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Notice of Appeal.

(Filed June 12, 1928.)

New Jersey Supreme Court

10

PATRICK LONG,
Prosecutor,

v.

BERT J. DALY, Director of the De-
partment of Public Safety of
the City of Bayonne, and CITY
OF BAYONNE,

Respondents.

On Certiorari.
Notice of Appeal.

20

To—JAMES BENNY, Esq., Attorney for above named
Respondents.

TAKE NOTICE, that the Prosecutor appeals from
the whole of the judgment entered in the above
entitled cause in the New Jersey Supreme Court
on the fifteenth day of May, 1928, to the New Jer-
sey Court of Errors and Appeals on the following
grounds:

30

1. Prosecutor was unlawfully discharged from
the police department of the City of Bayonne.

2. Prosecutor was dismissed from the police
department of the City of Bayonne on charges
which were false.

3. No properly verified signed complaint was
served upon the prosecutor.

40

Notice of Appeal.

4. The charges against the prosecutor were based on alleged acts of prosecutor on May 19th, 1927, and it was improper, illegal and unfair to prosecutor to delay the presentation of said charges until July 5th, 1927.

10

5. There was no proof of any properly signed complaint having been filed in the office of the municipal officer or Board having charge of the department in which the alleged complaint arose.

6. Prosecutor was denied a reasonable opportunity to prepare his defense to the charges made against him.

20

7. The hearing as a result was illegal, on the ground that the Director of Public Safety was without jurisdiction to try the prosecutor for the offense in question, such trials or hearings being within the province only of the Board of Commissioners of the City of Bayonne.

8. The manual of the rules and regulations of the police department of the City of Bayonne, under which the prosecutor was charged, was not offered in evidence.

30

9. That the City of Bayonne, never legally adopted a manual of the rules and regulations of the police force, under which the prosecutor was tried at the time of said trial.

10. Competent evidence was not offered to prove any charge against the prosecutor, and his dismissal is without just cause as required by law.

40

11. Credible evidence was not offered to prove any charge against the prosecutor, and his dismissal is without just cause as required by law.

Notice of Appeal.

12. Respondent, Bert J. Daly, Director of the Department of Public Safety of the City of Bayonne, showed prejudice throughout the hearing, and prosecutor did not receive a fair hearing, as required by law.

10

13. There was no competent proof of any incapacity, misconduct or any disobedience on the part of the prosecutor of any just rules or regulations established for the Police Department of the City of Bayonne.

14. There was an unreasonable abuse of discretion exercised by the Director of Public Safety, in dismissing the prosecutor from the Police Department.

20

15. The trial and conviction of the prosecutor were illegal, in that the prosecutor was a World War veteran, and protected under provision of laws of 1919, Chapter 124.

16. That the trial and conviction of the prosecutor were illegal, in that, the Board of Commissioners did not make, enforce, amend or repeal an ordinance or ordinances to establish, maintain, regulate and control a police department, under Chapter 152, Laws of 1917.

30

17. That it was arbitrary and illegal for the respondent, Bert J. Daly, to require the prosecutor to appear before him for trial on said charges on July 5th, 1927.

18. That the Director of Public Safety was prejudiced and biased, and the prosecutor did not receive a fair hearing at the trial.

19. That the conviction as shown by the re-

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Opinion.

turn to the writ of certiorari is irregular, improper and illegal.

20. The New Jersey Supreme Court gave judgment for the above named respondents instead of for the prosecutor.

10

Dated June 11th, 1928.

Yours, &c.,

FEINBERG & FEINBERG,
Attorneys of Prosecutor.

Opinion.

NEW JERSEY SUPREME COURT,

No. 210. MAY TERM, 1928.

20

PATRICK LONG,
Prosecutor,

v.

BERT DALY, Director of the Department of Public Safety of the City of Bayonne, *et al.,*
Respondents.

30

Argued May 1, 1928; decided May 14, 1928.

On Certiorari.

Before—Justices MINTURN, BLACK and CAMPBELL.
For Prosecutor, FEINBERG AND FEINBERG.
For Respondents, JAMES BENNY.

PER CURIAM:

40

This writ brings up for review a judgment of

Opinion.

dismissal of the prosecutor as a member of the police force of Bayonne.

There are several reasons advanced and argued why this judgment should be set aside.

1. Because there was no proof of a manual of rules which the prosecutor was charged with violating. 10

We think, however, that this is without substance and can be distinguished from *Kelly v. Bishop*, 119 Atl. Rep. 6, cited by prosecutor.

In that case the complaint was directly based upon violations of specific sections of the rules and regulations of the Police Department and the existence of such rules and regulations was not established. 20

In the present case the complaint is:

“To the Director of Public Safety.

I hereby charge Patrick Long with conduct unbecoming an officer and gentleman and conduct subversive of good order and discipline.

Specifications.

In that the said Patrolman Patrick Long on date of May 6, 1927, at 3:30 A. M. did assault Harry Clancy, a citizen of Bayonne, without just cause or provocation. 30

Being in violation of _____ of the Manual of Rules and Regulations of the Police Force of the City of Bayonne.”

Here a crime is charged and while in the last paragraph of the complaint Rules and Regulations of the Police Force are referred to the gravamen of the complaint is the assault charged. It will be noted that no specific rule and regulation is 40

Opinion.

charged as having been violated as in *Kelly v. Bishop, supra*.

10 2. There was no proof of any properly signed complaint having been filed in the office of the municipal officer or board having charge of the department in which the alleged complaint arose, as required by statute.

We think the statute in this respect was complied with.

20 The complaint was read into the record of the case. The affidavit upon which it was based, was not, because of objection of counsel for prosecutor (S. C. 11 and 12). Complaint, charge and service thereof are shown in return to the writ pages 3, 4 and 5.

30 3. The presentation of charges against prosecutor was improperly delayed for two months and prosecutor was denied a reasonable opportunity to prepare a defense to the charges made against him.

We do not find any showing upon the part of the prosecutor that he was prejudiced in his cause or the defense he made against the charges.

40 4. There was no competent or credible evidence upon which the prosecutor could be adjudged guilty; he was dismissed from the police force on charges which were false.

5. There was an unreasonable abuse of discretion exercised by the Director of Public Safety in dismissing the prosecutor from the Police Department.

40 If the evidence before the trial body presents a rational, legal and substantial basis for the finding this court will not disturb such finding, *Alcott v. Trenton*, 66 N. J. L. 173; *affd.* 67 N. J. L. 351;

Opinion.

Ayers v. Newark, 49 *Id.* 170; *Cavanagh v. Hoboken*, 59 *Id.* 412; *Reilly v. Jersey City*, 69 *Id.* 508.

We find the proofs before the Commissioner of Public Safety, who tried the cause, to be of the character so called for and for this reason his conclusion will not be disturbed.

10

6. The Director of Public Safety had no jurisdiction to try the prosecutor for the offense in question and hence the conviction and dismissal were unlawful.

The objection seems to have been that it must appear that the Board of Commissioners by resolution specifically placed the power to act in the Commissioner of Public Safety and that such action was not taken nor had.

20

Prosecutor concedes that under *Crane v. Jersey City*, 90 N. J. L. 109 the director of public safety has the power, sitting alone, to try charges of this character where the board of commissioners have, by resolution, conferred upon him such judicial powers.

A copy of a resolution purporting to be of such character was offered in evidence and marked over objection of attorney for the prosecutor upon the ground that it was merely a copy and that proof should be made by the original records. A copy certified by the City Clerk would have been competent.

30

We do not find this resolution sent up with the return to the writ and therefore cannot determine whether it was so certified or not.

By depositions taken under the writ resolutions of this character were proved and admitted.

We think it entirely unimportant whether proper proof of such authority was made at the trial or not so long as it now is established that

40

Opinion.

such authority existed in fact at the time of the trial.

10 7. The prosecutor is a World War Veteran and did not receive the protection to which he was entitled under Chapter 124, laws of 1919.

8. The Director of Public Safety was prejudiced and biased and the prosecutor did not receive a fair and impartial trial.

We are unable to find anything of legal or factual substance in either of these reasons.

9. The conviction as shown by the return to the writ is irregular, improper and illegal.

20 We are likewise unable to find anything substantial in this reason.

The writ will be dismissed.

30

40

Writ of Certiorari.

(Filed January 24, 1928.)

**COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.**

<p style="text-align: center;">PATRICK LONG, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>BERT J. DALY, Director of the De- partment of Public Safety of the City of Bayonne, and CITY OF BAYONNE, <i>Respondents.</i></p>	} On Certiorari.	10
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STATE OF NEW JERSEY, to wit: 20

To Bert J. Daly, Director of the Department of Public Safety of the City of Bayonne, and City of Bayonne, GREETING:

We being willing for certain reasons to be certified of a certain action, judgment, (Seal) decision and order by you made and rendered on October 4th, 1927, dismissing from further service in the Police Department of the City of Bayonne, Patrick Long, Prosecutor herein, and each other actions and proceedings relating thereto. 30

We command you that you, Bert J. Daly, Director of the Department of Public Safety of the City of Bayonne and the City of Bayonne, send the aforesaid order, judgment and decision, with the record and each other actions and proceedings relating thereto, together with all things touching 40

Return to Writ.

and concerning the aforesaid action as before you they remain, to our Justices of the Supreme Court of Judicature at Trenton, on the 7th day of February, 1928, you certify and send together with this writ, that therein may be done what of right and according to the laws of this State should be done.

WITNESS William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this 17th day of January, 1928.

EDWARD J. KELLEHER,
Clerk.

FEINBERG AND FEINBERG,
Attorneys.

Return to Writ.

NEW JERSEY SUPREME COURT.

PATRICK LONG,
Prosecutor,

v.

BERT J. DALY, Director of the Department of Public Safety of the City of Bayonne, and CITY OF BAYONNE,

Respondents.

On Certiorari.

To the Honorable the Justices of the Supreme Court of Judicature of the State of New Jersey:

I, Bert Daly, Director of the Department of Public Safety of the City of Bayonne, and I, William P. Lee, Clerk of the City of Bayonne, a Municipal

Return to Writ.

Corporation of the State of New Jersey, the above named Respondents, in obedience to the command of the Writ hereto annexed, Do HEREBY CERTIFY and send to you the action, order, judgment and decision referred to in the said Writ with the record and proceedings relating thereto, together with all things touching and concerning the same, as fully and entirely as the same remain before us, as by said Writ we are commanded. 10

Witness our hands and the corporate seal of the City of Bayonne, this second day of February, 1928.

BERT DALY,
Director of the Department of
Public Safety of the City of
Bayonne. 20

City of Bayonne:

By WM. P. LEE,
City Clerk.

(Corporate Seal of the
City of Bayonne)

May 19, 1927.

STATEMENT OF HARRY CLANCY, 184 WEST THIRD STREET, BAYONNE, IN CASE OF STATE OF NEW JERSEY VS. PATRICK LONG, CHARGE AA&B. 30

About 3:30 A. M., Friday, May 6, 1927, while I was in the restaurant at 49 Boulevard, Bayonne, in which restaurant I have an interest with Salvatore Cavelho and Ruth Fox I heard screaming in front of the place between 47 and 49 Boulevard. I went out and saw Hugh Haggerty striking Miss Ruth Fox. I went to her aid and started to strike Haggerty when officer Patrick Long came running across the street with revolver drawn and without 40

Return to Writ.

saying a word struck me across the face with the
 revolver. Long was in civilian clothes. I then
 asked that somebody call up Police Headquarters.
 I stood on the porch at 49 Boulevard until the pa-
 10 patrol wagon came. I told one of the officers on the
 patrol wagon that I wanted to make a charge
 against Long and one of the officers signalled Long
 who had returned to the restaurant across the
 street to come over. He came over and Miss Fox,
 Haggerty, Cavelho, Long and myself went to the
 Police Station.

HARRY CLANCY.

Subscribed and sworn to this }
 19th day of May, 1927. }

20

JOHN F. McCARTHY,
 Notary Public of N. J.

DEPARTMENT OF PUBLIC SAFETY

POLICE

To Patrick Long

You are hereby notified that your trial upon the
 charges, a copy of which is herewith served upon
 you, will be held on the day of ,
 192 at the hour of ten o'clock in the forenoon, in
 30 the office of the Director of Public Safety, Avenue
 C and 26th Street, Bayonne, N. J., before the Di-
 rector of Public Safety.

BERT DALY,
 Director of Public Safety.

CHARGE

To the Director of Public Safety:

I hereby charge Patrick Long with Conduct un-
 40 becoming an officer and gentleman and conduct
 subversive of good order and discipline.

Return to Writ.

SPECIFICATIONS

In this that the said Patrolman Patrick Long on date of May 6th, 1927, at 3:30 A. M. did assault Harry Clancy, a citizen of the City of Bayonne, without just cause or provocation.

10

Being in violation of _____ of the Manual of Rules and Regulations of the Police Force of the City of Bayonne.

C. J. O'NEILL,
Complainant.

Subscribed and sworn to this }
22nd day of June, 1927. }

JOHN F. McCARTHY,
Notary Public
of New Jersey.

20

I hereby certify that copy of charge and summons was served by me upon said.....
.....personally. Date.....
Time..... By

I hereby certify that copy of charge and summons was served by me upon said Officer Patrick Long personally.

30

Date, July 5; Time, 7 P. M.

By DANIEL TALBOT,
Motor Cycle Officer.
Office of the Chief of Police,
July 8th, 1927.

Daniel J. Kilduff, Esq.,
Deputy Chief of Police.

Sir:

40

The Director of Public Safety heard the charges

Return to Writ.

against the several patrolmen of this department at 10 A. M. this date; the following are the judgments of the Director:

Patrolman William Bertscha pleaded guilty and was fined thirty days pay.

10 Patrolman William Errien was found guilty on two counts; sentence suspended on first and fined ten days pay on second.

Patrolman James Connelly pleaded guilty and was fined ten days pay.

Patrolman Joseph J. Folger tendered his resignation as a member of the department.

Trial of charges against Patrolman Patrick Long was postponed until Wednesday, July 13th, 1927, at 10:00 A. M.

20 Trial of charges against Patrolman William Smeaton was postponed, no date set.

C. J. O'NEILL,
Chief of Police.

General Order Book Page #215.

P. J. DONOVAN,
Lieutenant of Police.

30

40

Return to Writ.

DEPARTMENT OF PUBLIC SAFETY OF THE
CITY OF BAYONNE.

<p>C. J. O'NEILL, Chief of Police. <i>Complainant,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>Patrolman, PATRICK LONG, <i>Defendant.</i></p>	}	10
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Hearing before Hon. BERT J. DALY,
Director of Public Safety.
July 13th, 1927.

TRANSCRIPT OF TESTIMONY. 20

DEPARTMENT OF PUBLIC SAFETY OF THE
CITY OF BAYONNE.

<p>C. J. O'NEILL, Chief of Police. <i>Complainant,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>Patrolman, PATRICK LONG, <i>Defendant.</i></p>	}	<p>Hearing before Hon. Bert J. Daly, Director of Public Safety.</p> <p>At Police Head- quarters. July 13th, 1927.</p>	30
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APPEARANCES:

For the Claimant, THOMAS A. MCCARTHY,
Esq.

For the Defendant, JACOB FEINBERG, Esq.

Stenographer sworn.

Mr. Feinberg: Mayor, before you proceed, I
want to make several objections on the record. 40

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10 First, I am going to object: I understand you are proceeding under the State Law. I am going to object to the proceedings on the ground, first, as the Director of Public Safety, you lack jurisdiction; and the complainant's charge has not been drawn up according to law. The manner of proceeding is illegal, and I want to make this note now, if your Honor wants to give this defendant a fair trial. I have subpoenaed two police officers who were at the scene of this alleged assault, both of whom were subpoenaed personally by Long last night. After they were subpoenaed, they received word from an officer that it was not necessary for them to appear. Kilduff left word they need not appear. I think Kilduff did not know they were subpoenaed.

20 Because of that, I don't think they will be here. I want your Honor to subpoena them. They have my subpoenas. They were served personally. One of them communicated with me, and I said, "You had better communicate with the Chief; I don't want you to get in trouble." The chief says he didn't know I had subpoenaed them. I think they were told not to appear, because it was not necessary to call them as witnesses for the Chief; but I had subpoenaed them, and I want them here.

30 Mayor Daly: Where are those men?

Chief O'Neill: They are off; both of them.

Mayor Daly: Can you get them?

Mr. Feinberg: They are both in town; both were talking to me this morning. I said to both of them, "There is no use getting in wrong. If you were told not to come here, you see the Chief."

40 Mr. McCarthy: I want to get the record straight in answer to Mr. Feinberg's objection. That has been provided for in the Walsh Act, Amendment

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to Section 4, approved April 13th, 1915, which left the jurisdiction in the Department of Public Safety. Case was decided in the case of *Foley v. The City of Orange*, 91 Law. 554.

Mr. Feinberg: One of my grounds is that very section Mr. McCarthy cites. 10

Chief O'Neill: Both of these officers will be available.

Commissioner Daly: What do you claim it on?

Mr. Feinberg: I claim this: A resolution must be specifically passed by the Board of Commissioners giving you authority to act as judge in a case of this kind. I contend that that was not done. Not being done, it cannot be delegated to any one particular Commissioner. A case against the City of Jersey City holds that. 20

Mr. McCarthy: What is the citation?

Mr. Feinberg: 90 Law, a hundred odd.

Mr. McCarthy: There is a later case of *Foley v. The City of Orange*.

Mr. Feinberg: I read that case, but it is contra to our case.

Mr. McCarthy: Evidently it is. The case, besides—

Mr. Feinberg: All right, it is on the record. I have made my objection. You have made your answer. 30

Mayor Daly: What is the date you are basing your contention on?

Mr. Feinberg: You mean when that case was decided? 1917.

Mayor Daly: 1917. What is the date you are citing?

Mr. McCarthy: I don't know the date. It is after his case. That is reported in 90 Law, and 91 Law is the citation I gave. 40

Return to Writ.

Mr. Feinberg: John Milton was in on the case. I want my objection noted on the record, further, that the Commissioner hasn't the authority to try the police officer, because, first of all, the resolution must be passed giving him the right to act
 10 as judge alone. It must be specific; the mere fact that it says "judicial" does not cover that case.

Mayor Daly: Proceed.

Mr. McCarthy: My answer to Mr. Feinberg's objection is answered by the following resolution, adopted by the Board of Commissioners of the City of Bayonne, May 17th, 1927, which is marked "A true copy," and offered in evidence.

(Resolution offered in evidence, marked
 20 "C 1.")

Mr. Feinberg: I object to that in evidence. The original is proper evidence. That is certainly not proper. The original of it is right here in the City of Bayonne.

Mayor Daly: This is a true copy, certified to by the court.

Mr. Feinberg: That makes no difference. The original is here in town. A copy would never be received in any court of law. It would never be
 30 received by any court or any judge.

Mayor Daly: I happen to know, Counselor, that this is a true copy of the original resolution that was passed on the organization of this Board.

Mr. Feinberg: I still note my objection.

Chief O'Neill (reads complaint as follows):

"This is in the matter of C. J. O'Neill—"

Mr. Feinberg: Just a minute, Chief. I have
 40 four or five witnesses out in the hall. I think all the witnesses ought to be out in the hall, except

Return to Writ.

the police officer. Either let all in or all out. There is no reason why three or four persons for the complainant should be permitted in the room, and the witnesses for the police officer be out in the hall.

Mayor Daly: There isn't any objection to their being in here. 10

Mr. Feinberg: I make my first request, that I want all the witnesses from the room, so one of the witnesses might not be guided by the testimony the other may say.

Mr. McCarthy: I have no objection.

Mayor Daly: All right; will all the witnesses go in the other room?

Chief O'Neill (reads complaint, as follows):

"In the matter of the charge of C. J. O'Neill, Chief of Police, Complainant, against Patrolman Patrick Long, Defendant. 20

"To the Director of Public Safety:

"I hereby charge Patrick Long with conduct unbecoming an officer and gentleman and conduct subservient of good order and discipline, in this, that the said Patrolman Patrick Long, on date of May 6, 1927, at 3:30 A. M., did assault Harry Clancy, a citizen of the City of Bayonne, without just cause or provocation." 30

"Signed, C. J. O'NEILL, Complainant.

"Before John F. McCarthy, Notary Public, of New Jersey, the 22nd day of June, 1927";

which charges were based upon the following affidavit— 40

Mr. Feinberg: I object to the reading of affi-

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davits. The witness is here in court. He can testify the specific statements. He can testify himself what happened, without the affidavit being read. The affidavit was made with the purpose of making a complaint.

10 Mr. McCarthy: We will consent to not reading the affidavit.

HARRY CLANCY, witness on behalf of the complainant, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. McCarthy:

Q. What is your full name? A. Harry J. Clancy.

Q. Where do you live? A. 184 West Third.

20 Q. Will you tell the Commissioner just what happened on the morning of May 6th, 1927? A. Ruth Fox was in the Star Restaurant over there, and Hughie Haggerty assaulted Ruth Fox. He was at 49, my place of business.

Mr. Feinberg: Did you see that? I object to him testifying to anything he didn't see.

Mr. McCarthy: Just tell us what you saw.

30 The Witness: I saw Hughie Haggerty assault Ruth Fox on the sidewalk in front of 47 Boulevard, Bayonne.

Q. Then what happened? A. I started to take Miss Fox's part and I hit Haggerty.

Q. And then what? A. And while I was hitting Haggerty, Officer Long came directly, almost directly, from a house opposite 49; pulled a gun, running to us over the street, and hit me over the mouth with the butt end of a gun.

40 Q. Was Officer Long in civilian clothes or in uniform? A. He was in civilian clothes.

Q. Did he say anything to you in regard to—

Return to Writ.

Did he tell you you were under arrest? A. No, sir.

Q. Did he give you any order to stop? A. No, sir.

Q. Did he give you any command?

Mr. Feinberg: I object to that. It is leading. Ask him what he did. 10

Mr. McCarthy: Did he give you any commands of any kind?

The Witness: No, sir.

Mr. Feinberg: Ask him what he did or said. I make my objection on the record.

Mr. McCarthy: Well, make your objection to the Commissioner, not to me.

Mr. McCarthy: Did you—after you were hit by Officer Long, what happened to you? 20

The Witness: I went up in 49 Boulevard, the place which I pay rent for, on the stoop; then went back on the street.

Q. Then what did you do? A. I hollered for the man that has the restaurant and everybody and Ruth Fox to call the wagon.

Q. And where did Officer Long go then? A. Over in the same place which he came out of.

Q. Did Officer Long place you under arrest? A. No, sir. 30

Q. He just hit you? A. Yes, sir.

Q. And you went up on the porch? A. Yes, sir.

Q. And you went back to the street? A. Yes, sir.

Mr. Feinberg: I object to that.

Mr. McCarthy: I am just repeating what he testified.

Mr. Feinberg: He ought to let the witness tell what happened. 40

Return to Writ.

Mr. McCarthy: Mr. Commissioner, he has already testified to that. There is nothing wrong in repeating what the witness has testified.

Mayor Daly: If he has testified.

10

Mr. McCarthy: How long did you stay on the porch?

The Witness: Util the wagon came.

Q. When the wagon came down where was Officer Long? A. Officer Long was right in the place which he came out of, across the street.

Q. Had you been placed under arrest at the time the wagon came down? A. No, sir.

20

Q. When were you placed under arrest? A. I told the cops on the beat that came in the wagon, "There is Officer Long over there; I want him put under arrest." Just as they entered the second landing, Long walked out. Knowing I was determined to have him arrested, he reversed the charge.

Q. Then he arrested you? A. He arrested me.

Mr. Feinberg: Let him tell it. I object to it.

30

Mr. McCarthy: You were taken to Police Headquarters?

The Witness: Yes, sir.

Q. Do you know where Haggerty was all this time? A. Haggerty went over with Long for a few minutes. Then he started to go away, and somebody called him back.

Q. Where was Ruth Fox all this time? A. Ruth Fox was right in front of 49.

Q. Alongside of you? A. Yes, sir.

40

Q. With you, I mean? A. Yes, sir.

Q. Did you strike Officer Long? A. No, sir.

Return to Writ.

Q. Did you offer any resistance to him? A. No, sir.

Q. You are sure that he didn't put you under arrest at the time he came across the street? A. Positively sure. May I conclude by saying—

Mr. Feinberg: No; I object. 10

Mr. McCarthy: Did you ever have any trouble with Long prior to this?

The Witness: No, sir.

