 and later admitted into evidence as Exhibit S6. 20

This occurred while the witness, Ramsey Reese was on the stand:

Question: Now, based upon the recount, was there filed in your office the order of this Court in connection with that recount?

Answer: There was.

Question: Do you have that?

Answer: (Witness produces paper, marked S-9 for Identification.) 30

Question: Was this filed in your office?

Answer: It was.

The document was offered at the time.

Objection was made.

The Court admitted it into evidence and exception to the Court's ruling was allowed.

This testimony was not admissible and the Exhibit should not have been placed in evidence 40

Assignments of Error

since the evidence and the exhibit were incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 35-36; Case, p. 44).

10 7. Because the verdict entered in the above entitled cause is against the weight of the evidence.

20 8. Because the Court denied the motion made by counsel for defendant for arrest of judgment before the imposition of sentence on the same grounds urged for quashing the indictment and also on the ground that the indictment did not charge and the record did not show a conviction of a criminal offense against the laws of the State of New Jersey.

WHEREFORE, because of the foregoing prejudicial errors, the said John Larison prays that the said judgment of conviction and sentence may be reversed and annulled, set aside and held for nothing and that he may be restored to all things which he has lost by occasion thereof.

30

WILLIAM A. DOLAN
Attorney for and of Counsel with
Plaintiff-in-Error

40

Specification of Causes for Reversal

NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN LARISON,
Plaintiff-in-Error.

In Error

10

John Larison, plaintiff-in-error, has elected to take up the entire record of the proceedings had upon the trial with his writ of error, without thereby waiving the bill of exceptions and assignments of error thereon, and by William A. Dolan, his attorney, hereby specifies the causes in the record relied upon him for causes of reversal as follows:

20

1. The Trial Court erred in denying the motion made to quash the indictment to the injury of the defendant, although moved so to do, and erred in ruling that the motion be denied (Stenog. Min. pp. 3-9; Case, p. 18).

30

2. Because the Trial Court erred in permitting answers to the following questions and to the admission into evidence of Exhibit S2. This occurred while a witness, to wit: Mr. Ramsey Reese, was on the stand. A paper was produced by the Prosecutor and marked S4 for identification. This exhibit was later marked S2 in evidence. The following questions and answers were made concerning this exhibit:

40

Specification of Causes for Reversal

Question: Now, referring to S4 for Identification, was this filed with you?

Answer: It was.

Question: When?

Answer: December 12, 1944.

10 Question: And that was after the election?

Answer: That is right.

20 This testimony was not admissible and the exhibit in question should not have been admitted because the defendant in this case was charged with negligence in the discharge of his duties as an election officer. It was therefore material to the issue that all the statutory requirements in connection with his qualification should have been complied with. Inasmuch as the provisions of RS19:6-11 have not been complied with, the evidence should not have been admitted and the exhibit should not have been put in evidence (Stenog. Min. pp. 22-25; Case, p. 33).

30 3. Because the Trial Court erred in permitting answers to the following questions asked by the Prosecutor of the witness, Ramsey Reese, on direct examination:

Question: Now, after the election, there came in your office some papers in connection with a petition and order for recount, is that correct?

Answer: That is correct.

Question: And, based upon those papers, was there a recount?

Answer: There was.

40

Specification of Causes for Reversal

This testimony was not admissible and the Court should not have permitted the witness to answer the questions since the evidence was incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 26-27; Case, p. 36).

4. Because the Trial Court erred in permitting answers to the following questions, while a witness, Ramsey Reese was on the stand, and also admitted into evidence a paper produced by the Prosecutor marked originally S6 for identification and later marked S4 in evidence:

Question: Can you tell from this paper when it was filed in your office?

Answer: I can. December 6, 1944.

Mr. Schechter: I offer this.

At that time, objection was made to the offer.

The Court admitted the document in evidence as Exhibit S4 and an exception to the Court's ruling was allowed.

This testimony was not admissible and the Exhibit should not have been placed in evidence since the evidence and the Exhibit were incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 28-30; Case, p. 37).

5. Because the Trial Court erred in permitting answers to the following questions and also admitted into evidence a document marked for identification by the Prosecutor S8 and later admitted into evidence as Exhibit S5.

This occurred while the witness, Ramsey Reese, was on the stand:

Specification of Causes for Reversal

Question: Can you tell from this paper when it was filed in your office?

Answer: December 11, 1944.

Schechter: I offer this.

10 This testimony was not admissible and the Exhibit should not have been placed in evidence since the evidence and the exhibit were incompetent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 30-31; Case, p. 39).

6. Because the Trial Court erred in permitting answers to the following questions and also admitted into evidence a document marked for identification by the Prosecutor S9 and later admitted into evidence as Exhibit S6.

20 This occurred while the witness, Ramsey Reese was on the stand:

Question: Now, based upon the recount, was there filed in your office the order of this Court in connection with that recount?

Answer: There was.

Question: Do you have that?

30 Answer: (Witness produces paper, marked S-9 for Identification.)

Question: Was this filed in your office?

Answer: It was.

The document was offered at the time.

Objection was made.

The Court admitted it into evidence and exception to the Court's ruling was allowed.

40 This testimony was not admissible and the Exhibit should not have been placed in evidence since the evidence and the exhibit were incompe-

Specification of Causes for Reversal

tent, immaterial, irrelevant and prejudicial to the defendant (Stenog. Min. pp. 35-36; Case, p. 44).

7. Because the verdict entered in the above entitled cause is against the weight of the evidence.

10

8. There were divers and other errors in the record and proceedings aforesaid, in the admission and exclusion of evidence, and of the charge to the jury and in giving of judgment and of passing sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

WHEREUPON, because of the foregoing causes, by reason of which the defendant suffered manifest wrong and injury, the defendant prays that the said judgment of conviction and sentence may be reversed and annulled, set aside and held for nothing and that he may be restored to all things which he has lost by occasion thereof.

