

1940

# State of Utah v. E. B. Erwin, Harry Finch and R. O. Pearce : Abstract of Record

Utah Supreme Court

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Burton W. Musser; Edward F. Richards; Attorneys for Appellant;

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IN THE  
**SUPREME COURT**  
OF THE STATE OF UTAH

STATE OF UTAH,  
*Plaintiff and Respondent,*

vs.

E. B. ERWIN, HARRY FINCH and  
R. O. PEARCE,  
*Defendants and Appellants.*

CASE  
NO. 6200

APPEAL FROM THE DISTRICT COURT OF THE  
THIRD JUDICIAL DISTRICT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

HONORABLE OSCAR W. McCONKIE PRESIDING

**ABSTRACT OF RECORD**

H. L. MULLINER,  
*Attorney for Appellants,  
Harry Finch and R. O. Pearce.*

BURTON W. MUSSER and  
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*Attorneys for Appellant  
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**FILED**

JAN 12 1940

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**ABSTRACT OF RECORD**

---

**INDICTMENT**

The Grand Jurors of the County of Salt Lake, State of Utah, accuse E. B. ERWIN, HARRY FINCH, FRANK A. THACKER, R. O. PEARCE and BEN HARMON of the crime of CRIMINAL CONSPIRACY, in Violation of Title 103, Chapter 11, Section 1, Revised Statutes of Utah, 1933, committed as follows, to-wit:

That the said E. B. Erwin, Harry L. Finch, Frank A. Thacker, R. O. Pearce, and Ben Harmon, together with divers other persons to this

Grand Jury unknown, the said E. B. Erwin at all times herein mentioned being the duly elected, qualified, and acting Mayor and Commissioner of Public Safety of Salt Lake City, a municipal corporation, and the said Harry L. Finch, at all times herein mentioned, since the 15th day of March, 1936, being the Chief of Police of said Salt Lake City, and the said Frank A. Thacker, at all times herein mentioned being a police officer of said Salt Lake City, and during all of the said time subsequent to the 15th day of April, 1937, the Captain of the Anti-Vice Squad of the Police Department of Salt Lake City, on the 6th day of January, 1936, and on divers other days and times between that day and the first day of January, 1938, at the County of Salt Lake, State of Utah, did willfully and unlawfully agree, combine, conspire, confederate, and engage to, with, and among themselves and to and with each other and to and with divers other persons to this Grand Jury unknown, to commit *acts* injurious to public morals and for the perversion and obstruction of justice and the due administration of the laws of the State of Utah, to-wit:

That the said E. B. Erwin, Harry L. Finch, Frank A. Thacker, R. O. Pearce, and Ben Harmon did willfully and unlawfully agree, combine, conspire, confederate, and engage to, with, and among themselves and to and with each other and to and with divers other persons to this Grand Jury unknown, willfully and corruptly to permit, allow, assist, and enable houses of Ill Fame, resorted to for the purpose of prostitution and lewdness, and lotteries, dice games, slot machines, bookmaking, and other gambling devices and games of chance to be kept, main-

tained, and operated at various places in Salt Lake City, Salt Lake County, State of Utah, the said Defendants then and there well knowing that said Houses of Ill Fame, lotteries, dice games, slot machines, bookmaking and other gambling devices, and games of chance were being kept, maintained, and operated in said Salt Lake City in violation of the Statutes of the State of Utah and the Ordinances of Salt Lake City, and in furtherance of said Conspiracy did commit the following overt acts:

1. That during all the period of time between March 15, 1936, and January 1, 1938, the said Defendants permitted, allowed, assisted, and enabled Houses of Ill Fame, resorted to for the purpose of prostitution and lewdness, to be kept, maintained and operated at various places in Salt Lake City, Salt Lake County, State of Utah.

2. That during all the period of time between March 15, 1936, and January 1, 1938, the said Defendants permitted, allowed, assisted, and enabled lotteries, dice games, slot machines, bookmaking, and other games of chance and gambling devices to be kept, maintained, and operated at various places in Salt Lake City, Salt Lake County, State of Utah.

3. That on or about the first day of each and every month, between the months of June, 1937, and January, 1938, both months inclusive, the Defendants collected and caused to be collected, money from the operators of various Houses of Ill Fame in various places in Salt Lake City, Salt Lake County, State of Utah.

4. That at various times, between April 1, 1936, and January 1, 1938, the Defendants collected and caused to be collected money from

the operators of various lotteries, dice games, slot machines, bookmaking, and other games of chance and gambling devices at various places in Salt Lake City, Salt Lake County, State of Utah;

contrary to the provisions of the Statute of the State of Utah, in such case made and provided, and against the peace and dignity of the State of Utah.

CARL W. BUEHNER

The Foreman of the Grand Jury  
of Salt Lake County, State of  
Utah, April Term, A. D. 1938.

Motions to quash the indictment were filed June 20, 1938, by all defendants. It is considered unnecessary to set forth in full all the motions made by all the separate defendants in this case. The points relied upon will be stated without duplication in so far as they may be raised on this appeal.

Such grounds of the motions to quash as to each defendant were as follows:

That said indictment does not charge the defendant with the commission of a public offense.

That no sufficient facts are alleged to constitute an offense.

That said indictment does not allege facts which show the nature and cause of the accusation against defendant as is guaranteed and required by Article I, Section 12 of the Constitution of the State of Utah, or by the Code of Criminal Procedure, Title 105 of the Revised Laws of Utah, 1933, or of any other law of the State of Utah. (8)

That said indictment charges more than one offense and contains two or more offenses. (8)

A demurrer was also filed on the foregoing grounds. (10)

That the indictment does not charge the offense attempted to be alleged as required by the effective statute 105-21-8, Chapter 118, page 223, of the Session Laws of Utah, 1935. The indictment attempts to charge under 103-11-1, R. S. U., 1933, and then limits the allegations to paragraph 5 of said section. There is then no allegation sufficient to charge and no allegation charging a conspiracy to do an act as provided by the said statute in violation of the provisions thereof.

Said indictment charges more than one offense in violation of 105-21-31, Chapter 118, page 226, Session Laws of 1935, by alleging numerous agreements and therefore numerous offenses and numerous conspiracies, and there is also a misjoinder of parties defendant and of causes in the said indictment.

The allegation of conspiracy to conspire is not within the statute. The allegation of a conspiracy to conspire alleging the terms "allow", "permit", "assist", and "enable" are conclusions and not allegations of facts or of acts. These are not allegations of an agreement to commit an act as required by the statute relied upon and there is no such allegation as to this defendant. (18)

The attempted allegations of "overt acts" are insufficient in fact to charge such or any act. These allegations are conclusions and not facts, are allegations of omissions without allegations of any duty to act,



and the allegations 3 and 4 are insufficient, ambiguous, uncertain and indefinite. (19)

The said indictment, for the foregoing reasons and in fact, is too indefinite, and separately is too ambiguous and uncertain, and separately that it is too multifarious, does not define any offense as to any defendant sufficiently to properly enable a defense to be made there-to. (19)

All motions to quash and demurrers were over-ruled. (21)

Without waiving their motions or the objections that an indictment by a Grand Jury could not be supplemented by a Bill of Particulars so as to, in any way, support it or at all, each defendant was permitted to file a request for a Bill of Particulars and did so. (24, 26, 31, 34)

The court ordered a Bill of Particulars as follows: (37)

Court denies Motions to Quash of the defendants E. B. Erwin, Harry L. Finch and R. O. Pearce and further orders District Attorney to prepare, serve and file a bill of particulars herein on or before August 9, 1938, in which the State shall particularize upon the alleged means employed by the defendants to permit, allow, assist and enable houses of all fame, lotteries, dice games, slot machines and various gambling device and games of chance to be operated and maintained at various places in Salt Lake City, Utah. It is further ordered that the State shall particularize with respect to the location of the houses of ill fame referred to in the indictment and in the overt act set

forth in the indictment and the names of the operators of those various houses of ill fame referred to. (38) It is further ordered that the State shall particularize with respect to the location of and the operators of the lottery establishments and the dice game establishments and the bookmaking establishments and in respect to the operators of the slot machines and also to particularize if they intend to rely upon games of chance or gambling devices as to what those gambling devices are and who operated them and where they are maintained at Salt Lake City. Further ordered that the State shall particularize with respect to the location of the various houses of ill fame and the operators thereof from whom allegedly money was collected and who collected it, if anyone, and the same with respect to the location of and the operators of the various lotteries, dice games, slot machines and bookmaking establishments referred to in the indictment.

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## BILL OF PARTICULARS

(39) Filed August 15, 1938

Comes now the State of Utah, and in accordance with Section 105-21-9, Laws of Utah, 1935, and pursuant to the Order of the above entitled Court, furnishes the following Bill of Particulars in the above entitled case, to-wit: The addresses of the Houses of Ill Fame, referred to in the Indictment herein, and the names of the operators, so far as are known, are as follows:

Kitty Spiegel alias Eva Eisner, 143 West Broadway.

Lou Anderson, 128½ West 1st South.



- Margaret Newman, 133 West Broadway.
- Madeline Chivione, 63 $\frac{1}{2}$  West 2nd South.
- Sadie Alter alias Sadie Campbell, 243 $\frac{1}{2}$  West 2nd South.
- Tillie Allen, 31 South 1st West.
- Cleon Sterling, 255 South 1st West.
- Helen Kay Kempendorf, 127 West 1st South.
- Sue Griffiths, 143 $\frac{1}{2}$  East 2nd South.
- Sally Bennett and Ruth Allen, 123 West 3rd So.
- Joe Larsen, 253 South West Temple.
- Jane Doe,, whose other and true name is unknown, 36 East 4th South.
- Piedmont Hotel, 249 $\frac{1}{2}$  South State Street.
- Rex Hotel, 253 South State Street.

The following are the addresses of the places where the lotteries, referred to in the Indictment on file herein, were kept, maintained, and operated, together with the names of the persons keeping, maintaining, and operating the same:

- Lee Bens and L. Wong, 456 West 2nd South.
- Lee Bens and L. Wong, 458 West 2nd South.
- Chang Chung, 472 West 2nd South.
- E. Young Waugh, 435 West 2nd South.
- Bow Kee, 439 West 2nd South.

The following are the addresses of the places, referred to in the Indictment on file herein, wherein dice games were kept, maintained, and operated, together with the names of said places and the operators thereof, to-wit:

- Western Social Club, Mike Bekis and Christ Klaris, 35 $\frac{1}{2}$  West 2nd South.
- Zapian Club, Chas. Cayias, 56 West 2nd South.
- Abie Rosenbloom, 61 $\frac{1}{2}$  East 2nd South.

The following are the addresses of the places, alleged in the Indictment on file herein, where bookmaking establishments were kept, maintained, and operated, together with the names of the persons operating the same:

Bill Browning, Basement, Atlas Building.  
 Wm. Farber, Basement, New Grand Hotel.  
 Cliff Jennings, Newhouse Building.  
 Lefty Newton, 124 East 2nd South, 2nd Floor.  
 Cliff Jennings, 541½ South Main Street.  
 Lefty Newton, Woodruff Apts., 1st Floor.

The following are the addresses of the places, referred to in the Indictment herein, wherein games of chance, to-wit: Poker games, were kept, maintained, and operated, together with the names of the said places, to-wit:

Pastime Club, 55 East 2nd South.  
 Bank Smoke Shop, 58 East 2nd South.  
 Wilson Card Room, 26 East 2nd South.  
 Mission Cigar Store, 129 South Main.  
 Peter Pan Card Club, 222 South Main.  
 Horseshoe Card Room, 49 East 2nd South.  
 Mint Card Club, 26 East 2nd South.  
 Stubeck's Card Club, Basement, Politz Candy Co.  
 Silver Dollar, 41 East 2nd South.  
 Malouf Billiards, 248 South Main Street, Basement.

That all of the foregoing places were at all times alleged in the Indictment on file herein, located in Salt Lake City, Salt Lake County, State of Utah.

That at all times alleged in said Indictment the said E. B. Erwin was the duly elected, qualified, and acting Mayor and Commissioner of Public Safety of Salt

Lake City, a municipal corporation, and the said Harry Finch, at all times mentioned in said Indictment, since the 15th day of March, 1936, was the duly appointed, qualified, and acting Chief of Police of Salt Lake City, and the said Frank A. Thacker, at all times mentioned in said Indictment, subsequent to the 15th day of April, 1937, was the duly appointed, qualified, and acting Captain of the Anti-Vice Squad of the Police Department of Salt Lake City.