Q. No ill feeling between you and Long? A. Not as far as I was concerned.

Q. What were you going to say before?

Mr. Feinberg: I object to that. That is certainly not proper, his making any speech. The question is, what happened on this particular night. You know well that question isn't a proper question. 20

Mayor Daly: Is there anything in connection with this incident that happened that you haven't recited here?

The Witness: This is what I wanted to make known, that Officer Long after he had that time went in the place across the street. The patrol wagon was down, and I told the officers that he went in there, and when Officer Long came out again, he said this to me. He said, "You won't be poppin' Daly next week." He says, "We will have a new boss," and I told him that possibly, no matter who was there, I would try to break him for his actions which he done to me. 30

Mayor Daly: That has no material bearing on the case—any opinion one way or the other about politics. I want to try this 40

Return to Writ.

case solely on its merits. Any political opinions have nothing to do with it.

Cross examination by Mr. Feinberg, as follows:

10 Q. You remember distinctly what happened on that morning, don't you? A. Positively.

Q. And everything you are telling us now is what you remember from your memory? A. From what I saw.

Q. From your memory, now; what you can remember—is that right? A. What I am saying here today is what I saw and what happened that night.

Q. You testified today just what you remember what happened on the morning? A. Not what I remember; what actually did happen.

20 Q. You don't remember it; don't you or do you remember? A. Of course, I am not a lawyer; but I am saying, if you want to put it that way, that what I am saying is an absolute truth. So I must remember it.

Q. So what you testified to you remember? A. Yes.

Q. I ask you now to open up that sheet of paper.

30 Mr. McCarthy: I object to that. It is immaterial.

Mr. Feinberg: Let's see if he is writing the story.

Mayor Daly: He hasn't opened any paper.

Mr. Feinberg: He has been looking at it all morning. Have you the story on that piece of paper?

Mr. McCarthy: I object to that. He hasn't used the paper. What is wrong with that? It is immaterial.

40 Mayor Daly: He is proceeding very closely thus far. I have watched the witness. I

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haven't seen him prompted by anyone, or refer to any notes.

Mr. Feinberg: It certainly cannot do any harm to know what he has.

The Witness: I have a perfect right to make notations of what goes on here, in the event, as a citizen, I have the right to take this higher. 10

Q. You mean you want to take this higher if you want to? A. I have a perfect right to.

Q. You mean that—that you have in your mind to take these proceedings higher? A. I don't mean exactly that.

Q. What did you mean when you just said that to the Mayor, you were thinking of taking the proceedings higher? 20

Mayor Daly: What else could he mean except he might take civil action against this man for personal damages?

Mr. Feinberg: These proceedings—

Mayor Daly: I think that is what he meant.

Mr. Feinberg: I think I have the right to ask him what he meant. 30

Mayor Daly: What difference does it make?

Mr. Feinberg: After all, you got to determine who is telling the truth. I have got to attack his credibility. If I am not permitted to do it, I might as well not waste time.

Mayor Daly: You are permitted to do it; but I don't see what significance there is in that remark to bring it in a civil action.

Mr. Feinberg: Your Honor will allow me an exception on that. Will you refuse to 40

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tell us what you have on that paper you have in your hand?

Mr. McCarthy: I object to the question.

Mr. Feinberg: I will ask your Honor to ask that question.

10

Mr. McCarthy: I don't think it is proper.

Mr. Feinberg: I want an exception on the record. First, the question was asked to attack his credibility. The man says he remembers distinctly what happened. Yet he has a memorandum in his hand and open, and I saw him on several occasions this morning refreshing himself from the piece of paper.

20

Mayor Daly: Since you started to question him?

Mr. Feinberg: No; before he started as a witness, I saw him refresh himself from the paper.

Mayor Daly: You didn't see him after he was called as a witness?

30

Mr. Feinberg: I said, "No." Just before he was called, I saw him looking at it. For the purpose of cross examination and attacking his credibility, I have a perfect right to ask this witness, while he is sitting in the witness chair, what the paper is he has in his hand. If it has nothing to do with this case, I think we ought to know it. If your Honor overrules me, I want to take an exception on it. You overrule me?

Mayor Daly: Yes.

Mr. Feinberg: I ask an exception.

40

Mr. Feinberg: How long have you been in Bayonne?

The Witness: I was born in Bayonne.

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Q. Did you ever live in Kearny? A. Yes.

Q. Were you ever padlocked in Kearny?

Mr. McCarthy: I will object.

The Witness: I will answer him with
"No."

10

Mr. Feinberg: Did you ever run a business there with Ruth Fox?

Mr. McCarthy: I object to the question as immaterial.

Mayor Daly: Objection is sustained. I don't see where this line of questioning you are starting now has any bearing on this case—whether he lived in Kearny or not. I don't propose to have the records littered up with a lot of material that has no application in this case. All I am interested in is whether this man did anything improper and unbecoming the conduct of a patrolman of the City of Bayonne. I am not interested in what business he was in. Let us assume he was padlocked, was in an illegal business. It has nothing to do with the case.

20

Mr. Feinberg: I assume your Honor don't know anything about Clancy. I assume your Honor is sitting here as a fair impartial judge. I propose to show several witnesses, and expect the priest to be here shortly to show the calibre of the people.

30

Mayor Daly: I won't permit that line of questioning in this proceeding.

Mr. Feinberg: Your Honor will permit an exception.

Mayor Daly: I will.

Mr. Feinberg: Aren't you now a fugitive from the Federal Government, and there is

40

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a warrant out for your arrest from the Federal Government?

Mr. McCarthy: I object.

Mayor Daly: Sustained.

Mr. Feinberg: Exception.

10

Mr. Feinberg: You have been in business with this Ruth before, haven't you?

Mr. McCarthy: I object.

Mr. Feinberg: Here is this girl, going to be a witness in this case. I want to show interest between the two. That is permissible in every court of law. I am now asking him now about his reputation or character. I ask him, "Were you in business with Ruth Fox in Kearny?"

20

Mr. Feinberg: You were never in business with Ruth Fox in Kearny?

The Witness: No.

Q. You know you are under oath, don't you?

A. I am under oath.

Q. You and Miss Fox weren't chased out of Kearny?

Mr. McCarthy: I object to the question. It is immaterial.

30

The Witness: I will answer that. No, I was never chased out of any place.

Mr. Feinberg: Did you have a fire in Kearny?

Mr. McCarthy: I object to the question. It is immaterial.

Mayor Daly: Objection sustained. I cannot see what you propose to bring out with this line of questioning.

40

Mr. Feinberg: Now, I have certain answers for him, and can contradict him with

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proper proof. In rebuttal I might show he isn't telling the truth.

Mayor Daly: All I am concerned in is whether or not this police officer struck him in the mouth with the butt end of a revolver, and that's all. I don't care anything about the reputations, or anything like it. Assuming that his reputation is shady, for the sake of argument, that doesn't give this man a right to strike any citizen. 10

Mr. Feinberg: You are sitting as a judge. You don't know whether he struck him or not. In order to determine whether he is telling the truth, certain rules have been laid out, so that a jury or judge might know who is telling the truth, and they give the lawyer a certain amount of latitude to question the man's veracity. I can prove to you he is lying in this instance, and that his entire testimony is to be discredited. I might show your Honor, in thousands of cases, if I can prove he is lying under oath in one instance, his whole testimony, in your Honor's opinion, can be regarded in suspicion. Then you should be very suspicious about the testimony in these charges. 20 30

That is the purpose of the courts in cross examination. That is the purpose of the courts' not permitting affidavits to enter into testimony, so the lawyer could cross examine a man. It would be very easy for a man to go on the witness stand, and say, "This man struck me with a gun." If I could not ask him anything else, how could I prove he is not telling the truth? 40

Mayor Daly: You asked him, in connec-

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10 tion with this incident, anything about Kearny, or anything that has nothing to do with this. I may be wrong legally, in the true sense of the law, not permitting this line of questioning. I am not going to sit here all day and listen to a lot of talk about Kearny.

Mr. Feinberg: This is an important thing to Long and his family, and I think I should take advantage of every opportunity the law affords me.

20 Q. You testify now Long never intended to lock you up. When these police officers came in the van, you said to them, "I want to put him under arrest." Then Long reversed the charge, and had the three of you arrested. Is that your story? A. Yes.

Q. And that is the truth, isn't it? A. Yes.

Q. As a matter of fact, he locked up the four?
A. No.

Q. Wasn't Haggerty arrested? A. He didn't lock up four.

Q. Yes or no? A. Yes.

30 Q. Wasn't Haggerty held for the Grand Jury in \$1,500.00 bail? A. Yes.

Q. Weren't you and Miss Fox and the other fellow held under bail of \$1,500.00 for the Grand Jury; yes or no? A. You are talking of one or three?

Q. Weren't you all held? A. I don't believe Miss Fox was.

Q. You were? A. Yes.

Q. And the other fellow? A. Yes.

Q. And so was Haggerty? A. Yes.

40 Q. You don't know about Miss Fox? A. I don't think she was.

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Q. You remember you were arrested that night, Lieutenant Derowski was behind the desk? A. Yes.

Q. And he said you would have to get \$500.00 bail; yes or no? A. Yes.

Q. You said you wanted to get in touch with somebody, so you could get out right away? A. I didn't ask him. 10

Q. And he said you will all have to go down stairs until bail. You said, "Miss Fox, too?" A. I don't remember saying that.

Q. Did you tell Lieutenant Derowski that Long hit you with a gun? A. I wasn't making any complaint.

Q. Did you tell the police officers on the van Long hit you with a gun? A. They could see that. 20

Q. Did you tell them that? A. I cannot answer.

Q. You said you wanted to put Long under arrest, and the meantime you said that Long reversed the charge and put you under arrest? A. Yes.

Q. When the police officers came down and wanted you arrested, they ran in the place? A. Who?

Q. Miss Fox and the other. A. No. 30

Q. Wasn't the place closed, and the cops banged on the door, and finally you said to the bartender, "Open up that door"? A. The place was closed when the incident happened.

Q. Didn't the cops pound on the door, and these people were in there when the cops came? A. There was one person in there.

Q. Who was in there? A. Sal Cavelho.

Q. That is the fellow sitting in there? A. Yes.

Q. Where does he live? A. He will tell you when he is questioned. 40

Q. I am asking you, where does he live? A. 49

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Boulevard. He has a residence in Jersey City, as well.

Q. He has two residences? A. He stays there on account of business.

Q. What business? A. Restaurant business.

10 Q. With you? A. Yes.

Q. And Miss Fox? A. Yes.

Q. Three of you are partners? A. Miss Fox doesn't stay at 49.

Q. Didn't you say in your affidavit you three were in business together? A. Miss Fox doesn't stay at 49.

Q. The three are partners? A. Yes.

20 Q. Those are the three to testify against Long—the three partners? A. I don't know what they are going to say.

Q. They are here to testify?

Mayor Daly: They are here to testify.

Mr. Feinberg: Don't you see, Mayor, he is here to say that, if he is to tell the truth?

Mayor Daly: He didn't understand the question.

Mr. Feinberg: You say Miss Fox doesn't live there. She is just in business with you?

30 The Witness: No.

Q. Where does she live? A. 184 West Third.

Q. Where do you live? A. I told you. I live at 184 West Third; but I am mostly at 49 Boulevard.

Q. Miss Fox? A. Miss Fox and her father and daughter live at 184.

Q. You are married? A. Yes.

Q. You have two children? A. Yes.

40 Q. You don't support them? A. No.

Q. They live in Jersey City? A. You asked me the question I don't support them. I am giving my

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wife more than any police officer that is working in the City of Bayonne a year.

Q. Why do you pick on a police officer? A. Is making. I am just picking on the comparison of salaries.

Q. You make more than a police officer in your restaurant or saloon? A. I have personal incomes. 10

Q. You just told the Mayor your business is at 49 Boulevard. You have other incomes there? A. My business is 49 Boulevard.

Q. And from the income you get there, you give your wife more than any police officer gives his wife? A. I say I am giving my wife more a year than the average police officer in the City of Bayonne is making a year. 20

Q. When I asked if you supported your wife, you said, "No." A. I said, "No," and was about to continue, and you didn't let me.

Q. You didn't mean you didn't support her? A. I couldn't; I would be telling a lie.

Q. You don't live with your wife? A. No.

Q. You are in business with this Ruth Fox? A. Yes.

Q. You wanted to have Long arrested right away, didn't you, as soon as you got hit? A. Yes. 30

Q. Why didn't you ring up for the wagon? A. I went up on the stoop, because I was bleeding pretty furiously at the time.

Q. Why didn't you send someone after the wagon? Why did Long have to send for the wagon? A. Long didn't send for the wagon, as far as I know.

Q. You swear to it? A. I said I hollered for the wagon, and Ruth Fox stood alongside of the man who owns the restaurant, and insisted they send for the wagon, which he did. 40

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Q. Would you say Long didn't send for the wagon? A. I couldn't say.

Q. You didn't send for it, did you? A. I didn't myself, but I asked for the wagon.

10 Q. How long did you and Haggerty fight before Long came over? A. Well, maybe five minutes, or a little over.

Q. It was a pretty bitter fight, wasn't it? There weren't any love taps attached to it—it was a bitter fight? A. All fights are bitter.

Q. This one was? A. That was a fight; it must have been bitter.

20 Q. You and he were hitting with all the force and might you ever had. You wanted to better him, and he wanted to better you. A. That's what everyone fights for.

Q. That's what this fight was for. You used as much force as you possibly could?

Mayor Daly: I guess there was a fight.
A fight is a fight.

Mr. Feinberg: You people were at hammers with each, when Long came along?

The Witness: That is a fact.

30 Q. You were in each other's arms when Long came along? A. I wouldn't say that. We were fighting.

Q. Isn't it a fact that Haggerty was on the ground, and you were kicking him, and he was yelling at the top of his voice? A. That's a lie.

Q. Was Haggerty bleeding? A. Not as much as I was. His face was a little marred.

Q. Who did that, Long? A. No; I did that.

40 Q. This Haggerty preferred charges against you? A. No.

Q. He didn't? A. No.

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Q. You are sure about that? Haggerty didn't prefer charges against you? A. At Police Headquarters.

Q. Down there at Third Street, when Long was there? A. No.

Q. Sure about that? A. As far as I know. 10

Q. You won't swear? A. I won't swear to anything I don't know.

Q. You won't swear Haggerty preferred a charge against you for beating him up? A. Not as far as I know.

Q. In other words, you won't swear to it. You aren't positive about it. A. No; I won't swear.

Q. Isn't it a fact that Haggerty wanted to make a charge against you, you turned around and said, "I want to make a charge against Haggerty." A. I didn't have one; Miss Fox. 20

Q. Did she make a charge? A. Why shouldn't she?

Mayor Daly: Just answer "Yes" or "No."

The Witness: Yes.

Mr. Feinberg: She made a charge against Haggerty, and then he against you?

The Witness: Counselor, I am not positive who made the charge first. 30

Q. Either she made it against him—one against you and one against him? A. That's right.

Q. Wasn't Miss Fox taken up? A. No.

Q. Did she go to Headquarters? A. Yes.

Q. How? A. By her own auto.

Q. Did the cops go with her? A. No.

Q. Alone? A. Yes.

Q. Then three of you men—you and Cavelho and Long and Haggerty went to Headquarters? A. Yes. 40

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Q. And Milden and Heaney were the other two police officers on the van? A. Yes.

10 Q. Didn't you say there, at least four or five times, "I will have you broke for this; Daly will break your neck"? A. No; I made a statement a little while ago. That's exactly what I said.

Q. You didn't say Daly would break him, or you would have Daly break him? A. Not in those words.

Q. How did you say it? Tell us how you said it. A. Long made the statement that we will have a new Board next week.

Q. Who heard him say that? Did the two cops hear him? Were the cops there? A. I didn't see them hear it.

20 Q. You won't say they weren't there? A. I will say they weren't.

Q. Haggerty was there? A. Yes.

Q. And you heard him say, "There will be no more Daly next week?" This was a week before the last election? A. Yes.

Q. And you were supposed to have been a Daly man, weren't you?

30 Mr. McCarthy: I object to the question, as immaterial.

Mr. Feinberg: I want to show interest.

Mayor Daly: I cannot imagine what you want to arrive at in this line of questioning.

Mr. Feinberg: Everything I ask is in line with everything.

Mayor Daly: The thing I want to find out is whether this witness struck this man in the mouth.

40 Mr. Feinberg: I think I will satisfy you beyond any question. Everything I am asking him now is about this question.

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Mayor Daly: You asked him a lot of questions of how he said something; how many were brought—that has nothing to do with this.

Mr. Feinberg: I will show you, your Honor, before I am through, it has a lot to do with this. 10

Mr. Feinberg: You are sure he said something about Daly?

The Witness: Positively.

Q. You aren't saying that to affect the Commissioner? A. No.

Q. You said to the police officers you would rather lose your right arm than make the charge. Two cops came down and said they would close you up if you didn't make this charge. Did you ever say that to two police officers? 20

Mr. McCarthy: I object to that question. Ask what police officers were supposed to have said that.

Mr. Feinberg: Any two police officers. Will you answer that, yes or no?

The Witness: Two police officers together? 30

Q. One at a time, or together. A. No.

Q. Did you ever say that to anybody, that you didn't want to make these charges? A. No.

Q. You never said to anybody you were forced to come down because two cops would close your place down? A. I never had any reason.

Mayor Daly: Just say "Yes" or "No."

The Witness: No.

Mr. Feinberg: Now you tell us what happened there three o'clock in the morning. 40

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Anyone else go in the wagon besides you three men and the cops?

The Witness: Any person, you mean?

Q. Any person or thing? A. Yes; there were slot machines.

10

Q. Why didn't you tell the Commissioner about that? Who took the slot machines out of your place? A. Why, the officers.

Q. Which one? A. Long.

Q. Long took it—you are sure about that? A. I wouldn't swear to it.

20

Q. The only thing you are sure about is being hit with a gun. The other things you are not sure about. Did you say to Long, "If you give me back the machine, we will call it quits," and he said to you, "If you will have me broke, go ahead and break me." Is that right or wrong? A. That's right.

Q. You didn't say to Long, "Give me back the machine, and we will call it quits"? A. No.

Q. You are sure about that? A. No.

Q. You are positive about that? A. Yes.

30

Q. You didn't say anything to Long about ing back the machine? A. The machine didn't belong to me.

Q. You didn't say that? A. I said he had no right to break into the place; that the place was locked, and they assaulted someone who was inside.

Q. The only thing you said about the machine—he had no right to take it? A. I said he had no right to go over the threshold at the door.

40

Q. The place was closed? A. At the time. By so doing, they assaulted a man that wasn't doing anything to them.

Q. Who assaulted the man? A. Long.

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Q. You are sure it wasn't Heaney or Milden?
A. No.

Q. And you are sure this man didn't put his hand to his back pocket, as though he was pulling a gun, and then a cop smacked him over the mouth? A. The man didn't say anything to the officers. 10

Q. He didn't put his hand in his pocket to pull a gun? A. He never had a gun.

Q. Heaney had his hand over his mouth, and then they searched him? A. They didn't search him.

Q. He didn't do that? A. He didn't put his hand in the pocket.

Q. Long hit the other fellow? A. Yes.

Q. Long took the machine, hit you, and hit the other fellow? A. The machine was in the other room. This man was at the door when they hit the boy. 20

Q. Long took the machine, hit you with a gun, and hit the other fellow; that is correct? A. Yes.

Q. You know there have been several complaints about your place down there—yes or no?
A. No.

Q. You never heard of a complaint about your place? A. No. 30

Q. You voted from that address, didn't you? A. What address?

Q. Down at Third Street. A. What address do you mean?

Q. How many addresses have you in Third Street? A. If you tell me the number—what address, I will tell you yes or no.

Q. Well, what address do you vote from? A. 184 West Third Street.

Q. Ruth Fox voted from the said address? A. She lives there. 40

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Q. I didn't ask you that. She voted from the same address? A. She did.

Q. This man Cavelho, the bartender, he tried to vote from the same address, and Judge Egan wouldn't let him?

10 Mr. McCarthy: I object to that. How would he know that?

Mr. Feinberg: Do you know that or not?

The Witness: I do; but he had a perfect right. I told you before he has one at 49 and one in the other.

Q. He has two homes—one in Jersey City, and one at Third Street. A. Yes. I have two, too; but I don't vote in Jersey City.

20 Q. You weren't fresh to the lieutenant at the desk, were you? A. No, sir.

Q. You didn't give him any trouble at all? A. No, sir.

Q. You didn't pass any wise cracks down at the desk? A. Well, I didn't consider them to be wise.

Q. When you were down at the desk, and were held for \$500.00, and sent down to the cell, you then said to Derowski, "I want this officer examined for being drunk"—or anyone else behind—to

30 Long? A. Yes.

Q. You wanted a doctor to come, and the lieutenant called the doctor? A. Yes, sir.

Q. And Dr. Norwich found him to be a hundred per cent.? A. Yes, sir.

Q. Nothing wrong with him? A. Yes, sir.

Mr. Feinberg: That's all. Where did Haggerty hit you? You were at it for five minutes. Where did he hit you?

40 The Witness: He didn't hit me at all.

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Q. Where did you hit him? A. In the face.

Q. He didn't hit you at all? A. No.

Q. You were fighting for five minutes, and he didn't hit you at all? A. No.

Q. You want the Mayor to believe that, that for the five minutes he didn't hit you at all. 10

Mr. Feinberg: That's all.

RUTH FOX, witness on behalf of the complainant, being first duly sworn according to law, upon her oath testifies as follows:

Direct examination by Mr. McCarthy:

Q. Miss Fox, where do you live? A. I live at 184 West Third Street. 20

Q. Tell the Commissioner just what happened on the morning of May 6th, 1927. A. I was in the Star Lunch Restaurant with another girl, having a cup of coffee, and a man came in, which I had never seen before, and he came up to both of us, and said, "What do you say to coming riding?" I said, "I don't ride with anybody." As I got up to go out, he hit me between the eyes. Somebody hollered. We all hollered, and Harry Clancy and Sal Cavelho and the fellow in the restaurant came out, and Haggerty and Harry got into a fight. Then, next thing I saw Officer Long running out of the "Do Come In" across the street, in civilian. I didn't know he was an officer—with a gun in his hands. I said, "Look out, Harry," and the first thing I knew he hit Harry on the mouth with the gun. Harry said, "Get the wagon." I went next door and told the restaurant proprietor to get a wagon. He called up, and it didn't come right away. I told him to call up again. 30 40

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Mayor Daly: Officer Long and Harry were fighting. What do you mean, arguing or punching?

10 The Witness: Both; he said to Harry, "Next week this time we will show you who is boss. You won't be shouting 'Daly'"; and Officer Long came from across the street, and I asked him to arrest Haggerty. He paid no attention whatsoever. He was still arguing with Harry.

Mayor Daly: This man that struck you in the restaurant—did you know who he was when he hit you?

20 The Witness: I never knew who he was until after he came up here, and then I didn't know his name.

Q. Never saw him before? A. Never saw him before.

Mr. McCarthy: When the wagon came down, where was Long?

The Witness: He was there in the "Do Come In."

Q. Where was Clancy? A. Over on his stoop.

30 Q. Where was Haggerty? A. He was down on the street. I am not sure whether he was up on our stoop or whether down on the street.

Q. When the wagon came down, where was Clancy and where was Haggerty? A. I think Haggerty was on the stoop. Officer Long was across the street in the "Do Come In."

Q. Did you see Long coming across the street? A. Positively.

40 Q. Did you see anything in his hand? A. He had a gun, and pulled it as he was coming across the street.

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Q. Did Long say anything to Clancy? A. He didn't say a word. I didn't even know he was an officer until after he hit Harry.

Q. Did you tell him he was under arrest? A. No.

Q. Did he say anything in regard to arresting Clancy? A. No; he didn't. 10

Q. Where did Haggerty go after Long hit Clancy? A. Haggerty started to run away. I think he started down the street—I am not sure—when the wagon came.

Q. Do you know who called the wagon? A. Harry Clancy called the wagon twice.

Q. You mean he called to you to call the wagon? A. Yes.

Mr. Feinberg: Wait a minute; why should you stir that up? Now if your Honor please, here she testifies to one thing and she changes it. 20

Mr. McCarthy: I will withdraw the question.

The Witness: Shorty Doughnuts called the wagon—I think that's what he's called.

Q. Who was he? A. The proprietor of the restaurant. I stood outside of the booth when he called. I insisted on his calling. Officer Long didn't want to call. 30

Q. Where was Officer Long? A. Over in the "Do Come In."

Mr. McCarthy: That's all.

