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IN THE WESTERN DIVISION OF THE UNITED STATES FOR
THE WESTERN DIVISION OF THE WESTERN DISTRICT
OF MISSOURI.

UNITED STATES OF AMERICA
Plaintiff,
-vs- No. 13682
E. D. SHANNABARGER, et al.,
Defendants.

COURT'S RULING ON MOTIONS
FOR NEW TRIAL, and SENTENCES

April 16, 1937.

FILED
APR 17 1937
A. L. ARNOLD, Clerk.
By W. W. Caster,
Deputy.

FINLEY and O'BRIEN

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(Thereafter, and on Friday, April 16, 1937, the defendants presented themselves to the Court to receive sentence, being also represented by counsel as aforesaid, the plaintiff also being present by counsel as aforesaid, and the following proceedings were had and entered of record:)

THE COURT: The first motion I will take up this morning is 13,682, United States vs. E. D. Shannabarger, et al., on which there is a motion for new trial. I will hear the argument on that motion now, giving thirty minutes to defendants to present the motion. You may present your motion for new trial, Mr. Langsdale. You may have thirty minutes to argue it if you wish. (Whereupon, Mr. Langsdale argued the motion to the Court.)

THE COURT: I have listened carefully to the very fine argument which has been made by Mr. Langsdale, for whom, as I think everybody knows, I have the most high esteem. I had already, of course, considered much of what was embodied in his argument, since he had presented substantially the same argument at the close of the Government's case in support of motions

for directed verdicts. Now I shall rule the motion for new trial and in arrest of judgment, and I shall do that without any extended oral opinion. Moreover, I shall not, in this case at least, hereafter prepare and file a memorandum opinion as I have done in other cases of the same general class as this. I shall content myself now

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with a very short statement. I think it is the duty of the judge of a court to express the reasons for any important ruling which is made, certainly a ruling upon so important a matter as a motion for a new trial. That is his duty to the parties upon whose behalf the motion is presented and to their counsel who presents the motion, but still more it is his duty to do that for the benefit of any reviewing court. I know that the honorable Circuit Court of Appeals, should this case be appealed to that court, as undoubtedly it will be, will desire to be enlightened as to the reasons for rulings which were made in the trial of that case. Out of consideration for that Court, I would fully express the reasons for the ruling that I am about to make, as well as out of consideration to the defendants upon whose behalf the motions are filed, and their counsel, were it not for the fact that, as to almost all the matters which are set up in the motion for new trial and in arrest of judgment, and they are forty in number, as to almost all of those matters, I have already written opinions in earlier cases, which have been adopted in this case by memoranda filed in this case. Those written opinions concern matters which have not been discussed here by Mr. Langsdale, who said that, since they had already been ruled with reasons given, it was not, in his viewpoint, again necessary to discuss them.

The one serious matter which is not discussed in any

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written opinion that has been filed is the matter which Mr. Langsdale orally has discussed in his argument just delivered, and that is, whether there was a case made against certain of the defendants, or against any of the defendants for submission to the jury. How, I shall not elaborate upon the reasons for my conclusion that Mr. Langsdale is in error in his argument on that subject, and I shall not do that for the reason that, at the close of the Government's case, upon the trial, after I had heard full argument by counsel for the defendants, I rendered an oral opinion, which was as carefully considered as I could consider it, which I have no doubt is incorporated in the record, in which oral opinion I set out in considerable detail the conclusions that I reached that, as to all of the defendants, a case had been made for submission to the jury. I am very frank to say that the case which was made as against those of the defendants who occupied the positions of clerks at the election was not nearly so strong a case as was made against others that were defendants.

I think that the defendants in this case fall into three classes. Mr. Pippin and Mrs. Adams, who were clerks, are in one class. The evidence against them was not so strong as that against others of the defendants, but for the reasons which I set out in the oral opinion rendered at the time, it was, in my judgment, sufficient to justify

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the submission of the case, even as against them, to the jury. Mr. Shannabarger, Mrs. Bodenhammer and Mrs. Constable fall in another class. They were all judges of election. They

fall in another class, a separate and distinct class, because, although judges of election, there was evidence that they did not participate in the count of the so-called political ballots, giving their attention to the count of the so-called bond and amendment ballots, and leaving the matter of counting the political ballots entirely to one judge, namely, Mrs. Brennan. The evidence as against them, those who fall in this second class, was somewhat stronger than that against the clerks. The reasons why I believed and still believe that the case as to them properly was submitted to the jury I stated in the oral opinion to which I have made reference. In the third class, of course, were the defendants Kaiser and McNamara and Mrs. Brennan. The case against them was — at least against McNamara and Mrs. Brennan was simply overwhelming. They did not even take the stand to testify in their own behalf. The reason the case is not so strong against Kaiser as against Mrs. Brennan and Mr. McNamara is that he rested at the close of the Government's case. They did not. As to them, those who fall in that class, I will not devote even a moment to a discussion as to the sufficiency of the evidence to justify the submission of the case to the jury.