20

WILLIAM A. DOLAN
Attorney for and of Counsel with
Plaintiff-in-Error

30

[1923]

40

The Commission of Enquiry for the

the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the

the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the

the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the

the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the

the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the
the Commission of Enquiry for the

Writ of Error to New Jersey Supreme Court

NEW JERSEY, ss.: THE STATE OF NEW JERSEY, to
 THE CHIEF JUSTICE AND ASSO-
 [L. S.] CIATE JUSTICES OF OUR SU-
 PREME COURT OF JUDICATURE,
 GREETING:

Because in the record and proceedings and also
 in the giving of judgment in a certain plaint,
 which was in our said Supreme Court of Judica-
 ture before you, between the State of New Jer-
 sey, defendant-in-error, and John Larison, plain-
 tiff-in-error to the Court of Quarter Sessions in
 and for the County of Hudson, New Jersey, in
 10

ADDITIONAL PAPERS ON APPEAL

intervened to the great damage of the said John
 Larison, plaintiff-in-error, as aforesaid, as by
 his complaint in error, as aforesaid, appearing
 TO NEW JERSEY COURT

that the error, if any there be, should in due
 manner be corrected, and that you, as aforesaid,
 20
 be done to the parties aforesaid, do command
 you, that if judgment be thereupon given, then
 you distinctly and openly send, under your seal,
 the record and proceedings and plaint aforesaid,
 with all things touching and concerning the same,
 to our Court of Errors and Appeals, before the
 Judges thereof, on the second day of May, next,
 and this writ, and the record and proceedings
 aforesaid being inspected, we may cause to be
 30
 further done thereupon what of right and ac-
 cording to law ought to be done.

WITNESS, Luther A. Campbell, our Chancellor
 and President Judge of our said Court of Errors
 and Appeals at Trenton, aforesaid, the 12th day
 of April, 1946.

LLOYD B. MARSH
 Clerk

EDWARD R. MCGLYNN
 Attorney for Plaintiff-in-Error
 17 Academy Street
 Newark, New Jersey

WILLIAM A. DOLAN
 Of Counsel

ADDITIONAL PAPERS ON APPEAL

TO NEW JERSEY COURT

OF ERRORS AND APPEALS

Writ of Error to New Jersey Supreme Court

NEW JERSEY, ss.: THE STATE OF NEW JERSEY, to
 [L. S.] THE CHIEF JUSTICE AND ASSO-
 CIATE JUSTICES OF OUR SU-
 PREME COURT OF JUDICATURE,
 GREETING:

Because in the record and proceedings and also
 in the giving of judgment in a certain plaint,
 which was in our said Supreme Court of Judica-
 ture before you, between the State of New Jer-
 sey, defendant-in-error, and John Larison, plain-
 tiff-in-error to the Court of Quarter Sessions in
 and for Warren County, manifest error hath in-
 tervened to the great damage of the said John
 Larison, plaintiff-in-error, as aforesaid, as by
 his complaint we are informed; we being willing
 that the error, if any there be, should in due
 manner be corrected, and full and speedy justice
 be done to the parties aforesaid, do command
 you, that if judgment be thereupon given, then
 you distinctly and openly send, under your seal,
 the record and proceedings and plaint aforesaid,
 with all things touching and concerning the same,
 to our Court of Errors and Appeals, before the
 Judges thereof, on the second day of May, next,
 and this writ, and the record and proceedings
 aforesaid being inspected, we may cause to be
 further done thereupon what of right and ac-
 cording to law ought to be done.

WITNESS, Luther A. Campbell, our Chancellor
 and President Judge of our said Court of Errors
 and Appeals at Trenton, aforesaid, the 12th day
 of April, 1946.

LLOYD B. MARSH
 Clerk

EDWARD R. MCGLYNN
 Attorney for Plaintiff-in-Error
 17 Academy Street
 Newark, New Jersey

WILLIAM A. DOLAN
 Of Counsel

10

20

30

40

Opinion of New Jersey Supreme Court

(Filed, April 1, 1946)

NEW JERSEY SUPREME COURT

No. 2 January Term, 1946

10

THE STATE OF NEW JERSEY,
Defendant-in-Error,

v.

JOHN LARISON,
Plaintiff-in-Error.

20

Argued January 15, 1946: decided March 1946.

1. The indictment in this cause held free from legal infirmity.
2. The question whether one appointed and actually serving as a judge of election had fully qualified by taking all the oaths prescribed by statute, held immaterial in a case of malfeasance by him in the performance of his duty as such.

30

Error to Warren Quarter Sessions.

Before Justices Parker and Oliphant.

For the plaintiff-in-error, William A. Dolan (Edward R. McGlynn, on the brief).

For the State, Saul N. Schechter, Prosecutor of the Pleas.

40

Opinion of New Jersey Supreme Court

The opinion of the court was delivered by
PARKER, J.

This is a writ of error to a conviction in the Warren County Court of Quarter Sessions of illegal conduct by a judge of election. In 1944 there was an election, among other things, for the office of Township Committeeman of Blairstown. There was a republican candidate and a democratic candidate. The substance of the charge was that Larison, the plaintiff-in-error, who was one of the Board of Elections and acted as judge of elections, had misread the ballots to such an extent that the democratic candidate was declared to be entitled to 328 votes and the republican candidate was entitled to 327. There was a recount, the result of which was a finding for the republican candidate of 367 votes and for the democratic candidate of only 291. The revised total seems to be three more than the original total, but no particular point is made on that score. There was an indictment by the Warren County Grand Jury charging criminal conduct by Larison in announcing the result of the several individual ballots, in that he did read off the name of the democrat in numerous cases although the ballot was for the republican. The jury convicted, and the case is here both on strict bill of exceptions and specification of causes under the section formerly known as Section 136 of the Criminal Procedure Act.

The first point is that the indictment is defective. This was raised below partly by motion to quash and by motion in arrest of judgment. However, we fail to see anything wrong with the indictment. It charges that the defendant while

10

20

30

40

Opinion of New Jersey Supreme Court

10 under the legal duty to read the ballots (of course as the ballots themselves read) did, in fact, knowingly and fraudulently announce that said ballots were cast for the democratic candidate whereas they were cast for the republican candidate. The indictment does not say how many ballots were so falsely read, but we discern no legal error on that score. Point I alleges that the indictment was defective, but we have no specification pointing out wherein it was defective, if at all.

20 The second point charges error in admitting into evidence an oath of the Election Board, or what purports to be an oath but which does not in fact appear as such. The copy before us is a photostat. It contains two separate oaths. The first oath is to faithfully and impartially discharge all the duties of a member of the Board of Election. This seems to be in due form. It is attested by a Notary Public and his seal seems to have been affixed. The second oath, however, which is an oath to support the Constitution of the United States and of New Jersey, and faithfully, etc. perform all the duties of the Board of Election, is signed by the four inspectors of election and there was a jurat which, however, is not subscribed. Evidently the Notary Public omitted to attend to that detail. Now the point seems to be that there is no statute authorizing the admission of this paper, and consequently that the common law rule applies; and under that rule the Notary Public should have been called. However, we are unable to perceive that this was particularly material. We consider that when a man has been elected or appointed as an in-

30

40

Opinion of New Jersey Supreme Court

spector of elections, and has undertaken, even although imperfectly, to qualify in that capacity and has sworn that he will faithfully perform all the duties of the office, but has inadequately undertaken to swear that he will support the Constitution of the United States and of the State of New Jersey, then if he undertakes those duties and does so corruptly and criminally, it would be unfortunate if a court were to hold that he may escape punishment because some Notary Public has failed to subscribe a second oath to support the Constitution of the United States and of New Jersey.