Cross examination by Mr. Feinberg, as follows:

Q. When you said a moment ago Clancy telephoned for the wagon, you didn't mean it? A. I meant he told the proprietor to call the wagon. 40

Q. When you told Mr. McCarthy a moment ago

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Clancy called the wagon, what did you mean? A. I didn't mean it.

Q. Do you know a girl by the name of Helen Leahy?

10 Mr. McCarthy: I object to the question. It is immaterial as to who she knows. Whether she knows this party or not has no bearing on this case.

Mr. Feinberg: You don't mean that, do you?

Mr. McCarthy: I certainly do.

Mr. Feinberg: All I know is, if she knows a certain girl, it is a foundation for another question.

20 Mayor Daly: What is the purpose.

The Witness: I never made any statements to anybody.

Mr. Feinberg: Did you ever say to Helen Leahy that you are going to go before Commissioner Daly, and if necessary railroad Long out of his job?

The Witness: Positively not.

Q. You never said that to Helen Leahy, or anybody? A. No.

30 Q. You don't know Helen Leahy? (No answer.)

Q. She was never down in your place on Third Street? A. I don't think she was. I don't remember her; no.

Q. Do you know Laura Peterson? A. Yes.

Q. Did you ever say to her that you were going to railroad Long out of his job? A. Positively not.

Q. You never said anything to her? (No answer.)

40 Q. You didn't say to anybody that you and Clancy were going to job Long? A. Never.

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Q. You said, when the wagon came you are not sure what Haggerty did? A. I am not sure.

Q. Why is it you are not so sure about that? A. I couldn't remember everything. I was dizzy. I laid in bed a week after that.

Q. You remember Doughnuts telephoned for the wagon? You remember Clancy told him? A. That was right after the fight. 10

Q. How long did it take him to run away? A. It was about fifteen minutes for the wagon to come.

Q. In the lapse of fifteen minutes, your memory got bad? A. Yes.

Q. Up to that you remembered everything? A. Positively.

Q. You had a place in Kearny, didn't you? A. Positively I did. 20

Q. You and Clancy were in Kearny? A. Mr. Clancy worked for me in Kearny; not Clancy and I were in Kearny at all. Get that right.

Q. You had a business over there? A. Yes.

Q. He was working over there? A. No.

Q. It wouldn't surprise you if he said he had no business in Kearny? That wouldn't change your testimony any? A. No; I wouldn't change my testimony. 30

Q. You know he is a married man, don't you? A. Sure I know.

Q. Who do you live with at Third Street? A. My father and daughter.

Q. Would it change your testimony any if he said you lived with your mother and daughter? A. He couldn't; my mother is dead.

Q. Did your father vote from there? A. Yes; he did.

Q. You are sure about that? A. I am positive. 40

Q. When this fight was going on, this fellow

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Cavelho—he is a bartender down there on Third Street; is that right? A. No; it isn't.

Q. What is he? A. He is a partner.

Q. At the time—you and Clancy and Cavelho are partners? A. Yes.

10 Q. At the time this fight was going on, he was inside? A. They were both inside when the fight was going on.

Q. I mean, when Long and Clancy were fighting, Cavelho was inside? A. I don't remember where he was.

Q. Where was he when the wagon came? A. Inside.

Q. How did he get there? A. He walked in there.

20 Q. Was he inside all the time? A. I don't remember.

Q. Did you ever see him outside at any time during this fight? A. Yes; I did.

Q. You cannot tell the Mayor when he went inside? A. I don't remember; I went next door to call the wagon.

Q. You didn't see him run in when the officers came? A. No.

30 Q. When the officers came, and they were pounding on the door, he wouldn't open it? A. I don't know.

Q. Where were you? A. Outside.

Q. And you called the wagon? A. Yes.

Q. You didn't see them pounding on the door? A. I don't remember that.

Q. And they couldn't get in? A. I don't know.

Q. Isn't it a fact that Clancy afterwards said, "open that door"? A. I don't know.

40 Q. Then they took Cavelho and locked him up? A. They didn't lock anyone up.

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Q. Long didn't telephone for the wagon, did he?

A. No; unless he called from Joe Bressler's after he went there.

Q. You aren't certain about that? A. The first call for the wagon was when Doughnuts called for it.

10

Q. You are sure whether he called? A. Do I know why he called for them?

Q. Do you know where Cavelho was when the fight happened? A. He came outside.

Q. Didn't you say you didn't know where he was? A. No; both of them came out.

Q. The two of them were fighting Haggerty? A. Yes.

Q. Isn't it a fact that Haggerty walked into your place, got a whiskey, and gave you a \$5.00 bill?

20

A. Never saw the man in my life.

Q. And you refused to give him any change?

A. Say listen; I never saw him before then.

Q. I am talking about that morning? A. You are not talking about that at all.

Q. He asked you for the change, and you pushed him out of the place, and then he took a shot at you; is that right or wrong? A. All wrong.

Mayor Daly: I happen to know this Haggerty. He is a boiler maker, and when you talk about any woman pushing Haggerty out of that place, why, I wouldn't believe that. Why, he could throw her out of the window.

30

Mayor Daly: This fellow is round about town, and he is a pretty rough type of fellow. A man in the boiler making game can take care of himself, and not be hit by any woman. If you say she pushed Haggerty out of the place, it is ridiculous.

40

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Mr. Feinberg: Her story is more ridiculous than the other. She said Haggerty came in—the first time he ever saw her in his life—a fellow must be crazy if he would do that.

10 Mr. Feinberg: He certainly is crazy. On the other hand, Mayor, here is Haggerty's testimony. He isn't interested; she is. She is a partner of the man making the complaint.

Mayor Daly: She says he asked her to go for a ride, and when she refused, he hit her. I never heard a thing like it.

20 The Witness: Well, he is a friend of Officer Long. He said he wouldn't arrest him.

Mayor Daly: Miss Fox, was Haggerty under the influence of liquor?

The Witness: I don't know.

Mr. Feinberg: You didn't sell him a drink.

The Witness: No.

Mayor Daly: What store was this in, yours?

30 The Witness: No. There was another girl. I was going to take her home. I said, "Let's have a cup of coffee"; and this man followed us in, and I said, "I don't ride with anybody; I have my own car," and he said, "You dirty prostitute," and he got up and hit me between the eyes.

Mr. Feinberg: You never met the man before?

The Witness: Never.

40 Q. And the first time he ever met you he asked you for a ride and he hit you when you refused?
A. Yes.

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Q. You didn't talk this over with anybody?

A. No.

Q. Since it happened until you got into the witness chair? A. No.

Q. You are sure about that? A. No; I didn't.

Q. You didn't tell your story to McCarthy, did you? A. Who is McCarthy? 10

Q. Tom McCarthy. A. No; I didn't tell my story. I don't know if Mr. Clancy told his story to McCarthy or anybody.

Mr. McCarthy: I will vouch to that.

Mr. Feinberg: Did you see the fight outside?

The Witness: I was all excited.

Q. How many times did Haggerty hit Clancy? A. I don't know. 20

Q. Did he hit him once? A. I don't know. They were fighting when I got over there.

Q. They were hitting each other? A. I saw the both of them with their heads over when Officer Long came along.

Q. How long were they fighting before Long came along? A. I don't know; I came running back and forth from the restaurant for Cavelho to call the wagon. 30

Q. You didn't see anybody hit anybody? A. I think Mr. Clancy hit the other fellow Haggerty.

Q. You think Haggerty hit Clancy at all? A. I didn't see him.

Q. You don't know if he did or not? For Five minutes you ran up and down?

Mayor Daly: She ran to the telephone when she saw this fight started.

The Witness: That's right. 40

Mayor Daly: And you went to get the

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wagon and the fellow from the restaurant was so excited he didn't know what to do himself.

10 Mr. Feinberg: You don't remember what Haggerty did when the wagon came; you aren't sure?

The Witness: Well, Haggerty was standing there, and Harry Clancy said, "I want this man arrested." I think when Officer Long came across the street, he was near.

Q. Before you said Haggerty ran away? A. When the wagon got there, Haggerty was running up the street.

20 Q. You aren't sure what Clancy or Haggerty did? A. No; I am not sure what either one of them did.

Q. You never had any trouble with Long? A. No.

Q. He never had any trouble with you? A. No.

Q. As far as you know, Long never had any trouble with Clancy? A. No.

Q. You know no reason why he should take a shot at him? A. I didn't know he was an officer until he came across the street.

30 Q. You didn't see Haggerty on the ground? A. No.

Q. You saw two men hitting him? A. I saw one man; I saw Harry Clancy hitting him.

Q. Didn't you say a moment ago that both Clancy and Cavelho were fighting with him? A. I don't know.

40 Q. Didn't you say the two of them were fighting? Didn't you say before to the Mayor that both Clancy and Cavelho were fighting with Haggerty? Did you say that, or didn't you? A. I don't know.

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I don't remember saying the three of them were fighting.

Q. You cannot remember now what you were saying ten minutes ago, but you can remember what happened last May. A. I remember Harry Clancy and Haggerty fighting.

10

Q. They weren't shaking hands? A. They wouldn't be arrested for shaking hands.

Q. They were arrested for that? A. Yes.

Q. Did you see them take out the slot machine? A. The officers. He insisted on them taking it. They had it in the hall, and they hesitated, and Harry said, "Go ahead and take it."

Q. You remember when the two officers tried to get inside, and they couldn't get in, and Clancy said, "Open the door"? A. The place was closed.

20

Q. And Clancy said, "Open the door," and Cavelho opened it? A. I didn't know that was done.

Q. One of them hit Cavelho. Who hit him? A. I don't know.

Q. Who hit him—one of the two cops on the van? A. I don't know which one.

Q. Did Long hit him? A. I don't think so.

Q. Didn't this Cavelho put his hand in his back pocket, and one of the officers smacked him? A. No; he didn't have anything.

30

Q. Did he make the motion of pulling a gun? A. No.

Q. One of the two hit him? A. Yes.

Q. You say Long didn't hit him? A. Yes.

40

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SALVATORE CAVELHO, witness on behalf of the complainant, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. McCarthy:

10 Q. What is your name? A. Salvatore Cavelho.

Q. Where do you live? A. 49 Boulevard.

Q. You tell the Mayor just what happened on the morning of May 6th. A. On the morning of May 6th, between the hours of 3:30 and four, we heard a racket outside of the place, next door, at 47 Boulevard.

20 Q. Where were you at the time? A. I was in the place of business at 49 Boulevard. We were all closed up. We heard the racket and went outside, and we heard the woman scream.

Q. By "We" you mean who? A. Clancy and I. We heard the woman scream, and we walked to the street, and this woman said, "This man has abused me."

Mr. Feinberg: I will object to what was said by the man or woman not in the presence of Officer Long.

Mr. McCarthy: Just tell what you saw.

30 The Witness: As I came outside, this man was fighting with the woman. Clancy came over to find out what is the matter. Clancy and he were at it. This gentleman, Haggerty, found out what the trouble was, and he beat this Haggerty for the simple reason he called this woman certain names.

Q. When did you first see Long? A. I seen Long when Mr. Clancy and Haggerty was fighting, across the street from the restaurant.

40 Q. Did you see anything in Long's hand?

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Mr. Feinberg: Wait a minute. I think that is a leading question. Why don't you ask him what happened?

Mr. McCarthy: Why don't you make your objection to the Court?

Mr. Feinberg: I will make it to the Court. 10

Mayor Daly: Objection sustained.

Mr. McCarthy: From what direction did Long come?

The Witness: Right across the street.

Q. When Long came over, what happened then?

A. He hit Clancy without finding out what was the trouble. I didn't know whether he was an officer or not. He should have found out what it was about.

20

Mr. Feinberg: I move it all be stricken out. That is his conclusion.

Mayor Daly: Strike out only what he said regarding what the officer should have done as a police officer.

Mr. McCarthy: When Long came across the street, did he say anything to Clancy or Haggerty?

The Witness: Didn't say a word.

Q. Did he strike Clancy? A. Yes, sir.

30

Q. Did he strike him with any weapon of any kind? A. Yes, sir.

Q. What was the weapon? A. A revolver.

Q. Where did he hit Clancy? A. Across the mouth.

Q. You saw that? A. Yes, sir.

Q. Then what did Long do? A. Why, after he hit Clancy he walked across the street, and Harry Clancy called for the wagon.

Q. What do you mean, he called for the wagon?

40

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A. He called for the wagon; he wanted Long pulled in.

Mr. Feinberg: Who called for the wagon?

10

The Witness: Harry Clancy.

Mr. McCarthy: Where did Long go then?

The Witness: He went across the street.

Q. When the wagon came down, where was Long? A. Across the street.

Q. Across the street from the scene of the fight?

A. From the scene of the fight.

20

Q. When did you next see Long after the wagon came down? A. The next time I seen Long—the wagon came down; my place of business was closed up. They came at the door and wanted me outside, and I said, "All right." I put on my hat and coat and walked out.

Q. Were you in the fight with Clancy and Haggerty? A. No; I wasn't in the fight with them. I did pick Haggerty up for a few times.

Q. Picked him off his feet? A. Yes.

Q. Did you have any trouble with Officer Long?

A. No, sir; none whatever.

30

Mayor Daly: When you state that Harry Clancy called the wagon, just what do you mean; that he went and called up by telephone, or he just said, "Get the wagon?"

The Witness: He called to the proprietor of the restaurant at 47 Boulevard to call the wagon.

Q. But he didn't call the wagon. He called to somebody else to call the wagon. A. Yes; he called to somebody else to call the wagon.

40

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Mr. McCarthy: When the wagon came down, where was Long?

The Witness: He was across the street.

Q. Do you know how Long came to be on the west side of the street? A. That I couldn't say.

Q. Did Long come over when the wagon came down? A. I didn't see Long at the time.

Q. Didn't see him. That's all.

Cross examination by Mr. Feinberg, as follows:

Q. What did you go inside for when the wagon was coming down and locked the door? A. I went inside. I had the door open.

Q. Just explain to the Court why you went inside and locked the door when the wagon arrived. A. I went inside to get my hat and coat.

Q. And locked the door? A. I lock the door in my home all the time.

Q. So you did that because it was your custom? A. Yes; that is the custom.

Q. You want us to believe that because it is your custom to lock the door, you locked the door then? A. There is a latch on the door; it locks itself.

Q. Also, it is your custom to do so at your own home? A. Yes.

Q. You were only in there for a few minutes, when there was a pounding, pounding on the door? A. Yes.

Q. And a couple of cops hollered, "Open the door"? A. Yes.

Q. And you wouldn't open the door? A. No.

Q. And Clancy told you to open the door? A. Yes.

Q. You wouldn't open it for anybody; but when Clancy told you, you opened it? A. Yes.

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Q. Then, when you got Clancy's order, you opened the door? A. Yes.

Q. And these two cops that came down on the patrol came in? A. They pushed their way in.

10 Q. As they pushed their way in, you put your hand over your back packet? A. No.

Q. One of them smacked you over the mouth; which one was it? A. Heaney.

Q. Long didn't? A. No.

Q. You wouldn't change your testimony any if I said that Clancy said that Long hit you? A. No.

Q. Long didn't hit you at all. That isn't true? A. No.

Q. When these two cops came in, they took the slot machine out? A. Yes.

20 Q. Who held this; the two of them, or did the fat fellow hold it himself? A. Why, I don't remember. I don't remember at the time, as I was hit in the jaw, and was stunned for a minute.

Q. Why did they hit you? A. I don't know.

Q. Why did the cop hit you? Why did Heaney hit you? A. That I couldn't say. I don't think he had a right to hit me, any more right that Long had to hit Clancy; no.

30 Q. You are sure you didn't make any pass for him? A. No.

Q. You didn't put your hand in your back pocket, did you? A. No.

Q. They searched you after that? A. Yes.

Mayor Daly: Did they find any weapon on you?

Mr. Feinberg: No; he said he was going to pull his handkerchief out.

Mayor Daly: Who said that?

40 Mr. Feinberg: Didn't you tell the cops you were going to pull out your handkerchief?

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Mayor Daly: Did you have a handkerchief?

The Witness: Yes.

Mayor Daly: Wouldn't that be an assumption?

Mr. Feinberg: It is all right for a man to put his hand in his back pocket, and under the laws of assault and battery, it is all right to kill a man when he puts his hand in his back pocket, even if he has nothing. 10

Mayor Daly: If he wouldn't have a gun there, he wouldn't make such a statement.

Mr. Feinberg: I will have the officers here under oath. They certainly wouldn't hit the man for any reason at all.

Mr. Feinberg: You picked Haggerty up a couple of times? 20

The Witness: Yes.

Q. What did you pick him up for a couple of times; to be knocked down again? A. Yes.

Q. How many times did you pick him up? A. Several.

Q. And each time you picked him up, he got knocked down? A. Yes.

Q. You are sure you saw Haggerty hit Harry? You won't change your testimony if Clancy testified Haggerty never touched him once? A. No. 30

Mayor Daly: I don't think Haggerty testified he didn't touch him once; he didn't hit him once. He might have attempted once.

Mr. Feinberg: Didn't hit him once? He saw him being hit.

Q. Where do you live? A. 49 Boulevard.

Q. You also have a home in Jersey City? A. Yes. 40

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Q. Is that your summer home? A. I stay there once in a while.

Q. Where is your real home? A. 49 Boulevard.

Q. You voted from there? A. Yes.

10 Q. Didn't Judge Egan stop you? A. He didn't stop me.

Q. Were you before Judge Egan? A. When I was up before Judge Egan? I said I voted from 49 Boulevard.

Q. Didn't Judge Egan tell you you couldn't vote from there? A. I didn't hear it, if he said it.

Q. In your presence? A. I didn't hear it.

Mayor Daly: He might be referring to the Primary Election.

20 Mr. Feinberg: Did you vote at the last election?

The Witness: Yes, sir.

Q. Were you up before Egan at the primaries? A. No, sir.

Q. Weren't you up before Egan at all? A. No, sir.

Q. Didn't you just now testify a moment ago, if Egan said it, you didn't hear it? A. At the primary, I mean.

30 Q. At the last Commission Election, you said you weren't up there? A. I didn't know that was primary.

Q. You were up before Egan on it; somebody challenged you. A. In the last election?

Mayor Daly: You are referring to the Commission Election. There are two different elections.

40 Mr. Feinberg: What is your other address?

The Witness: 170 Mallory Avenue.

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Q. Are you married? A. Yes.

Q. You don't live with your wife? A. Yes, sir.

Q. When you are in your Bayonne home, you are not living with your wife; is that right? A. Yes, sir.

Q. When you are in your other home, you are living with her; is that right? A. Yes, sir. 10

Mr. McCarthy: That is the Chief's case.

Mayor Daly: You saw the officer strike Clancy with the butt end of his revolver?

The Witness: With the butt end of his revolver.

Q. Where did he strike him? A. Right across the mouth.

Mr. Feinberg: The first blow you saw struck was Haggerty hitting Clancy on the mouth? 20

The Witness: I never said Haggerty hit him in the mouth.

Q. Where did he hit him? A. I couldn't say where he hit him.

Q. But the first blow was Haggerty hitting Clancy? A. He made an attempt to hit him.

Q. Do you want to change your testimony? A. I am pretty sure. I don't know where he hit him, but he hit him. 30

Q. Now, when Long came across the street, do you know if anybody called him? A. Nobody.

Q. Long never had a fight with you? A. No.

Q. You never had a fight with him? A. No.

Q. He never had, as far as you know, a fight with any of these people—Clancy or Miss Fox? A. No.

Q. Do you know of any cause for a fight? A. 40

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Yes; there is one cause, if you want me to bring one up.

Q. What is it? A. I wasn't going to say anything about it.

10 Q. You say he never had anything to do with Clancy or Ruth Fox, yet you say it was politics that caused him to hit him.

Mayor Daly: He couldn't testify what caused Long to hit him.

Mr. Feinberg: He is doing it, your Honor; I am not testifying for him.

The Witness: I had another reason for Long hitting him.

Mr. Feinberg: He said that himself.

20 Commissioner Daly: That doesn't make it so.

Mr. Feinberg: Then he isn't telling the truth.

Mayor Daly: Do you feel that politics had anything to do with this fight between Haggerty and Clancy that was over Haggerty striking Miss Fox?

The Witness: Yes.

30 Mr. Feinberg: I think that is certainly objectionable—telling him what it happened over.

Mayor Daly: There is nothing in the testimony up to this time that it was a question about politics. You are placing a different construction on what he meant; I can see that. It is plain to everybody that this woman here was in the restaurant.

Mr. Feinberg: I will get the rest of it out when I finish the case.

40 Mr. Feinberg: Did you say before that it

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was politics that caused this assault, and you didn't want to mention it?

The Witness: I never said politics caused the assault.

Q. You just tell me what you said about politics.
A. About politics—there was a remark passed to Harry Clancy that this time next week, or the week after, we will see who is boss. Somebody else said that, and Harry then said, "All right; we will see who is boss."

10

Mayor Daly: Was this after the fight was stopped?

The Witness: I am pretty sure it was after the fight was stopped.

Mayor Daly: Long didn't come from across the street until Haggerty and Clancy were fighting, did he?

20

The Witness: Why, no; he didn't come over.

Mr. Feinberg: I am going to object to the question on the ground it is leading. It is putting the question in his mouth.

Mayor Daly: It is very apparent Long came over there to stop the fight, didn't he? The remarks about politics could not have taken place, with Long making some of the remarks, until after he came across the street to stop the fight. Consequently, I think it is apparent to everybody that the fight was not due to politics.

30

Mr. Feinberg: It was not to this witness, your Honor. You said before Long came over without any provocation and struck Clancy. He didn't know Clancy or Miss Fox. You said, "I didn't want to mention it; it was politics." Do you mean it?

40

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The Witness: I never said it was politics. He came over and hit Clancy. That caused the whole thing.

Q. The whole thing? A. Not the whole.

Q. It caused some of it? A. Yes.

10 Q. Now, you tell the Mayor how much of it politics caused. A. Right after Long came over and there was a remark passed, and then everything quieted down.

Mayor Daly: This was after the fight?

The Witness: There was only one blow passed, and the fight was off, and there was a remark passed, "We will see who is boss next week."

20 Mr. Feinberg: Did Clancy say, "I will have you broken for this?"

The Witness: I never—

Q. Didn't he say, "I will have you up before Daly?" A. I never heard that.

Q. Would it change your opinion if Clancy said that? A. I don't know if he said it.

Q. In the beginning there was no politics? A. No.

30 Q. In the end there was politics? A. Yes.

Q. As far as the charges, was that part politics. A. I wouldn't say that.

Q. What is this thing about, then? A. Here is the thing: Long came over, without asking what the trouble was and asking who he was, he came over and smacked a citizen. Is that fair?

Q. That is what you mean by politics? A. I mean—

40 Q. You are not bringing it in now? A. I brought it in.

Q. Part of it was politics? A. Yes.

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Q. You didn't know Long? A. No.

Q. As far as you know, Harry and Long were not on the same political sides? Harry wasn't supporting the Long men? A. Not that I know.

Q. Do you know who was Harry with? A. I think he was a redeemer. 10

Q. Do you know he was for Donohoe? A. I don't know.

Q. Do you know who Long was for?

Mayor Daly: The point is, the political argument came out after the fight was over. He came over and hit him in the mouth with the point of a revolver.

The Witness: You asked me if I knew how Long voted or what his politics were. 20

Mr. Feinberg: You said you didn't know. I will not question you any more. Let me ask you this: Did you talk this over with anybody?

The Witness: No.

Q. Why did you stop a minute? You didn't talk to a living soul about this? A. No.

Q. With what part of the gun was he hit? A. The butt.

Q. The three of you said the butt. Where did he hit him? A. Across the mouth. 30

Q. That is the same language the three used. You didn't talk to anybody? A. Not that I know of.

Q. Your answer is, "I didn't speak to anybody that I know of." That is your answer. When was the last time you lived with your wife? A. The last time? Night before last.

Q. And before then when was the last time? 40

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Mr. McCarthy: Object to that as immaterial.

Mayor Daly: Objection sustained.

Mr. Feinberg: I ask an exception.

10 Mr. Feinberg: How often do you live in Bayonne?

The Witness: Two or three days a week; four days a week.

Q. And the other three days you live in Jersey City with your wife? A. Yes.

Q. And you sleep here without your wife? A. Yes.

Q. Where is the house? A. 170 Mallory Avenue.

Q. In Bayonne? A. 49 Boulevard.

20 Q. You got a bed there? A. We are open all night in the restaurant.

Q. That is your place of business? A. Yes, sir.

Q. Do you live there? A. I stay there most of the time.

Q. Where do you sleep? A. Upstairs, over 49 Boulevard.

Q. You got a bedroom? A. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. Is that where you sleep? A. Yes, sir.

30 Q. Who else lives upstairs? A. No one; just myself.

Q. Just one room up there? A. No.

Q. How many? A. Three or four.

Q. What is in there? A. Nothing; they are bare rooms.

Q. Just bare rooms, and one bedroom for you to sleep in. You don't remember how many times you picked up Haggerty, do you? A. I couldn't tell you the exact number of times.