That during all of the period of time between the 15th day of March, 1936, and the 1st day of January, 1938, the said Defendants permitted, allowed, assisted, and enabled Houses of Ill Fame, resorted to for the purposes of prostitution and lewdness, Lotteries, Dice Games, Slot Machines, Bookmaking, and other games of chance and gambling devices, to be kept, maintained, and operated at the places herein mentioned in Salt Lake City, Salt Lake County, State of Utah, by then and there failing and refusing to make arrests for the keeping, maintaining, and operating of said places, although the said Defendants herein well knew that said places were being kept, maintained, and operated in violation of the Statutes of the State of Utah, and the Ordinances of Salt Lake City, a municipal corporation, and the said Defendants further permitted, allowed, assisted, and enabled said places to be kept, maintained, and operated by failing and refusing to enforce the Statutes of the State of Utah, and the Ordinances of Salt Lake City, prohibiting the keeping, maintaining, and operating of said places and said games.

That on or about the first day of each and every

month between the months of June, 1937, and January, 1938, both months inclusive, the Defendants, with the aid and assistance of Golden Holt and Ben Harmon, collected money from the operators of the Houses of Ill Fame herein referred. That between April 1, 1936, and January 1, 1938, the Defendants, with the aid and assistance of Ben Harmon, and other persons to the State of Utah unknown, collected money from the operators of the Lotteries, Dice Games, Bookmaking, and other games of chance and gambling devices herein referred to and set out.

**CALVIN W. RAWLINGS**

District Attorney of the Third  
Judicial District, in and for Salt  
Lake County, State of Utah.

By **MARION G. ROMNEY**,  
Deputy District Attorney.

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Motions were then made by each defendant, Sept. 3, 6, 8, 1938, to quash the Indictment as supplemented by Bill of Particulars upon all the grounds of the previous motions to quash indictment and upon the following additional grounds:

That the Court has ordered a Bill of Particulars to be furnished this defendant and no sufficient Bill of Particulars has been furnished, or a Bill of Particulars in accordance with the Court's order, (42)

That if the indictment by the Grand Jury can be supplemented by the allegations in the Bill of Particulars it is possible for the attorney to charge things not considered by the Grand Jury at all, and that this

Bill of Particulars purports to charge matters not charged in the Indictment.

That if the Bill of Particulars is properly filed it limits the indictment by the allegations of the Bill of Particulars, and as to defendant Pearce as to the main charge, and separately as to the overt acts, the charge indicated is the obstruction of justice by the officers not diligently exercising their powers, and the overt acts consist of the failure to act on the part of such officers only.

That then the indictment, as supplemented, should be quashed as to the individual defendants and particularly as to defendant Pearce because it is definitely indicated that he had no police powers that could be relaxed.

That the collection of money appears by the Bill of Particulars to be the gist of the offense and no agreement to collect money is alleged, no such means as this is alleged as being agreed upon as to the individual defendants, and particularly as to defendant Pearce. He is excluded from the allegations of the Bill of Particulars as to the collection of money and should be dismissed. (48)

That the Bill of Particulars does not set forth as required by the order of the Court and by law, the means agreed upon to be employed by the defendants to permit, allow, or assist the various things to operate, or, the alleged means so employed, or so as to show any connection or agreement between the individual defendants in relation thereto.

That there are no facts or particulars, either ex-

pressly or by necessary implication or inference to indicate that a conspiracy, or any conspiracy in fact, was entered into among or between the said defendants in accordance with the demand for a Bill of Particulars, or the Court's order therefor, or at all. (52)

Motions were also made Sept. 10, 1938, to strike the Bill of Particulars (57) for the reasons hereinabove indicated, including the ground that Indictment by a Grand Jury could not be supplemented or supported by a Bill of Particulars filed by other persons not shown to have participated in said proceedings or having knowledge of the matters considered by the Grand Jury, or what facts it had before it, or what it intended to charge as a violation of law.

All motions were denied. (58)

All defendants pleaded "Not guilty" and defendants Erwin and Pearce pleaded former jeopardy and acquittal. (59)

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### ABSTRACT OF EVIDENCE

The trial started March 31, 1939. The plaintiff was represented by Calvin W. Rawlings and Brigham E. Roberts.

Defendant E. B. Erwin was represented by Burton W. Musser, defendant Frank A. Thacker by Willard Hanson, E. N. Straup and Stewart Hanson, defendant Harry L. Finch by Frederick Loofbourow, and defendant R. O. Pearce by H. L. Mulliner.

The information was read to the jury (R. 319). The Bill of Particulars was read to the jury over the objection of defendants (R 320). (The forepart of the



transcript related to matters pertaining to the motion to dismiss on account of the delay of the trial. This question is not being urged on appeal.)

A motion was made as follows: "Your Honor, Please, before the witness is called I want to make a motion requiring the state to elect as to the subdivision of Subdivision 5-103-11-1 it will proceed on." All defendants joined in the motion. The motion was overruled. (R. 365)

Objection was made on behalf of each of the defendants to the introduction of any evidence upon all the grounds stated in the previous motions to quash. Over-ruled.

Further grounds of the motion were that defendants Pearce and Erwin had been acquitted of the offense charged by verdict rendered in Case 10785 in the same Court that they were there tried upon the theory of conspiracy involving the same matters.

ETHEL McDONALD being sworn as a witness testified that defendant Erwin took oath as Mayor the first Monday in January, 1936. (R. 378). That he resigned February 7, 1939. (R. 378) That Mr. Finch was discharged as Chief of Police January 21, 1938. (R. 379).

Certain City Ordinances were introduced by defendants, and are in the exhibit (R. 427). Others were introduced relating to the licensing of card games, the ordinances of the city licensing of marble games, and slot machine operations were offered. The offer was objected to and the objection sustained. (R. 436.)

Ordinances 600 to 603 inclusive were offered, the same relating to the duty of enforcement of law and the

city attorney's duty to enforce the same. These were objected to by the plaintiff and the objection sustained. (R. 438) Section 130 of the ordinances was introduced by plaintiff showing the jurisdiction of the City Board of Health over "The control of prostitution." (R. 444).

O. B. RECORD was sworn as a witness for plaintiff. He testified that he had been Inspector of police for three years and was such on May 1, 1937. That the Chief was his superior officer and he was next in line. That Thacker was placed as Chief of the Anti-Vice squad some time in April or the first of May, 1937. (R. 456) and remained until January of 1938—the latter part of January.

When Mr. Finch became Chief he was in charge of the Traffic department. Was told to continue. The Anti-vice squad is under the Chief of Police.

That he was down near Second South and Rio Grande Avenue in August, 1937, and met Mr. Thacker in that neighborhood. (R. 569). This testimony relating to Mr. Thacker has become immaterial.

He testified that once in the absence of Mr. Finch Mr. Thacker told him that he was instructed to report to the Mayor's office.

Around the 25th of August, 1937, he and officer Burt made an arrest in the basement of the Atlas Building. He did not know at that time who operated it but he knew now that Bill Browning did. That he saw around 50 to 70 men in the basement. That he was in full uniform. That he saw people going down and coming out of the basement. When he went down he saw horse racing sheets tacked upon the partitions, 4 or 5



tables, horse racing sheets on these, and some money on the table. He got two fellows, the keepers, and Burt got two tables. (R. 579). They had a blackboard with sheets on them. It was about 1 P. M. in the day time. (R. 580).

That he and Sargent Pearce made an arrest in the basement of the New Grand Hotel a day or two later of some bookmakers at 32 East 4th South.

Motion to strike out the reference to this last address was made on the ground that it was not in the Bill of Particulars mentioned. The motion was denied. (R. 581).

After these arrests he was in the office a dozen times a day on different matters. This was around August 30, 1937. Objection was made to the conversation in the Chief's presence and the Court said it was binding upon nobody except Mr. Finch. The witness said the Chief asked him if he had complaints about these particular places and he said he hadn't. The Chief then suggested that he let Thacker handle the arrests and not interfere. If they had any complaints of gambling to let Thacker know and he would see it was taken care of. (R.583).

The Chief did not tell him to cease making arrests. (R.583).

### CROSS EXAMINATION

When Mr. Finch was appointed the witness was captain. He had his office in the same place that he did after Mr. Finch appointed him inspector. That in entering the police station they entered from the West into a large hall then turned right to reach the Chief's office and passed through a room which was at some-

times unoccupied and in 1937 occupied by the Secretary, or one of the other police officers, and then passed through the witnesses office which room sometimes was occupied by Mr. Bauer Secretary, and from there passed into the Chief's office. That there was another entrance to the Chief's office which was sometimes used by members of the department but not used by the public. (R. 585).

That the Anti-Vice squad made up daily reports of their activities as did other officers. That these went to the captain's office and from there to the Chief's office. They were then filed away in the regular files. This is in the record room in the Detective Department. (R. 586). That there were filed in the witnesses office just personal files on all the officers—the personal record, correspondence etc. Witness saw the reports from the Vice squad, he wouldn't say everyday but he read the reports nearly everyday of all the officers, and had opportunity to do so, and didn't know that any report of the Anti-Vice squad was ever kept from him. (R. 587).

That Chief Finch was away twice to attend conventions from 10 days to 2 weeks. That Mr. Finch became Chief in March 1936, (R. 588). Witness said that he as inspector, was in charge of the personnel of the department. That Chief Finch talked over the appointment of Thacker with him. (R. 593) He couldn't say that he recommended it but that he had no objection to the appointment of Thacker.

He couldn't say whether he was consulted by Mr. Thacker about the members of the Anti-vice squad or

not. That he was in charge of the personnel but thought that Mr. Thacker largely chose the men for that squad.

That there are several departments having heads, including the Traffic department, the Detective department, the Vice squad, and then each shift had its Sergeant. The radio department had a man in charge. That the department heads reported to the Chief. (R. 593).

That his desk faced the door leading into the Chief's office and that the Chief's door was open all of the time (R. 593) That his brother H. K. Record was head of the Anti-vice squad before Thacker. That Mr. Holt had been in charge prior to his brother.

Mr. Thacker had five men under him. There may have been six. Among them was Golden Holt, C. H. Christensen, Mr. Beckstead, and Mr. L. C. Crowther. He couldn't name any others. He didn't know how they worked, that is, in what groups.

Captain Thacker told him he didn't like the job of head of Anti-vice squad and didn't want it, and witness told him to do the best he could. (R. 612).

That while the Chief was out of town the reports of the various departments came to him as the acting Chief, including the reports of the Anti-vice department.

Witness said that he testified that Bill Browning had a place in the basement of the Atlas Building in August 1937; that he had heard of Bill Browning being in town for years; that he didn't arrest him in the Atlas Building that day but he did arrest him on another day later. (R. 613) Witness was asked on cross examination over how many years to his recollection

Bill Browning had been arrested off and on, for book-making. The witness stated that he heard of his making books in 1936 and 1937. This question as to other years was objected to by the plaintiff and the objection sustained. (R. 614) Also as to how many years Browning had operated (R. 614) Witness testified he did not know how many times Browning had been arrested by the squad under Mr. Thacker.

The question as to whether the witness knew from his experience that a person could not be arrested on rumor was objected to by the plaintiff and the objection sustained. (R. 615).

That he told Thacker when Thacker complained and said he didn't want the job of Chief of the Anti-vice squad to go and make the best of it and to do his duty and he would come out all right. (R. 618).

Motion was then made to strike as being irrelevant to any issue in the case. The conversation with Mr. Finch as to the arrests made by the witness and Mr. Finch's suggestion as to reporting to Mr. Thacker on gambling as being in no way relevant or material to the issue of conspiracy, and in no way binding upon any of the other defendants, and in no way indicating an admission of the offense charged as against Mr. Finch.

Separate motion was made to the strike the conduct of this witness in making arrests outside of the presence of the parties here and without any showing that any of the parties arrested were guilty or were convicted of any offense, as being irrelevant and immaterial to the charge of conspiracy.

A separate motion was made as to the conversations with Mr. Thacker and the suspicion of the witness as to lotteries in the neighborhood of this conversation. These motions were all denied. (R. 620-622).

O. B. RECORD was sworn again and testified that he was captain of police in 1936 and inspector in 1937. That he was acquainted with Abe Rosenblum, that he saw him around the police station several times, maybe a dozen. A motion to strike this testimony was made and denied. (R. 1329) That in 1936 he saw Mr. Rosenblum talking to Mr. Finch three or four times, he guessed.

### CROSS EXAMINATION

On cross examination he testified that Abe Rosenblum was a bondsman. That that was his business around the police station. That he had no idea what he was talking to Mr. Finch about. (R. 1330).

On re-direct he testified that he knew that Rosenblum was writing bonds at that time.

This witness was also called by Mr. Loofbourow on defense and testified that he heard a conversation about January 20, 1938 in the police station in the Chief's office between the Chief and Golden Holt in the presence of the Chief and Mr. Bauer, the secretary and others, and at that time the Chief said "something that you men have done or not done may cost me my job. They say there has been a pay-off in Salt Lake City, and I want you to tell me, before these witnesses, if I ever asked you to favor any of the games, bookies, prostitutes, or anyone else?"