10

Point III is not very intelligible but seems to be in substance that there was error in admitting the ballots themselves at the trial. We can discern no legal merit in it.

20

The fourth point is the statutory point that the verdict is against the weight of evidence. This seems to be principally an attack on the testimony of a witness named Christian who testified at considerable length and in large part on matters that seem quite irrelevant to the present issue. It is enough for us at the present time to consider his story with regard to what happened at the counting of the votes, and particularly with regard to the incident where the defendant Larison said Cornwall was 12 ahead, and that "it is about time we drop a few"; and later there was some talk of \$100. or \$150. "if John changes a few of them around", and that after 200 votes had been properly read, defendant Larison began to count them out wrong.

30

We discern no legal error, and are clear that the verdict was not against the weight of evidence.

40

The judgment is affirmed.

Rule of Affirmance and Order of Remittitur

(Filed April 4, 1946.)

NEW JERSEY SUPREME COURT

10

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN LARISON,
Plaintiff-in-Error.

On Error
 to Warren
 Quarter Sessions

20

This cause having been duly argued at the January Term, A. D. one thousand nine hundred and forty-six of this Court by William A. Dolan, Esq., of counsel for the plaintiff in error, and Saul N. Schechter, Prosecutor of the Pleas in and for the County of Warren, of counsel for the defendant in error, and the Court having considered the same, and finding no error in the record or proceedings in the Court of Quarter Sessions in and for the County of Warren;

30

It is thereupon, on this 4th day of April, A. D. one thousand nine hundred and forty-six, ORDERED and ADJUDGED that the judgment of the Court of Quarter Sessions in and for the County of Warren, removed by writ of error in this cause, be affirmed with costs; and that the record be remitted to the Court of Quarter Sessions in and for the County of Warren to be proceeded with

40

Assignments of Error

in accordance with this judgment and the practice of said court.

Entered April 4, 1946

On motion of

SAUL N. SCHECHTER

Prosecutor of the Pleas in and
for the County of Warren,
Attorney for Defendant-in-Error

10

Assignments of Error

NEW JERSEY COURT OF ERRORS
AND APPEALS

20

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN LARISON,
Plaintiff-in-Error.

On Writ of Error
to New Jersey
Supreme Court

30

Afterwards, to wit on the return day of the said writ of error before the Justices and Judges of the Court of Errors and Appeals at Trenton, comes the said John Larison, by Edward R. McGlynn, his attorney, and says: That in the record and proceedings aforesaid there is manifest error in this, to wit:

40

Assignments of Error

10 1. That the New Jersey Supreme Court erred in giving judgment affirming the conviction of the plaintiff-in-error, and of the judgment thereon, when it should have reversed the judgment of the Warren County Court of Quarter Sessions, and set aside the conviction in that Court.

2. Because the judgment in the Supreme Court in said case was entered in favor of the said State of New Jersey, whereas it should have been entered in favor of the plaintiff-in-error, John Larison.

EDWARD R. MCGLYNN
Attorney for Plaintiff-in-Error

20

Service of a copy of the within Assignments of Error is hereby acknowledged this 15 day of April, 1946.

SAUL SCHECHTER
Prosecutor of the Pleas
Attorney for Defendant-in-Error.

30

40

Joinder in Error

NEW JERSEY COURT OF ERRORS
AND APPEALS

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN LARISON,
Plaintiff-in-Error.

On Error

10

Thereupon the State of New Jersey, defendant-in-error, by Saul N. Schechter, Prosecutor of the Pleas in and for the County of Warren, its attorney, comes into court and says, that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid. The State of New Jersey prays that this court may examine the said record and proceedings, the matters assigned for error, and the judgment aforesaid, and that such judgment so given may be affirmed in all things.

20

SAUL N. SCHECHTER

Prosecutor of the Pleas in and for
the County of Warren, attorney for
and of counsel with defendant-in-
error.

30

40

judgment is error

NEW JERSEY COURT OF ERRORS AND APPEALS

Decided in Error

Joint Appeal

Decided in Error

The Supreme Court of New Jersey, defendant, and in error by State M. Schuchter, Prosecutor of the Peace in and for the County of Warren, its attorney, James H. Schuchter, and payee that there is no error either in the record or proceedings returned or in the giving of the judgment above said. The State of New Jersey prays that this court may regard the said record and proceed- ing as correct and without error, and the judgment affirmed, and that such judgment so given may be affirmed in all things.

State M. Schuchter

Prosecutor of the Peace in and for the County of Warren, attorney for and all counsel with defendant in

07501

New Jersey Court of Errors and Appeals

MAY TERM—1946

THE STATE OF NEW JERSEY,
Appellee,

vs.

JOHN LARISON,
Appellant.

On Writ of Error
to New Jersey
Supreme Court

BRIEF OF APPELLANT

Statement

The writ of error in this case brings before this Court a judgment of the New Jersey Supreme Court confirming the conviction of the appellant in the Warren County Court of Quarter Sessions.

The sentence imposed was one of imprisonment in the State Prison for a term of not less than one year and not more than two years, plus a fine of \$500.00. The case was taken to the Supreme Court on common law writ of error on bill of exceptions and also under RS 2:195-16, formerly Section 136 of the Criminal Procedure Act, bringing up the entire record of the proceedings had upon the trial.

It was the first case tried in Warren County during the early part of 1945 arising out of the election of November 7, 1944. The other, and

second one, was *State v. Beatty*, which resulted in a reversal (see N. J. L.).

The State's contention here, and it is very closely tied up to the case just mentioned, was that in this election, in addition to the county, state and national contests there was a local one involving the office of Township Committeeman. There were two candidates, one Cornwell, a Republican (who was at the time of the election serving as Township Clerk), and one O. S. Everitt, the Democratic candidate. According to the returns on election night, or the following morning, when the count was completed, Cornwell was defeated by one vote. Apparently this did not include the soldier vote which added three more to Everitt's count. As a result of a recount by the County Election Board, in which proceeding this defendant had no part, Cornwell was finally declared the winner by seventy-six votes.

The ballots and ballot boxes were the old fashioned type involving a manual and visual count and recording by the local election board. There were no voting machines.