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I have said that I will not repeat what I set out in the oral opinion rendered at the close of the Government's case, and I shall not do that, but I shall very briefly epitomize that in a single paragraph, in what will not fill more than a single paragraph in the record.

The evidence disclosed the erasure of a great many ballots, the substitution of marks upon a great many ballots for those which had been placed there by the voters, I do not now remember the number, but it was forty or more. There was some little evidence that, as to one or two ballots, they might have been changed during the day by or with the assistance of one of the judges, Mrs. Brennan, the only judge who seemed to be allowed to have anything to do with the political ballots at any time, but the evidence was quite conclusive that certainly a great majority of the erasures and changes were made at the close of the day when the ballots were supposed to be counted. It was a small room, there were few in the room at the time of the count. The defendants were there and perhaps one or two others, certainly two or three others, two others, at least, because they are -— well, no, I mean the defendants who were officers and clerks were there and two others who are also defendants were there, and perhaps there were still one or two others. The evidence was conclusive that in that small room that night (it was perfectly lighted, no disturbance

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of any kind excepting the counting of the ballots) thirty or forty ballots were changed by erasures, by substitution of marks. It is inconceivable to my mind that, when it is considered that each of these ballots Is a blanket ballot two feet square, that considerable effort must be made to erase marks and to substitute other marks, it is inconceivable to my mind that there is not at least basis for a conclusion by a jury that all who were in the room and who had duties to perform with respect to the ballots or the count, I say there is at least a basis to support a conclusion that those erasures that must have been made and substitutions of marks which must have been made with some effort and labor, that all the defendants knew what was being done and, having known what was being done, thereafter when they signed the certificate that the count which was announced was an honest count, a truthful count, if not before that time,

certainly then they joined the conspiracy. It was upon that ground that I based the ruling at the close of the Government's case.

The reason that Mr. Shannabarger, Mrs. Bodenhammer and Mrs. Constable, although the evidence shows that they did not participate in the count of the political ballots, — at least they so testified and there was no evidence to the contrary, -- the reason that they are in a different situation than the clerks is two-fold. The first is that

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they had a duty to count and to observe the ballots. They had sworn they would do that and they signed the certificate that they did do that, but even if they actually did not do that but permitted someone else to do it, they were chargeable with notice of what was being done in their presence. Especially were they chargeable with that notice when they knew -- this they undoubtedly did know, no one can contend to the contrary, they admitted it, -- that although they knew they were judges of the election, they turned over that very important part of their duties, (certainly no one will contend for a moment that the count of bond ballots and amendment ballots is regarded as more important than counting the political ballots) — they turned the whole thing over to one of their number, Mrs. Brennan, and permitted her and two men, who had no right whatever to participate in the count, to make the count of the political ballots. Now, they may have been serving for the first time, but no one could have been so ignorant as not to know that, being judges of the election, they had no right to turn over the count of the political ballots to one of the judges and to two outsiders. Whenever one who is a judge does that, that fact certainly is sufficient to support a conclusion that he knows that something crooked is in progress, and when, as was disclosed in this case beyond any question, to my mind, at least, — I do not know that the jury considered it, — when

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it was demonstrated beyond any possibility of question that, even as to the amendment ballots, these three defendants, Mr. Shannabarger, Mrs. Bodenhammer and Mrs. Constable, -- they said they counted those ballots, — I say it was demonstrated beyond any question that that count was a false and an untrue count. I do not believe they counted even those ballots. I think the result as to those ballots was given to them also by the three defendants who did not testify. The vote, as I recall it now, was identical in favor of and against each amendment, four amendments, an absolute impossibility, that is to say, if they were counted.

I make reference to only one other matter that was presented in the argument of counsel, and that I do out of justice to myself. It was said by counsel in his argument, and rightly, correctly, that In the oral opinion which was rendered at the close of the Government’s case, outside of the presence of the jury, of course, it was said that if the defendants knew or had reason to know that a count was false and then certified that the results to which they did certify were truthful results, that those facts were sufficient to support a conclusion of guilt. As counsel said, I did not so charge the jury in the charge to the jury. The reason that I did not so charge the jury in the charge to the jury was that I thought that that might be debatable, and I intended to resolve that doubt in favor of the defendants

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and to impose upon the Government a really greater burden than I thought the Government should be required to carry. I have no doubt at all that what I said in the oral opinion is right and is the law. I think I can make it perfectly clear in a few words.