The witness testified that he was present and heard a question in that order and in substance as stated, and that he heard Holt say "no" to that question. That the Chief also asked Mr. Holt "have I ever asked you to coerce or intimidate any of these people?" The witness testified that he heard that question asked and Mr. Holt answered "no", and that the Chief then asked Mr. Holt if any of these people had paid him any money and Mr. Holt answered "no", and that he also heard Mr. Finch ask Holt in substance whether Mr. Finch had ever asked Holt to do anything other than enforce the ordinances and laws, and that Mr. Holt answered "no." (R. 1501).

### CROSS EXAMINATION

The witness testified on cross examination that Mr. Headman may have been present at that conversation and that Mr. Thacker was there.

Witness said that he had talked with Chief Finch since the conversation and not with Mr. Loofbourow, except that Mr. Loofbourow called and wanted him as witness. That Mr. Loofbourow never presented a type written sheet to him to the questions and answers as given on it, or any other papers. The witness testified also that Mr. H. K. Record was present at this or a similar conversation. (R. 1504) And he thought that Mr. Beckstead was also present. He testified also that Mr. H. K. Record, his brother, and Mr. Beckstead and also Mr. Headman answered Mr. Finch's questions to the same effect. The Witness said on cross examination that as nearly as he could remember this conversation

was about a day before the Chief left the service. And he thought it was after he got back from his lunch.

JOHN S. EARLY sworn on behalf of plaintiff, testified he was appointed office manager of the public safety building by the City Commission on recommendation of Mr. Erwin in January, 1936. In answer to a leading question he testified that he had had a conversation with the mayor on the subject of "pay-off" (R. 460) in February or early March, 1936.

Objection was made and argued at length that such conversation was hearsay as to the other defendants. That no conspiracy has been shown, no foundation laid, and if any such conversation was prior to the existence of any conspiracy it would be immaterial, and that the order of proof requiring some evidence of a conspiracy before such conversations were let in. The Court said he could not limit these statements at this time because he assumed that hereinafter a conspiracy would be "attempted to be shown, any way that these various defendants will be brought in to what they claim was an agreement."

"The Court: What I was about to get to say was that I think I will have to admit the evidence, if there is any evidence of an agreement to conspire and confederate together, and then if it is not connected up with one or all of the defendants, I presume that it could be made clear to the jury at that time that it was not to apply to them." That upon it being urged that the essential thing that they charged was a conspiracy the Court said: "Yes, I know, it is an agreement. \* \* \* I will have to hold, I presume, that they

may proceed and make their showing if they can establish the offense as charged, or the crime, and if they don't, then it will be time enough to determine that. So I will overrule a lot of objections, I anticipate, but I want to do it with the distinct understanding with you that when they get through, if they haven't connected up your clients, that I will hear from you again." (R. 463).

(After some discussion) The Court again: "If there is some evidence introduced of an agreement to conspire, as stated in the indictment, then the Court, unless it becomes convinced to the contrary, *will probably take the view that statements of anybody, anywhere, are pertinent to the issues.*"

It was then objected that unless they should show a conspiracy that conversations with one should not be admitted and was in no way binding upon the others. (R. 464) The Court said: "I can't make that instruction to the Jury at this time", and then addressing the District Attorney stated that he assumed that one of the first things to do was to introduce some evidence, if you can, of an agreement. The District Attorney then stated in substances that he couldn't prove that there was a written agreement but he wanted to introduce all their evidence beginning in 1936, "and as we go through with our testimony we will weave the story of the conspiracy and the contracts that were made with these men." The court then indicated that he would allow them to proceed, and if the evidence now offered was not connected up with anybody in this



case that upon motion he would strike or order it stricken and instruct the jury at that time (467).

The witness then testified that at the time indicated the Mayor stated that he had heard there was a pay-off and that he was very much interested in finding out and told the witness to find out.

That later, probably the later part of March, the Mayor asked if he had been able to find out, and he told him that he had discussed the matter with numerous of the officers and was unable to get any information whatsoever, and that he had discussed it with "another party" who had said there was a pay-off of approximately \$2000.00 per month. The witness said he told the Mayor that the party who informed him claimed that there was a pay-off on prostitution, lotteries, card games, and horse racing. (469).

(Throughout this testimony and by objections and after by motions the same objections as previously referred to were taken and it was agreed (469) and ordered by the court that the defendants and each of them have the objections as to each conversation as previously taken, that there was no foundation and that it was hearsay, and also an exception that the jury was not instructed that such statements were not binding on the other defendants.)

A separate motion was then made (469) to strike this testimony upon the ground that it was incompetant, irrelevant and immaterial; that no foundation had been laid by any evidence of any agreement between the defendants, and that this testimony did not tend to prove any such agreement. The rule was urged that

under the cases some evidence of an agreement must be introduced as a basis of agency in order for one person to bind any other defendants. It was further urged that if these conversations were claimed to be in the nature of an admission that an agreement could not be shown by admissions. Counsel for the defendants asked to bring authorities. The court said: "I am not going to listen to you at this time. The objection is overruled and you may proceed. (R. 471).

The witness testified that he was acquainted with Mr. Finch; that he had known him 10 years by sight; that he took office as Chief of police the middle of March, 1936, and that 2 weeks thereafter witness had a conversation with him. The same objection as above discussed was made as to all defendants and overruled.

The witness said he told Mr. Finch that he had heard rumors that there had been graft going on. Mr. Finch said he hadn't heard anything about it, and had had no reports from anyone in the department. (472)..

The witness testified, over objection, that certain persons representing race horse betting or something of that kind came to him to see about operating in Salt Lake City, including Mr. Browning, a chinaman named Wong, Cliff Jennings, Wm. Cayias, and also, to a leading question, that Ben Harmon called and that Abe Rosenblum came. That the witness had a conversation with different ones of them.

The District Attorney asked the leading question:

"Q. After that change was made in the Anti-vice squad, I will ask you to state whether or not any men

came to see you about operating in Salt Lake City?" There was objection. Then after the witness had given names there was an objection and discussion about admitting the conversation the court ruled that the conversation should not be admitted, but overruled the contention that it was in fact admitted by the question and answered. (473-479).

The witness then testified that when Mr. Browning came that he had a conversation with the witness and then went over to the Chief's office, or rather to the secretary's office, and beyond that the witness couldn't say. That there was no other way of getting into the Chief's office. He didn't know whether the Chief was in or not. (480) He then testified that Harmon was in the witness's office on several occasions and after his conversations there he, on one occasion, went into the Secretary's office. That he also talked with Cliff Jennings. He couldn't tell just when, possibly about the first of May. Didn't know whether he went to the Chief's office or not. (481) That Abe Rosenblum was around there off and on; that the witness understood he was a bondsman, and that he, on one occasion, saw him go over towards the Chief's office, probably the latter part of May. (482).

Witness said he afterwards had a conversation with the Chief but he didn't remember that he mentioned any of the persons above referred to. That he said to the Chief, there are rumors that there has been a considerable pay-off going on and Finch stated that those people know their own business and would have to operate their own business; that it was his duty to operate the police department and he proposed to operate it.

The witness said that these conversations with the Chief were about the same on each occasion. A motion was then made to strike the conversation with Mr. Finch as being incompetent, irrelevant and immaterial and no foundation laid. Attention was called to the previous objection, and also that any statement made did not constitute an admission of any kind of the offense charged or any fact leading up to and relating to anything that is charged as the offense. The motion was denied. (485).

The witness testified that he discussed with Mayor Erwin in the fall of 1936 and told the Mayor that there was rumors that there was a vice pay-off and the Mayor said that the matter was in the jurisdiction of the Chief of police and that the Chief was operating the department. This was around October or thereabouts. That the Chief made a similar statement on another occasion. (486).

In the summer of 1937 the witness said he had another conversation with the Mayor and said there was again rumors of a vice pay-off. The Mayor asked if he had told the Chief of Police. Nothing was said as to who was involved.

He had another conversation in the fall of 1937 that there were then rumors of a vice pay-off, and the Mayor said that he personally had not heard anything about it; that there had not been any reports from the department. Nothing was said about who might be involved.

The following occurred:

"Q. During any of these conversations was it

mentioned by you whether the Chief and the Mayor were involved?"

(Objection that it was leading). The objection was overruled and the question re-read. Further objection was made that there was no foundation. The witness then answered "no." (R. 488).

Over objection that the District Attorney was not entitled to cross examine his own witness and the objection being overruled, District Attorney asked the witness if he hadn't had a conversation in his office in which he said that he had said something about rumors, that the Mayor and Mr. Finch were involved. The witness said that he had had more than one conversation in the District Attorney's office. He was then asked, and the question was repeated as to whether he hadn't said that Mr. Finch and the Mayor were involved. Objection was then made not only that it was leading and cross examination, but that no foundation had been laid, that the witness stated there was no such conversation and that in any event the witness had only stated that he had heard rumors. The objection being overruled the witness stated that he did tell the District Attorney that he did advise them that he had heard that they were involved—"That there were such rumors around. It had slipped my mind for the time being."

He then testified that both the Mayor and Mr. Finch disclaimed all knowledge of it.

Separate motions were then made to strike the testimony of the witness as to these separately with Mr. Erwin and Mr. Finch upon the grounds previously



indicated, general grounds and hearsay statements of remarks with no admissions by either defendant.

AUSTIN SMITH sworn on behalf of plaintiff testified: (492) I was appointed secretary to the Mayor, I think, the 6th of January, 1936, and acted in such capacity until some time in June or July, 1936. Very shortly after Mr. Finch was appointed I went to his home one night.

He was asked to testify as to a conversation with Mr. Finch at that time (494) Objection was made that it was incompetent, irrelevant and immaterial and no sufficient foundation, not binding upon the defendants, and hearsay as to the defendants not present. The objection was overruled. The witness testified: I asked how he liked his job, he made the remark it was all right. We discussed things generally pertaining to the department.

“Q. I direct your attention to the subject: Was anything said about the graft pay-off?” Objection was made and overruled.

I asked: approximately what is the pay-off existing at the time and the answer was approximately \$2000.00 a month. I asked who was getting it, or who collected or what became of it and was told probably Abe Rosenblum “*would*” collect it as he had had experience along that line. (495).

In June 1936 I had a conversation with a newspaper man in Salt Lake City. (This was answered over objection) (496) After that conversation I received a memorandum at my office. (This was answered over objection) (497). I handed the memorandum to Mayor

Erwin. (This answered over objection of no foundation and hearsay and no defendants being connected with the preparation of the memorandum.)

The following then transpired: (498).

MR. RAWLINGS: We will not be able to present to this court, or to your honor, any written memoranda prepared by the conspirators. They don't do it that way. If we are held down to any memorandum that the conspirators wrote out, as to what they were going to do, we could never introduce any evidence."

"MR. MULLINER: We object to this as prejudicial, and assign it as prejudicial error. It has nothing to do with my objection whatsoever. I am objecting to a memorandum between people not defendants in this action."

"The COURT: I think the objection ought to be overruled. You may answer."

I talked to the Mayor about the memorandum, and left it on his desk. (Motion to strike was denied.) (498).

"Q. Now, Mr. Smith, tell us what was in the memorandum that you handed to the Mayor, and what you said about it?"

Objection was made on all the grounds next above stated, and special attention called to the ground of incompetency, and also specifically on the ground of no sufficient foundation. The objection was overruled.

The witness answered:

"A. The memorandum contained a list of supposed pay-offs in town, gambling houses and houses of prostitution."

(Motion to strike denied). (500).

The witness then repeated his answer as to supposed "pay-offs", and added: "and opposite each one of them was set aside a supposed amount that was being paid by those huoses." In our conversation I stated that the person who had talked to me about this said that unless these things were taken care of that the lid would be blown off I think was the expression he used."

I handed this to the Mayor and he told me that it would immediately be investigated, that he did not know anything about it.

Motion to strike was then made upon all the general grounds, and that the contents of the memorandum as given, and the conversation, was pure hearsay, and particularly upon the ground that this evidence contained no admission of any kind even on the part of the Mayor. The motion further asked that the jury be instructed to disregard it. The motion was denied. (501).

I went to Captain Taggart's office and there met Mr. Holt. I went at the request of Mr. Holt. The foregoing was objected to and objection overruled. (501).

After I had been over there and talked with Mr. Holt I went down to the police station and talked with the Mayor. I told him that I had a conversation with someone who apparently knew conditions. This was about June, 1936. I did not use the man's name because he had asked me to withhold his name. I told him there was a pay-off and vice conditions being talked about. The Mayor informed me that he would investigate. (504).

I made the conversation myself with Mayor. I made the telephone call for the appointment. I later talked to the Mayor, the Chief and Mr. Holt. (Objec-



tion to this conversation was made on all the previous grounds including hearsay and no foundation.)