40 Q. Each time he fell down, you picked him up?

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A. So he wouldn't knock the ground; so he wouldn't hurt himself.

Q. He was helpless? A. I wouldn't say.

Q. Why did you pick him up if he wasn't helpless? A. I tried to save him falling down and hurting his head. 10

Q. You say you picked him up from the ground?
A. No.

Q. And you say you picked him up so he wouldn't fall down and hurt his head? Why didn't you let him there? A. Now, if anybody calls your sister or your daughter—

Q. I am asking you why you picked him up?
A. Because he deserved it. I would pick up anybody. 20

Q. You didn't pick him up to help him? A. No.

Q. So that Clancy could take another shot? A. No; so he could hurt himself falling down.

Q. That part you want to take back, don't you?
A. Yes; I do.

Q. Were you ever convicted of a crime? A. No sir.

Q. Never convicted of a crime? A. No, sir.

Q. You ran a place in Kearny? A. No, sir.

Q. Were you ever in Kearny? A. I worked in Kearny. 30

Q. For whom? A. William Somers—the man is dead now; William Somers.

Q. Did you know Ruth Fox in Kearny? A. Yes, sir.

Q. Did you work for her? A. No, sir.

Q. Did you know where her place was? A. Yes.

Q. Where? A. On River Road.

Q. Was it a roadhouse? A. Restaurant.

Q. Restaurant? A. Restaurant, to my estimation. 40

Q. Was it a saloon? A. Restaurant.

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Q. On River Road? There was a sign out in front. What was the name of it? A. I just couldn't tell you the name; I don't remember.

Q. You wouldn't say I was wrong if I call it a roadhouse? That is what is commonly known as a roadhouse? A. Some people call it a roadhouse.

Q. You wouldn't call it a roadhouse? A. No.

Q. You don't call any of those places roadhouses; you call them restaurants? A. Yes.

Q. You did say you were a partner with Miss Fox and Clancy? A. I didn't say it before, but I will say it now.

WILLIAM HARMON, being first duly sworn according to law, on his oath testifies as follows, on behalf of the defendant:

Direct examination by Mr. Feinberg:

Q. Mr. Harmon, where do you live? A. 22 East 12th Street.

Q. How long have you lived in Bayonne? A. Four years.

Q. And you are in business, and where? A. Twelfth Street.

Q. What kind of business? A. U-Drive business.

Q. You run a garage there? A. Yes.

Q. On the morning of May 6th, was one of your cars missing? A. Yes.

Q. Did you have a talk with Mr. Long? A. I did.

Q. As a result of that, did you ask him to go and find the car.

Mr. McCarthy: I object to leading the witness.

Mr. Feinberg: There is nothing material in this thing I want to show.

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Mayor Daly: Who was there?

The Witness: Long went down there to find him.

Mr. Feinberg: Tell the Mayor what happened. Was it two o'clock?

The Witness: Between one and two, I should say. 10

Q. Tell what happened. A. On the day previous the car had been rented from my place by a fellow. It had been out thirty-six hours or so. Shortly after twelve o'clock—or just about twelve o'clock—I saw Mr. Long on the corner of Twelfth and Broadway, and mentioned it to him.

Mayor Daly: In uniform?

The Witness: In uniform. He was just going to go in. I had got word during the course of the evening that the car had been seen over on the Boulevard, and that the fellow driving it was drunk. I couldn't leave my place there. I was alone. I asked Long if he could go down there and see if he could find the fellow and get him to drive the car back. I loaned him a car to drive down there. 20

Mayor Daly: You did loan Long a car to drive down? That was about twelve? 30

Mr. Feinberg: It was between one and two, he said.

The Witness: That was later. He went home to change his clothes. I don't think it was much later than 1:30 when he came back.

Cross examination by Mr. McCarthy, as follows:

Q. Where do you live? A. 22 East Twelfth. 40

Q. Where is your garage? A. 5 East Twelfth.

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Q. What kind of a car was missing? A. An Oakland coach.

Q. What was the license number, do you know? A. 0365 UD.

Q. How old was that car, do you know?

10

Mr. Feinberg: I object to that. It is immaterial, irrelevant and incompetent.

Mr. McCarthy: I am testing the witness' credibility.

Mr. Feinberg: It is immaterial, irrelevant, and incompetent. Why don't you ask him how much it is worth?

Mayor Daly: Objection sustained.

Mr. McCarthy: When was the car missing, you say?

20

The Witness: Since eleven o'clock in the morning the day previous.

Q. May 5th? A. Yes.

Q. And when was that car supposed to be in your garage, according to your contract? A. Within twelve hours.

Q. Therefore it was overdue at twelve o'clock? A. Yes.

30

Q. And did you notify the police? A. I did.

Q. Police Headquarters? A. Yes.

Q. Whom did you call? A. Fifth Precinct, Jersey City.

Q. Did you call Bayonne? A. I did, and I was referred to there, because this party that had this car, and I had reason to believe he was in his own neighborhood, and that is in the Fifth Precinct, Greenville.

40

Q. What time did you call Police Headquarters in Bayonne? A. About three o'clock in the afternoon of the fifth.

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Q. And you did that in spite of the fact that the car was under contract for twelve hours' service.

A. Wait a minute, you have your dates mixed.

Q. You have your dates mixed up. You are telling me it is the fifth. This affair down Second Street was supposed to have happened on the morning of the seventh.

10

Mr. Feinberg: Sixth.

The Witness: Sixth. The car had been rented on the fourth. In other words, the car had been out thirty-eight hours.

Mr. McCarthy: And when did you call Bayonne Police Headquarters?

The Witness: About three o'clock in the afternoon on the fifth of May.

20

Q. Do you know whom you talked to? A. No; I don't.

Q. Did you tell them who you were? A. Yes.

Q. And they referred you to the Fifth Precinct of Jersey City? A. Yes.

Q. And this night of May 5th you saw Long on the corner of Twelfth and Broadway? A. Yes.

Q. About twelve o'clock? A. About twelve o'clock.

30

Q. And he was in uniform? A. Yes.

Q. And you told him about the car being missing? A. Yes.

Q. And you asked him to locate it? A. He told me he was going off at twelve o'clock. I told him to take a car and go down the Boulevard and see if he could pick it up.

Q. How long do you know Long? A. Three years.

Q. How long have you been living in Bayonne? A. Four years.

40

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Q. You know him practically all the time you have been living in Bayonne? A. Yes.

Q. Has Long ever hired cars from you? A. Yes.

Q. Long was a regular customer of yours?

10 Mr. Feinberg: What difference does that make?

Mr. McCarthy: If you have any objections, make them to the Commissioner.

Mr. Feinberg: I object to it, as being immaterial, irrelevant, and incompetent. I know I was limited in my cross examination. The Commissioner stated he was interested only in whether this man hit the other with his gun.

20 Mr. McCarthy: I want to test the witness' credibility.

Mayor Daly: The reason I am letting Mr. McCarthy ask these questions is this: There was brought out a very extraordinary situation; that of a Bayonne police officer working after he has gone off duty. I am interested in that. That is the first time in my connection with the City that has happened.

30 Mr. Feinberg: You mean working gratuitously?

Mayor Daly: Yes; taking that much interest in a stolen car after off duty.

Mr. Feinberg: This is a surprising thing. I can call your Honor's attention to fifty or sixty things right here in Bayonne last week.

Mayor Daly: I am glad to know that. How is that to do with the case of a man charged with assaulting a man? Did Long pay you every time he hired a car from you?

40 The Witness: Absolutely.

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Q. Did he ever have one out that he didn't pay you? A. No.

Mr. McCarthy: Did you give Long a car that morning to go out in?

The Witness: Yes.

10

Q. When did you get it back? A. It is difficult for me to say, because I wasn't at the garage when it came.

Q. What time did you go to the garage? A. I closed at two or two-thirty, and didn't go back at all until twelve the next day.

Q. Was the car in the garage when you got there? A. Yes.

Q. Who brought it back? A. I suppose Long.

Q. You don't know? A. No.

20

Q. Did he find the car that was lost? A. No; in the meantime it came back about two o'clock.

Q. Did you send word to Long? A. Didn't see him afterwards.

Q. Did you go out and try to find him? A. I expected him to return when he went out. I didn't expect him to be out more than an hour or so. I was pretty certain the car was parked somewhere in Bayonne outside of a gin mill. While he was taking the ride, the car came in.

30

Q. You didn't go out and tell Long the car was found? A. I didn't know where to find him.

Q. Along the Boulevard? A. Not necessarily.

Q. Didn't you say to Mr. Feinberg you told him to look along the Boulevard?

Mr. Feinberg: No, he didn't. He didn't say anything of the kind.

Mr. McCarthy: You are not testifying.

Mayor Daly: You say you called up Police Headquarters.

40

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The Witness: Yes, sir.

Mayor Daly: Well, there is no report on that date.

Mr. Feinberg: We are certainly not responsible for that.

10 The Witness: The report was not entered here, because the residence of this man was Jersey City, and whoever was at the desk at the time suggested that, inasmuch as he lived at the Fifth Precinct, to call up there.

Mr. McCarthy: That's all.

20 PATRICK LONG, defendant, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Feinberg:

Q. About three o'clock in the morning of May 6th, were you in the vicinity of the Boulevard and Third Street? A. Yes, sir.

30 Q. When you got there—first, before you got there—when you got there, what were you going down that neighborhood for? A. Mr. Harmon asked me if I wouldn't go up and down and look for the car, so I said I would go home and change my clothes and take a ride up and down; so I go down Avenue A, am up riding and well along First Street and up the Boulevard. As I am coming up the Boulevard I hear some hollering. So I stopped the car on the east side, got out, and went over.

40 Q. What did you see? A. There's a crowd there, and I saw a man laying down and another man kicking him. So I shoved him away.

Q. Who, the man that was doing the kicking?

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A. Yes; the man that was doing the kicking. So I recognized that the man laying down was Shoot Haggerty. I said, "What is the matter here?" He said, "I want Harry Clancy arrested." I said, "Where is Harry Clancy?" He said, "Here I am."

Q. Who is the man who said that? A. That man (indicating Harry Clancy). He said, "Here I am"—the man that was kicking. He said, "I have a charge against Shoot Haggerty." So I said, "Haggerty, you are under arrest," and I called the wagon. 10

Q. You called the wagon? A. Yes; I called the wagon.

Q. Did Clancy call for the wagon? A. Not that I know of. It looked like a free-for-all fight.

Q. How long did it take for the wagon to come? A. I judge about ten minutes; not any more. 20

Q. What happened when the wagon came? A. I was standing there. Officers Milden and Heaney were on the wagon. He said, "What is the matter?" I said, "I have the four persons under arrest." There were only three there—Clancy, Shoot, and Miss Fox; I said, "The other fellow went inside"; so they said, "We will go inside." So we went to the door and said we were officers of the law and wanted to come in. He wouldn't let us come in. So Harry Clancy came up and said, "It's all right." Us officers were at the door, so he could see the uniforms; so we went inside and opened the door, and Harry said we had no right—and there is a slot machine. 30

Q. What happened as you got in the door? A. This fellow goes to his back pocket. Somebody hit him. I was in the rear of the store. The three of us couldn't go in at once. I don't know who hit him. 40

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Q. Then what happened? A. So we got in. So they searched—we searched him, and couldn't find anything. So then in the corner we see a slot machine. I don't know which one remarked, "You better take the slot machine; you cover yourself up." I said, "I haven't got nothing to cover; we are only doing our duty. The slot machine is a violation. We had better take it."

Q. You didn't order the cops to take it? A. No.

Q. Who took it? A. I don't know.

Q. You didn't hit the other man that was inside? A. No.

Q. You heard Clancy testify that you hit him. That isn't so? A. No.

Q. You didn't actually carry out the slot machine? A. No.

Q. Did you come over from the other side of the street and take a gun out of your pocket and hit this man with a gun? A. Never had a gun in my hand.

Q. When you got outside with Clancy, was anything said about putting it off? A. When we got in the wagon, Clancy said, "Leave this thing drop; nobody will get anything out of it," I said, "I am out of it now." I said to Shoot, "When you get there, tell the lieutenant our story. It is out of my hands." I called the wagon. Then Clancy said, "I will break you." So I says, "All right, if that's the way you think about it, I will get you more of a chance. I have a charge against you of disorderly conduct—the four of you. I have a charge of disorderly conduct against you." They were brought up before Judge Sharkey, and he held them for \$1,500.00 for the Grand Jury.

Q. Every one of them? A. Yes.

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Q. Did Clancy tell Sharkey that you hit him with a gun? A. Yes.

Q. Did he make any charges there? A. No.

Q. Did he tell Lieutenant Derowski you hit him with a gun? A. I didn't hear him.

Q. Did he give Derowski any trouble you know of? A. He was cranky down there—I don't know. 10

Q. Did you say to him, "Next week there will be a different boss." A. Politics never entered my mind that night.

Q. Did you say anything about Dr. Daly or anybody else? A. No, sir; I thought I was doing my duty by preventing him from hitting Haggerty and Haggerty from being hit.

Q. Was he drunk? A. No.

Q. Was he battered up? A. I didn't know Shoot until I got him on his feet. 20

Q. That was the first time you ever knew him? A. No; just passing by. I never recognized him.

Q. Did you ever have anything to do with this woman or her partner, Salvatore Cavelho? A. No.

Q. You never had anything to do with either one of them? A. No.

Q. Did Clancy say to the two patrolmen on the van, "I want to have Long arrested"? A. That I don't know. I rode up behind him in the other car that I was with. 30

Q. The two van men went up with the fellows? A. I left Miss Fox, who wanted to ride in her car.

Q. Did Clancy say anything about giving back the slot machine? A. No; he just said he wanted things quiet.

Q. How long have you been in the service? A. Police Department? 40

Q. Yes. A. About nine years.

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Q. When did you first go on the service? A. December 1st, 1919, I think.

Q. Were you in the war? A. Two years; twenty-four months in France.

10 Q. Twenty-four what? A. Twenty-three months in France.

Q. Have you your discharge with you? Let me have it. Were you wounded in service? A. Yes.

Q. How many times? A. Well, once there, and I was wounded there.

Q. Where were you wounded? A. I was wounded September 21st with shrapnel. It didn't amount to anything. It was in the battle of Cambrai. I went to the hospital.

20 Q. When were you wounded the second time? A. November 30th, 1917.

Q. Are you married? A. Single.

Q. Whom do you live with? A. My sister.

(Army discharge offered in evidence, marked "D 1.")

Q. You don't know anything about these three people who testified, from your own knowledge? A. No.

30 Q. What did Clancy say to you about getting you? Just give me the language. A. He said he was going the limit to break me.

Q. Did he say whom he was going to see to do it? A. He said he was going to see Daly—Dr. Daly.

Q. And when you got to Headquarters, did he want you examined? A. He asked the lieutenant to examine me—to have me examined by the doctor.

40 Q. Dr. Norwich came? A. Dr. Norwich.

Q. Pronounced you O. K. A. Yes.

Q. Judge Sharkey heard the whole case, didn't he? A. Yes.

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Q. He held all the parties for the Grand Jury in \$1,500.00 bail? A. Yes.

Q. No charge made against you hitting him with the gun? A. He had one of the witnesses up there, and he said he didn't see the gun.

Q. Which witness is that? A. He cooks in the Star Restaurant. 10

Q. He isn't here today, is he? A. No.

Q. He wasn't arrested, was he? A. No.

Cross examination by Mr. McCarthy, as follows:

Q. What shift were you on May 5th? A. Four to twelve.

Q. What was your post? A. From Eighth to Thirteenth; Post 12.

Q. What does that include, east and west? A. East of Broadway. 20

Q. All east of Broadway? A. Twelve; east of Broadway.

Q. From Eighth to Twelfth? A. Eighth to Fourteenth; Post 12, east of Broadway.

Q. All east of Broadway? A. East of Broadway.

Q. What time did you go off duty? A. Twelve o'clock.

Q. How did you go off? A. Walked up and rung at 13th and Broadway. 30

Q. What did you do then? A. I walked home.

Q. Where do you live? A. 68 West Eleventh Street.

Q. What time did you meet Harmon? A. Just before I went off post, before twelve o'clock.

Q. In front of your garage? A. No; in front of Donnelly's Chevrolet garage. I was waiting for a couple of minutes to twelve, so I could walk up and ring off.

Q. What did he say to you? A. He said, "There 40

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is a car out." He had word that the car was coming in. He heard it was up the Boulevard somewhere, would I mind taking a car and seeing if I could see it?

10 Q. Did he make the report to you as a friend or police officer? A. That I don't know.

Q. Did he say the car was stolen? A. He said he called up Jersey City or some place, and he heard he was in Bayonne.

Q. What time was that? A. That was just before twelve o'clock.

Q. What time did you ring off? A. Twelve o'clock.

Q. Exactly? A. I don't know.

20 Q. Was it after your conversation? A. With Harmon.

Q. Did you notify the lieutenant at the desk you were asked by a citizen to recover a stolen car—that a car was missing? A. No.

Q. You didn't make a report of that? A. No.

Q. You didn't tell the lieutenant at the desk that the car had been reported stolen of Harmon? A. He didn't report it stolen; he said one of the cars had been seen.

30 Q. It was missing? A. Missing.

Q. Shouldn't you have made a report to the lieutenant?

Mr. Feinberg: I object to that. The charge is that of assault and battery. Whether the charge is failing to report is another question. I object to what he should have done.

Mayor Daly: What is the question?

40 Mr. McCarthy: Shouldn't he have made a report to the lieutenant at the desk that the car was missing?

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Mr. Feinberg: He shouldn't have done that. I will object to that question. That is for your Honor to determine.

Mayor Daly: Objection sustained.

Mr. McCarthy: When you receive a notice of that kind from a citizen, isn't it customary to make out a report to the lieutenant? 10

Mr. Feinberg: I object to that—whether it is customary, whether it should have been done. That is a question for Mayor Daly to determine.

Mr. McCarthy: It is cross examination.

Mr. Feinberg: What is customary for a man to do when off duty, when a man says, "go down the street and see if you can find my car" is absolutely incompetent, irrelevant, and immaterial on the charge of assault and battery. 20

Mayor Daly: It seems to me he should have made a report.

Mr. Feinberg: He should not have.

Mayor Daly: According to your theory he shouldn't have gone to look for the stolen car. 30

Mr. Feinberg: My theory is: here is an officer off duty. It is a noble thing. A friend—a citizen—asks him if he can locate a car on his own time. He goes. It was not reported as stolen; a crime may never have been committed. The issue is if he hit the man with a gun.

Mayor Daly: But you are both digressing considerably from the issues.

Mr. McCarthy: I will withdraw the ques- 40

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tion. When you got the car, what kind of car was it?

The Witness: Franklin.

10 Q. How far did you go? A. I went up Broadway to 54th, to the Boulevard, down to Avenue C, to Sixth Street, down to Avenue A, and up.

Q. Avenue A to where? A. First Street; along First Street, and then up the Boulevard.

Q. Did you take the car from the garage before you went home? A. No; I went home and changed, and then went back.

Q. You weren't driving the car in uniform, and then changed? A. No.

20 Q. About what time did you leave the house? A. I don't know. I changed my clothes about half past twelve or so.

Q. Now, you say you came across First Street there, and up the Boulevard, and you saw a fight going on. Was there a crowd around? A. Yes.

Q. How many? A. About half a dozen; a couple of jitney drivers, and the four.

30 Q. You saw Clancy kicking Haggerty? A. I didn't know Clancy. I recognized Haggerty. When I picked him up, he said, "I want to make a charge against Clancy." I said, "Where is Clancy?" He said, "Here I am." Then I knew it was Clancy that was kicking him.

Q. Where did you leave the car? A. Directly across the street.

Q. And the crowd was around the two fellows fighting? A. Yes.

Q. You didn't know who it was at the time? A. I didn't know.

40 Q. You saw somebody, who turned out to be Clancy, kicking someone on the ground? A. I saw someone kicking, and Haggerty said he wants to

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make a complaint against Clancy, and I said, "Where is Clancy?"

Q. Where were you when you first saw the crowd? A. I should judge about fifty feet down coming up in the car.

Q. Were you in the car? A. In which car? 10

Q. Where were you when you saw Clancy kick Haggerty? A. I saw the crowd. I stopped the car, and ran across the street, and that's when I saw the man was kicked.

Q. Where was your car stopped with reference to the Star Restaurant? A. In front of the street.

Q. That is in front of a place called Bressler's? A. I don't know where it was.

Q. You are familiar with the neighborhood? A. Not in the last four months. 20

Q. Were you in the place called Bressler's. A. No.

Q. You didn't come out of there, did you? Where did you call the wagon from? A. From the restaurant, Star Lunch.

Q. Did you tell Clancy you were a police officer? A. He knew it. I said, "I am a police officer; you are under arrest."

Q. Did you have your gun with you? A. Yes. 30

Q. Did you make a complete change when you went home? A. I took my hat and coat off and had my civilian clothes on.

Q. Did you leave your gun home? A. I had my gun with me.

Q. You didn't use it on Clancy? A. No.

Q. How soon after the fight did you call the wagon? A. No more than Haggerty said he wanted him under arrest, I called up the wagon. Somebody else hollered, "Where's the wagon?" or something like that—I don't know—but I called the wagon. 40

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Q. What time was that, do you know? A. I don't know.

Q. Have you any idea what time it was? About what time do you think you left your house? A. About half past twelve.

10 Q. Then you went to 54th Street? A. No; then I went to my house.

Q. What time did you go to the garage? Was it twenty minutes or half hour later? A. Around one o'clock, I guess.

Q. Then did you go to 54th Street? A. I rode around the town. I didn't say I went directly up—up and down side streets.

20 Q. About what time was it when you reached First Street? A. It was close on to three o'clock, I guess.

Q. About what time was it when you got into this fight? A. I don't know.

Q. Was it a half hour later? A. I don't know.

Q. Did you have your watch with you? A. Yes.

Q. Did you make a report of this? A. When I came to Police Headquarters.

Q. Not before that—not over the telephone? A. I made a report. There was a fight. I called for the wagon.

30 Q. Did you look at your watch when you telephoned? A. No.

Q. Did you ever have any argument with Clancy before this? A. Never knew him. Just passed him by.

Q. Did you ever see this girl, Ruth Fox, before? A. I saw her up and down when I was on the post. I used to see her on the Boulevard. She used to go into the store, buying stuff; but I never spoke to her.

40

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Mayor Daly: Were you ever up on charges before, Officer?

The Witness: Yes, sir.

Q. When? Your first time was in December, 1920, wasn't it? A. Yes.

Q. Charged with conduct subservient of good order and discipline? You were found guilty and reprimanded.

10

Mr. Feinberg: I am going to object to that, if your Honor will permit me. He is now on charges for assault and battery. The other things have nothing to do with the case. I don't think your Honor has any right, sitting as judge, to say that he was up on charges before your Honor, or other Commissioners, because it is detrimental to his case.

20

The issue in this case is whether or not he assaulted this citizen. I want the objection noted on the record. It is immaterial, irrelevant and incompetent.

Mayor Daly: I will sustain the objection.

Mr. McCarthy. Were you ever convicted of a crime?

The Witness: Never in my life.

30

LIEUTENANT JOSEPH DEROWSKI, witness on behalf of the defendant, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Feinberg:

Q. Lieutenant, when Officer Long appeared the morning of May 6th at the desk, were you on desk duty? A. Yes, sir.

Q. You were on desk duty? A. Yes, sir.

40

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Q. And when Officer Long came in, was there anything about his actions, conduct, or demeanor that would have you believe he was drunk? A. No, sir.

10 Q. As far as you saw him, he was the same as whenever reporting on duty? A. Yes, sir.

Q. You heard the doctor who examined him pronounce him absolutely O. K.? A. Yes, sir.

Mr. Feinberg: That's all.