Of course it is true that in a criminal case one cannot be convicted because he has reason to know that a crime has been committed by others. That is not what I said in the oral opinion. What I said was that if A is an election Judge whose duty It is to count the ballots, and it is a matter of common knowledge that that is the duty of an election judge (what is an election judge for if he is not for the purpose of counting the ballots?), if A is an election judge, charged with that duty, and he abandons that duty to others, that may be the custom and it may be all right for him to do that, but he does it, he abandons the duty to another judge or to another person, and then he sees something suspicions; he doesn't know exactly what it is, he sees this other Judge to whom he has abandoned his duty apparently making erasures and apparently making marks; he doesn't know what the effect of the erasures is, what the effect of the substitution of marks is, he doesn't know what has been done, but he knows that something is being done that ought not to be done, he has reason to know that a false count is being made or prepared for; he doesn't know it, but

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he has reason to know it. How, I say that if those are the facts, considering his duty, if the evidence discloses that he doesn't say a word, that he doesn't raise his hand in protest, that he doesn't inquire, "What are you doing with those ballots?", he just lets it all pass, if the evidence discloses that, and then the evidence finally discloses that, with all of that, he nevertheless signs his name to a certificate that the vote announced is a truthful count, I say, and I think there can be no question about it, that those facts are sufficient to support a conclusion that he is a party to a conspiracy to certify a false return. If any court will say otherwise it will be surprising to me.

The motion is overruled and exception allowed to each of the defendants.

(To which ruling and action of the Court, the defendants, and each of them, at the time duly excepted and still except.)

THE COURT: I shall not ask the defendants to go through the idle ceremony of presenting themselves at the bench unless they want to do so. They may remain seated. I shall, however, and I now give to any one of them, and when I give this opportunity, it is not an idle gesture or an idle ceremony, but I now say to each of them or to any one of them that if he desires to say anything on his own

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behalf why he should not be sentenced, he may come forward and make such a statement, and it might make a lot of difference. It makes all the difference in the world, I say, in a case where individuals haven't testified and the Court doesn't know a thing from their standpoint as to what their defense is, if at this period they will come forward and make a statement that will enable the Court to make some discrimination, If discrimination is required, so I give the opportunity, and it is a real opportunity, and if any one of the defendants desires to do it he may do it, and if not, counsel may speak for them if he desires to speak for them on the matter of what sentence ought to be imposed. In the absence of anything being said by any of the

defendants or by their counsel upon this subject --

MR. LANGSDALE: If the Court please, do you intend to call off the individual names?

THE COURT: Yes, I am giving each individual, and I will call the individual names if you like, an opportunity to say anything he wishes to.

MR. LANGSDALE: For fear that I may be out of time, Mrs. Brennan didn't take the witness stand, therefore your Honor had no knowledge whatever of her situation. She was a judge. I didn't put her on the stand because I knew some of the evidence would be that she was where the counting was going on, and I was assured by her that she had nothing

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whatever to do with any changes, but I knew your Honor's conclusions in this case and other cases, that anyone who was there counting the ballots had an opportunity of seeing the ballots. Mrs. Brennan has four children, eight, ten, twelve and thirteen years of age. Certainly the public can not profit in this case to have another with four children imprisoned, or by permitting then to grow up without a mother during a period of incarceration.

THE COURT: I an very glad that you made that statement, Mr. Langsdale. It will have some weight with the Court. After the verdicts were returned by the jury, but I did not know it at the time the verdicts were handed to me by the jury, my attention was called to a recommendation made by the jury, which was handed to me in my chambers after I retired from the bench on the date when the case was decided by the jury. That recommendation concerned the defendants Nancy Bodenhammer, Nancy Constable and Bessie D. Adams, was signed by the foreman and all of the members of the jury; it recommended leniency in the sentences as to those three. However, it was explained to me by the jury that that was all they were recommending, namely, leniency and a lesser sentence as to these three than as to the others. I always give great consideration to whatever a jury says to me, even although the duty of imposing punishment is solely with the judge. But I shall not put all of

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the defendants named in this recommendation in the same class, because I think they belong in different classes. I shall put one of the defendants who is not named in this recommendation in the same class with those who were.

It is the sentence and judgment of the Court as to the defendants Everett Pippin and Bessie D. Adams — they were the clerks -- that they be imprisoned in the Clay County jail, each of them be imprisoned for a period of one month, and pay a fine of $100.00.

It is the sentence and judgment of the Court as to the defendants E. D. Shannabarger, Nancy Bodenhammer and Nancy Constable — they were judges — as to each of them, that he or she be imprisoned in the Clay County jail for a period of six months and pay a fine of $200.00.

It Is the sentence and Judgment of the Court as to the defendants Charles H. Kaiser and James McNamara, as to each of them, that he be Imprisoned in the United States Penitentiary at Leavenworth for a period of three years, and pay a fine of $500.00.

It is the sentence and judgment of the Court as to the defendant Irene Brennan that she be imprisoned In the United States Women's Reformatory, at Alderson, West Virginia, for a period of two years, and pay a fine of $500.00.

There will be no probation granted to any of the defendants.