The Mayor acted very up-set. He felt that I had talked to people that I should not have talked to and said something I should not have said pertaining to the department and his particular affairs, "and because of that, the reason for it, I had withheld the name of the man that informed me, but I gave him the information that the man gave me." This information I gave him a couple of days before as I stated. (506) At a later conversation.

I asked Mr. Holt to relate the conversation that he had with me in Mr. Taggart's office. He was asked to give the gist of this conversation. (Objection was made on the general grounds and that there was no sufficient foundation, and overruled. (507).

Holt said that he had informed me of the same conditions and that he called me over because the information should be given to the Mayor, and also stated that he had asked me to withhold his name. He said there was a pay-off going on from houses of prostitution and gambling and other vice conditions, that it was rampant all over town; nearly everyone knew about it up and down Main street, and he had informed me of that fact.

Mr. Holt's statement was rather brief, the same that I had told the mayor. I asked him again if there was any misunderstanding, if they were satisfied with what Holt had said, and that it was all right; and there was no further remark. (508)

Mr. Finch made the remark that we should not be

washing our dirty linen in the enemy's camp. Motions were then made by the defendants to strike out the testimony of Smith on all the grounds that there was nothing involved in the statements made to Mr. Finch or to Mr. Erwin which called for denial of the charges here; nothing in the nature of an admission, and no sufficient foundation. Motions were denied. (510). As indicating the theory of the proceedings the following, in connection with the objection of one of the defendants, took place.

“THE COURT: Do you claim to connect Mr. Thacker up with this testimony?

MR. RAWLINGS: Absolutely, your Honor. Mr. Thacker will be mentioned a little later, by witnesses.”

### CROSS EXAMINATION

(By Mr. Loofbourow). The time of the conversation he said he had with Mr. Finch at his home may have been at any time within a month after the 15th day of March, 1936, when he became chief. I don't remember; I don't know what day of the week, (511) it was in the evening, approximately 7 or 8 o'clock. I met Mrs. Finch there when I came in. I was there an hour or so; in the front room. I think it was before Mrs. Finch died. (512).

By Mr. Musser). The memorandum I said I left on the mayor's desk was in the City and County building. I don't think he was present when I left the memorandum. I never saw the memorandum in his possession. I spoke to him about it. It wasn't signed by me.

(By Mr. Loofbourow). I don't remember whether the conversation at Mr. Finch's house was before or after Mr. Holt was made Chief of the anti-vice squad. (515).

HENRY V. GOSLING—(The testimony of this witness will not be abstracted at length for the reason that he testified as to lotteries being conducted in Salt Lake City during 1936 and 1937, and also for many years prior thereto and shortly subsequently thereafter, and the Court instructed the jury in instruction 9 (b) that the "operating of gambling, prostitution, lotteries, etc., either before, after, or during 1936 and 1937, in and of themselves cannot be considered by you as evidence of an agreement of a conspiracy between the defendants in this case. Such conditions may or may not exist by agreement, and their operation is consistent with the absence of such agreement." This instruction, without exception, has become the law of the case and the testimony of this witness immaterial. We will, therefore, just state the general nature of the testimony.)

This witness testified that he played Chinese Lottery in 1936 and 1937 at 435 West 2nd South and one at 458 West 2nd South. One of these appeared to be located on Rio Grande Avenue which runs north and South between Third and Fourth West, and that there was another one under the French Hotel No. 472.

He testified that for some 20 or 21 years he had played these in Salt Lake City including the years 1932 and 1933, 1934, 1935. That he had not played after February of 1938.

His testimony runs from 516 to 567.

The witness stated that he lost interest after February of 1938. (564) The witness was then asked if he saw anybody play after February, 1938. Objection was made that it was indefinite, uncertain as to time and place and objection sustained. (565).

The contention of defendants (547) was that if any inference could be drawn as to the alleged agreement between the conspirators from the fact of operation of these lotteries that it was pertinent to show that they operated at times prior and subsequent to the time of the alleged agreement, as tending to rebut that presumption. This witness mentioned none of the defendants except Mr. Thacker. He testified that he saw Mr. Thacker in one of these places at one time but that no gambling was being carried on at that time.

This, because of the acquittal of Mr. Thacker, has also become immaterial.

D. L. HAYS, was sworn on behalf of the plaintiff. (793).

(What was said with relation to witness Gosling's testimony applies to this witness also, he having testified that he saw gambling in different of the licensed card rooms as specified in the Bill of Particulars in 1936 and 1937.)

He also testified that these places operated previously; in 1935 (843) and 1934 (844) and 1933 (846) and 1938 (847). That he played occasionally from 1923 on in some of these card rooms and that the method of operation was the same. (854).

He did not play in the latter part of 1937 and only occasionally in 1933 and 1934.

In 1939 the same places, except the Wilson, were operating and the only difference in the operation was that they had cut out some of the games. They were not playing poker. They did not play poker for 5 or 6 months at one time. Once they stopped Panguiny for a while. Rummy, Solo and Pinochle were played just the same after 1936 and up to 1939 as before. (861).

On February 20, 1939, these places that have been mentioned were gambling. On that date I asked the City Commission why they continued to license these places "when it was well known that gambling went on as long as they were licensed." (864).

The witness said afterward that the time they stopped playing poker was between the 20th of February and the 27th of March, 1939, in some of these places. (867).

(Objection was made to general statements of this witness that he saw gambling as conclusions, and also objection and motion were made to strike his testimony of seeing gambling in licensed card rooms upon the ground that there had been no sufficient foundation of any agreement or conspiracy here, and that this evidence did not tend to prove such. (830). These objections were overruled.)

The witness said he talked with Mr. Finch about November, 1937, at his office. (This conversation was likewise objected to upon the ground that there had been no foundation, as to the conspiracy or agreement, laid so that it would be inadmissible even though it may involve an admission as to Mr. Finch. Overruled.)

I said to Mr. Finch, "You must know that gam-



bling is going on in these places either under protection or without regard to law." Mr. Finch said, "Yes, I know that gambling is going on here." I asked him what he was going to do about it and he said he was not going to do anything about it and he gave me his reasons. (836).

Motion was made to strike this testimony upon the grounds of the objection and upon the ground that it now showed an admission of Mr. Finch as to the charge here.) Overruled. (837).

WILLIAM SCOTT was sworn by the plaintiff. (647)

This is another witness who testified first that he saw gambling in some of the card rooms mentioned in the Bill of Particulars in 1937, also that he was in the Atlas Building in the spring of 1937 and saw equipment there apparently used for horse race betting, also heard announcements over the loud speaker of different races at different tracks. (653).

(Objection was made to this testimony that it was out of the presence of any of the defendants and that there was no sufficient foundation and irrelevant and immaterial as to the charge of conspiracy here. (649). This objection was overruled.)

During the discussing of this objection the district attorney made a statement (651) about reports coming in from the race tracks and they would "continue making bets before the race is finally on", and "when they go to the post the announcement is made", \* \* \* "and then the bets are laid", etc. And on the objection this additional statement:



“MR. RAWLINGS: Why, of course, we contend that a majority of this wasn't in the presence of the defendants. Obviously they wouldn't be there when it was going on, purposely, but we want to show that.”

These statements in this discussion were excepted to, assigned as prejudicial error, and the court was asked to instruct the jury to disregard them. The objections were overruled, the motions and requests denied. (649-651).

There was a Barbute game at 35½ West 2nd South in 1936. It was raided by Thacker. Objection was made that Mr. Thacker was not head of the anti-vice squad at all in 1936. This was overruled. (657).

There was another incident of this kind in 1937. It involved only Mr. Thacker. None of the appellants were mentioned by this witness. The testimony in 1937 was that those that were playing in larger denominations quit before the raid was made. One man was arrested, I do not know his name, and some of the players were arrested, but not the operator. (668).

The witness also testified that he saw gambling in the Mint, (671) and that he saw Thacker at the Mint. (672). Also that he had seen gambling in Stubeck's card room (676); also that he had seen gambling at the Horseshoe.

A motion was made to strike the testimony as to gambling at these separate card rooms on the ground that the appellants were not present, nothing to show that any knew anything of it, and it was immaterial and irrelevant to the issue of conspiracy here. Motion was denied.

## CROSS EXAMINATION

On Cross Examination (679-691) the witness was very uncertain and couldn't remember as to when he was in Utah or anywhere else, (697) or what he did (703).

I saw Officers Beckstead and Thacker in the Mint. I do not know whether I saw Mr. Thacker in there more than once in 1936 or not. (715) There was a cafe on the ground floor of the Mint. I saw Mr. Thacker there. I saw gambling upstairs. I didn't see the city license for card rooms (721). I saw Mr. Thacker talking with Mr. Harmon on one occasion in the card rom (727).

I visited these gambling huses in 1935 and so testified before the City Commission (731).

It occurred that the witness couldn't remember anything he did from 1932 to 1935 before lunch but after lunch and on re-direct of the District Attorney, he could remember. Objection was made that he shouldn't be permitted to testify as to what happened in those years because he already testified that he couldn't remember. At first the Court took this view but later overruled this objection. (755 to 758).

DAVID T. LEWIS was sworn as a witness by plaintiff (764). His testimony related only to Mr. Thacker.

I have seen Mr. Thacker in the Mint Cafe, the restaurant part down stairs 6 or 7 times in the latter part of 1937. It was in the evening during the meal time. I saw him on some occasions talking with Mr. Harmon, who, I understand, operated the restaurant. There were several marble games there, I don't know

whether Mr. Thacker was checking up on these or not. There was another officer with him at the time that I particularly remember. I don't know whether there was each time I saw him there. At the time I saw him talk with Mr. Harmon there was nobdy in close vacinity to them. (771).

DAR KEMPNER was sworn on behalf of plaintiff (772).

I have been acquainted with Abe Stubeck for about 8 or 9 years.

“Q. Did you see Mr. Stubeck during the months of April, May, or June, of 1937?

A. Yes, I did.”

During these particular times I saw him, I guess, 2 or 3 times a week in his place of business under Politz Cafe at 2nd South and Main. It is a pool hall.

I am acquainted with the location of Ace Billiard Hall. It is about 246 or 248 Main Street. I was there with Mr. Stubeck. I was also in the Peter Pan Club with Mr. Stubeck, and I was in what I believe was the Wilson Card Room; I couldn't say for certain. The card room was right by the Wilson Hotel. I can't remember whether it was in behind, the back part of the building, or not.

“Q. Give us as definite as you can the date; if you can't give the day, the month of the time you first went around to these places with Mr. Stubeck.

A. Well, it was early in the spring of 1937.” (774).

Q. Now, where was the first place you went with Mr. Stubeck?

A. To the Ace Billiard.

Q. Where did you first meet him?

MR. MULLINER: I object to this as incompetent, irrelevant, and immaterial; conduct between people not in any way connected with this.

MR. RAWLINGS: It is very material, Your Honor, and we are prepared to show—this is preliminary—show the importance of it, and I think when the next question or so is answered Your Honor can see the materiality.

THE COURT: Well, on your statement I will hear it.

Q. Where did you meet Mr. Stubeck?

A. I met Mr. Stubeck in his place of business.

Q. And the night that you called on these places did you have a conversation with him?

MR. MULLINER: That is objected to as incompetent, irrelevant, and immaterial and hearsay. Conduct outside of the presence of any of the defendants.

THE COURT: He may answer that yes or no.

Q. Did you have a conversation with Mr. Stubeck?

A. Yes, I had a conversation with him.

Q. I think I asked you if this was the night you went around. Was it the night or the afternoon?

A. It was in the afternoon. (775)

Q. I see. About what time?

A. Somewhere in the neighborhood of 3:00 o'clock.

Q. Where did you leave after you had this conversation with Mr. Stubeck? Where did you go?

MR. MULLINER: May we have our objection to

this line of the testimony? It is out of the presence of the defendants and, therefore, incompetent, irrelevant, and immaterial.

THE COURT: Well, the competency of it hasn't yet been made manifest to the Court, but Mr. Rawlings states he will connect it up, and I will permit him to pursue the matter.

Q. Where did you first go from Stubeck's card game or pool hall that afternoon?

A. We went straight down Main Street to the Ace Billiard.

Q. Did you go in the Ace Billiard with him?

A. Yes, I did.

Q. What did he do and—

MR. MULLINER: That is objected to, your Honor; incompetent, irrelevant, and immaterial; not within any issue here; conduct outside of the presence of the defendants and without any knowledge.

THE COURT: What do you show by this?

MR. RAWLINGS: Your Honor, without giving the conversation it is our contention that this man went with Stubeck and collections were made from these places that have been mentioned and conversations took place at the time the collections were made. The money was taken over to Ben Harmon's establishment and conversations involving the defendants were made by Stubeck, (776) who was making the collection in the presence of this witness.

MR. MULLINER: I ask that that be stricken. I ask that the jury be instructed to disregard it. I as-



sign it as prejudicial error regardless of any instruction on it, that it can't be eliminated from this case.