After the polls had closed and at the end of the count of the first two hundred ballots, a recess was declared and the defendant Larison (judge of the election board), and one, Gerald E. Christian, inspector of the board and incidentally, the State's only witness, went outside (State of the Case, p. 102). Now here is the State's case:

"Q. What was the conversation, then and between whom? A. Well, Mr. Mitchell asked Mr. Larison how the voting was going, and Mr. Larison said Cornwell was twelve ahead,

and then I heard Larison say, 'It is about time we drop a few.'

Q. What did he say? A. 'It is about time we drop a few.'

Q. Who said that? A. Mr. Larison.

Q. To whom? A. To Mr. Mitchell.

Q. Were you there? A. I was.

Q. And heard it? A. I heard it.

Q. Did you say anything at that time? A. I did not say a word.

Q. What other conversation took place at that time? A. I do not think there was any other conversation.

Q. Well, from there, where you were standing, did you go anywhere? A. Yes, we went across the street.

Q. Was there any talk about going across the street? A. Well, they just suggested it, and I thought to be sociable I would go across the street with them.

Q. Who suggested it? A. I am not sure whether Mitchell or Larison suggested it.

Q. As the result of a suggestion by someone, either Larison or Mitchell, you went across the street? A. Yes.

Q. Where did you go? A. In Mr. Mitchell's tavern.

Q. How far is that from the place where you were standing in front of the fire house?

A. Just across the state highway, or the state road."

* * *

(State of the Case, p. 104):

"Q. Did you have any conversation with Larison at the bar? A. Well, no. We didn't have nothing to talk about.

Q. Did anyone join you in conversation at the bar? A. Well, Mr. Beatty; he came in.

Q. What Beatty? A. Sam Beatty.

Q. Samuel T. Beatty, of Blairstown. A. That is right.

Q. How long after you were in the bar did he come in? A. Well, during the first drink.

Q. Have you any idea as to the time? A. Well, at the time that we went across the road, at the two hundred votes.

Q. I am talking about the time after you got to the tavern, how long had you been there? A. Oh, maybe five or ten minutes.

Q. Were you with Larison when Beatty came in? A. I was.

Q. Did you have any conversation with Beatty that evening? A. Yes.

Q. Did Larison have any conversation with Beatty that evening? A. Yes.

Q. When this conversation took place, where was it in the tavern? A. Right in front of the bar.

Q. At the same place you were standing? A. That we got the drink.

Q. What was the conversation with Beatty and yourself?

Mr. Dolan: I object unless it was in the presence and hearing of Larison.

Q. This conversation I am speaking about took place between whom? A. Beatty, Larison and Sparky Mitchell, or George Mitchell.

Q. Were you there? A. I was.

Q. And did you hear this conversation? A. I did.

Q. Was it within the hearing of the defendant Larison? A. Yes.

Q. Now, relate the conversation please. A. Well, Mr. Beatty came in and he asked us, the ones that were standing at the bar, how the voting was going, and Larison says, 'It don't look so good. Cornwell is twelve ahead.' And right away Beatty says to me, 'You don't mind if John changes a few of them around, do you? There is big money in it—a hundred dollars.' And I didn't say nothing—oh, I did say something. I said, 'Do you call that big money?' Because I didn't want to accept it or refuse it, because I wasn't so sure Cornwell would have won anyway. Or he would get a dishonest defeat. I thought it would be an honest defeat and I didn't want to go against him. And Beatty right away said, 'A hundred and fifty.' I said, 'Don't you think you are getting into trouble?' And Beatty says, 'What do you mean?' 'What do you mean?' And I said,—I didn't say anything. Larison says, 'He don't mean you.' He says, 'He means all of us.' And right away Beatty says, 'There is no bond. There is no bond.'

Q. Is that word 'Bond'? A. 'Bond.'

Q. Go ahead. Was that all that was said?

A. That was about all that was said."

* * *

(State of the Case, p. 107):

"Q. In the same manner as you did previous to that? A. Well, the only thing, Larison called them out wrong.

Q. Well, he would take a ballot from the box—

Mr. Dolan: Please do not tell him what he did. It is a very vital part of this case.

Q. How would the ballots get out of the box? A. Larison would pick them out of the box on his left.

Q. How? A. With his fingers.

Q. Using his hand? A. Yes.

Q. Would he insert it in the box, or not?

Mr. Dolan: If your Honor please, this is the vital part of this case, and I do not think the Prosecutor should prejudice our situation by putting the words in the witness' mouth. I object to the question.

The Court: Well, you are technically correct, I suppose. Take care, Mr. Prosecutor.

Q. How did the ballots get out of the box? A. Larison picked them out of the box.

Q. How many at a time? A. One at a time.

Q. Was that done all the time as the total ballots were counted? A. It was.

Q. When he removed a ballot from the box, what did he do? A. He reached for them, unfolded them and read them off.

Q. Were they being read correctly, as the markings appeared on the ballot?

Mr. Dolan: I object. Of course, that immediately puts the question and the answer right in this witness' mouth—yes or no. I think, at this crucial stage, this witness should tell what he remembers, if he remembers anything, and not have the Prosecutor say he did this or he did that. I object to that form of examination.

Mr. Schechter: It calls for a yes or no answer.

The Court: It would seem that you could add 'correctly or incorrectly read.' Do not lead the witness.

Q. Now, after you returned and started the count, after the two hundred you have told us about, the operation of counting the ballots went on the same as before, is that correct? A. That is right.

Q. When a ballot was taken from the box by Larison, were any of those ballots counted correctly or incorrectly? A. They were counted incorrectly, some of the votes.

Q. I am referring particularly to the election between Cornwell and Everitt. After the first ballot was taken from the box, after the two hundred, were you in a position to determine whether or not that ballot had been cast for Cornwell or Everitt? A. I was.

Q. Were you in a position to see every ballot taken after the two hundred? A. I was.

Q. When did you first notice, if you did, a ballot being incorrectly called or counted? A. After the two hundred.

Q. How soon thereafter? A. I am not sure about that; it was between two and three hundred.

Q. Did you notice any ballots in the hands of Larison, cast for Cornwell, which were announced by him for Everitt?

Mr. Dolan: Now, if your Honor please, there again it is practically putting the answer in the witness' mouth. It seems to me that at this crucial stage of this

examination this witness should tell what he remembers, if he remembers anything, and not just be put in a position to say Yes or No.

Mr. Schechter: My command of the English language does not permit me to ask the question in any other way. I asked the man whether, between two and three hundred, he saw any ballots cast for Cornwell which were counted for Everitt. I cannot see there is anything wrong.

The Court: The Court does not either. Answer the question.

Mr. Dolan: Will your Honor allow an exception?

The Court: Certainly.