HUGH HAGGERTY, witness on behalf of the defendant, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Feinberg:

20 Q. Mr. Haggerty, where do you live? A. 138 West Sixth Street.

Q. How long have you been living in Bayonne? A. About twenty-five years.

Q. Whom do you live with? A. A sister of mine.

Q. On the morning of May 6th, 1927, you were in a fight down at Third Street and the Boulevard?

A. Yes; I think it was Third.

Q. Second, isn't it?

30 Mayor Daly: Yes, Second.

Q. And tell his Honor what happened. A. Well, I stopped in a place down there by the name of Clancy's.

Q. What kind of a place is it? A. It must be a roadhouse.

Q. Go ahead. A. I had a couple of drinks in there, and I gave this woman \$5.00.

Mayor Daly: In where?

40 The Witness: In Clancy's.

Mr. Feinberg: Who was behind the bar?

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The Witness: Well, she was in there; she took the money.

Q. Who is the woman? A. Miss Cox, or Fox.

Q. Ruth Fox? A. Yes, Ruth; a tall woman.

Q. You saw her here this morning? A. Yes.

Q. The tall, big woman? A. Tall blond.

10

Q. Is that the woman (indicating Miss Fox)? A. Yes, sir.

Q. Now tell us the story. A. So I had about two or three drinks, and I gave her the \$5.00 bill, and I asked for the change. She gave me an argument. I turned around. She shoved me. After that she hit me. So she hit me the first time, so I turned around and socked her. As I socked her, Clancy hit me.

20

Q. Where did this happen? A. Right outside. When I socked Clancy, I had to fight four altogether. There were three men and one woman. You cannot fight four, you know.

Q. Did you hit Clancy? A. Sure, I hit him.

Q. How many times did you hit him? A. I don't know.

Q. Did you hit him in the mouth? A. Yes.

Q. And where else. A. In the lip.

Q. Did he knock you down? A. I went down, and he went down several times.

30

Q. Did this Salvatore Cavelho pick you up several times? A. No one picked me up. I was on the ground, and he had his feet on me.

Q. You are sure about that? A. Yes.

Q. Did Long come along while you were on the ground? A. Yes.

Q. What happened? Did he take his gun out of his pocket and hit Clancy over the mouth? A. No; Long had no gun.

40

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Q. Did Long hit him on the lip? A. I hit him on the lip.

10 Mr. Feinberg (pointing at Harry Clancy, in the room): Did you hear what he called him, Doctor? He just called him a "Son of a bitch" right here in the court proceeding. (Harry Clancy ordered out of the room by Mayor Daly.) Now go ahead. Tell what happened.

The Witness: He came and took the other three away.

20 Q. So what happened? A. They put their feet into me, when Pat heard me hollering, he came running over. Only for Pat I would have been killed.

Q. You think Patrick Long saved your life? A. You said it! Pat Long really did save my life.

Q. Who called up the wagon? A. Pat Long.

Q. And when the wagon came, did you see two men go into the other place? A. They went back. Two men went in.

Q. Was the place closed when the two cops tried to get in? A. They just locked the door. They stayed inside.

30 Q. Did they come out with anything? A. Pat tried to get in there.

Q. The door was locked? A. Yes.

Q. Did Clancy say anything to the fellow inside? A. He said something to Pat.

Q. Did you hear him say anything about pulling off? A. He told Pat to pull off; he wanted the slot machine.

Q. You are sure about that? A. He said it six or seven times.

40 Q. Did you hear Clancy say to the two cops in

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the van, "I want to lock up Long"? A. Yes; he said that.

Q. Did you hear him say, "If you give me back the slot machine, I will pull off"? A. He said it about five times.

Q. He said, "If you give me the slot machine back, I will pull off"? A. Yes. 10

Q. What did Pat say? A. He said, "Never mind pulling off. Come up to 26th Street and pull off."

Q. You are sure Pat Long didn't hit him with a gun? A. Positively. No one hit him with a gun or blackjack.

Cross examination by Mr. McCarthy, as follows:

Q. How many times did Clancy hit you? A. I don't know. He hit me, and I went down, and the three fellows—that is, from the restaurant and his helper, put their feet in me. 20

Q. Did the fellow in the restaurant hit you? A. Three of them were.

Q. Did you make a complaint against him? A. No.

Q. Why not? A. I didn't think of it at the time.

Q. You just made a complaint against Cavelho and Clancy? A. Yes, at the time.

Q. When you were about it, did you make a complaint against the restaurant man? A. No. 30

Q. You haven't since? A. No.

Q. Cavelho picked you up and Clancy knocked you down? A. No; nobody picked me up.

Q. You were down? A. I knocked him down a couple of times. After I knocked him down I went down. As I went down—I don't know his name—this fellow—helper—waiter, and Clancy and the restaurant man—the three of them put their feet in me. If I didn't holler, I would be dead there. 40

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Q. What happened when you hollered? A. When I hollered, Pat Long happened to be in the neighborhood. He came to my rescue.

Q. Where were you? A. In the gutter.

10 Q. You say you ran across the street? A. No; I didn't.

Q. So you want to change that part, "I didn't see him running across the street"? You want to change it if you did say it? A. I didn't say it.

Mr. Feinberg: I certainly will object to the question, "You want to change it if you did say it?" Either he said it or he didn't say it.

20 Mayor Daly: I think a lot of these questions are unnecessary. I don't see where we are going. You are talking about a lot of stuff that has no bearing on the case.

Mr. McCarthy: Where were you when Long went into Clancy's house?

The Witness: Standing outside at the wagon there.

Q. Where were you when Clancy was telling Long to lay off? A. Right on the sidewalk.

30 Q. Was Clancy in the house with Long? A. He was on the steps, like from you to me.

Q. Where were you with reference to the steps? A. About ten feet. It's only from you and I.

Q. Were they talking out loud? A. Clancy was doing all the talking, what he did about the machine.

Q. Long didn't talk at all? A. Clancy did all the talking. "You give me the machine back, and I will pull off."

40 Q. You were never convicted of a crime? A. No.

Q. You were never convicted of a crime?

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Mr. Feinberg: He answered that question.

Mr. McCarthy: Weren't you convicted of an attempted rape before Judge Doherty?

Mr. Feinberg: I will object. Unless the witness says, "No," he must bring the absolute conviction. He must not ask him any more questions about it. It is absolutely incompetent, immaterial and irrelevant to ask him any more questions about that. It is illegal. I most strenuously charge my objection. 10

Mr. McCarthy: My argument is, if he says, "Yes," I have to stop; but if he says, "No," I can show that he was convicted of a crime, if he says, "No." He has already testified that he was not convicted. I asked him wasn't he convicted of a crime of attempted rape in 1921. If he says, "No," I can prove in rebuttal that he was. So I can still continue to ask those questions. 20

Mayor Daly: I will permit the question.

Mr. Feinberg: I ask for an exception.

Mr. McCarthy: Were you tried and found guilty, and placed on probation before Judge Doherty, in 1921, on a charge of attempted rape? 30

The Witness: I answered before.

Q. Is your answer "No"?

Mayor Daly: Now, you realize you are committing perjury when you are under oath?

Mr. Feinberg: I will advise you that you needn't answer the question. You don't 40

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have to answer the question, on advice of counsel.

10 Mr. McCarthy: You say you went into this store of Clancy's and asked Miss Fox for a couple of drinks, and gave her a \$5.00 bill?

The Witness: Yes.

Q. You are sure it wasn't in the restaurant you met this woman? A. In Clancy's.

Q. And she pushed you out when you asked her for change, and she pushed you and you hit her? Was it in the restaurant? A. No.

Q. Didn't you make an indecent proposal to her? A. To her? No.

20 Q. You are sure about that? A. Positively. Who; her? What? Am I blind, or what?

Q. Is your answer "Yes" or "No"? A. No.

Mayor Daly: Did you hit her?

The Witness: Sure I hit her. She hit me. Why shouldn't I hit her when she hit me about six or seven times?

Mr. McCarthy: How many times did you hit her?

30 The Witness: I don't know; I didn't count them.

Mr. McCarthy: That's all.

Mr. Feinberg: You said Clancy said he would do something if you don't pull off. What did he say he would do to Long?

The Witness: He called Pat a "Son of a B," and he said he would break him.

Q. He would break him? A. He would break him.

40

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THOMAS F. HEANEY, witness on behalf of the defendant, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Feinberg:

Q. Mr. Heaney, you are attached to the Police Department of the City of Bayonne? A. I am. 10

Q. Police Officer? A. Yes.

Q. You have been such for how long? A. Three years.

Q. On the morning of May 6th, were you at Police Headquarters when a call came in for the wagon to be sent to Boulevard and Second Street? A. Yes, sir.

Q. Who was driving the car? A. We received two calls; one for 51st or 54th, and the other for Second Street. The two of us answered that call; we figured there was more trouble down there. 20

Q. You know who made that call? A. Officer Long, I believe.

Q. That is the only call the Headquarters got for Second Street? A. Yes.

Q. And the other for 54th? A. Yes.

Q. Who went in the van? A. Officer Milden in one, and I in another. 30

Q. You had two vans? A. We figured more trouble.

Q. Tell the Mayor what you saw when you got there. A. Mr. Clancy and the waiter was there, and Officer Milden was coming out of the restaurant with the lady here, and Clancy was shouting around that he was going to have Officer Long broken.

Q. How often did he say that? A. He repeated that assertion about two or three times in my presence. 40

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Q. Did you hear him say anything to Long about getting back the slot machine?

Mr. McCarthy: I wish you wouldn't lead the witness.

10

Mr. Feinberg: He is an officer.

Mr. McCarthy: That makes no difference.

Mr. Feinberg: Was a slot machine taken out?

The Witness: Yes.

Q. Who took it out? A. Officer Long. He said there were some more defendants inside the house, so we went to the door, but they wouldn't open it until O.K.'d from Mr. Clancy.

Q. Clancy gave an order to open it? A. Yes.

20

Q. Wouldn't open it for the police officer, but for Clancy? A. Yes. Then the door swung back, and the man in the other side of the room went for his hip pocket, and Officer Milden grabbed him by the shoulder and I grabbed him by the arm, and we searched him, but didn't find anything on him.

Q. In protection, Officer, you grabbed him by the arm and Officer Milden by the shoulder? A. Yes.

30

Q. Did he look as if he were going after a gun?

Mr. McCarthy: I object; drawing for a conclusion.

Mr. Feinberg: Is that fellow Salvatore Cavelho?

The Witness: Yes.

40

Q. Then, when the slot machine was taken out, did Clancy say anything to Long about that? A. The slot machine was in the van all the time. Clancy offered to make all settlements there if the slot machine were returned to him.

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Q. What did Long say? A. Long said "Nothing doing; as long as you are going to have me broke, I will go through with it."

Q. Did Clancy tell you at any time that Long hit you with a gun? A. No.

Q. And you were right there after the telephone call for the van? A. Took two or three minutes to get there. 10

Q. You were at Headquarters when the call came in to Lieutenant Derowski? A. Yes.

Q. Did you hear Clancy tell Lieutenant Derowski at any time that he hit him with a gun? A. No.

Q. You didn't see anything that looked wrong with Long particularly? A. No, sir.

Q. You were present when the doctor came and pronounced him all right? A. The doctor took him in the surgeon's room. 20

Q. He pronounced him O. K.? A. He gave his decision to Lieutenant Derowski.

Q. You didn't hear him? A. I didn't hear him.

Q. But he looked all right to you? A. He looked all right to me.

Q. Did this fellow, Clancy, say to you, "I want Long arrested? A. No. 30

Q. When he heard that, did Long run around and say, "I want Clancy locked up?" A. No, nothing.

Q. Nothing like that happened? A. No.

Q. You were one of the officers on the van? A. Yes.

Cross examination by Mr. McCarthy:

Q. How did you get there? A. On the van.

Q. Who undertook the first van? A. Both vans answered the call. We sent Officer O'Connell to 40

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answer the 51st Street call and to take the officer down to make the arrest.

Q. You don't know if Long struck Clancy, do you? A. No.

10 Q. You don't know if he didn't before you came or not?

Mr. Feinberg: I object to what happened before he came or not.

Mr. McCarthy: Do you know whether or not Long hit Clancy?

The Witness: Not in my presence.

FRED C. MILDEN, witness on behalf of the defendant, being first duly sworn according to law, upon his oath testifies as follows:

20

Direct examination by Mr. Feinberg:

Q. Where do you live? A. 772 Boulevard.

Q. You are a member of the Police Department of the City of Bayonne? A. Yes.

Q. How long have you been on the force? A. About four years.

Q. On the morning of May 6th, 1927, were you in Police Headquarters when a call came in for a van to go down to Boulevard and Second Street?

30

A. Yes, sir.

Q. And were you on that van? A. Yes, sir.

Q. When you got there, Milden was there ahead of you? A. You mean Heaney.

Q. I mean Heaney. A. Yes, sir.

Q. Did you see any people there? Tell the Mayor just what you saw. A. I saw Long and Clancy and Haggerty together. Then Clancy said he wanted this man arrested, meaning Haggerty. Just then the other wagon came down. Heaney

40

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came over and started talking to Clancy. I went in the restaurant and seen Ruth, and asked who hit her. She said—

Q. Never mind what you asked her. Did you go in Clancy's place, find the place was closed? Did you and Heaney knock at the door to get in? A. Yes; rang the bell. 10

Q. Did he open the door? A. No; a couple of minutes later.

Q. Who ordered him? A. Clancy.

Q. Not for you cops, but for Clancy? A. Yes.

Q. Who was inside, Salvatore Cavelho? A. Some Italian fellow—I don't know.

Q. What did he do the minute the door opened? What motions did he make? A. He put his hand in his back pocket, and then me and Heaney jumped on his neck. 20

Q. Why did you do that? A. We didn't know what he had in his back pocket.

Q. You searched him? He didn't have a gun on him? A. Heaney searched him.

Q. When you got inside, did you hear Clancy say anything to Long? A. Heard him say he was going to get him broke.

Q. How many times? A. A couple of times. 30

Q. Did you hear him say anything about a slot machine? A. I heard him say a few times he would pull off if he would get something—I don't know what it was; it might have been a slot machine.

Q. What would he do? A. He would pull off.

Q. Did Clancy say, "I want you to arrest Officer Long"? A. He said, "I want you to arrest Haggerty."

Q. Did he ever say, "I want you to lock up Officer Long"? A. He didn't say to me, Long. 40

*Return to Writ.**Cross examination by Mr. McCarthy:*

Q. Officer, where was Ruth Fox? A. In the Star Restaurant.

Q. And where was Clancy? A. Out on the sidewalk.

10 Q. Was anybody at 49 Boulevard? A. Is that where her house is—49?

Q. Do you know where she lives? A. I know where she has her place. I don't know where she is.

Q. She wasn't in her own place? A. No.

Q. Was her own place locked up? A. Yes.

Q. Clancy had to order Cavelho to open up? A. Yes.

20 Q. You are sure she was not in her own place?
A. Not at the time we got there.

Mr. Feinberg: When you got there, it was long after the fight?

Mr. McCarthy: I object to that, as leading.

Mr. Feinberg: Was the fight on or over?

The Witness: Over.

Q. You don't know where she was or going?

30 Mr. McCarthy: I object to that, as leading.

Mr. Feinberg: Do you know where she went to before you got there?

The Witness: No.

Mr. McCarthy: Of course you don't. That's all.

Mr. Feinberg: That's our case.

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RUTH FOX, witness on behalf of the complainant, recalled.

Direct examination by Mr. McCarthy:

Q. You heard Haggerty testify he was in your place of business that morning? A. Yes, sir. 10

Q. Was Haggerty in your place? A. No, he was not. I never saw the man.

Mr. Feinberg: I want to make an objection, and want it noted on the record. It is not proper rebuttal. She testified in direct testimony, "This didn't happen in my place." She did testify it happened in the restaurant next door.

Mayor Daly: She also testified she never saw the man until he hit her in the restaurant. She said the first time in her place, and he said the other place. 20

Mr. Feinberg: In the first place, if your Honor please, I think there should be a dismissal in the proceedings on the testimony of the complainant himself. I am just going to confine myself to the testimony of the complainant in this case.

He had a man named Clancy a complainant against a police officer of the City of Bayonne. After all, he is a police officer, as far as the record is concerned, with a clean reputation; never convicted of a crime. You have the testimony of a man in partnership with another man and woman running a saloon. 30

Mr. McCarthy: I object to that part. There is no evidence there is a saloon.

Mr. Feinberg: There is evidence there were a couple of drinks served. 40

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Mr. McCarthy: The complaint is made by Chief O'Neill.

10 Mr. Feinberg: I know all about it. The complaint in this case is made by Clancy, directly by the Chief, through information and belief of Clancy. In other words, we cannot hide behind the fact that the Chief is just a nominal complainant. The Chief knows nothing about it. The Chief, in compliance with his duty, must make a complaint under the law when someone comes to him and makes a charge against a police officer. This whole thing is based upon an affidavit of Harry Clancy; not Chief O'Neill.

20 Harry Clancy says he never had anything to do with anything in Kearny. Then we had his first witness. She ran some kind of restaurant—your Honor has a pretty good idea, I think, of what kind it was—and he was working for her. Contradiction Number One.

30 Your Honor said to me before we want to get down to the hitting. That is true; but how is your Honor going to determine who is telling the truth unless you weigh everything they said? And the first thing he said was, when he said he never had any business connections with her in Kearny—and she said "Yes," he worked for her in Kearny. Why did he lie under oath?

40 I have never yet, in my whole life, in my experience as a lawyer—which is about twelve or thirteen years—ever hear a complaining witness call a man a "Son of a bitch" and still entertain his complaint. Your Honor did right in chasing him out of

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the room, but he has no respect for court or order or constitutional rights. Right across the table, in a court of law, he called a man a vile name. I think your Honor should throw the whole thing out, right after the conduct of that man, Clancy.

10

There are two stories your Honor is made to believe, I think your Honor is going to give Mr. Long a square deal. We think you have done that in the past with all officers. I want to make a picture in your mind of two stories. I want to impress in your mind the story of what they say is true.

Here comes Clancy, and he says, "I live at Third Street, and I am married and have two children, and they live in Jersey City." He is in business with another man and a young lady. He said first he doesn't support them; then took it back, and said, "I give my wife more than the average police officer earns a year in Bayonne."

20

Your Honor knows what kind of place he is running. An ordinary kind of restaurant, we will call it. He didn't say he turns over more than a cop does, but more than a cop makes.

30

Mayor Daly: He corrected himself.

Mr. Feinberg: He said he gives his wife more than what an ordinary cop makes. That is number one. And then he went on and said, when this fight was on, Pat Long went over, without provocation, and smacked Clancy on the mouth with a gun. As a matter of fact, Long didn't even know Clancy. He didn't have any business with him; just to say "Hello." As a matter of

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fact, when this thing happened, he said, "Who is Clancy?" when Haggerty said Clancy was beating him. He didn't deny he said, "I am Clancy."

10 When Long said he said, "I am Clancy," Patrick Long didn't say he smacked him over the mouth with a gun. Afterward we have the uncontradicted testimony of Long and Haggerty. I hold no brief for Haggerty. I know what your Honor thinks about Haggerty. I think the same thing. But why have Officer Long brought into it? That is my argument here. It is not contradicted, when Long came over and said, "Who is Clancy?" Clancy said, "I am Clancy." That
20 couldn't have happened that he came over and smacked him on the mouth with a gun.

 On the other hand, let us take their version. Can you Honor believe Miss Fox that, without any provocation, without any reason, Long would do that? Long doesn't know her; she doesn't know him. She may be the best woman in the world. Long has nothing to say against her or Haggerty or Clancy. Then they say, right off the bat, he
30 walks over and smacks him on the mouth. These people—they have a unity of interest; they have a unity of cause; they have a common interest, they are partners in law. United they stand, divided they fall—and they are united.

 Here come three partners. One fellow makes a complaint. We don't know why. You don't think his partners will turn down
40 on him. I am going to show your Honor

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why you cannot under any circumstances believe they are telling the truth.

In the first place, she said that Long socked or hit the Italian fellow inside, Cavelho. The officers said they did it. They said they grabbed him, afraid he might have a gun. That contradicts her story. 10

According to law, I will bring you many decisions where a witness does not tell the truth in one occasion, you have the perfect right to discredit her whole testimony. She said he was in business, and he said he wasn't. She said Long was carrying out the machine, and the two witnesses say he didn't; and she said further—I probably made one mistake when I said she lived with her mother. I withdrew that. The chances are he said "Father." Let us assume that is so. 20

You have heard her testimony on this. She said Long hit Cavelho; Cavelho said he didn't. Why should there be any lying on that? She said Long carried out the slot machine; Cavelho said he didn't.

Then, the most important thing of this case: He comes up here; he makes a crack he is going to have Long broke. Now, that is perfectly proper. He said that before everybody, before the police officers. Your Honor must be impressed with their truth. Your Honor wouldn't say Long or I fixed them. 30

Then, Lieutenant Derowski: A man calling a man a "Son of a bitch" in open court, who said, "I want that man arrested; he is drunk." The Lieutenant said, "He is all 40

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right." They bring a doctor, and the doctor says he is all right.

10 He says, "If you give me back the slot machine, everything will be quits." Did he deny that? He didn't. If he said "No," he didn't say such a thing, will you say Officer Milden isn't telling the truth?

Officer Heaney and Officer Milden: I don't think your Honor will say I fixed those people. The first time I saw them was this morning at the case. And they told the honest truth, that he said, "I am going to have you broke; but if you will give me back the slot machine, everything will be quits."

20 He said, to impress you, "Long said there will be no more Daly next week." That is a cheap way to go to any court. It is like anyone saying Sharkey is a big bum, and it is a cheap way of making an impression with the Judge; and I think, your Honor, it was a very cheap way of making an impression with you. Your Honor acted right to disregard it.

30 You heard Cavelho say, "I know why it happened; it was account of politics." I don't think you think so at all. Here we are showing a part of the reason why they are down here. He went into his house when the patrol wagon came. Why did he beat it and close his door? And the cops had to pound the door. When they said, "Open the door," he didn't obey the law; but he obeyed the partner. Then he made for his back pocket. Your Honor got any interpretation you may on that. They go

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in there, those two police officers, in the performance of their duty.

I have no brief for Haggerty. I hold no brief for a man who would hit a woman. I don't care who she is. The most I would do to a woman is to hold her hands and prevent her striking me. Don't think I am here to defend Haggerty. I had him here to say what happened. I don't care anything about having Haggerty to testify about the drinks and the \$5.00 bill. He said if Long hadn't been there, he would have been killed. He said if Long hadn't been there, he wouldn't have saved his life; and he is up on charge of saving a citizen's life—no matter how bad the citizen is.

You have heard all the testimony Clancy said. The point I want to bring out is that the fight went on for five minutes, and Haggerty never hit him once. He wants to convince your Honor that the lip was cut on account of the gun.

Miss Fox said they were punching one another. The very first crack out of the box, Cavelho said, was Haggerty hitting Clancy; and Haggerty said he split his lip open when he hit him on the month. Why didn't he say he hit him once? If he were hit with a gun, why didn't he say to the two officers on the van, "I want you to arrest Long; he hit me with a gun"—and the officers say he never said any such thing.

He said, "I will break you." If your Honor pleases, if I will ring at three o'clock in the morning, and when police officers come, the first natural instinct would be to say to an

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10 officer, "I want you to lock this man up; he hit me with a gun." Officer Milden said he never said such a thing, and Officer Heaney said he never said such a thing. Officers of this Department are good, reputable citizens of this city, and I consider them all that. Unless proven otherwise, you got to give these men credence—the police officers.

Considering all the filth connected with this case about going and breaking him, your Honor would do the right thing by dismissing the charge against Long.

20 Mr. McCarthy: I want to remind you that I am only here as an advisory counsel to the Department and to this Department of Public Safety.

Mr. Feinberg: I don't think it is proper for Mr. McCarthy to sum up in this case. It is proper for you as prosecutor and for your Honor as Judge to ask questions; I think it is not proper for him to sum up. I want to object to it.

30 Mr. McCarthy: I am not prosecuting any police officers. I am merely advising the Commissioner, and in that advisory capacity I want to advise the Commissioner to weigh the evidence as to both sides; the evidence of the police, as well as Clancy and the other witnesses, and the character of their witnesses and the weight and quantity of their testimony. So, likewise, the testimony of the defendant, Long, and his witnesses, Haggerty and the two officers; and to weigh them in such a manner so that you will be able to determine the truth—
40 who is telling the truth, and who is lying.

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That is your duty in this matter, and I advise you to weigh this matter carefully, and let your decision be in accordance with the evidence.

Mayor Daly: I will reserve the decision until the notes are prepared.

10

D-1.

HONORABLE DISCHARGE FROM THE UNITED STATES ARMY.

May 6, 1919.