THE COURT: Well, the jury will not consider the observation of counsel, which was in response to the Court's interrogation as to what he claimed for it. It isn't evidence. It is statement of counsel and must not be considered as evidence.

MR. MULLINER: Now, your Honor, if your Honor is finished—

THE COURT: Yes.

MR. MULLINER: The importance to it is that counsel is trying this case in that way by proving a lot of things not in our presence and then proving something in connection with someone not in this case and then leaving it to a lot of guesswork as to whether this conduct outside had anything to do with it. Now, if something was said to one of these people or something done by them, he doesn't have to go through all this preliminary stuff to get through it in order to show competent evidence here presented.

Mr. RAWLINGS: We have to show where the money came from before it got to Mr. Harmon's.

MR. MULLINER: All right, show it by somebody who got it to Mr. Harmon.

MR. RAWLINGS: We are going to.

MR. HANSON: We ask a mistrial on account of the misconduct (777) of the District Attorney. The damage has already been done.

THE COURT: The request is denied. I think I ought to permit the matter to be pursued.



MR. MULLINER: May I ask what the last question was?

MR. RAWLINGS: Question was what did he do there. Speaking of Stubeck at the Ace Billiards. Just a minute. Any further objection?

MR. MULLINER: Yes. I have made my objection, your Honor, that it is incompetent, irrelevant, immaterial, and conduct outside of the presence of any defendant.

THE COURT: On your statement submitted that it will be tied up to the defendants. Now, the case can't be put in, of course, all at once. I think I'll—

MR. MULLINER: I made the further objection that there is no sufficient foundation.

MR. MUSSER: Just a moment, if your Honor please.

MR. MULLINER: I make the further objection that it is entirely outside of the Bill of Particulars. If there was any question of collecting money, it—

THE COURT: I think it is.

MR. MULLINER: The last paragraph of the—

THE COURT: You may proceed, Mr. Rawlings.

Q. What did Mr. Stubeck do at the address of 248 South Main Street in the basement in your presence?

MR. MULLINER: Your Honor, could we have the record now? Can't we have these questions read after we have made our record? You asked the question again, and then we have to go through it all again. (778)

MR. RAWLINGS: I don't see any necessity for it.

MR. MULLINER: I would like to have all the objections to this question now, the same record that was made before.

THE COURT: That is all right.

Q. Do you remember my question? Read the question, please.

REPORTER: Q. What did Mr. Stubeck do at the address of 248 South Main Street in the basement in your presence?

A. Is it all right?

Q. Go ahead.

A. He went up to the fellow that was in charge.

MR. MUSSER: I object to that as being conclusion; no proper foundation.

THE COURT: I think the objection was good.

Q. What was the man doing he went up to?

THE COURT: And that the record might be clear I will strike that; order that answer stricken, so you may start over again.

Q. Just tell what he did.

A. He came up to a man that was racking pool balls on the pool tables and asked that man if he had the money ready.

Q. Had the money ready?

A. If he had the money ready, yes.

Q. Yes. What did the man say?

A. The man said—

MR. HANSON: We object to this as hearsay, your Honor; incompetent; for the reason it is not in the presence of any defendant. It seems to be a con-

versation between Mr. Stubeck and somebody racking pool balls. (779)

MR. RAWLINGS: There is money involved.

MR. HANSON: It may be there is money involved, but I don't care anything about it.

MR. MULLINER: So far as I can see, Your Honor—and if I am wrong about this I want to be corrected—this has only been testified to as being a pool hall, apparently, where pool is played; and so far as I recall the evidence, there hasn't been anything else shown as going on there. Now, suppose somebody did go in and collect some mney. It has no materiality here, and certainly no foundation.

MR. RAWLINGS: Your Honor, there won't be any question about cards being played at this place. We intend to offer proof, but it hasn't been offered yet, Your Honor, to this particular place. Gambling—

MR. HANSON: What I am objecting to is the conversation between two strangers, the entire transaction.

MR. MULLINER: I thought that was sustained.

MR. ROBERTS: No. If the Court please, in connection with this matter I think the law is well settled that if a conspirator makes a statement while he is doing an act in furtherance of the conspiracy, it may come in as part of the res gestae and, of course, Stubeck in this particular instance is one of the conspirators, and this will show it.

MR. MULLINER: Your Honor, before anything like that is gotten away with, we want to be heard on it.

MR HANSON: They can't claim that this man or

that man, (780) without any notice, that anybody is a conspirator. There has been no notice of that kind in this.

MR. MULLINER: That is one of the reasons for the law that agreement must be shown. You see where we are getting. They can just show anybody.

MR. RAWLINGS: We say "and divers other persons", Your Honor, which covers Mr. Stubeck.

MR. MULLINER: All right.

MR. RAWLINGS: And there is no question about the law. We will argue it. We assure you we didn't go into this as to its materiality without being sure as to the law.

MR. MULLINER: I will state to Your Honor that the law is that they can't go into this alleged conduct or admissions until there is some evidence of an agreement and counsel can show no case to the contrary, unless it is merely one item of preliminary admission or a promise to connect up; and we have gone about a week on this case, haven't we?

MR. RAWLINGS: Let's go another half hour, will you?

MR. MULLINER: Without any foundation for any of this.

MR. RAWLINGS: If we have gone a week, it won't hurt to finish it.

THE COURT: I think I ought to permit the testimony to come in.

MR. MULLINER: Well, Your Honor, then they can admit any hearsay statement between any Tom,

Dick, and Harry, just by saying they were doing something and, therefore, they were conspirators. (781)

MR. RAWLINGS: I have made my statement to Your Honor that makes this particular evidence material.

THE COURT: I will over-rule the objections.

MR. HANSON: Save an exception.

Q. Now, will you read the question, the last question and answer?

REPORTER: Q. Yes. What did the man say?

A. The man said—

Q. Tell us what this man said.

MR. HANSON: May we have the same objection to this?

THE COURT: Yes.

MR. MULLINER: I think we have there that there is no foundation. We don't even know who this man is.

THE COURT: Yes.

MR. HANSON: Save an exception.

Q. What did Stubeck say to him? (782)

A. Mr. Stubeck said, "You had better get it in a hurry, or you know the result."

Q. What did this man do?

A. This man left the place and he said, "I will be back right away"; and he left the place, the pool hall.

Q. Were you there when he came back?

A. Yes.

Q. Did he have anything in his hands?

A. Yes, he did.

Q. What did he have in hands when he came back?

A. Some currency.

Q. Did Mr. Stubeck say anything to him at that time?

MR. MULLINER: Of course, we want our objection on all the grounds to this whole line of testimony; out of our presence, and especially to any conversation.

THE COURT: Yes.

MR. MULLINER: And including the ground that no foundation even as to the conversation.

MR. RAWLINGS: Read the question, please.

REPORTER: Q. Did Mr. Stubeck say anything to him at that time? A. He just said "All right" and put the money in his pocket.

Q. And then where did you go with Mr. Stubeck?

A. We went out on the street then; out on Main Street.

Q. And then where did you go?

A. To the Peter Pan.

Q. And what happened there? (783)

MR. MULLINER: Let me just ask, is the Peter Pan named?

MR. RAWLINGS: Yes: 222 South State Street, No, I mean South Main.

Q. What happened there, Mr. Kempner?

A. Why, we went downstairs and I went to the fountain and got a coca cola, and Mr. Stubeck went into the card room.

Q. And did you see him talk to anyone in the card room?



A. I saw him speak to several men in the card room.

Q. And did you see anything happen there?

A. In the card room, you mean?

Q. Yes.

A. No, I didn't.

Q. After he had been in the card room, did he say anything to you?

MR. MULLINER: Now, that, of course, is subject to our objection.

THE COURT: I'll permit him to answer.

Q. Did he say anything to you after he had been in the card room?

A. Before we went upstairs, do you mean?

Q. Yes.

A. Yes, he said, "come on; let's go."

Q. Then after you got upstairs, did he say anything to you?

MR. MULLINER: I don't know that I need repeat it, but it is very important, Your Honor, that we have our record on this kind of conversation.

THE COURT: The objection will be over-ruled.  
(784)

Q. When he got upstairs did he say anything?

MR. MULLINER: I have it on all the grounds without repeating?

THE COURT: Yes.

Q. After you got upstairs, did he say anything to you?

MR. MULLINER: Now, I don't want to repeat the objection again. May I have it?

THE COURT: Yes. While he is on this same strain, this same line, the objections, all of them, will go to all of the questions. However, if there is a shift, I would like you to—you can use your judgment on it.

A. Yes, he did.

MR. MUSSER: He may answer this question yes or no, as I understand the question.

A. Yes, he did.

Q. What did he say to you?

MR. MULLINER: We want an objection to this.

MR. MUSSER: And this is certainly hearsay. We object to it for that reason. It is incompetent.

THE COURT: I take it that your contention is that what he said relates to this alleged collection of money and what was to be done with it?

MR. RAWLINGS: Exclusively.

MR. MUSSER: There is no foundation laid for that. Nobody has collected any money yet at the Peter Pan; no evidence of it at all; so that if there is anything in the conversation relating to that, it is just simply what Mr. Stubeck told this (785) man happened, and it isn't within the witness's knowledge at all. He saw nothing.

THE COURT: Of course, this is so important. If it should develop that it isn't pertinent, I presume it would be a mistrial. I am not saying it would, but I presume it would.

MR. RAWLINGS: I don't think it would, but we think it is important enough to be given considerable study, Your Honor, and we feel satisfied—

THE COURT: All right, you may proceed.

Q. What was said to you by Mr. Stubeck on that occasion?

MR. MUSSER: We have all our objections, don't we?

THE COURT: Yes.

A. Why, he just told me that all card games were paying off and that some of them were trying to chisel by giving him less money than they should do.

Q. Did he say anything further at that time?

MR. MULLINER: This, Your Honor, I think justifies a motion on all the grounds—incompetent, irrelevant, and immaterial. This is all hearsay and no sufficient foundation at all.

THE COURT: I will over-rule the objection.

Q. Was anything further said at that time about the pay-off?

MR. MULLINER: Now—all right. Our general objection.

A. Yes, there was. I asked him a few questions.

Q. What did you ask him?

A. About it. I asked him about the pay-off.

MR. MUSSER: That is a conclusion, if Your Honor please. If (786) he is going to state now the conversation between him and Mr. Stubeck on this occasion. I think he can state the exact words as near as he can.

THE COURT: I think so.

Q. State as nearly what you can, what you said to Stubeck and what Stubeck said to you.

MR. MUSSER: Object to this.

THE COURT: Yes.

A. I asked him who all was paying off, and he said all card clubs are paying off; and I said, "Well, what's the matter? Who gets this money?" and he said, "Well I take it over to Ben Harmon's place." And I said, "Well, does Ben Harmon get that money?" And he said, "Well, he splits it with Erwin and his crowd."

Q. Now, from—

MR. MUSSER: We move to strike that, if Your Honor please, because it is nothing but hearsay. It is incompetent for that reason. It isn't within the issues. It isn't in the presence of the defendant or anyone named as a defendant in this case. Certainly it isn't binding on the Mayor. No proper foundation has been laid for it. No acquaintance has been shown between Stubeck and Harmon or either of those men and the Mayor, and it is just a prejudicial and volunteered statement coming out of the clear air without any foundation whatsoever. We move to strike it.

MR. HANSON: Defendant Thacker goes further. Defendant (787) Thacker moved for a mistrial because it couldn't in any wise, Your Honor, be a relevant statement. Neither of the conspirators, if he is an alleged conspirator, may in the course of conspiracy make statements that are binding on the others. This is a statement of what he says in the transaction and nothing in furtherance of it. He is asking him to narrate what is apparently Stubeck's opinion of matters. Now, that couldn't be in furtherance of it, Your Honor; and, of course, the damage is done, as Your Honor has said, and it cannot be cured.

MR. MUSSER: We join in that.

MR. HANSON: If Your Honor wants authorities on that, I would be very glad to submit them to you because there isn't any question about that rule of law, about the declaration of conspirators. Neither one may bind others in matters not pursuant to the conspiracy, but to relate—

THE COURT: Upon the abstract question of furthering the conspiracy I don't think you would dispute that.

MR. HANSON: All right. Then, if that is the case, Your Honor, the statement here could not be in pursuance or could not be in furtherance of it. It is simply a narration of what one man claims is being done or thinks in his opinion and the damage has been done, Your Honor, in this case.

THE COURT: We'll proceed, and the objections are all over-ruled.

Q. After this conversation where did you go?

MR. MUSSER: Now, if Your Honor please, it does seem to me that you should grant this request that I now make. I request (788), Your Honor, to instruct the jury that what the witness said Ben Harmon—or Stubeck told him what Ben Harmon did with the money—should not be considered by the jury as evidence that that is what Ben Harmon did with the money. In other words, if Your Honor please, this witness says that Stubeck told him, “I collect the money and take it over to Ben Harmon and Ben Harmon gives it to Mr. Erwin.”