Mr. Dolan: My conception of the English language is more simple than the Prosecutor's. I may not have the same extensive vocabulary. But my understanding of the rule is that when you reach the point where the alleged offense is being described, you say to the witness, 'What did they do?' That is the simplest fashion in which it can be put. The Prosecutor is apparently doing the testifying.

The Court: I have ruled on the question. Proceed.

Mr. Dolan: I ask an exception.

The Court: An exception may be entered.

(Exception allowed and the same is signed and sealed accordingly. Judge.)

(Last question read.)

A. I did.

Q. How many, during the course of this evening, were there, of such ballots? A.

Well, I counted them up to six hundred and he shifted thirty-three from Cornwell over to Everitt, which made a total of around sixty-six.

Q. I assume you are multiplying 33 by 2.

A. Yes; he took thirty-three from Cornwell and gave Everitt thirty-three, which was sixty-six votes.

Q. How often was that done between two hundred and six hundred? A. Well, thirty-three times it was shifted.

Q. Was there any particular period of time between one calling and the other? A. What do you mean by that?

Q. Was there any particular set pattern used by Larison when these votes were called? A. No."

The tally sheet indicating the certification by the local election board of the result of the election, this witness testified he signed in the morning (State of the Case, p. 112), before the votes were cast.

The ballot boxes and keys after the election were apparently delivered to Cornwell as Town Clerk, also a candidate, who had them in his custody until they were delivered to the County Clerk's Office about two P. M. the day after election. On the Sunday following the election the same witness, Gerald E. Christian, made one affidavit and then later on made another affidavit (State of the Case, pp. 192-198), in neither of which affidavits did he mention the important fact about having been offered \$150.00 to have the defendant Larison drop a few, and on these affidavits an order was made for a recount by the County Board of Election. Also note that in

both affidavits the witness said that about "fifth" votes altogether were announced by the defendant Larison for Everitt when, as a fact, they were for Cornwell—at the trial he testified that there were exactly "thirty-three" (State of the Case, p. 110, ll. 30-40; p. 111, ll. 1-2).

The orders by the County Board of Election and its tally sheet, but not the original ballots, were permitted in evidence, showing a change from 328 for Everitt and 327 to Cornwell, or a total of 655, to a result of 367 for Cornwell and 291 for Everitt, or a total of 658. All of this testimony was objected to and proper exception taken (see Bill of Exceptions, p. 297; also Assignment of Errors, 3-4-5-6, and Specifications of Reverses 3-4-5-6).

It is interesting to note that the only witness for the State, Christian, stated on cross examination (State of the Case, p. 124, ll. 36-38), that he never read any of the ballots *wrong*.

As to the alleged conversation at the tavern (State of the Case, pp. 105-106), everyone named by Christian denied the conversation, as did almost everyone in the tavern at the time it was alleged to have occurred, or at least everyone mentioned as having been in the tavern denied that Christian and Beatty were close enough to have any conversation.

Remember in this connection, that the witness Christian was indicted for neglect of duty and for having accepted a bribe, and although he first pleaded "not guilty" later he pleaded "guilty" and the Court then discovered he could not be sentenced because of the provisions of the election law, RS 19:34-59, so he went absolutely free.

The Statutes

The statutes which are involved in this case are RS 19:34-48 and RS 19:16-7, which read as follows:

“19:34-48. Neglect of duties.

Every person charged with the performance of any duty under the provisions of any law of this state relating to elections who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, shall be guilty of a misdemeanor.

19:16-7. Reading and stringing of ballots.

The board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the judge of the election, and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the inspector. The inspector shall be satisfied that the ballot is being correctly read by the judge.

After the reading of the ballot and before taking another ballot from the box the judge shall fold the ballot to a size about five inches square, and shall deliver the same so folded to the inspector, who shall write on the back thereof the number of such ballot from one onward, in the order in which the same shall have been taken from the box; and shall string the ballot as one ticket in

the order in which the same shall be taken from the box and numbered, by means of a needle and string to be provided for that purpose.

Void ballots shall be strung in the same manner as valid ballots but on a separate string."

POINT ONE

The Indictment was Defective.

(Assignments 1; Specifications 1)

The sufficiency of the indictment was questioned in Quarter Sessions (a) by motion to quash (State of the Case, pp. 13-18), (b) by motion in arrest of judgment (State of the Case, p. 30) (bill of exceptions No. 8).

The first point with respect to the motion to quash is that the indictment failed to set forth with clearness and certainty, a definite charge and failed to sufficiently identify the occasion, so as to enable the defendant to prepare his defense. The second point is that the indictment charged that the defendant did, "in the discharge of his duties" do certain things for which he could not be held liable as he was responsible only for acts contrary to the discharge of his duties.

It is fundamental that the indictment, to be good must charge each and every material element of the crime; when it fails so to do it is fatally defective—the omission of any fact or circumstance necessary to the constitution of the statutory offense renders the indictment bad; *State v. Solomon*, 97 N. J. L. 252, 255; *State v. Lee*, 100 N. J. L. 201; *State v. Quinn*, 108 N. J. L. 467; *State v. White*, 129 N. J. L. 200, affirmed 103 N. J. L. 527.

POINT TWO

The Trial Court erred in admitting into evidence Exhibit S-2 (the unexecuted oath of the local election board).

(Assignments 2; Specifications 2.)

The prosecution called County Clerk Reese to prove the qualification of Larison as a member of the district board of election (State of the Case, pp. 23-48).

Over the objections and exceptions of the defense (see State of the Case, p. 33), a document marked S-2, a photostatic copy of which appears on page 283 of the State of the Case, was admitted into evidence.

Not only does the document show otherwise (no jurat exists thereon as to the second part of the oath), but no officer was called to show that Larison took even the first oath on the page. S-2 of itself was hearsay testimony, and the living witness, the Notary Public who allegedly administered the first of two oaths, should have been called to prove its recitals, so as to preserve the right of cross examination, material here especially because of the defects in S-2. It is not admissible under the Evidence Act (RS 2:98-10, *et seq.*) because not a Court record, nor under RS 19:6-11 which merely provides for filing of the oath with the county clerk and is silent on any evidential value of the filed document.

There being no statute authorizing the admission of S-2 in evidence, the common law rule applies and under that rule the living witness,

the Notary Public, should have been called; see *State v. Mandeville*, 88 N. J. L. 418, 424, affirmed 88 N. J. L. 228, obviously relying upon the common law principle that hearsay evidence is inadmissible.

A written document cannot be cross examined and for such reason is inadmissible in evidence unless given evidential value by statute, absent here. The admission of S-2 over objection and exception was manifestly prejudicial to the defendant because it deprived him of the right of cross examination of the Notary Public on the vital point as to whether Larison had qualified as a member of the district board of election. The Notary Public was Cornwell, *the very person allegedly counted out in the election*, and by keeping him off the stand and "proving" S-2 without his testimony the prosecution adroitly prevented cross examination of him on a vital and material matter.