To all Whom it May Concern:

This is to Certify, that Patrick A. Long, #161520, Mess Sergeant Co. F. 11th U. S. Eng.,

20

The United States Army, as a Testimonial of honest and faithful service, is hereby honorably discharged from the military service of the United States by reason of Men discharged, pursuant to authority contained in War Department Cir. No. 73, dated Nov. 18, 1918, etc;

Said Patrick A. Long was born in Bayonne, in the State of New Jersey. When enlisted he was 26 years of age and by occupation a boilermaker. He had brown eyes, black hair, dark complexion, and was 5 feet 7 $\frac{3}{4}$ inches in height.

30

Given under my hand at Camp Upton, this 6th day of May, one thousand nine hundred and nineteen.

(Signed) J. M. BROWN,
Major, Infantry, U.S.A.
Commanding.

40

Return to Writ.

ENLISTMENT RECORD.

Name: Patrick A. Long. Grade: Mess Sergeant.
Enlisted, or Inducted, May 26th, 1917, at New
York City.

10 Serving in First enlistment period at date of dis-
charge.

Prior Service: None.

Noncommissioned officer: Corporal Sept. 10,
1917.

Markmanship, Gunner qualification or rating:
None.

Horsemanship: Not mounted.

20 Battles, engagements, skirmishes, expeditions;
Cambrai offensive; Gouzeacourt defensive; With
the 1st Army B.E.F.; St. Michiel offensive; Meuse;
Argonne offensive.

Knowledge of any vocation: Boilermaker.

Wounds received in service: Rifle bullet, left
groin, Gouzeacourt, France, Nov. 30th, 1917.

Physical condition when discharged: Good.

Typhoid prophylaxis completed June 18th, 1917.

Paratyphoid prophylaxis completed July 11th,
1917.

Married or single: Single.

30 Character: Excellent.

Remarks: No A. W. O. L.

No absence under G. O. 31/12 or 45/14. Served
in France and England. Left U.S. July 14th, 1917.
Arrived back U.S. April 27th, 1919.

Signature of Soldier: Patrick A. Long
Co. F. 11th Eng.

(Signed) J. M. BROWN,
Capt. Inft. U.S.A.

40 Commanding: 13th Company, 152nd Depot
Brigade.

*Return to Writ.***Resolution.**

By Commissioner Keenen :

RESOLVED by the Board of Commissioners of the City of Bayonne, that we have determined and hereby do determine that all of the executive, administrative, judicial and legislative powers, duties and authority relating to Weights and Measures, Recorder and Recorder's Court, Recorder's Clerk, Interpreters, Police Department, Fire Department, Pension Fund, Electrical Bureau, Public Buildings, and Jitney Department, be and the same are hereby assigned and distributed into the Department of Public Safety, and that the Director of said Department is hereby vested with all the powers, authority, rights and duties vested in or given by any statute, charter or ordinance relating to Weights and Measures, Recorder and Recorder's Court, Recorder's Clerk, Interpreters, Police Department, Fire Department, Pension Fund, Electrical Bureau, Public Buildings and Jitney Department, and shall perform all the duties imposed by law with respect thereto.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution
(SEAL) adopted at a meeting of the Board of Commissioners of the City of Bayonne, held May 17, 1927.

WM. P. LEE,
City Clerk.

*Return to Writ.***Decision.**

10 IN THE MATTER OF THE TRIAL OF CHARGES BY C. J.
O'NEILL, CHIEF OF POLICE OF THE POLICE DE-
PARTMENT OF THE CITY OF BAYONNE AGAINST
PATRICK LONG, A PATROLMAN OF THE POLICE DE-
PARTMENT OF THE CITY OF BAYONNE.

I, BERT DALY, Director of the Department of
Public Safety of the City of Bayonne, having heard
the trial of the above charges on the date of July
13th, 1927, and having considered the testimony
as adduced at said trial, I do hereby determine:

20 That the charges, as made against Patrolman
Patrick Long have been fully sustained and that
the said Patrolman Patrick Long is adjudged guilty
of said charges and the judgment of the trial court
is that Patrolman Patrick Long be and he is hereby
dismissed from further service in the Police De-
partment of the City of Bayonne.

BERT DALY,
Director of the Department
of Public Safety.

Dated,
30 City of Bayonne,
October 4th, 1927.

Notice of Taking Testimony.

(Acknowledged by James Benny on Feb. 11, 1928.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">PATRICK LONG, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>BERT J. DALY, Director of the Department of Public Safety of the City of Bayonne, and CITY OF BAYONNE, <i>Respondents.</i></p>	<p>} On Certiorari. Notice.</p>	<p>10</p>
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To James Benny, Esq., City Attorney of the City of Bayonne. 20

SIR:

PLEASE TAKE NOTICE, that under the writ of certiorari issued by the Supreme Court of New Jersey in the above entitled action, testimony will be taken before John P. Dengler, Esq., Supreme Court Commissioner, at the Court House, in the City of Jersey City, on Friday, February 17th, 1928, at two o'clock in the afternoon, or as soon thereafter as the matter can be heard. Such testimony so taken will be used in the argument for a reversal of the conviction of the Prosecutor in the matter heretofore referred to. 30

Dated February 11th, 1928.

Yours, &c.,

FEINBERG & FEINBERG,
Attorneys of Prosecutor. 40

Deposition of William P. Lee.
NEW JERSEY SUPREME COURT.

10		<p style="text-align: center;">PATRICK LONG, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">BERT J. DALY, Director of Public Safety of Bayonne, and the CITY OF BAYONNE,</p>
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Jersey City, N. J., February 17, 1928.

20 DEPOSITION on behalf of the Prosecutor in the above entitled cause, taken the 17th day of February, 1928, pursuant to notice, before Neale Ransom, a Supreme Court Examiner of New Jersey, at the Court House, Jersey City, N. J., at two o'clock P. M.

IT IS STIPULATED that the deposition be taken stenographically, reduced to typewriting, and the signature of the witness is waived.

Stipulation.

30 IT IS STIPULATED between Mr. James Benny, counsel for the respondents, and Jacob Feinberg, of Feinberg & Feinberg, counsel for the prosecutor, that the deposition of Patrick Long taken on November 28, 1927, and the depositions of William P. Lee and Bert J. Daly taken on November 30, 1927, under the rule to show cause originally issued in this matter, be part of the printed case and used on the argument to reverse the conviction of the prosecutor.

40

William P. Lee, direct.

State of New Jersey, }
County of Hudson, } ss.:

WILLIAM P. LEE, sworn.

Direct examination by Mr. Feinberg:

Q. You are the City Clerk of the City of Bayonne? A. Yes.

10

Q. And you were subpoenaed to appear today and produce whatever records you had pertaining to rules and regulations, the police manual of the City of Bayonne? A. Yes.

Q. Have you any police manual with you? A. No, sir.

Q. To your knowledge was there a police manual of rules and regulations governing the Police Department ever adopted in the City of Bayonne? A. I have one instance here. At a meeting of the Board of Councilmen held November the 28th, 1888, there is a report here from the committee on Police and Fire Department concerning rules and regulations.

20

Q. But you have no record there of the council ever adopting it? A. Yes, they did adopt it.

Q. Read the record. A. "The committee on Police and Fire Department to whom was referred the rules and regulations governing the Police Force respectfully report that they find the same correct and proper and recommend the passage of the following resolution:

30

"RESOLVED, that the rules and regulations for the government of the Police Force, presented herewith, be and the same are hereby adopted, and that the Committee on stationery and printing are hereby directed to have fifty copies printed and bound and de-

40

William P. Lee, direct.

livered to the Chief of Police for the use of the Police Department.

Q. What is the date of that? A. That was November 28, 1888.

10 Q. Since then has any manual of rules and regulations of the Police Force of the City of Bayonne ever been adopted or changed or ordinances for the creation of a manual of rules and regulations of the Police Force of the City of Bayonne been adopted by the Board of Commissioners? A. No, sir.

Q. Since the institution of the commission form of government? A. No, sir.

20 Q. In other words since we have had the commission form of government, since commissioners have been in power in Bayonne, there has never been a manual of rules and regulations of the Police Force of Bayonne adopted? A. No, not by the Board of Commissioners.

Q. Referring to that meeting, does it appear in the minutes that the rules or the manual were presented to the councilman? A. Not insofar as I have read.

30 Q. The rules or the police manual that they wanted to adopt, was that in the minutes there? A. No, not in the minutes.

Q. Did you ever see the rules or that manual? A. I have been unable to find them.

Q. The records do not disclose any manual of rules and regulations governing the Police Department? A. Not as far as I have been able to find.

Q. You have never been able to find them? A. No.

40 Q. It is just a reference to a manual? A. It is a reference to rules and regulations.

Q. And none appear? A. They are not here.

*William P. Lee, cross—redirect.**Cross examination by Mr. Benny:*

Q. You were not City Clerk then, were you? A. No, sir.

Q. Who was? A. William C. Hamilton.

Q. And you know nothing about the matter except as appears in the minutes? A. Absolutely not.

10

Redirect examination by Mr. Feinberg:

Q. You have been City Clerk for how long? A. I was City Clerk from October, 1911, to May 20, 1919, and from the latter part of August, 1921, to date.

Q. In your search through these minutes from 1888 to the present time you have never yet been able to find the manual of rules and regulations governing the Police Department? A. Well, I did not search the minutes from 1888.

20

Q. I say you have not found them? A. I have not found them and they do not appear here.

Q. And you never saw them? A. I did not see them.

Recross examination by Mr. Benny:

Q. But as a matter of fact you have not made any search through the minutes for them? A. No.

30

Redirect examination by Mr. Feinberg:

Q. You were subpoenaed to produce whatever records you could find relative to the rules and regulations of the Police Department, as City Clerk, and the only thing you could find are these minutes you have testified about? A. That is all.

Q. And you have never seen the rules and regulations referred to in those minutes of the meeting of November, 1888? A. They are not there.

40

William P. Lee, cross—redirect.

Q. You have never seen them? A. I could not; they are not there.

Q. And the only records that you have found you have produced in answer to the subpoena?

A. Yes.

10

State of New Jersey,)
County of Hudson, { ss.:

20

I, NEALE RANSOM, a Supreme Court Examiner of the State of New Jersey, Do HEREBY CERTIFY, that the foregoing is a true and accurate transcript of the deposition taken under order and notice of the witness William P. Lee in the herein entitled cause, before me at the time and place hereinbefore mentioned; that the said witness was first duly sworn, according to law, to tell the truth, the whole truth and nothing but the truth, and examined by counsel, and that by stipulation entered into by counsel in open court the deposition was recorded in shorthand and subsequently transcribed and the signature of the witness waived; and I Do FURTHER CERTIFY, that this said transcript does fully, fairly and accurately set forth the testimony so given.

30

IN TESTIMONY WHEREOF I have hereunto set my hand this 17th day of February, A. D. 1928.

Supreme Court Examiner.

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Deposition of Patrick Long.
NEW JERSEY SUPREME COURT.

<p style="text-align: center;">PATRICK LONG, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">BERT J. DALY, Director of the De- partment of Public Safety of the City of Bayonne, and CITY OF BAYONNE, <i>Respondents.</i></p>	}	10
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Jersey City, N. J., November 28, 1927.

APPEARANCES: 20

FEINBERG & FEINBERG, Esqs., Counsel for
the Prosecutor.

JAMES BENNY, Esq., Counsel for the Re-
spondents.

DEPOSITION on behalf of the Prosecutor, taken
this day, pursuant to notice, before John P. Den-
gler, a Supreme Court Examiner of New Jersey,
at the Court House, Jersey City, N. J., at 2 o'clock
P. M. 30

IT IS STIPULATED that the deposition be taken
stenographically, reduced to typewriting, and the
signature of the witness is waived.

Stipulation.

IT IS STIPULATED that the transcript of testimony
at the trial of Patrick Long, taken July 13, 1927,
by Frieda Lipschitz, may be used on the argument
of the writ of certiorari, said testimony being 40
offered in evidence and marked Exhibit P-1 of this
date.

Patrick Long, direct.

State of New Jersey, }
County of Hudson, } ss.:

PATRICK LONG, sworn, on his oath deposes and says:

10 *Direct examination by Mr. Feinberg:*

Q. Mr. Long, you are the prosecutor in these proceedings? A. I am.

Q. Up to October 4, 1927, you had been a police officer connected with the Police Department of the City of Bayonne? A. Yes.

Q. And you were appointed when? A. December 1, 1919.

20 Q. And acted continuously until October the 4th, 1927? A. Yes.

Q. On or about that date did you receive a communication from Bert Daly, Director of the Department of Public Safety, advising you that you had been dismissed from the service? A. Yes.

Q. And is this the letter that you received (handing witness a paper)? A. Yes.

Mr. Feinberg: I offer that in evidence.

(Admitted and marked Exhibit P-2 of this date.)

30 Q. Now, prior to the receipt of this letter you had been charged by the Chief of Police with assault upon one Harry Clancy, and conduct unbecoming an officer and gentleman, and conduct subversive of good order and discipline? A. Yes, sir.

Q. And you were tried on those charges on July 13, 1927, is that right? A. Yes.

Q. Did you assault Harry Clancy?

40 Mr. Benny: The question is objected to

Patrick Long, direct.

on the ground that this was covered by the trial.

A. I did not.

Q. Is this a copy of the charged that was served on you (handing witness a paper)? A. Yes.

10

Mr. Feinberg: I offer that in evidence.

(Admitted and marked Exhibit P-3 of this date.)

Q. When were you served with this charge? A. July 7.

Q. At what time? A. Some time in the afternoon.

Q. And the original date of hearing under these chages was July 8? A. Yes.

20

Q. And it was postponed until when? A. Until a week—the 13th.

Q. Until the 13th, that is not a week. A week would be the 15th. It was postponed from a Friday until a Wednesday? A. Yes.

Q. And you were tried on Wednesday, the 13th of July? A. Yes.

Q. Were you in the United States Army? A. Yes.

Q. When did you enter? A. May, 1917.

30

Q. How long did you serve? A. Close on to tow years, a little over two years.

Q. Were you honorably discharged? A. I was

Q. When ? A. In June or July, I forget now, 1919.

Q. And is this a copy of your discharge? A. It is.

Mr. Feinberg: I offer that in evidence.

Mr. Benny: It is objected to on the ground it should have been submitted at the trial.

40

Patrick Long, direct.

(Admitted and marked Exhibit P-4 of this date.)

Q. Did you see active service? A. I did.

Q. Where?

10 Mr. Benny: I make the same objection.

A. In France, all over the front.

Q. And were you wounded? A. I was.

Q. Where? A. In the thigh, or in here (indicating); shrapnel on the leg.

Q. Shrapnel on the leg and a gunshot wound in there? A. Yes.

20 Q. Prior to the receipt by you of the charges of the Chief of Police, marked P-3, did you have a talk with Commissioner Daly relative to your position on the police Department? A. Well, before I was brought up on the charges—is that what you mean?

Q. Yes. A. Sergeant Slade said I was off traffic for two hours, and I thought I showed where I wasn't.

30 Q. Were you up before Commissioner Daly on it? A. Yes. And he said to me that regardless of what it was, after the case was over, that he would do anything Slade wanted, break me or anything.

Q. What did Slade want, do you know? Did Slade want you to be broken? A. No, he said he would give me a reprimand, so after that Commissioner Daly told me, "The next time you come up here I am going to break you to stop your popping off about me."

Q. Did he say what he meant by "Popping off"? A. Political.

40 Q. Do you remember when that was? A. It was some time in April.

Patrick Long, direct.

Q. Was there a general election in Bayonne at any time around there?

Mr. Benny: The question is objected to as immaterial, irrelevant and incompetent.

A. May 10, 1927. 10

Q. And this Slade incident you are talking about was in April, 1927?

Mr. Benny: Same objection.

A. Yes.

Q. At that election were you aligned with Dr. Daly's party?

Mr. Benny: Objected to for the same reason. 20

A. No, sir; I was out against him.

Q. Do you know who is recognized as the leader of the Democratic Party in Bayonne?

Mr. Benny: Same objection.

A. Daly.

Q. Commissioner Bert Daly? A. Yes.

Q. Did you have another talk with Dr. Daly after election? 30

Mr. Benny: Same objection.

A. About two or three days before my trial. I got it postponed, and then two or three days before it was to come up on trial I met him in the hall of police headquarters and I wanted to get it straightened out, I did not know why I was brought up on charges; I thought I had done my duty.

Q. You said you went where two or three days before your trial? A. Before the 12th. 40

Mr. Benny: I object on the ground that all of this testimony should have been

Patrick Long, direct.

offered at the trial of the police officer before Director Daly, and that it is incompetent now, the question being whether there was evidence enough to justify the judgment of the Director of Public Safety.

10 The Witness: To police headquarters.

Q. Did you go to police headquarters? A. To see Commissioner Daly and find out the reason why I was brought up on charges, because I had got a conviction against the four, and I saw him coming in the hall and I said, "Commissioner, what is the idea of bringing me up on those charges? Can't I straighten it out?" And he would not talk to me, he kept on walking. He said, "I am going to break you." And I could not say any more; he kept going.

20

Q. That was two or three days before your trial?
A. Yes, a couple of days before.

Q. You said something about you got a conviction, what did you mean by that? A. I arrested those people; they were in a street fight.

Q. Who do you mean?

Mr. Benny: Same objection.

30 A. Clancy and Ruth, the girl that was supposed to stay there, and the cook, and a fellow named Haggerty. The four of them were in a fight, and I came along and heard some shouting—

Q. I do not care anything about that. You say you arrested them and you were in the police court the next day? A. Yes, and Judge Sharkey held the four of them in fifteen hundred dollars bail for the grand jury.

40 Q. At that time were there any charges made against you for assaulting anybody—in the police court? A. No.

Patrick Long, cross.

Q. Did you hear from Dr. Daly from July 13th, 1927, the date of the trial, until October the 4th, 1927, or about October 4, 1927, did you hear from him in the meantime? A. No.

Q. In between those two dates was there another election in Bayonne. 10

Mr. Benny: The question is objected to as immaterial, irrelevant and incompetent.

A. Yes.

Q. What election was that? A. The Primary Election, June 20, I think.

Q. And did Dr. Daly hold rallies in the City of Bayonne?

Mr. Benny: Same objection. 20

A. He held rallies at different clubs.

Q. And after this election had you received notice that you were dismissed?

Mr. Benny: Same objection.

A. Yes.

Q. Since this trial do you know if Clancy, the man who made these charges against you, has been running his business, his saloon, at the same place? 30

Mr. Benny: Same objection.

A. Up till a week ago, when I understand there were about twenty saloons closed up in the city, and his place was one of them. That was closed, there were a lot of complaints.

Cross examination by Mr. Benny:

Q. You said you understood that a number of places were closed, including Clancy's. What was the source of your understanding? A. People 40

Patrick Long, cross.

talking, and I passed a couple of places that were supposed to be closed, and they were closed.

(Further taking of depositions was adjourned to Wednesday, November 30, 1927, at 10 o'clock A. M.)

10

State of New Jersey, }
County of Hudson, } ss.:

20

I, JOHN P. DENGLER, a Supreme Court Examiner of the State of New Jersey, DO HEREBY CERTIFY that the foregoing deposition of Patrick Long was taken before me on this 28th day of November, 1927, pursuant to notice, in the herein entitled cause, at the time and place hereinbefore mentioned; that the said witness was first properly sworn according to law to tell the truth, the whole truth and nothing but the truth; and that by stipulation entered into by Counsel the deposition was recorded stenographically and subsequently transcribed, and that the said transcript fully, fairly and accurately sets forth the testimony so given, and by like stipulation the signature of the witness was waived.

30

IN TESTIMONY whereof I have hereunto set my hand this 28th day of November, 1927.

JOHN P. DENGLER,
Supreme Court Examiner.

40

Deposition of William P. Lee.

NEW JERSEY SUPREME COURT.

PATRICK LONG, <i>Prosecutor,</i> <i>v.</i> BERT J. DALY, Director of the De- partment of Public Safety of the City of Bayonne, and CITY OF BAYONNE, <i>Respondents.</i>	} 10
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Jersey City, N. J., November 30, 1927.

APPEARANCES: 20

FEINBERG & FEINBERG, Esqs., Counsel for
the Prosecutor.

JAMES BENNY, Esq., Counsel for the Re-
spondents.

DEPOSITION on behalf of the respondents, taken
this day, pursuant to notice, before John P.
Dengler, a Supreme Court Examiner of New Jer-
sey, at the Court House, Jersey City, N. J., at 10
o'clock A. M. 30

IT IS STIPULATED that the deposition of the wit-
ness be taken stenographically, reduced to type-
writing, and the signature is waived.

Counsel for the Prosecutor states that he closes
his case.

William P. Lee, direct.

State of New Jersey, }
County of Hudson, } ss.:

WILLIAM P. LEE, sworn.

Direct examination by Mr. Benny:

10 Q. You are the City Clerk of the City of Bayonne? A. Yes, sir.

Q. And you were such clerk prior to the charges preferred against Officer Patrick Long, a member of the Police Department of the City of Bayonne? A. Yes.

Q. Was the testimony and conviction of Patrick Long as such police officer filed with you? A. Yes, sir.

20 Q. Will you produce the same? A. Here is the testimony and here is the judgment.

Q. And the testimony is the same, I believe—although I have not examined it—as Exhibit P-1?

A. It is apparently the same.

Mr. Benny: I offer it in evidence.

(Admitted and marked Exhibit R-1 of this date.)

30 Q. You have not compared the same? A. I have not.

Q. Will you please produce the conviction that was filed with you? A. I have it. (Witness produces paper.)

Mr. Benny: I offer it in evidence.

(Admitted and marked Exhibit R-2 of this date.)

40 Q. Will you please compare Exhibit R-2 with P-2 and see if they are the same? A. This is the same as the one I have.

Q. When were these papers filed with you? A. The judgment was filed on October the 4th, 1927,

William P. Lee, direct.

at 10:47 A. M., and the testimony was filed October the 6th, 1927, at 3 P. M.

Q. Have you got with you Exhibit C-1 produced at the trial of the police officer? A. I produce it.

Mr. Benny: I offer it in evidence.

Mr. Feinberg: I object to the offer of this instrument, or paper, on the ground it should have been offered at the trial of Officer Long.

Mr. Benny: It was offered.

Mr. Feinberg: Not that one. Some paper purporting to be it was offered, but the proper way was by Mr. Lee.

(Admitted and marked Exhibit R-3 of this date.)

Exhibit R-3 is as follows:

“By Commissioner Keenen:

“RESOLVED by the Board of Commissioners of the City of Bayonne, that we have determined and hereby do determine that all of the executive, administrative, judicial and legislative powers, duties and authority relating to Weights and Measures, Recorder and Recorder’s Court, Recorder’s Clerk, Interpreters, Police Department, Fire Department, Pension Fund, Electrical Bureau, Public Buildings, and Jitney Department, be and the same are hereby assigned and distributed into the Department of Public Safety, and that the Director of said Department is hereby vested with all the powers, authority, rights and duties vested in or given by any statute, charter or ordinance relating to Weights and Measures, Recorder and Recorder’s Court, Recorder’s Clerk, Interpreters, Police Department, Fire Department,

William P. Lee, direct.

Pension Fund, Electrical Bureau, Public Buildings and Jitney Department, and shall perform all the duties imposed by law with respect thereto.

10 "I hereby certify that the foregoing is a true and correct copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Bayonne, held May 17, 1927.

"WM. P. LEE,
"City Clerk."

20 Q. I show you a certified copy of a resolution passed by the Commissioners of the City of Bayonne and ask you whether such resolution was passed or not? A. Yes, sir; it was.

Mr. Benny: I offer it in evidence.

Mr. Feinberg: I object to the offer of that paper on the same ground; it should have been offered at the trial of Patrick Long.

(Admitted and marked Exhibit R-4 of this date.)

"By Commissioner Axford:

30 "RESOLVED by the Board of Commissioners of the City of Bayonne, that it is our judgment that Bert Daly, who has been chosen by us to preside at all meetings of the Board of Commissioners of said City, and designated Mayor, shall be and hereby is designated to be the Director of the Department of Public Safety.

40 "I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Bayonne, held May 17, 1927.

"WM. P. LEE,
"City Clerk."

(No Cross Examination.)

Deposition of Bert J. Daly.

State of New Jersey, }
 County of Hudson, } ss.:

BERT J. DALY, sworn.

Direct examination by Mr. Benny:

10

Q. You are a member of the Board of Commissioners of the City of Bayonne, I believe? A. Yes.

Q. Were you appointed Director of the Department of Public Safety of Bayonne by resolution of the said Board? A. I was.

Q. And as such Director of Public Safety did you try police officer Patrick Long? A. I did.

Q. Police officer Patrick Long testified on November 28, 1927, that you said that you would do anything that Sergeant Sleight wanted you to. Is that true? A. It is not so. I might qualify that in this way. You are referring now to the time he was up on charges, previous to these charges?