MR. RAWLINGS: And his crowd.

MR. MUSSER: Well, and his crowd. I don't know

that he said that, but anyway, all there is to that is Stubeck's word to this person as to what Stubeck said he did with the money, giving it to now a third party who in turn is alleged to give it to another person and, of course, there is no evidence that either Stubeck ever took it to Ben Harmon or Ben Harmon took it to the Mayor and his crowd.

MR. RAWLINGS: If you will give us time, we will show it.

THE COURT: The Court understands full well the great importance of this testimony, but it will all have to be connected up to the satisfaction of the Court or there will be further proceedings, of course; but I think that counsel is entitled to go into it.

MR. MULLINER. Your Honor—

Q. Where did you go from—

THE COURT: Did you have something else?

MR. MULLINER: Your Honor, I just wish to call Your Honor's attention that if this case can be proven in this way or in any case, any of us can be convicted of anything. (789)

MR. RAWLINGS: Now, if Your Honor please, Mr. Mulliner has made that same statment a few minutes ago.

THE COURT: Let me make this observation.

MR. RAWLINGS: And it seems to me that those statements continuously being made are prejudicial.

THE COURT: If this is all there is to it—if there isn't anything else to the case other than what somebody, what this man has said—then, of course, I will be hearing from you again; but the representation is



that this money is going to be traced into somebody's hands.

MR. MULLINER: Yes. Now if that is done, that, of course, would be evidence as against the person into whose hands it is traced.

THE COURT: Then we will just have to wait and see.

MR. RAWLINGS: And that is the only evidence than can be material here.

THE COURT: We will just—

MR. RAWLINGS: As to that fact.

THE COURT: We will just have to wait and see what develops. Now, as I see it, about the only thing that can be done now is that you make your record as you are doing and we will see what the evidence develops or what the State is able to develop by its evidence.

MR. RAWLINGS: Yes.

Q. Now after this conversation, where did you go, Mr. Kempner, with Mr. Stubeck?

A. Well, there was another card club on East Second South. (790)

Q. And is that the one you referred to as being in or the rear—

MR. MULLINER: Now, this is leading.

Q. State where it is.

A. Well, it was in the close vicinity of the Wilson Hotel.

Q. And what did you do there?

A. We walked into this place.

MR. MULLINER: I don't think that has been

identified with anything in the Bill of Particulars, has it?

MR. RAWLINGS: Wilson Card Room, 26 East Second South.

MR. MULLINER: He hasn't said it was the Wilson Card Room.

MR. RAWLINGS: He said it was either at the Wilson or at the rear of it.

MR. MUSSER: Or near there is what he said.

MR. RAWLINGS: Well, if there is any serious doubt about it, if Your Honor will permit us to have a recess we can probably have him check the place.

THE COURT: Is there any question but what you can show that this particular place is and can be proved—that is, you can introduce evidence to the fact that it is the card place that is mentioned in your Bill of Particulars?

MR. RAWLINGS: Yes, Your Honor, there will be no question.

THE COURT: Well, when you get through with this witness—we won't take the time out—if counsel are not satisfied upon that point, you will have to call somebody at a later time to establish that fact.

MR. RAWLINGS: We intend to do it. (791)

THE COURT: And we will proceed now in the interest of time rather than—

Q. You state what you and Stubeck did then.

A. We entered this place, and Mr. Stubeck walked up and started talking to a fellow and I just stood there watching some of the fellows playing cards.

Q. What was this fellow doing he talked to?

A. He wasn't doing anything particular; just walking around.

Q. And from there where did you go?

A. To the Mint Cafe.

MR. MULLINER: I move to strike out the reference of the witness to the Wilson Card Room.

MR. RAWLINGS: We resist it.

MR. MULLINER: Incompetent, irrelevant and immaterial. No way tied up.

THE COURT: What is the materiality of it?

MR. MULLINER: A reflection on somebody that operates that hotel.

THE COURT: I don't see the materiality of that. He walked up to a man who was walking around there.

MR. RAWLINGS: And had a conversation with him. He said all card rooms were paying off; some of them were giving some difficulty.

MR. MULLINER: This fellow didn't say anything. He was just walking around.

THE COURT: I will deny the motion to strike.

Q. Did Mr. Stubeck have a conversation with this man? (791) (a)

A. Yes.

Q. About how long did that conversation last?

A. Perhaps four or five minutes.

Q. Now did you see any money on this trip other than this money you indicated as handed at the Ace to Mr. Stubeck?

MR. MULLINER: I object on all the other grounds, and I object to the generality of this question.

THE COURT: You may answer.

A. Yes, I did see.

Q. Where did you see it?

A. As Mr. Stubeck and I came upstairs from the Peter Pan, Mr. Stubeck took some currency out of his right pocket and then took some out of his left pocket and put both packages of the currency together and folded them and put it all back in his other pocket. I can't be certain which pocket.

Q. Was it after he did that that you had the conversation?

MR. MULLINER: I move to strike that.

MR. RAWLINGS: Just a minute please.

Q. Was it after that that you—

MR. MULLINER: No, just a minute please.

MR. RAWLINGS: I had started with a question.

THE COURT: I will deny the motion to strike.

Q. Yes. Now, was it after that that you had this conversation that you have related?

A. We had the conversation after I saw him put the two packets of money together?

Q. Yes?

A. Yes. (791 b)

Q. Now, what did he do with that money if you know?

A. Well—

MR. MULLINER. Did he see?

MR. RAWLINGS: Just a minute, Mr. Mulliner. It is my witness.

Q. What did he do with this money?

MR. MULLINER: I will object there is no sufficient foundation.

THE COURT: Well, you will have to answer what you saw done with it.

A. With the money?

THE COURT: Yes.

A. Why, the money was taken to the Mint Cafe.

Q. And was Mr. Harmon there?

MR. MULLINER: Now wait a minute. Your Honor, I object and move to strike that as a conclusion of the witness.

THE COURT: Well, do you mean by that that you saw him take the money to the Mint Cafe?

A. I went with him, Your Honor. It was left there, yes.

THE COURT: Well, let's be sure about what he saw. Let's not have any conclusions in the record.

Q. After you left the Wilson Card Room or this card room you discussed, where did you go?

A. Across the street to the Mint Cafe.

Q. And where is that from the Wilson Card Room?

A. Almost directly north across the street. (791 c)

Q. And as you went in did you see Mr. Harmon—or did you see Mr. Harmon there?

A. Yes.

Q. And I will ask you to state whether or not you saw anything done with this money in Mr. Harmon's presence.

MR. MUSSER: I object to that, if your Honor please, because it is so indefinite, uncertain when he says

'this money'. That doesn't identify any money he got from any other place. He may have seen something about some money.

THE COURT: I will over-rule the objection.

MR. MULLINER: He can't state what he saw with counsel leading. I suggest that he should be permitted to state what he saw, if he saw anything, in connection with money.

MR. RAWLINGS: Will you read the question?

REPORTER: Q. And I will ask you to state whether or not you saw anything done with this money in Mr. Harmon's presence.

MR. MUSSER: I object to that as leading suggestive.

THE COURT: I think I ought to let him answer the question.

A. Yes, I saw what he did with the money there.

Q. Who?

A. Mr. Stubeck.

Q. What did he do with it?

A. He took the money out of his pocket and just as he did that Mr. Harmon said, "Hello, Abe", and Mr. Harmon was standing perhaps six or eight feet from Mr. Stubeck and myself. And Mr. Stubeck said, "Hello, Harmon", and he took the money out of his (791d) pocket and laid it on the counter by the cashier. I presume it was the cashier, I don't know. He was at the cash register. The man there by the cash register picked the money up and put it under the counter.

Q. Did you ever go with Mr. Stubeck again on any trip as you have described?



A. Not like that one. I was on one trip when we just stopped in one place.

What place was it?

A. It was the Ace Billiards.

Q. Was that before or after this trip you have mentioned?

A. That was sometime after; perhaps a month?."

#### CROSS EXAMINATION (874)

I never had any business connections with Mr. Stubeck. I was in his place playing pool—playing cards occasionally. I had a number of conversations with him in the place.

I believe the transactions I testified to, to the best of my recollections "was around in March, possibly April, may have been a little earlier or a little later. (875)

At that time I wasn't working. I couldn't say whether it was before I went to work for Sniders or not. I wouldn't say for certain whether it was before or afterwards. I don't remember when it was I was at Mercur. I couldn't say whether I went up to work at Mercur on the 12th of April or not. I wrench my back up there. I couldn't say whether that was on the 14th of April or not. I am not certain whether it was before or after. (876)

I took another job after I worked for the Sniders. (877)

I never had had any business with Mr. Stubeck. I don't remember whether I was down there playing pool at this time or not. I can't say whether the fellow who was racking pool balls at the Ace Billiards was Ameri-

can or not. He was shorter than I am and heavy, he had dark hair. I went down to the Ace; I went to the lunch counter. There is a pool hall there. (879)

When we were upon Main Street where he took out the roll of bills there was a lot of people walking around (880). When he went over to the Mint there were several men there that I didn't know, perhaps 6 or 7, possibly 8, including the help. That was the first time I was ever in the Mint. I don't know where the restaurant part of it is, if there is a restaurant. There are counters on both sides of the building. The cashier I saw there was taller than I am, fairly heavy built man, around 30 or 35, he was dark—dark hair—I didn't notice his eyes. Hair combed pompadour. (882) He would weigh in the neighborhood of 200 pounds.

I had seen Ben Harman 2 or 3 times before on the street.

After Mr. Stubeck had spoken to Mr. Harmon he took the money, the bunch of bills, and laid them right on the counter. (884). The people in the place could all have seen it if they had wanted to look. Some gentlemen were sitting eating their lunch. We were all in plain view.

I talked with Mr. Rawlings about this and was subpoenaed. (886)

I have known Mr. Rawlings quite a while. Mr. Rawlings is the State Chairman. I was a district committeeman. I attended political meetings. I knew Mr. Black, he was associated with Mr. Rawlings and he is County Chairman, and they are associated together. (888) I have applied for political and public positions. I ap-

plied to the Liquor Commission. I knew that Mr. Black was in a position to help me get a political appointment. I knew he was County Chairman. I didn't ask Mr. Rawlings for a job, and when I saw him no job was mentioned. (891)

AGUSTA FRIEND was sworn on behalf of plaintiff. (896) I have my headquarters at the Public Safety Building. I have been there for about 7 years.

Q. Since May, 1937, I will ask you to state whether or not you have had any complaints on matters of gambling.

MR. MULLINER: I will object to that as incompetent, irrelevant, immaterial, calling for her conclusion; hearsay.

THE COURT: I think I ought to have her answer that.

A. Yes sir.

I talked to Mr. Thacker about those instances. He didn't do anything about it. I talked with him about November. He was then head of the Anti-vice Squad. I said we had a report of gambling at 819 West Fourth South. (899)

The Court then struck out the testimony of this witness and said he would instruct the Jury to disregard it. No specific instruction was given. (901)

E. A. HEADMAN sworn as a witness for plaintiff. (623) I am captain of police in charge of detective bureau, and was Chief of this bureau in 1936 and 1937.

Soon after Xmas, 1937, I was called to the Chief's office. Mr. Thacker and Inspector Record were there. This was excepted to as not being within the issue of

the indictment, or the bill or particulars, and also upon the ground that the State had already proved that Chief Finch was out of town at the time of the alleged conversation. Objection overruled.

Mr. Finch said Mr. Thacker seems to have a grievance. Mr. Thacker said he wanted to know why I ordered a raid on a gambling place at an address which at this time I don't know—West on 4th South—I said I said I hadn't made it but it was made by the Detective Bureau. (Objection was made that this was not a matter within the bill of particulars as to address. Overruled).

Mr. Thacker said I have to know about these raids. I said what do you want me to do? He said write it down and leave it on my desk if it relates to gambling. I said if there is a burglary or robbery going on I would want you to take care of it. He said, that is a different matter. Mr. Finch didn't say anything at all during the conversation. (627)

### CROSS EXAMINATION (628)

(By Mr. Hanson)

Mr. Thacker didn't tell me that he had a stool-pigeon working on this place and I don't know whether the fellows arrested were acquitted or not. (628)

(By Mr. Mulliner)

There are a number of squads up there that have heads or subheads. Members of other departments would act on cases relating to the business of another department, especially if an offense was committed in their presence. If they were working on a case and trying

to get evidence and other departments got any information they would bring it to us. (631)

We don't go into other departments and start to make investigations. (632)

Each department had a scope of things it was expected to handle. It was only natural through an organization as large as the police department that if one department is making an investigation and another broke in that there would be some possible resentment and jealousy. (633)

(By Mr. Hanson)

I don't know the name of the person arrested (634). Mr. Record told me 3 or 4 days after the arrest that Mr. Thacker said he had a man working on that place to get evidence. (639)

(Mr. Loofbourow)

In this conversation Chief Finch did not make any criticism of our having made that arrest. (644)

ANN COLLINS was sworn for the plaintiff. (902) The landlady at the Blackstone Hotel the latter part of 1937 was Sadie Alder. The latter part of November and in December, 1937 I was working there for Sadie Alder. I made payments to Sadie Alder. (Objection was made to transactions between the witness and Sadie Alder. Objection over-ruled).