Concededly, an election is not wholly void because a member of the election board of the district board of elections fails to carry out the statutory provisions relating to his qualifying oath and other details of a similar nature, but when the indictment expressly charges, as it did here (State of the Case, pp. 4-5) that "John Larison * * * while under the statutory duty to take the ballots cast at said election singly and separately from the ballot box, and to audibly and publicly read the same in full view of the Inspector of the District Board of Registry and Election," etc., then there is specifically in issue the question of the defendant's statutory qualifications.

It must not be overlooked in this case that the document S-2 *was not* on file in the Warren County Clerk's Office on November 7, 1944, the

date alleged in the indictment, and it was not filed until December 12, 1944 (State of the Case, p. 283), and that this date was *even after* the entry of the order S-6 (State of the Case, pp. 292-294), and there was no explanation given as to why it was not filed or where it was or in whose custody it was.

Appellant can find no statute or case which sanctions the admissibility of the exhibit and respectfully urges by every canon of common sense and logic it should have been excluded.

POINT THREE

The Trial Court erred in admitting orders and tally sheets of the County Board of Elections.

(Assignments of Error 3-4-5-6; Specifications for Reversal 3-4-5-6.)

This deals with exhibits:

S-4 (pp. 35-37)

S-5 (pp. 41-43)

(There are erroneously two exhibits marked S-5 and the one in question appears at p. 290.)

S-6 (pp. 43-44)

S-4 is a certificate by the County Board of Elections showing the result of the recount made by it; S-5 is the tally sheet of the County Board of Elections directing a recount; S-6 is an order of the Common Pleas Judge revoking the certificate of election to Everitt and directing a certifi-

cate issued to Cornwell. To quote from a section of the order, page 294, lines 26-30:

“And it further appearing that errors have occurred in said election as a result of which the election is changed and the difference in the vote between the said William M. Cornwell and Oscar E. Everitt has been altered by more than ten per cent of the total vote cast in said district.”

Appellant was not a party to the recount, was not permitted to participate, and no statute is in existence which makes these documents evidential because of their filing or recording.

The ballots themselves are the best evidence of their contents and there was no testimony explaining their absence or the State's inability to produce them.

The Evidence Act, RS 2:98-10, *et seq.*, does not make them admissible.

POINT FOUR

The verdict is against the weight of the evidence.

(Assignments of Error 7; Specifications
of Reversal 7.)

The only witness who testified for the State to any elements of the actual charge in the indictment was one Gerald E. Christian. Strangely enough, when you read his testimony (pp. 97 to 151) you find an absolutely unqualified denial of any intent or desire on his part to become an actor in the scheme outlined by the State as the basis of the indictment. He did not, either directly or indirectly, by word or action, agree to go along with the suggestion made to him in the conversation had with Mitchell (p. 102) or with Beatty (p. 106). All he apparently did was to wilfully fail to perform his duty as inspector of the board which, under RS 19:6-7 was "The Inspector shall be satisfied that the ballot is being correctly read by the judge."

He certified to the tally sheet (S-5, p. 288) and to the certificate (S-3, p. 284) and raised no question about anything until the Sunday following the election (p. 126), when he made an affidavit in which he omitted any mention of having been offered money, nor did he mention anything about the second conversation in the tavern with Samuel Beatty—he merely said in both affidavits that he heard Larison, the defendant say "I think it is time to drop a few out."

To offset this weak and flimsy uncorroborated

story of Christian, the defendant produced (besides his own denial) the following witnesses:

Lyman Lawson	Page 201
Walter Jones	Page 205
Charles J. Raub	Page 208
Rolland Biles	Page 211
Elmer Jones	Page 215
George E. Mitchell	Page 218
Dorothy Angle	Page 225
William Angle	Page 227
Samuel T. Beatty	Page 229
Grant Depuy	Page 243

All of whom clearly and convincingly showed that the alleged conversation which was the basis of Christian's uncorroborated story, could not be true and was not true.

The alleged neglect of duty is not one which could be accomplished by the *Judge of the Board by himself*. There had to be a failure on the part of the *inspector*, in conjunction with the Judge in order to create a violation of the statute. If the Judge "audibly and publicly reads the ballot in full view of the inspector" then, unless the inspector is satisfied that the ballot is being correctly read by the Judge, the other two members of the Board who tally the reading would not tally the result announced by the Judge and the ballot would have to be re-read; and no result would be recorded until the judge and inspector had collectively performed the provisions of RS 19:16-7.

Consequently, there must have been a concert of action and intent on the part of the judge and inspector, otherwise neither could be guilty of neglect of duty. The inspector, Gerald E. Christian, steadfastly maintained throughout the case

that he had neither mentally nor actually violated his duty as an election board member. At best or worst, all that can be spelled out of his testimony is a half hearted passive acquiescence with no intent to create a whole or partial cooperation. That was the State's position at the end of the case and the verdict of guilty cannot be sustained on such proof.

May we point out here a very significant statement in the Court's charge to the jury which may assist this Court in the determination of whether or not the verdict was not the result of passion, prejudice, bias or one of its kindred vices (State of the Case, p. 273):

"This case, as we all know, has been discussed, and there have been news items in the papers and all of us have read more or less concerning the case. And I wish to caution you now, ladies and gentlemen, to be fair and be guided by the evidence here in the court room. What someone may have told you on the street, or what you have gleaned from newspaper items, or what some person thought of what may have happened or what may not have happened at this time or other times, you should eliminate from your mind and be guided by the testimony elicited here before your body, which I am sure will be quite sufficient for you to decide the case upon its merits as it is duly presented according to law."

This was a political case in a county where politics are taken seriously. May we also point out that the record shows that the Prosecutor very adroitly brought to the Jury's attention the fact that the witness Samuel Beatty (a defend-

ant in a case then pending and later tried), was closely connected with a then well known political leader in Warren County. We quote State of the Case, page 232:

“Q. You spoke of calling the office. What office do you mean? A. I meant Rosecrans’ office, where we were receiving telephone calls. I think I was talking to you that night, later on, when we were getting the Belvidere vote.

Q. Was I receiving returns that night? A. You were somewhere on the wire at one time.

Q. So you were sufficiently interested to be making calls back and forth about the results? A. Yes, because the different people in Washington, Hackettstown, Phillipsburg and different people in our office who got them; and we gave them what we had and got what they had. We were checking all over the county.