20

Q. Yes. A. Sergeant Sleight was the officer—

Mr. Feinberg: I object to the answer excepting a yes or no answer. The question requires a yes or no answer.

A. (Continuing)—that made the complaint, and after I had heard all the evidence I asked Sergeant Sleight how he felt about it and Sergeant Sleight said that—

30

Mr. Feinberg: I object to all of this.

A. (Continuing)—he did not want to see the man punished. While he felt that he was entitled to some punishment, if it was agreeable to me he would be satisfied if I would give him another chance—which I did.

40

Bert J. Daly, direct.

Q. He also said in his testimony on the same occasion that you said, "The next time you come up here I am going to break you to stop your popping off about me." Did you ever use that language to him? A. It is positively untrue.

10 Q. Did you ever say anything at that time about breaking him if there were any other charges preferred against him? A. I did not.

Q. He also testified that he "went to police headquarters to see Commissioner Daly and find out the reason why I was brought up on charges, because I had got a conviction against the four. I saw him coming in the hall and I said, 'Commissioner, what is the idea of bringing me up on those charges? Can't I straighten it out?' And he would not talk to me; he kept on walking. He said, 'I am going to break you.' And I could not say any more, he kept on going." Did you ever say to him on that occasion that you were going to break him? A. Positively not.

20

Q. Did you ever say to him, or to anybody else, that you were going to break him—before the trial? A. I did not.

Q. It is claimed that there was unnecessary delay in your findings after the testimony was taken. What have you got to say on that subject?

30

Mr. Feinberg: I object to that question. There is no claim made of that kind, and I object to the form of the question, as to what he has to say about that. That is not a proper question. It calls for an improper answer and is opinion evidence. It is for the Court to determine.

40 A. Right after I received the stenographic notes I sent them to your office to get some advice as to

Bert J. Daly, direct.

certain points, and if I am not mistaken you were away at that time for about a month, and on your return there were several other important City matters that took up your time, and it was a considerable time before I received word from you about the matter.

10

Q. Was there any delay in transcribing the record by the stenographer? A. I cannot recall just how much time elapsed.

Q. I show you what purports to be a record of charges against Police Officer Patrick Long, the prosecutor, and ask you whether you ever saw that record before?

Mr. Feinberg: I object to that on the ground that this is not the proper place nor the proper time to refer to any other charges made against Officer Long; that that should have been introduced as a part of the original trial, and this is not a proper offer at this time of that record. I would like at this time to examine him on that record.

20

A. I did.

Q. Where did you see it?

Mr. Feinberg: That is objected to.

30

A. In the files at police headquarters.

Q. And where did you get it from? A. From the files at police headquarters.

Q. From the Department over which you are the Director? A. Yes.

Q. Will you please read the contents of the record as to the charges against Police Officer Long?

Mr. Feinberg: I object as immaterial, irrelevant and incompetent and it does not appear that this record was kept by the

40

Bert J. Daly, direct.

Commissioner or anybody under him or over which the Director of the Department of Public Safety had control at the time the record was made.

10 A. December 20 he was charged with conduct subversive of good order and discipline and he was reprimanded. On February 21, 1922, absence without leave. Fined two furlough days. November 21, 1922, absence without leave on two counts. Conduct unbecoming an officer and gentleman. Intoxication and conduct subversive of good order and discipline of the force. He pleaded guilty to all charges. Fined 45 days' pay. Violation of Article 9, Section 3, fined five days' pay.

20 Mr. Feinberg: When was this?

A. November the 21st, the same date. October the 16th, 1924, missed two rings from signal boxes. November the 10th, 1924, reported sick by telephone, and not at home when Police Sergeant called. Fined 15 days' pay on both charges. 1926: December 22 off traffic post Avenue C and West 8th Street. Reprimanded. December 27 disrespect to superior Sleight. Reprimanded. May the 6th
30 conduct unbecoming an officer and gentleman. He did assault a citizen—H. Clancy. Dismissed.

Q. In the testimony taken of Officer Long the Sergeant is mentioned as "Slade." A. Sleight is the way he spells his name.

Q. That is the same person? A. Yes.

Mr. Feinberg: It is admitted that the "Slade" as given by the stenographer in the testimony of November 28 is the same person referred to by Commissioner Daly as
40 Sleight.

Bert J. Daly, cross.

Cross examination by Mr. Feinberg:

Q. A short time ago you made Sleight a Sergeant as head of the Police Department? A. Yes.

Q. He was a police officer up to then? A. Yes.

Q. And this record was kept by you, was it?
A. Kept by the Clerk in the office. 10

Q. Was this record kept by you? A. Not personally.

Q. And part of this is on time when you were not Director of Public Safety, is that right? A. I assume it is.

Q. You did not write this record or have anything to do with it being written up, did you? A. No.

Q. You knew at the time and prior to this trial that Officer Long had been against your re-election? 20

Mr. Benny: The question is objected to on the ground that it is asking for a political opinion and on the further ground it is immaterial, irrelevant and incompetent.

A. Why, I was under the impression that he was with our side.

Q. So that at the time of this trial you were under the impression that Patrick Long was with your side? A. Yes. 30

Q. You are sure about that? A. I am pretty sure.

Q. Did he ever tell you that?

Mr. Benny: The question is objected to on the same ground.

A. Not personally.

Q. Where did you get your information from? 40

Bert J. Daly, cross.

Mr. Benny: The question is objected to on the same ground.

A. Just gossip around. I got it from his brother.

10 Q. When the trial was over, after the testimony was finished, you were still under the impression that Long was with you? A. Oh, yes.

Q. So that notwithstanding the fact that the testimony right through the entire case of these three partners, Ruth Fox and Clancy and this bartender, that Long had made a threat that you would not be boss much longer, you still were under the impression and under the opinion that Long was with you?

20 Mr. Benny: The question is objected to on the ground it does not appear by the testimony that they were partners.

A. Yes.

Q. Do you remember the testimony that these three were partners? A. No, I do not.

30 Q. I refer you now to the stenographer's report of the testimony taken at the trial of Patrick Long on July 13, 1927, and go to page 16, where I questioned Clancy. The questions and answers were these:

"Q. I am asking you where does he live?—referring to Sal Cavelho— A. 49 Boulevard. He has a residence in Jersey City as well.

"Q. He has two residences? A. He stays there on account of business.

"Q. What business? A. Restaurant business.

"Q. With you? A. Yes, sir.

"Q. And this Miss Fox? A. Yes.

40 "Q. The three of you are partners? A. Miss Fox does not stay at 49.

"Q. Didn't you say in your affidavit you three

Bert J. Daly, cross.

were in business together? A. Miss Fox does not stay at 49.

“Q. The three are partners? A. Yes.”

Do you remember that testimony? A. No.

Q. And did you read this testimony before you found Officer Long guilty? A. Oh, yes. 10

Q. And you do not remember the testimony being that the three of them were partners? A. No.

Q. Do you remember an affidavit being filed with you by Clancy before these charges were made in which affidavit Clancy says that he, Ruth Fox and this Sal were partners doing business together at 49 Boulevard? A. I do not recall.

Mr. Feinberg: I now call upon Mr. Benny to produce the original affidavit upon which these charges were made. 20

Mr. Benny: I haven't got it.

Q. Have you got that affidavit? A. No.

Q. Can you produce it before Saturday? A. The Chief of Police may have it.

Q. This complaint was first made by affidavit filed by Clancy, wasn't it? You recall that, don't you? A. I believe it was.

Q. Will you try and have it here by Saturday? A. Yes. 30

Q. Having refreshed your memory on the testimony that these three were partners, and having just testified that you read this testimony are you surprised now to learn for the first time that they were partners? A. I won't say that.

Q. Then you are not surprised; you did know they were partners before? A. No.

Q. And yet that does not surprise you? (No answer.) 40

Q. When the testimony was closed did you feel

Bert J. Daly, cross.

then that a strong case had been made against Long? A. Yes.

Q. Why didn't you suspend him? A. Because I was waiting to get Mr. Benny's opinion on certain points in the testimony.

10 Q. What points? A. Well, I do not just recall now what the points were.

Q. You knew you had the right to suspend the police officer pending trial or during trial or after trial? A. Yes.

Q. You had been Director of Public Safety before? A. We were very short of men at the time and I took it up with the Chief and he felt that he might be able to use him.

20 Q. So it was not because you were waiting for an opinion from Mr. Benny, it was because the Chief said he might need him? A. Yes.

Q. So that first answer of yours was not correct? A. Yes; it was a combination of both.

Q. So it was both Mr. Benny's opinion you were waiting for before you suspended Long and as a result of a conversation you had with the Chief of Police. It was both those things in one that impelled you not to suspend Long? A. Yes.

30 Q. When this case was finished you reserved decision? A. Yes.

Q. And at that time you had not fully made up your mind as to whether or not you were going to find him guilty? A. No. The trial was very lengthy and I wanted an opportunity to consider the matter.

Q. So that you had not yet made up your mind fully and finally as to his guilt or innocence? A. No.

40 Q. And you had not made up your mind fully and finally until the time you wrote your decision; that is correct, is it? A. Yes.

Bert J. Daly, cross.

Q. Now I will show you an editorial in the Bayonne Times dated July 19, 1927, relative to the Long case and entitled "Flimsy evidence," and ask you, do you remember reading that?

Mr. Benny: I object on the ground that it is incompetent and irrelevant. 10

A. Yes.

Q. And prior to that editorial there had been other articles in all the local papers relative to the Long case, hadn't there?

Mr. Benny: Same objection.

A. Yes.

Q. And you were angry as a result of this editorial and other articles? 20

Mr. Benny: Same objection.

A. No, I was not.

Q. Why did you upbraid several reporters and the owner of the Bayonne Times for the insertion of these articles and the editorial?

Mr. Benny: The question is objected to on the ground it does not appear as yet that he upbraided any person for any article that appeared in a newspaper. 30

A. I did not upbraid anybody.

Q. You did not upbraid a single reporter or any of the owners of the Times or Bayonne News about these articles? A. That is only somebody's opinion.

Q. I did not ask you that You say you did not or you do not remember? A. I did not.

Q. You never mentioned to anyone that you were angry about these newspaper articles about the case? 40

Mr. Benny: Same objection.

Bert J. Daly, cross.

A. Not that I can recall.

Q. These articles did not have anything to do with your forming your opinion, did they?

Mr. Benny: Same objection.

10 A. No.

Q. When did you get word from Mr. Benny on the points you wanted? A. I cannot just recall.

Q. And in between the time of this trial and the time you handed down your decision there was a primary election in Bayonne, wasn't there?

Mr. Benny: I object on the ground that the question is immaterial, irrelevant and incompetent.

20 A. I do not remember.

Q. Well, there was some kind of election between July 13, 1927, when this trial took place and October the 4th, 1927, when you rendered your decision, wasn't there?

Mr. Benny: Same objection.

A. There may have been. I do not know.

30 Q. Don't you remember having several meetings at the Democratic Club and rallying the forces together to support the organization at this election?

Mr. Benny: Same objection.

A. That is an annual event down there whenever there is an election.

Q. I am asking you about this particular time.

A. I do not know.

Q. And you are regarded as leader of the Democratic Party in Bayonne?

40 Mr. Benny: Same objection.

Bert J. Daly, cross.

A. By some.

Q. Yet you do not know now whether there was an election between July and October? A. No.

Q. Wasn't there an election in June?

Mr. Benny: Same objection.

10

A. I imagine there was, yes.

Q. Wasn't there an election after July on several amendments?

Mr. Benny: Same objection.

A. Yes.

Q. When did you have the primary election for your assemblyman and freeholder?

Mr. Benny: Same objection.

20

A. In June.

Q. When was the special election.

Mr. Benny: Same objection.

A. I just cannot recall.

Q. Why didn't you punish Harry Clancy, the complainant in this case, when he uttered the vile epithet during the trial of Officer Long in calling a witness who was then sworn before you and testifying, namely Hugh Haggerty—in calling that witness a son-of-a-bitch.

30

Mr. Benny: The question is objected to on the ground that it is immaterial and incompetent and on the further ground there were no charges preferred against the complaining witness named.

A. I did order him from the room.

Q. And that is all you did to him? A. Yes.

Q. And you did not think it called for any other

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Bert J. Daly, cross.

action on your part excepting to ask him to leave the room?

Mr. Benny: Same objection.

A. No.

10 Q. And the uttering of that epithet, the use of that language by that witness did not affect you in any way in determining this case?

Mr. Benny: Same objection.

A. If I punished everybody that called me that, half of the place would be in jail.

Mr. Feinberg: I move that that be stricken out and I ask that the question be repeated.

20 (The question was repeated.)

A. Absolutely not. Do you mean what Clancy said?

Q. Yes. A. No, it did not influence me at all. Nothing influenced me in arriving at this decision except the testimony in the case.

30 Q. During the entire trial of these three partners you recall every one of them said that Officer Long had been popping off about you, you remember that, don't you?

Mr. Benny: The question is objected to on the ground that the transcript of the testimony is the best evidence of what was said at that trial.

A. I do not remember it.

Q. You do not remember any of them saying that Officer Long was popping off about you? A. No.

40 Q. You are sure about that? A. Yes.

Exhibits.

Q. And you read this testimony over before you found Officer Long guilty and you do not remember any of these witnesses saying that Officer Long was supposed to have said you would not be boss much longer?

Mr. Benny: Same objection.

10

A. It is six months ago, counsellor, that I read that, and I cannot recall.

Q. It is only a month ago that you rendered your opinion or a little over a month ago, isn't it? A. No, I think it is longer than that.

Q. A month and a half—October the 4th? A. October the 4th.

Q. It is not much more than a month and a half, is it? A. (No answer.)

20

Q. You still do not remember that? A. No.

Q. You do not remember any of the witnesses testifying that you were in any wise concerned in this matter? A. No.

Q. You do not remember that? A. No.

Exhibits.

P-1. Mentioned in Stipulation on page 115 herein, is the testimony taken before Commissioner Daly and appears on pages 15 to 105 of State of Case herein.

30

P-2. Mentioned in deposition of Patrick Long on page 116 herein, is the decision and appears on page 108 of State of Case herein.

P-3. Mentioned in deposition of Patrick Long on page 117 herein, is the charge and appears on page 12 of State of Case herein.

P-4. Mentioned in deposition of Patrick Long on page 118 herein, is the U. S. Army discharge and appears on page 105 of State of Case herein, as D-1.

40

Reasons.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">PATRICK LONG, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>BERT J. DALY, Director of the Department of Public Safety of the City of Bayonne, and CITY OF BAYONNE, <i>Respondents.</i></p>	} On Certiorari.
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20 The prosecutor writes down the following reasons for setting aside the order of October 4th, 1927, dismissing the prosecutor from the police force of the City of Bayonne, which order and the proceedings relating thereto are brought up by this writ of certiorari:

1. Prosecutor was unlawfully discharged from the police department of the City of Bayonne.
2. Prosecutor was dismissed from the police department of the City of Bayonne on charges which were false.
- 30 3. No properly verified signed complaint was served upon the prosecutor.
4. The charges against the prosecutor were based on alleged acts of prosecutor on May 19th, 1927, and it was improper, illegal and unfair to prosecutor to delay the presentation of said charges until July 5th, 1927.
- 40 5. There was no proof of any properly signed complaint having been filed in the office of the

Reasons.

municipal officer or Board having charge of the department in which the alleged complaint arose.

6. Prosecutor was denied a reasonable opportunity to prepare his defense to the charges made against him.

10

7. The hearing as a result was illegal, on the ground that the Director of Public Safety was without jurisdiction to try the prosecutor for the offense in question, such trials or hearings being within the province only of the Board of Commissioners of the City of Bayonne.

8. The manual of the rules and regulations of the police department of the City of Bayonne, under which the prosecutor was charged, was not offered in evidence.

20

9. That the City of Bayonne never legally adopted a manual of the rules and regulations of the police force, under which the prosecutor was tried at the time of said trial.

10. Competent evidence was not offered to prove any charge against the prosecutor, and his dismissal is without just cause as required by law.

11. Credible evidence was not offered to prove any charge against the prosecutor, and his dismissal is without just cause as required by law.

30

12. Respondent, Bert J. Daly, Director of the Department of Public Safety of the City of Bayonne, showed prejudice throughout the hearing, and prosecutor did not receive a fair hearing, as required by law.

13. There was no competent proof of any incapacity, misconduct or any disobedience on the

40

Reasons.

part of prosecutor of any just rules or regulations established for the Police Department of the City of Bayonne.

10 14. There was an unreasonable abuse of discretion exercised by the Director of Public Safety, in dismissing the prosecutor from the Police department.

15. The trial and conviction of the prosecutor were illegal, in that the prosecutor was a World War veteran, and protected under provision of laws of 1919, Chapter 124.

20 16. That the trial and conviction of the prosecutor were illegal, in that, the Board of Commissioners did not make, enforce, amend or repeal an ordinance or ordinances to establish, maintain, regulate and control a police department, under Chapter 152, Laws of 1917.

17. That it was arbitrary and illegal for the respondent, Bert J. Daly, to require the prosecutor to appear before him for trial on said charges on July 5th, 1927.

30 18. That the Director of Public Safety was prejudiced and biased, and the prosecutor did not receive a fair hearing at the trial.

19. That the conviction as shown by the return to the writ of certiorari is irregular, improper and illegal.

FEINBERG & FEINBERG,
Attorneys of Prosecutor.

Court of Errors and Appeals

STATE OF NEW JERSEY.

PATRICK LONG,
Prosecutor-Appellant,

v.

BERT J. DALY, Director of the De-
partment of Public Safety of
the City of Bayonne, *et al.*,
Respondents.

On Certiorari.

BRIEF OF APPELLANT.

The Facts.

Patrick Long, the appellant herein was appointed a member of the Police Department of the City of Bayonne on December 1st, 1919, and continued to serve as such police officer until October 4th, 1927, when he was dismissed by the Director of the Department of Public Safety of that city after a hearing.

On July 7th, 1927, he was served with what purports to be a specification of charges, alleging a violation of the manual book of rules and regulations of the Police Department of the City of Bayonne, and notified therein that his hearing was set for the following morning, July 8th, 1927. The charge was as follows: "To the Director of Public Safety: I hereby charge Patrick Long with conduct unbecoming an officer and gentleman, and conduct subversive of good order and discipline."

This charge was followed by a particular specification, which manifestly was intended to support the charge as follows:

“SPECIFICATIONS. In that the said Patrolman Patrick Long on date of May 6, 1927, at 3:30 A. M. did assault Harry Clancy, a citizen of Bayonne, without just cause or provocation. Being in violation of the Manual of Rules and Regulations of the Police Force of the City of Bayonne.”

A reading of the case will disclose the facts which may be briefly summarized as follows: Long was off duty in the early morning of May 6th, 1927, when his attention was directed by a call for help at Second Street and the Boulevard, Bayonne. He hurried to the scene and discovered several men assaulting and battering a man who was lying on the ground. The complainant before the Director of Public Safety charges that Long in rushing up to the scene drew his gun and struck Clancy, the said complainant below, as he, Long, rushed into the melee. This, in the case, was denied by Long, although Clancy makes no denial of the fact that at that moment he was assaulting and battering the man who was lying on the ground, one Haggerty.

Long arrested all parties, taking them to the Police Station, where charges were made by Haggerty, who was beaten by Clancy and his friends, of assault and battery, and Clancy making a counter-charge of assault against Haggerty. All parties were held to bail, but Clancy failed to charge Long at this or any other time in the criminal courts with assault and battery.

The Director of Public Safety, as stated, tried Long, on the complaint of Clancy, two months after the alleged occurrence, and filed his conclusion three months after that, dismissing Long as a Patrolman of the Bayonne Police Department.

The reasons filed in the state of the case on pages 1, 2 and 3, twenty in number, may with greater convenience, and the indulgence of this Court, be treated under two headings:

(1) No signed complaint was shown to have been filed in the office of the municipal officer or board having charge of the department in which the complaint arises as required by statute.

(2) Long was dismissed for violations of rules of a police manual, which rules or manual were not presented in evidence against him, and which are, in fact, admittedly non-existent.

POINT I.

No signed complaint was shown to have been filed in the office of the municipal officer or board having charge of the department in which the complaint arises as required by statute.

In all cases where a citizen may be deprived of his liberty, or property rights, the law surrounds proceedings of this character with certain all-important safeguards. In an action for civil damages, after the service of a summons and complaint, the statute requires the filing of that complaint in the office of the Clerk of the Court. In criminal matters, after the prescribed steps have been taken, such as the hearing of witnesses before a Grand Jury and the like, the Grand Jury returns these indictments into Court, and the originals are lodged or filed with the statutory custodian of them, and so in cases of this character, where public employees, police officers or others are protected by the legislative scheme of tenure of office, may be penalized, fined, demoted, or as in this case, dismissed, the law too is exacting in

the conditions that it imposes. These conditions set out in the statute have their life and inspiration from the Constitution itself, which will not tolerate the deprivation or loss of liberty or property rights without due process of law. This, we argue, is the statutory due-process-of-law, which has its inspiration from the Constitution itself.

Section 5 of Chapter 152 of the Laws of 1917, page 360, provides:

“No person, whether officer or employee in any such police department shall be removed from office or employment therein, except after just cause, as hereinabove provided, and then only after written charge or charges of the cause or causes of complaint shall have been preferred against such officer or employee, signed by the person or persons making such charge or charges and filed in the office of the municipal officer, officers or board having charge of the department in which the complaint arises, and after the charge or charges shall have been publicly examined into by the appropriate board or authority upon reasonable notice to the person charged; it being the intent of this act to give every person against whom a charge or charges for any cause may be preferred under this act, a fair trial upon said charge or charges, and every reasonable opportunity to make his defense, if any he has or chooses to make.”

The state of the case is barren of evidence to show that this complaint was filed in the office having charge of the department as required by the statute. For this reason alone the action of the director in dismissing Long is unlawful.

POINT II.

Long was dismissed for violations of rules of a police manual, which rules or manual were not presented in evidence against him, and which are, in fact, admittedly non-existent.

It will be noted that Long, while charged with conduct unbecoming an officer and a gentleman, is referred as authority for the charge to an unmentioned section of an alleged manual. This is plain on the face of the return at page 13, line 11, that the Police Department of the City of Bayonne has no manual; that one was never adopted for the government of that department is manifest from the testimony of City Clerk Lee:

“Q. You are the City Clerk of the City of Bayonne? A. Yes.

“Q. And you were subpoenaed to appear today and produce whatever records you had pertaining to rules and regulations, the police manual of the City of Bayonne? A. Yes.

“Q. Have you any police manual with you? A. No.

“Q. To your knowledge was there a police manual of rules and regulations governing the Police Department ever adopted in the City of Bayonne? A. I have one instance here. At a meeting of the Board of Councilmen held November the 28th, 1888, there is a report here from the committee on Police and Fire Department concerning rules and regulations.

“Q. But you have no record there of the council ever adopting it? A. Yes, they did adopt it.

“Q. Read the record. A. “The committee on Police and Fire Department to whom was referred the rules and regulations governing the Police Force respectfully report that they find the same correct and proper and recommend the passage of the following resolution:

“RESOLVED, that the rules and regulations for the government of the Police Force, presented herewith, be and the same are hereby adopted, and that the Committee on stationery and printing are hereby directed to have fifty copies printed and bound and delivered to the Chief of Police for the use of the Police Department.’

“Q. What is the date of that? A. That was November 28, 1888.

“Q. Since then has any manual of rules and regulations of the Police Force of the City of Bayonne ever been adopted or changed or ordinances for the creation of a manual of rules and regulations of the Police Force of the City of Bayonne been adopted by the Board of Commissioners? A. No, sir.

“Q. Since the institution of the commission form of government? A. No, sir.

“Q. In other words, since we have had the commission form of government, since commissioners have been in power in Bayonne, there has never been a manual of rules and regulations of the Police Force of Bayonne adopted? A. No, not by the Board of Commissioners.

“Q. Referring to that meeting, does it appear in the minutes that the rules or the manual were presented to the councilmen? A. Not insofar as I have read.

“Q. The rules or the police manual that they wanted to adopt, was that in the minutes there? A. No, not in the minutes.

“Q. Did you ever see the rules or that manual? A. I have been unable to find them.

“Q. The records do not disclose any manual of rules and regulations governing the Police Department? A. Not as far as I have been able to find.