I gave her \$2.00 at the end of the day. I gave her \$2.00 out of \$5.00 which took care of my board and room. If I made \$10.00 I gave her another \$1.00 which took care of my laundry and my cleaning.

This witness then was cross examined over objection by the District Attorney, (904) as to whether she

had stated something different in conversation with him as to what the money was paid for. Objection was made to this including the ground that no foundation had been laid by satisfying the Court that there was any surprise. Objection overruled.

Someone was present in the District Attorney's office and wrote down what I said.

The witness did not change her testimony.

BOBBIE CARLTON sworn by plaintiff. (911) In 1936 and 1937 I was engaged in prostitution in Salt Lake City. I worked for Tillie Allen in July, 1937, at 31 South First West.

The arrangement for payment was called for and objected to as a conclusion and also as hearsay. Overruled.

I gave one-half into the cup. I put the whole thing in the cup and when we got through we were supposed to split. There were five other girls working there. They put their earnings in the cup. (913) There were five cups. We got the money from the fellows for turning tricks.

I worked at Swede Larson's in 1936 or 1937. I don't remember the address. It was Sunshine Rooms, between 3rd South and 2nd South on West Temple. That was in September, 1937. We put the money we earned in the slot. There were slots on the top of the dressers. About three girls were there; each had a slot. When we got through we split 50-50.

I worked for Margaret Newman in 1937, between First West and South Temple, on 3rd South. We paid



the money in slots, splitting one-half. There were three girls there.

I also worked in 1936 and 1937 for Cleo Sterling at the LaVerne. This was the early part of December, 1937. The place was on First West between 3rd and Second South. It was a rooming house. Business there was the same as at Margaret Newman's. We put the money in slots. There was more than one girl working there at that time, about five. We paid 50-50.

I also worked on 4th South, I think the number is 46 East 4th South. I can't remember the lady's name. I was there after Xmas. The business and division were the same. (919)

#### CROSS EXAMINATION (919)

I have worked in this business for the last 7 or 8 years. I quit the last of 1937. I went up to the police department and was booked up there every two weeks unless there were times that I was sick. I have also been up there and booked since 1937. I have been up there in 1938 about every two weeks. Last time I was up there was about a month ago. I have been going up there and being booked and reporting to the health authorities for the last 8 years.

The other years before this case are out. Asked if anybody told her that this case was just 1937 and the other years out, the witness answered.

A. Well, this case come up, didn't it?

Q. Yes.

A. In 1937.

Q. Yes, it came up—no, not in 1937. Did you talk with Mr. Rawlings before you went on here?

A. No.

Q. You didn't talk with him at all?

A. I have talked with Mr. Rawlings but not before I come on here. (926)

SADIE ALDER sworn for plaintiff. (928). My name is Sadie Campbell since my marriage. It was Sadie Alder. I live at the Blackstone Hotel, and did in 1936 and 1937. The business was "sporting house". In 1936 I had 3 or 4 girls working for me there. They didn't live there. Asked as to what arrangement she had. Objection was made on the general ground and also hearsay and no foundation. Objection overruled. (929)

The girls gave me \$2.00 out of \$5.00; if they made \$10.00 they paid \$4.00 in the drawer. At times in 1937 there were 3 or 4 girls; sometimes 5. I had the same arrangement as to compensation.

Mr. Holt talked with me in 1936—July 1, 1936—he came in the house.

After objection to the conversation between Holt and witness the following occurred:

"THE COURT: This is not a place of amusement. There is no evidence in the record that Mr. Holt is a conspirator.

MR. RAWLINGS: We don't claim he wasn't a conspirator.

THE COURT: How?

MR. RAWLINGS: We do not claim he wasn't a conspirator involved in this matter.

THE COURT: You don't claim that he was a conspirator?

MR. RAWLINGS: We do claim.

THE COURT: You do claim that he was?

MR. RAWLINGS: Yes. (932)

The witness was asked for the conversation between herself and Holt. (Objection was made on all the general grounds, particularly that there was no foundation on the theory of conspiracy here for the admission of this conversation and also that it was hearsay. Objection overruled.) (934)

He told me I would have to give him \$125.00. He came in and talked to me. He says I will have to pay \$125.00. That was all the conversation I had in 1936—not in 1937. I paid Mr. Holt \$125.00 that I got from the girls. I don't have any other source of income. I have paid him from July to the end of the year 1936; February 1, 1937, was the last. In 1937 I paid Holt again, June 1, 1937, I had a conversation with him June 1. (Same objection. Overruled.) (936) He came in told me if I wanted to run I would have to pay \$125.00 I paid him the balance of that year. The last was February 1, 1938.

The next day the following question was asked.

“Q. Now, do you know whether the last payment he collected from you was before or after Mr. Finch left office?

A. It was before.”

(Objection was made to this leading question on the ground that she had fixed the date. Objection overruled.) (937)

Hazel Wilson was one of the girls who worked for me.

(The Court stated that the defendants, without repeating it, may have the objection to this and other like testimony on the general grounds and also on the ground that there was no foundation and that it had no tendency to show any agreement between any of the defendants here.) Kay Oliver was also one of the girls who worked for me, and Jean Gardiner and Ann Collins. Sometimes there were 2 or 3 or 4 girls.

### CROSS EXAMINATION (940)

In addition to the money that I gave Mr. Holt I gave him an overcoat for an Xmas present. I don't remember whether that was 1936 or 1937.

MARGARET NEWMAN sworn for plaintiff. (941) I live at 133 West 3rd South. I have a house of prostitution there. I saw Mr. Golden Holt in 1936. (Same general objection also on the ground that there was no foundation and no tendency to prove a conspiracy between the defendants and the court stated that it may stand as to all the examination.) (941 a)

Mr. Holt made the first collection in 1936 about August. It was \$50.00 and I paid the same amount per month through the remainder of 1936.

Mr. Holt came to my place in 1937. I started paying him again about the first of June, 1937. I continued to pay through the balance of that year \$50.00 a month. I got this money from the girls. I think the last payment I made to him was about the first of January, 1938, I guess.

I had sometimes one, two and never over three girls. The paid \$2.00 out of \$5.00 or \$4.00 out of \$10.00 for the privilege of operating there. Bobbie Carl-

ton was there but I don't remember what year, either 1936 or 1937. I don't recall the names of any other girls that were there.

### CROSS EXAMINATION (944)

There has been a criminal action pending against me since a year ago, April of 1938. (944) I don't know of any case against me. (945) I know something about the indictment cases being brought. I didn't understand that I might be indicted if I didn't come in and testify. The question was asked:

“Q. You don't expect to be prosecuted for operating that place, do you? (947)

Objection was made by the plaintiff that it was immaterial and irrelevant and objection sustained.

A. M. J. PRICHARD sworn for plaintiff. (1107) I am Sexton at the City Cemetery and have been for going on four years. Before that I was a detective. I was appointed Sexton April 1, 1936. I knew Mayor Erwin. I used to bring plants down to his office and then I would just go in and pass the time of day. I had a conversation with the Mayor relative to the subject of alleged pay-off. That was in the fall or winter of 1936. He was asked for the conversation.

(“Of course, we want the general objection—incompetent, irrelevant; hearsay and no foundation. I am speaking of the general foundation—that there is no prima facie evidence whatever of any agreement.” Objection overruled.)

I told the Mayor there was a pay-off in town and the woman's organization had a list of all the pay-off

—the names of the parties paying off, the amount they were paying. They were going to have a meeting in two weeks and give it to the papers. He said, can you get me a copy of that list. I brought him a full copy of the list of pay-offs.

(Objection that it was incompetent and not the best evidence. Overruled.)

I handed him a written copy. He did not read it, he put it in the drawer of his desk. The paper contained a list of the names of the people who were supposed to be paying off, their addresses and the amount that they were paying. He said words to the effect that it was unbelievable. He never mentioned the matter to me after from that day to this.

### CROSS EXAMINATION (1119)

He glanced over the paper and said it is unbelievable and put it in his desk. (1110)

(Motion was made to strike the testimony of this witness on all the general grounds; not tending to prove any issue involved in the case; as containing no admission or acquiescence on the part of Mr. Erwin, that no inference could be drawn as to any agreement between the defendants. Motion denied.)

MRS. W. T. RUNZLER sworn for plaintiff. (1252)  
Except when abroad or teaching out of the city I have lived in Salt Lake City since 1889, I think. I have met Mr. Erwin. I had a meeting with him around the forepart of 1937. Mrs. Earl Van Cott and Mrs. Lee Wright were there. It was after January 14, 1937, as well as I can remember.



She was asked if there was a conversation there with the Mayor on the subject of pay-off and objection that it was leading and suggesting was overruled. Also the further objection that the corpus delicti had not been shown nor prima facie case made; no proof of the agreement has been offered.

The District Attorney stated that the evidence was not offered as effecting any other defendants than Mr. Erwin. (1255) The Court so instructed the jury.

Mrs. Van Cott acted as spokesman for the group that was present and stated: "That according to information she had received it was charged that Mr. Erwin was receiving a pay-off of \$750.00 a month and the Chief \$350.00, and operators, other operators of gambling establishments \$250.00. There may have been mention of one or two other names, but I remember distinctly those." (1257)

As to what the Mayor did the witness answered:

"A. He flushed considerably and stated, 'Oh, I am accused of that too, am I?' and he took a cigarette and asked if he might smoke. None of the ladies present said anything after he asked if he might smoke, we had no objection and he changed the subject to parking meters.

(Motion to strike the witness's testimony as to this conversation was made on the general grounds and on the ground that it showed no admission of acquiescence or any statement of fact that would call for an admission or acquiescence. Motion denied.)

## CROSS EXAMINATION (1261)

(By Mr. Musser.)

The conversation took about as long as I took to say it right now, but, of course, I was interrupted while I was giving this by objections. I came in at 25 to 12 and it is now 10 minutes to but I have had interruptions. It didn't take many minutes, this little bit of conversation that I have repeated, but that wasn't all of the conversation. I don't know, about 2 minutes. You are asking me to become a Judge. I haven't timed it. If I make an answer that doesn't please you why you may come back to me and I am just protecting myself.

A. H. ELLETT sworn for plaintiff (1264) I am one of the city judges. I was up to the police court for the first 11 months of 1936. Cases were brought to my court for gambling and most of these the defendants appeared by attorney. The cases for violation of city ordinances were brought into the police court over which I presided. (1267) I had a conversation with Harry Finch about the middle of April, 1936. He was chief at that time.

(Objection was made on the general grounds and that there was no foundation laid, no showing that any conspiracy existed and hearsay. Objection overruled).

Mr. Finch said I would like to come up and talk to you Judge about these gamblers. This was on the telephone. I said you may see me in the morning at 9:00 o'clock. (1269)

The witness was then asked as to what had transpired in his court relative to these gamblers that was mentioned over the telephone. (Objection was made

that this was irrelevant and immaterial until some foundation showing that some defendant had knowledge that it happened. That this matter, and the alleged conversation with Mr. Finch could not be admitted in the case unless something said to him required a denial from him and if that were so that it might amount to an admission on his part.)

“MR. RAWLINGS: It was mentioned, Your Honor, over the telephone, and it is the basis; we are laying a basis to explain the conduct of the conspirator that afternoon. It will have a tendency to explain the conduct, and it is a basis for the conversation that we are going to bring in.” \* \* \* \* Well, of course, in regard to matters of denial I think the jury will be asked to determine whether or not these statements would require a reasonable person to deny them.

MR. MULLINER: I object to that. I object to counsel facing the jury and making a statement of that kind to the jury, and I assign it as prejudicial error in this case.

MR. RAWLINGS: The fact that I faced the jury?

MR. MULLINER: Yes, and made the statement that you did to the jury. Counsel has made an opening statement here that ought to be sufficient to satisfy him without making these repeated statements during the course of the trial.

MR. RAWLINGS: Of course, Your Honor, I think I have explained what we desire to do, and I reiterate that the jury here is the person and institution that will be called upon to determine whether or not such

a statement as will be introduced would be denied by a reasonable person. We reiterate that." (1271)

After a discussion the question was withdrawn.

I saw Mr. Finch after the telephone conversation, between 5:30 and 6:00 on the first floor of the police station. (As to the conversation objection was again made upon all of the grounds previously above stated including that of no foundation, the District Attorney refusing to stipulate that this conversation would not be held to effect others than Mr. Finch. All objections were overruled.)