Q. How far from the Fire House is your office and that of Judge Rosecrans? A. Well, you know where the office is.

Q. I know where the office is but I do not know where the Fire House is, Mr. Beatty. A. I could not tell you exactly. It is no great distance. It is probably as far out from the Fire House to the main street as from here to the corner, or farther.

Q. Can we say a block or half a block? A. Oh, a block and a half probably. I could not exactly tell you.

Mr. McGlynn. It is right on the highway, Mr. Prosecutor.

Q. Do I understand the Fire House is on the concrete highway and Judge Rosecrans' office is on the main street, in other words, about one block? A. Opposite the Post Office, we were receiving the returns. You come down here one block (indicating) and over about one block, it would be, probably."

What effect, if any, all this mention of Judge Rosecrans' name in this connection may have had, of course no one knows, but it does not take very much conjecture, speculation or imagination to see that it probably went a long way in influencing a Warren County Jury in giving to one self confessed accomplice's testimony sufficient weight to overcome all of the testimony of the defendant and his ten witnesses, all of whom denied in one way or another some portion of the State's only witness.

What other explanation can be given for the conviction of the appellant under such circumstances? Clearly, the verdict was and must have been the result of passion, prejudice, bias or mistake.

CONCLUSION

It is respectfully urged that, for the foregoing reasons, the judgment of conviction should be reversed.

EDWARD R. MCGLYNN,
*Attorney for and of Counsel
with Appellant*

On the Brief:

WILLIAM A. DOLAN

Q. Do I understand the Life House is on
the concrete highway and Judge Leavelle
office is on the main street in other words
about one block. A. (Points to the Life
Office) we were receiving the return. You
come down there one block (indicates) and
over about one block, it would be, wouldn't it?
What about it, if any, all this mention of Judge
Leavelle's name in this connection, may have
had of course no one knows, but it does not take
very much investigation, investigation or imagin-
tion to see that it is probably a very long way in
influencing a Warren County jury in fixing to
one well-considered and logical testimony and
that weight for one person, all of the testimony
of the defendant and his two witnesses, all of
them denied in one way or another some portion
of the State's only witness, the one witness.
What other explanation can be given for the
conviction of the appellant under such circum-
stances? Clearly, the verdict was and must have
been the result of passing prejudicial bias or
prejudice, and should be set aside. The State
of Ohio has not shown that the State's
case is a fair and honest one. I say
it is respectfully urged that for the fore-
going reasons, the judgment of conviction
should be reversed.
Edward R. McGraw
Attorney for one of Counsel
with Appellate
On the Brief:
William A. Dorman

New Jersey Court of Errors and Appeals

MAY TERM — 1946

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN LARISON,
Plaintiff-in-Error.

On Writ of Error
to New Jersey
Supreme Court

BRIEF OF DEFENDANT-IN-ERROR

Statement of Facts

The plaintiff-in-error John Larison was on the 7th day of November, 1944, a member of the Board of Registry and Elections in and for the Township of Blairstown in the County of Warren and acted as Judge of Elections thereof. The said Board also consisted of Gerald E. Christian, Elsa Becker and Dayton Brugler.

At the election held on the 7th day of November, 1944 there were two candidates for the office of Township Committeeman of the Township of Blairstown, one William M. Cornwell, being the Republican candidate and one O. S. Everitt, being the Democratic candidate.

After the polls closed, the election board proceeded to count the ballots and on the morning of November 8th, 1944 certified to the County Clerk of the County of Warren that O. S. Everitt had received the sum of 328 votes and that William M. Cornwell had received 327 votes.

A short time thereafter, Gerald E. Christian, who was a member of the Board of Elections in the election aforesaid, made two affidavits (S. C., pp. 192-5 and pp. 195-8) in which he alleged there were certain irregularities in the counting of the ballots as a result of which a recount was ordered by the Warren County Court of Common Pleas. As a result of said recount the Warren County Board of Registry and Elections certified that its count of the ballots showed that William M. Cornwell received 367 votes and Oscar S. Everitt (formerly referred to as O. S. Everitt) received 291 votes.

By reason of the recount the Warren County Court of Common Pleas ordered revoked the certificate of election of Oscar S. Everitt and directed issuance of a certificate of election to William M. Cornwell.

An investigation resulted and the plaintiff-in-error John Larison was indicted by the December Term, 1944 Grand Jury on a charge of "neglect of duty" under the provisions of R. S. 19:34-48 and R. S. 19:16-7.

The plaintiff-in-error was tried before a jury in the Court of Quarter Sessions in the County of Warren and was found guilty.

Sentence was passed by the Court and subsequently the Trial Judge refused a certificate of reasonable doubt but upon application the plaintiff-in-error was released upon bail after a certificate of reasonable doubt was issued by the Supreme Court.

This is a proceeding brought by the plaintiff-in-error John Larison to review the record, the proceedings and rendition of judgment and the affirmance thereof by the New Jersey Supreme Court on the indictment for "neglect of duty"

against John Larison, late of the Township of Blairstown, County of Warren and State of New Jersey; said John Larison having been indicted and convicted by a certain jury of the County of Warren and said plaintiff-in-error feeling that manifest error has intervened to his great damage.

The plaintiff-in-error and the remaining members of the board were in charge of this particular election district and as proven by the State the neglect of duty of the plaintiff-in-error was brought to light as disclosed by the testimony.

The neglect of the plaintiff-in-error consisted in that he, while reading said ballots cast in the said election, audibly and publicly which were cast for William C. Cornwell, did, in fact, knowingly and fraudulently, announce that said ballots were cast for Oscar S. Everitt, by reason of which the result of said election as announced by the Board was not the true result of the election held for the office of the Township Committeeman.

The plaintiff-in-error in his brief refers to *State v. Beatty* (not reported) which was reversed by the Supreme Court. We would like to point out that the reversal by the Supreme Court was based upon the insufficiency of the indictment.

POINT ONE

The indictment is not defective

It is charged by the plaintiff-in-error that the indictment presented in this matter is defective in that it fails to set forth with clearness and certainty a definite charge and fails to sufficiently identify the occasion so as to enable the defendant to prepare his defense.

This point is without merit. The indictment clearly charges the statutory duty imposed upon the plaintiff-in-error and specifically alleges in what respect it is alleged he violated such duty.

R. S. 19:16-7, among other provisions, provides as follows:

“The board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the judge of the election, and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the inspector. The inspector shall be satisfied that the ballot is being correctly read by the judge.”

The indictment clearly charges that the plaintiff-in-error on the 7th day of November, 1944, while under the statutory duty to comply with the provisions of R. S. 19:16-7 did fail and neglect to perform said duty in that he did “while reading said ballots audibly and publicly which were cast for one William C. Cornwell did in fact knowingly and fraudulently announce that the said ballots were cast for Oscar S. Everitt.”