“Q. You have never been able to find them? A. No.

“Q. It is just a reference to a manual? A. It is a reference to rules and regulations.

“Q. And none appear? A. They are not here.”

This lengthy excerpt comprises the testimony of the City Clerk, and from it, it is evident that he was subpoenaed to produce the police manual, and that he did not do so; that no police manual or rules or regulations were introduced in this case; that he reads a resolution of the year 1888 concerning rules and regulations governing the department, but that he neither knows what nor where they are; that no other rules or regulations to his knowledge and from the record have been since adopted; that the supposed rules and regulations were not, according to the record, presented to the Board of Councilmen in 1888, nor in the minutes of that period; that he never saw the rules or manual, nor does the record disclose any, and again:

“Q. And you have never seen the rules and regulations referred to in those minutes of the meeting of November, 1888? A. They are not there.”

and that there are no rules and regulations in the minutes of November, 1888. Manifestly, the language of the Supreme Court (BERGEN, J.) in the case of *Kelly v. Bishop*, 119 Atlantic 6, becomes dispositive of this case, wherein an identical conviction was set aside, the Court saying:

“The other reason is that there was no proof that the rules of the Police Commission, which prosecutor was charged with violating, have any existence, and therefore there was a failure of proof of the material matter upon which the conviction must rest, for without it there is no foundation for the finding.”

The Supreme Court in the instant case, however, in sustaining the conviction says that this case is distinguished from *Kelly v. Bishop*, and goes on to say, “here a crime is charged,” meaning that in the specifications as proof of the charge that

Long was guilty of conduct unbecoming an officer and a gentleman. It is a glaring *non sequitur* as proof that Long was guilty of unbecoming conduct. He is charged with an assault, which assault is a violation of an unmentioned section of a manual, which is non-existent. Can Long, in this fashion and by indirection in order to sustain this conviction, be convicted of a crime? This would be the only possible justification for sustaining the dismissal.

The Director of the Police Department certainly has no jurisdiction to find Long guilty of a crime. That reasoning would deprive Long of his constitutional right of being presented by the Grand Jury and tried by a jury in the proper forum. So then, in order to justify the opinion of the Court below, we are forced into the position of accepting the right and power of a Director of Public Safety, who is a layman, in finding a man guilty of an offense, for the trial of which he is clothed with not the slightest jurisdiction.

The Supreme Court, therefore, distinguishes this case from the *Kelly* case on that ground. Unfortunately the charge or complaint in the *Kelly* case is not printed in the opinion *supra*, but the record and state of the case in that instance as filed, and we take it is just as much part of the law as is the opinion in the case upon which the decision is predicated, as the opinion itself, and we assert, after an examination of the complaint in the *Kelly* case, that the specifications in that case charged disorderly conduct, which manifestly would be just as sound a ground for sustaining the dismissal as if the charge had been a major crime, yet the reasoning of the Court brushes aside that specification and consequently the dismissal followed.

Aside from all this, it is clear that the officer came upon a riotous scene, that he acted as any police officer should act under the circumstances.

He stopped the riot and took all persons concerned to the police station, where all parties were given opportunity to make whatever charge was necessary under these circumstances. That Long prevented this riotous conduct from continuing is apparent. Complainant against Long testified (p. 20, line 33, Case): "A. And while I was hitting Haggerty, Officer Long came directly, almost directly from a house opposite 49, pulled a gun, running to us over the street, and hit me over the mouth with the butt end of a gun." That Long acted as a patrolman reasonably should act or any citizen, who felt he was equal to the occasion, is manifest from the testimony of Haggerty (Case, p. 86, lines 18 to 23):

"Q. So what happened? A. They put their feet into me, when Pat heard me hollering, he came running over. Only for Pat I would have been killed.

"Q. You think Patrick Long saved your life? A. You said it. Pat Long really did save my life."

It is elementary that in defense of a third person, who is being assaulted, one may use as much force in repelling an attack as he thinks necessary, even though, in fact, no force is necessary to repel the attack.

The ground upon which the opinion of the Supreme Court rests seems to us to take for granted that Long was charged with crime which was proven against him. There is nothing in this case, even assuming that Long did use force upon Clancy, to show that he used force which was excessive. Even though he did use force that might have been unnecessary, still it is elementary law that under the circumstances it would have to be clearly shown that he acted in a way that was tantamount to wilfulness in the assault and battery alleged to have been committed.

We respectfully urge, because of the failure of the condition precedent, the filing of the sworn complaint in the proper office, because of the fact that there is no manual or rules apparently in existence, or at least were not produced at the trial, and because of the fact that a crime was neither charged nor proven, and further that there was no jurisdiction to so find that a crime had been proven, the order of dismissal should be set aside.

Respectfully submitted,

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THOS. J. BROGAN, Esq.,
Of Counsel.

Court of Errors and Appeals

PATRICK LONG,
Prosecutor-Appellant,

vs.

BERT DALY, Director of the Department of Public Safety of the City of Bayonne, and the CITY OF BAYONNE,
Respondents.

ON
CERTIORARI.

BRIEF OF RESPONDENTS.

This is an appeal from the judgment of the Supreme Court dismissing a writ of certiorari to review the action of Bert Daly, Director of Public Safety of the City of Bayonne, in dismissing Patrick Long, the appellant, from the police force, who was found guilty of assaulting Harry Clancy.

The charge was made by C. J. O'Neill, Chief of Police of the City of Bayonne.

The charge (p. 12, line 40) was as follows:

“To the Director of Public Safety:

I hereby charge Patrick Long with Conduct unbecoming an officer and gentleman and conduct subversive of good order and discipline.

SPECIFICATIONS.

In this that the said Patrolman Patrick Long on date of May 6th, 1927, at 3:30 A. M. did assault Harry Clancy, a citizen of the City of Bayonne, without just cause of provocation.

Being in violation of
of the Manual of Rules and Regulations of
the Police Force of the City of Bayonne.

C. J. O'NEILL,
Complainant.

The officer was off duty. He went off duty at twelve o'clock midnight (p. 79, line 26) ^{and at 12:40} He had his civilian clothes on (p. ~~40~~⁸⁰, line ~~40~~²⁰).

The judgment of the Supreme Court should be affirmed for the following reasons.

P O I N T I .

It is unnecessary that there should be any rule forbidding a police officer to commit a crime.

The statute protecting police officers from removal, except upon charges, expressly provides:

“The officers and men employed in every municipal police department shall severally hold their respective offices and continue in their respective employments during *good behavior*, efficiency, and residence in the municipality wherein they are respectively employed.”

P. L. 1917, p. 319, Article 16, Sec. 3.

(The italics are mine.)

It cannot be said that one guilty of assaulting another deserves the appellation of “good behavior”.

In the case of *Kelly vs. Bishop, et al.*, 119 Atl., p. 6, there was another reason than that mentioned in the brief of counsel for the appellant, viz.: A member of the Board, who had not heard the testimony of all the witnesses, was allowed to sit as one of the judges and participate in the making of the order of dismissal.

Besides, it does not appear what the officer *did* that constituted “conduct unbecoming an officer” and of “conduct subversive of good order and discipline of the force.” It may have been necessary in that case to refer to the rules of the police

commissioner to determine whether that which the officer *did* was in violation of such rules.

But in the case now before the Court the specification in the charge is that the officer "did assault Harry Clancy" thereby specifying what the officer did.

Whether the Rules and Regulations of the police Force of Bayonne forbid any of the members of that force *assaulting* a citizen is immaterial because the law of the land forbids such action and no person guilty of such conduct is protected by the Tenure of Office Act or by any other act.

POINT II.

The prosecutor-appellant was found guilty of assault and battery.

The Director of Public Safety, before whom he was tried, found him guilty (p. 108) and dismissed him (p. 108) from the force.

The judgment of the trial officer is justified by the testimony of Harry Clancy (the person assaulted), pp. 20 to 40; Ruth Fox, pp. 41 to 51 and Salvatore Cavelho, pp. 52 to 66.

POINT III.

The Court will not weigh evidence if there is a rational basis for the judgment.

In *Alcott vs. Trenton* (66 N. J. L., page 173, affirmed 67 N. J. L., page 351), Mr. Justice Garretson said on page 174:

"Upon the trial it was for the board to say whether the evidence established the charge made and if it appears that the officer was

duly tried upon the charge before the proper authority and was found guilty upon evidence which forms a rational basis for the judgment, this court will not interfere." Citing *Devault vs. Camden*, 19 Vr. (48 N. J. J. L., page 433); *Ayers vs. Newark*, 20 Vr. (49 N. J. L., page 170); *Dodd vs. Camden*, 27 Vr. (56 N. J. L., page 258); *Cavanagh vs. Police Commissioners*, 30 Vr. (59 N. J. L., page 412.)

In *Ayers vs. Newark*, quoted above, Mr. Justice Scudder, in delivering the opinion of the Supreme Court, said:

"A fair trial does not mean that all the formalities shall be observed that are used in the trials of criminals for minor offenses in courts or by magistrates. The policeman, under charges, is not regarded by this statute as a criminal but a public agent or servant whose efficiency and fitness for the discharge of his duties may be questioned at any time in the interest of the public and no mere forms tending to chicanery and delay rather than substantial justice should be regarded. * * * This court will not weigh the evidence on these facts. It is sufficient that there was a legal and substantial basis shown for his removal upon which the commissioners acted within their authority."

In *Cavanagh vs. Police Commissioners of Hoboken*, 30 Vr. (59 N. J. L., page 412), Mr. Justice Ludlow, in delivering the opinion of the Supreme Court, said:

"The defendant board had the power to try the prosecutor as he was tried on the charge which was duly made against him and the charge was sustained on a fair trial, it had the power to dismiss him from the police force. The court will not weigh the evidence on which the board acted; it is enough that there was evidence on which the board found the prose-

cutor guilty of the charge and such evidence, *whether weak or strong*, formed a rational basis for its judgment against him.”

In *Reilly vs. Jersey City* (64 N. J. L., page 508), Chief Justice Gummere said:

“In reviewing the action of the board of police commissioners, this court will not weigh the evidence taken before them for the purpose of reaching an independent conclusion on the question of the guilt or innocence of the prosecutor. It will only consider such evidence for the purpose of determining whether or not it affords a rational basis for the judgment against him. If it does, *then no matter whether the evidence be weak or strong*, this court will not interfere. (The italics in the above quotations are ours.)

In *Herbert vs. Atlantic City* (87 N. J. L., page 98), Mr. Justice Kalisch quoted the language above of Justice Gummere in *Reilly vs. Jersey City* (64 N. J. L., page 508), and cited the cases above referred to as authority for the refusal of the Court to weigh the evidence.

POINT IV.

The prosecutor-appellant had a fair trial and was represented by counsel before the Director of Public Safety.

The Director of Public Safety, having heard the witnesses in person and being acquainted with them and having reached the conclusion that the officer was guilty as charged, this Court ought only to consider the evidence for the purpose of determining whether or not it offers a rational basis for the judgment against the police officer.

If the complaining witnesses told the truth—and the trial officer is the judge of that—his action in finding the policeman guilty and dismissing him from the police force should be sustained.

The prosecutor admits (p. 117, line 10) that he was served with a copy of the charges on July 7, 1927, and that on his application he procured an adjournment until July 13, 1927 (p. 117, line 20).

POINT V.

The same formalities are not required in proceedings for the removal of officers and employees in public departments as have been prescribed for inferior criminal prosecutions.

This point is made because in the testimony, in the trial of the prosecutor before the Director of Public Safety, certain objections were made and exceptions taken to the ruling of the Director of Public Safety thereon.

Devault vs. Camden, 48 N. J. L., p. 433.

POINT VI.

The record of the prosecutor-appellant is bad.

In the testimony of Bert Daly, Director of Public Safety (p. 129, line 14, and p. 130), he testified that the record of the prosecutor as taken by him from the records of the police department of Bayonne was that on December of 1920 the prosecutor was charged with conduct subversive of good order and discipline and he was reprimanded. On February 21, 1922, he was charged with Absence Without Leave and fined two days. On November 21, 1922, Absence Without Leave on two

counts, conduct unbecoming an officer and a gentleman, intoxication and subversion of good order and discipline of the force. He pleaded guilty to all the charges. He was fined forty-five days pay. On October 16, 1924, he missed two rings from signal boxes and on November 10, 1924, reported sick by telephone and was not at home when Police Surgeon called. Fined fifteen days pay for both charges. December 22, 1926, off traffic post, Avenue C and Eighth Street, reprimanded. December 27, 1926, disrespect to Superior Officer Sleight, reprimanded. May 6, 1927, conduct unbecoming an officer and gentleman, assaulting a citizen, Harry Clancy. Of this offense he was found guilty and dismissed.

POINT VII.

The City of Bayonne is organized under the Commission Government Act (P. L. 1911, page 462) and the several supplements and amendments thereto.

The Act was adopted by Bayonne, March 9, 1915. See statement of Secretary of State in P. L. 1916, p. 779.

By a supplement to the above act, which supplement was passed April 1, 1927 (P. L. 1927, p. 776), it was, among other things, provided as follows:

“The Mayor may be designated to be director of such department as a majority of the members of said commission shall in its judgment determine.”

On May 17, 1927, the Board of Commissioners of Bayonne passed a resolution reciting that, in its judgment, Bert Daly, who has been chosen to

preside at all meetings, be designated to be the Director of Public Safety.

See Exhibit "R-4", p. 126, line 20, also testimony of William P. Lee, City Clerk, p. 126, lines 10 to 40.

The following is a copy of Exhibit "R-4", offered by respondent under rule to show cause made by Justice Minturn:

"EXHIBIT R-4 OF NOVEMBER 30, 1927.

By Commissioner Axford:—

RESOLVED by the Board of Commissioners of the City of Bayonne, that it is our judgment that Bert Daly, who has been chosen by us to preside at all meetings of the Board of Commissioners of said City, and designated Mayor, shall be and hereby is designated to be the Director of the Department of Public Safety.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Bayonne, held May 17, 1927.

W. M. P. LEE,
City Clerk."

POINT VIII.

The Director of Public Safety, since the Amendment of 1915 (P. L. 1915, page 495, Section 4), is the sole officer to try charges against police officers.

The amendment of Section 4, among other things, provides as follows:

"The board of commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the mayor and

city council and all other executive or legislative bodies in said city, and have complete control over the affairs of the city adopting the provisions of this act. The executive, administrative, judicial and legislative powers, authority and duties in such city shall be distributed into and among five departments, except that in any city having but three commissioners, three departments shall be designated and provided by the consolidation of the first and third departments and the fourth and fifth departments as follows:

1. Department of public affairs.
2. Department of revenue and finance.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

The board of commissioners shall determine the powers and duties to be performed by each department and assigns such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all officers and employees and they may assign particular officers and employees to one or more departments and may require any officer or employee to perform duties in two or more departments, provided the work required of such officer or employee in such different departments be similar in character and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city." * * *

The Director of Public Safety is the sole officer to try charges against policemen.

Apple vs. Atlantic City, 104 Atl. Rep. 89;
Foley vs. Orange, 91 N. J. L. 554;
Crane vs. Jersey City, 90 N. J. L. 109,
 affirmed 92 N. J. L. 248.

The City of Bayonne is governed by five commissioners.

The Board of Commissioners on May 17, 1927, adopted a resolution assigning certain powers and duties to the Director of the Department of Public Safety. Among others so assigned was the police department. See Exhibit "C-1" (being a resolution by Commissioner Keenen, p. 107, also p. 125, line 20) offered at the trial of the police officer (p. 18, line 19). It was also offered under the rule to show cause granted by Mr. Justice Min-turn as Exhibit R-3, p. 125, line 20, and is printed below.

The following is a copy of Exhibit "C-1" also called Exhibit "R-3" offered by the Respondent at the trial of the police officer before Director of Public Safety, Daly:

"EXHIBIT C-1 OFFERED AT TRIAL OF PROSECUTOR
BEFORE DIRECTOR OF SAFETY.

By Commissioner Keenen:

RESOLVED by the Board of Commissioners of the City of Bayonne, that we have determined and hereby do determine that all of the executive, administrative, judicial and legislative powers, duties and authority relating to Weights and Measures, Recorder and Recorder's Court, Recorder's Clerk, Interpreters, Police Department, Fire Department, Pension Fund, Electrical Bureau, Public Buildings, and Jitney Department, be and the same are hereby assigned and distributed into the Department of Public Safety, and that the Director of said Department is hereby vested with all the powers, authority, rights and duties vested in or given by any statute, charter or ordinance relating to Weights and Measures, Recorder and Recorder's Court, Recorder's Clerk, Interpreters, Police Department, Fire Department, Pension Fund, Electrical Bureau, Public

Buildings and Jitney Department, and shall perform all the duties imposed by law with respect thereto.

Adopted—May 17, 1927.

A true copy.

WM. P. LEE,
City Clerk.”

POINT IX.

The prosecutor-appellant, in his reasons (p. 140) urges the following for the setting aside of the conviction of the prosecutor.

None of the reasons assigned should prevail.

The first and second reasons are that the prosecutor was discharged unlawfully. We say that he was lawfully discharged.

The third reason is as follows:

“No properly verified, signed complaint was served upon the prosecutor.”

The complaint was sworn to (p. 13) and was served (p. 13, line 30).

The fourth reason is that the alleged acts of the prosecutor took place on May 19, 1927, and the charges were not presented until July 5, 1927. That reason cannot prevail because the police officer had a fair trial and the conclusion reached by the Director of Public Safety was justified by the evidence, and besides he was not prejudiced by the delay.

The fifth reason is that there was no proof of any properly signed complaint having been filed in the office of the municipal officer or board having charge of the department in which the alleged complaint arose.

In reply thereto, we say that, in as much as the trial was held by the Director of Public Safety, the charges must have been filed in his department and that it is unnecessary to prove at such a trial that such complaint had been filed in the department of public safety.

The sixth reason of the prosecutor is:

“Prosecutor was denied a reasonable opportunity to prepare his defense to the charges made against him.”

To which we reply that the trial of the prosecutor was adjourned from July 8, 1927 (p. 13, line 13) to July 13, 1927 (p. 117, line 20) on the application of the prosecutor and that no further request was made by him for an additional adjournment.

The seventh reason is that the Director of Public Safety was without jurisdiction to try the prosecutor for the offense, such trials or hearings being within the province only of the Board of Commissioners.

In reply thereto, we refer to cases under point eight, viz.: *Apple vs. Atlantic City*, 194 Atl. Rep., p. 89; *Foley vs. Orange*, 91 N. J. L., 554; *Crane vs. Jersey City*, 90 N. J. L., p. 109, affirmed 92 N. J. L. 248.

The eighth and ninth reasons are that the manual and regulations of the police department were not offered in evidence and that the City never legally adopted a manual of rules and regulations.

We reply that the statute, protecting police officers from removal, protects them only during *good behavior* and that an officer found guilty of assaulting a citizen cannot be said to come under that category, and that it is unnecessary for the City to adopt a rule that an officer guilty of a crime shall be removed. See Tenure of Office Act, P. L. 1917, p. 319, Article 16, Section 3.

The tenth, eleventh and thirteenth reasons belong to the same category as reasons one and two.

The twelfth, fourteenth, seventeenth and eighteenth reasons are that the Director of Public Safety was prejudiced throughout the hearing and that he abused his judicial discretion.

Our reply is that a reading of the testimony will disprove all of the allegations contained in reasons twelve, fourteen, seventeen and eighteen, and establish the fact that the trial officer was not only free from prejudice but eminently fair.

The fifteenth reason is that the prosecutor is a Work Veteran and that he is protected by Chapter 124 of the Laws of 1917, etc.

That act and amendment thereto does not protect policemen who are guilty of assault and battery. It only guarantees to them a hearing on charges and against removal for political reasons. The contention is made on behalf of the prosecutor that because the Director of Public Safety had the idea that the police officer was opposed to him politically that he was, therefore, prejudiced against such officer but, on cross-examination of Bert Daly the officer who tried the policeman by the attorney of the prosecutor (p. 131, line 2, etc., notwithstanding our objection thereto) the prosecutor's attorney asked him the following questions:

“Q. You knew at the time and prior to this trial that Officer Long had been against your reelection? A. Why—I was under the impression that he was with our side.

Q. So that at the time of this trial were you under the impression that Patrick Long was with your side? A. Yes.

Q. You are sure about that? A. I am pretty sure.

Q. Did he ever tell you that? A. Not personally.

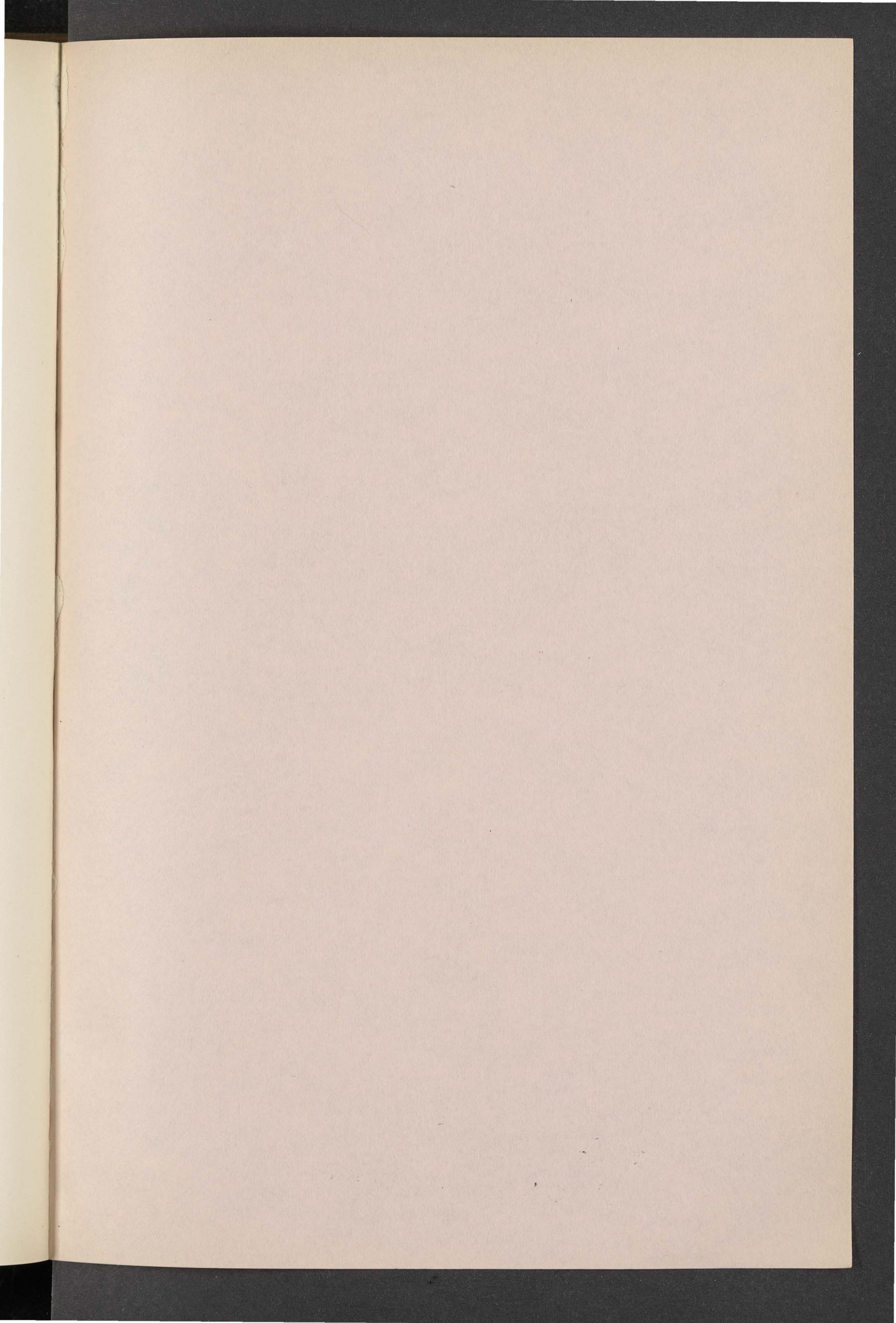
Q. Where did you get your information from? A. Just gossip around. I got it from his brother.”

The Sixteenth reason is covered by Point I.

POINT X.

The judgment of the Supreme Court should be affirmed.

JAMES BENNY,
Of Counsel with the Respondents.



Q. Where did you get your information
from? A. Just newspaper articles. I got it from
his brother."

The Sixth reason is covered by Point I.

POINT X.

The judgment of the Supreme Court should
be affirmed.

James Henry,
Of Counsel with the Respondents.