The indictment sets up a complete description of the neglect, and there is no ambiguity or uncertainty in the charge.

The plaintiff-in-error further alleges that the indictment is defective in that the indictment charges that the plaintiff-in-error did "in the discharge of his duties" do certain things for which he could not be held liable as he was responsible only for the acts contrary to the discharge of his duties.

This point is without merit in that the plaintiff-in-error was under certain statutory duties while acting as a member of the board of elections as particularly set forth in R. S. 19:16-7, and by reason of his failure to discharge the statutory duties imposed upon him, the plaintiff-in-error was indicted under an indictment which clearly sets forth the nature of the offense alleged to have been committed by the plaintiff-in-error.

POINT TWO

The Trial Court did not err in admitting into evidence Exhibit S-2.

It is charged by the plaintiff-in-error that the admission in evidence of Exhibit S-2 was error by the Trial Court.

This point is without merit for the reason that R. S. 19:6-11 provides as follows:

"Each member of the district board shall before entering upon the performance of his duties take and subscribe an oath or affirmation in writing before a duly qualified officer, faithfully and impartially to discharge all his duties as such officer to the best of his

skill and ability. Such oaths and affirmations shall be forthwith forwarded to the county clerk and by him filed in his office, and after so qualifying, any member of such board may at any meeting thereof administer any oath or affirmation required or permitted to be taken by this title."

The statute having provided that such oath shall be filed with the County Clerk in his office it thereby becomes a "public record" of the County of Warren and State of New Jersey and every rule of reason would indicate its admissibility thereof. No statute can be found concerning the admissibility of such exhibit.

If the Legislature did not intend that such oath and affirmation become a part of the records of the County wherein filed, it would not have directed that such oath or affirmation be filed with the County Clerk of the County involved.

The defendant-in-error strongly urges that the admission of Exhibit S-2 by the Trial Court was not error.

Since the plaintiff-in-error himself upon direct examination (S. C., pp. 151-152) admitted that he was acting as a member of the board during the entire day, it certainly cannot be argued that even if the plaintiff-in-error had taken upon himself the duties imposed upon a Judge of Elections without taking the necessary oath or affirmation that he would not be liable for any neglect of his duties as defined by the statute.

POINT THREE

The Trial Court did not err in admitting the Tally Sheet and Certificate of the County Board of Elections or the Order of the Common Pleas Court.

It is charged by the plaintiff-in-error that the admission in evidence by the Trial Court of the Tally Sheet of the County Board of Elections compiled while conducting the recount was in error.

This point is without merit.

R. S. 19:28-3 provides among other things that the County Board of Elections shall, under the direction of the Justice or Judge ordering the same, conduct the recount of the votes. The statute having directed that the County Board of Elections shall conduct the recount, it cannot be argued that the result of such recount as shown on the Tally Sheet used by the County Board of Elections is not admissible in evidence for the purpose of showing such result.

Tally sheets are admissible in evidence. *State v. Monia*, 132 N. J. L. 91, at page 95; *State v. Tulenko*, 23 N. J. Mis. R. 249, affirmed 133 N. J. L. 385.

Exhibit S-5, showing the result of such recount, was filed by the County Board of Elections in the County Clerk's Office (S. C., p. 37), and having been there filed it is a "public record" of the County of Warren and State of New Jersey and as such is admissible in evidence.

The same reasoning applies to the admissibility in evidence of Exhibit S-4 which is the statement of the result of the recount as set forth on the Tally Sheet, Exhibit S-5.

The plaintiff-in-error charges that the admission in evidence of S-6, which is an order of the Common Pleas Judge revoking the certificate of election of Everitt and directing the certificate issued to Cornwell, was error by the Trial Court.

This point is without merit for the reason that R. S. 19:28-4 provides among other things the following:

“If it appears upon such recount that an error has been made sufficient to change the result of such election such justice or judge in case of candidates shall issue an order to revoke the certificate of election already issued to any person, and shall issue an order directing the chairman and clerk of the county board of canvassers to issue in its place another certificate in favor of the party who shall be found to have received a plurality of the votes cast at the election, which certificate shall supersede all others and entitle the holder thereof to the same rights and privileges as if such certificate had been originally issued by the canvassing board.”

S-6 being the original order signed by the Common Pleas Judge of the County of Warren, there can be no question as to its admissibility in evidence since it is an order of a court of competent jurisdiction and is the best evidence.

S-6 being an original order of a Court of this State, it also was properly admitted in evidence under the provisions of R. S. 2:98-10.

It is argued by the plaintiff-in-error that the ballots themselves are the best evidence of their contents.

If this theory were to prevail, during the course of the trial under the indictment in hand,

it would be necessary either for the Trial Judge or the members of the trial jury to conduct another recount of the ballots in question which is not the manner provided by the statute for the conduct of a recount.

POINT FOUR

The verdict is not against the weight of the evidence.

It is charged by the plaintiff-in-error that the verdict in the cause is against the weight of evidence.

A careful perusal of the facts will show that this point is without merit. It is urged by the defendant-in-error that the jury having chosen to believe the testimony of Gerald E. Christian (S. C., pp. 97-151) and particularly at page 102,

“Q. What did he say? A. It is about time we drop a few.

Q. Who said that? A. Mr. Larison,”

and also particularly on S. C., pages 108-111, coupled with the documentary evidence produced, it was entirely justified in finding the plaintiff-in-error guilty as charged.

The entire pattern of the case shows clearly that the plaintiff-in-error knowingly and fraudulently counted the ballots cast dishonestly for the purpose of “counting out” William M. Cornwell, who was afterwards determined to be the duly elected candidate, who is at present a member of the Township Committee of the Township of Blairstown by virtue of his election to office at

the election held in the Township of Blirstown on the 7th day of November, 1944.

We respectfully submit that the verdict of guilty was amply supported by the evidence in the case.

It is well established that to justify the setting aside of a verdict as against the weight of the evidence that fact must be so clear as to give rise to the inference that the verdict was the result of mistake, passion, prejudice or partiality.

State v. Treficanto, 106 N. J. L. 344, 350;

State v. Lederman, 112 N. J. L. 366, 370;

State v. Cox, 128 N. J. L. 108, 111, 112.

CONCLUSION

It is respectfully urged for all the foregoing reasons, that the conviction of the plaintiff-in-error should be sustained.

Respectfully submitted,

SAUL N. SCHECHTER,

*Prosecutor of the Pleas for the County
of Warren, Attorney and Counsel
for Defendant-in-Error.*