We went into where the captain sits. We were looking at some cleaning or painting work that was being done and then we walked into the Chief's office. Toward the end of the conversation the Chief said: "Judge, why can't we get together on the sentencing of these gamblers? Let them pay the fine; let the city get the revenue." I said the reason we can't do that is: "Because my friends tell me you are taking \$2500.00 a month in your hand behind your back, and I am not going to be a party to it, and we can't get together on it." (This was within a month of the time that Mr. Finch became Chief.)

After about a minute or two he made some remark and the meeting broke up.

### CROSS EXAMINATION (1276)

I knew that Mr. Finch wasn't a lawyer. I didn't know that he had been up there only for about a month. I thought he had been there about two months. I don't know when he took office. If he took office in March

he had been in about a month. In the conversation over the telephone he said something about felony charges for gambling. In the conversation with Mr. Finch I don't think the word "felony" was used. (1277) The particular gamblers were not charged with gambling but with keeping a gambling game. The question of felony charges against gamblers was in my mind. I had had it all day, and it was in my mind that these people were not charged under the state statute but under the city ordinances. I thought Mr. Finch had the duty of filing complaints and prosecuting these cases in view of the discussion by me in open court to his deputies. It was the practice for the prosecuting attorney to file complaints. The Clerk assisted the attorney in these cases. The officers would go to the Clerk or the city attorney. (1279)

The city attorney would either file a complaint under the city ordinances or send the matter to the county attorney to be filed.

I knew that all arrests made each day are reported to the assistant city attorney. I think it was regular practice to take from the police register the arrests and make out, on a form, a copy of the arrests and send it to the city attorney's office. There are about five copies made by the girl. (1282)

The city attorney didn't exactly determine what complaints should be filed under what section of the city ordinances. He and I had our little arguments about these particular cases. I would say I was the one to determine what cases would be filed in my court. I just kicked the cases out and wouldn't take jurisdic-



tion of them. I told them to take evidence down to the County Attorney's office. (1283) I rejected the complaint drawn by the assistant city attorney. I just wouldn't sign them. My objection was that charges for keepers of gambling games should be filed by the County Attorney. (1284)

### REDIRECT (1284)

It was after I sent the cases down to the County Attorney's office that Mr. Finch called and talked with me. (1285)

(Motion was made to strike out the statement of the witness to Mr. Finch and to which it was testified no reply was made on the ground that the statement was in substance what the witness's friend had told him. That Mr. Finch had been in office less than, or about one month and such a statement called for no denial and any denial could only go to the question as to whether or not the witness's friend had told him and Mr. Finch was not called upon to dispute with the witness as to what his friends had told him; that it did not call for an admission; that it did not constitute an admission. Motion was denied.)

BEN HUNSAKER sworn for plaintiff (1112)

(Mr. Musser, in making objection to the testimony of this witness, called attention of the court to the fact that the testimony would be substantially the same as in case 10785, tried the previous September.)

The district attorney agreed that it was substantially the same on a particular angle of the case. The objection then made was first that no conspiracy had



been shown as alleged in the indictment and supplemented by the bill of particulars or at all. Second, no prima facie case of any conspiracy had been shown. Third, that there was no evidence here of any conspiracy as sought to be alleged. That until such prima facie case had been shown this evidence was entirely incompetent, irrelevant and immaterial. That it does not consist of any evidence or an acquiescence or admission.

The court was then requested to exercise its discretion, if it is a matter of discretion, that the evidence should not be introduced and gone forward with until there is some evidence of a conspiracy as alleged. The offer and request was made to the court to examine the transcript of this testimony as previously given in ruling upon it. Motion and request were overruled. (1114)

I reside in Ogden and have since 1911. I have been in the live stock game for several years and in farming and live stock all my life. I went into the automobile business about 1935. I have known Mr. Erwin for 10 years. I had a conversation with him in the early part of 1936, the latter part of March.

(It was then stated by the District Attorney, after objection by the defendants, that the testimony of this witness was offered "only so far as it binds Mr. Erwin" and that the objections are conceded as good except as to Mr. Erwin. The jury was so instructed.) (1116)

Mr. Erwin said he had been assigned to Public Safety Department; that he had his Chief of Police and expected him to bring him in good money. He wanted to get the financial end of the thing and still had

hopes that he would get the financial end of the city. He said if he did get that he would make a lot of money out of it. If he got the financial end of the city he was sure he would be able to pay the note off in a very short time. This was a \$10,000.00 note. I told him I wanted to make the payments on that note so that he knew he could pay it out of his salary and not out of graft. He said, I can pay that note off; I can make a payment of \$200.00 a month out of my salary. I don't want more than 18 months. I am sure I will have it paid off before that time. (1112) The note was a little more than \$10,000.00. (1121)

Mr. Erwin said that he expected yet to get the financial end of the city and that if he did he would be able to pay this note off. I told Mr. Erwin he had better go straight or he would get into trouble. I said, you had better go straight in the future although you haven't in the past.

(Motion was made to strike the latter part of this answer as not being within any issue of the case and having nothing to do with the matter charged, not within the conspiracy alleged as to time or otherwise. Was denied.)

I don't claim to say all that was said in that conversation.

He said, if I can pay this note off before it is due will you be willing to refund the interest and I said "Yes".

We signed up a memorandum to that effect.

That is all I can remember now of the conversation.

Q. Do you recall whether anything was said about his predecessor?

(Objection was made to this question as leading and overruled.)

Answering the witness said: I told Mr. Erwin that he had better go straight. He said that they all do it and I am going to get mine while I have the chance. (1125)

I saw Mr. Erwin again about May, I think. I had a conversation but I don't remember much about it.

I saw him next in my field in Box Elder County on July 3—as well as I can remember. He had \$200.00 in currency. He offered me the money and I said you needn't have come up here, you know that Mr. Lowe, my attorney, is the man you should have paid it to because I wrote you and declared the whole note due. I am not going to take that payment because it is up to Mr. Lowe to settle this thing with you. He said, I have had one hell of a time getting things lined up and I didn't think you would mind for a short time. I said when that note was made out I told you I wasn't going to play around. He said he had been having a lot of trouble and only had a few gambling joints and bootlegging places running. Now he was getting “and had got pretty well women of the underworld lined up and that he expected quite a lot of money to be coming in now.”

I told him that when that note was made out I wanted him to figure paying it out of his salary and that there was nobody to blame but himself.

I had several conversations after that. He made other payments in currency. (1129)

I had a conversation with him during the latter part of 1936 at my home in Ogden. He had \$200.00 in currency and handed it to me. I signed the receipt. He said he had a Chief of Police in there that was bringing him very good money but not enough. If he had got the financial end of the city he would have been taking plenty of money.

I said: "E. B., they are going to get you as sure as hell." He said: "They can't get me. Somebody has got to see me take the money. They have got to prove I take the money, and they can't do that because I don't collect. Finch is the man they will get, but I don't think they'll be able to get Finch because he doesn't do the collecting himself. He has his men collecting for him." (1132)

About the same time the following year, along in the latter part of the summer, the Mayor said that he thought the Chief of Police was taking in a lot of money and he didn't know if he was getting his right split; that he couldn't go down to his office and watch him and tend his office at the same time, so he had just got to take what he handed him.

He made his payment in currency.

Q. How long did these payments continue Mr. Hunsaker?

A. I think,—well, I can't think. You said—"

(Objection was made to this question as incompetent, irrelevant and immaterial, not within the issues of the case at all. Objection was overruled.)

May 15, 1936, I think the first payment was due. I shouldn't say I think, I guess. All of the payments except one were made by currency. (1135)

He brought the payments to me except one.

Sometime in the late summer or fall of 1936 I asked him why he didn't sit down and write out a check and mail it to me and he said, you don't think I am crazy enough to take \$200.00 in currency and take it to the bank and get a check for it each month? I don't intend to let those fellows know what I am doing. I will take care of paying the note in my own way.

He never gave me a check personally. (1136)

I gave him receipts for all but one. Not all of them were made by me personally. The first one was made by my son Clifford in October. In July, when he was trying to get me to take the money and I wouldn't give him a receipt for it I said I would take it and turn it over to Mr. Lowe. He was pleased to think I would take it.

Another payment was made to my daughter-in-law. (1138) and my wife also signed a few receipts.

"Q. Now, you say previously you had numerous conversations with the Mayor" relative to income tax report. (This was objected to as leading and suggestive and immaterial. The objection was overruled.)

The latter part of the year 1936 at my home Mr. Erwin had paid Mrs. Hunsaker the \$200.00. I had come into the house. He said: Are you making a report on your income of this \$200.00 a month that I am paying you. I said: "No", it is merely a re-payment of an old account. He said, I thought if you were I would have to



report it but being as you are not I will not have to report it. I said: You had better go straight with Uncle Sam and the State, and he said, well, I won't have to report it.

(Motion was made then to strike this last testimony on the general grounds and that it was not within the issues of this case. The motion was denied.) (1149)

Again it was suggested to the witness that he had had numerous conversations and he was asked if in any of these conversations "there was any discussion relative to the subject matter we have been discussing here about the pay-off." He said about the middle of the summer, 1937, at my home, he told me that things had tightened up and he was having a hard time with the Women's Betterment League. They were giving him trouble.

(Motion was made to strike this answer as to the middle of the summer of 1937 on the general grounds and having nothing to do with the issues of the case. Motion was denied.)

I first became associated with Mr. Erwin in business in 1932) (1142) And I knew him up until he became Mayor. I had frequent conversations with him during this period.

#### CROSS EXAMINATION (1143)

The payments made by Mr. Erwin arose out of a commercial transaction. I had loaned the Gateway Chevrolet Company a sum of money prior to 1932. Mr. Erwin became connected with that company at that time. I came down to see him and talked the thing over



and we made a deal for him to go in. (1144) The company executed a note to me for \$18,500.00. The note was paid down to \$10,000.00. (1146)

On March 23, 1936, (Exhibit No. 10) a letter dated February 1, 1938, on the letterhead of George H. Lowe, and attached receipt signed by Mr. Hunsaker, together with an agreement. The witness was asked if this was the original note of March 23, 1936. He said "Yes" and that the agreement bore his signature and that the letter was signed by George H. Lowe as his attorney who handled the matter for him. Exhibit admitted.

No receipt was issued for the one check he mailed and there was also a payment sent by Western Union Telegraph when the Mayor was in Los Angeles.

Sometimes he made payments to Mrs. Hunsaker, sometimes to Clifford Hunsaker and sometimes to Dorothy Stone who afterwards married one of my sons.

Receipts were marked as Exhibit 11 and admitted as the receipts signed by him.

Exhibit 12 consisted of three receipts signed by C. S. Hunsaker.

Exhibit 13, receipts signed by Mrs. Ben Hunsaker. There were 7 of these.

Exhibit 15, receipts signed by Dorothy Stone.

Exhibits 11, 12, 13, and 15, and 14 (a receipt from the Western Union Telegraph Company) were offered and admitted. (1154)

He testified to these same conversations with Mr. Erwin as State's witness last September or October, 1938, in a case against Mr. Erwin.

I don't remember in giving the conversation of

March 23, 1936, when I previously testified whether I failed to mention that Mr. Erwin stated that he had the Police Department and would make good money.

His previous testimony was read and makes no reference to the question of making money out of the police department, or the finance department. The witness admitted he so testified previously, and testified that it was then stated that he wanted the note fixed so that it could be paid out of the Mayor's salary.

The witness was then asked whether in his previous testimony he mentioned the statement now given in one conversation as to Mr. Erwin going straight and that he had not previously been straight. He said he couldn't remember whether he so testified previously. That he undertook to state the same conversation previously. (1159)

Witness was asked to produce the receipt showing the first payment and produce the receipt of May, 1936, as being such. That money was paid to my son and by him turned over to me. The second payment I don't have a distinct recollection of my son paying this \$200.00 currency to me. I don't remember him telling me that he received the currency from Mr. Erwin. I am satisfied that I got all the payments.

I didn't know that the first payment was paid out of graft. I do not know as to any of the payments being paid out of graft and I don't know that they were. I couldn't prove that any of the money was coming from graft. I don't know any more than he told me and that don't prove to me that he got it. He may have been telling me something wrong. (1162) I did really believe

that the money he paid me on several occasions was graft money. I did not report it to the public officials at that time or to any public officer, either here or in Ogden. (1162)

I think I said something about it before he ceased paying me. I don't remember right now to whom I said anything. I didn't say anything to any officer. He ceased paying, I believe, after the February payment, 1938. I sent him some wires in February, 1938. (1163)

Mr. Lowe, my attorney, wrote some letters to Mr. Erwin and to Mr. Erwin's attorney, trying to collect on this note. Mr. Erwin had two attorneys, Mr. Clawson and also Mr. Stewart.

A telegram from the witness to Mr. Erwin was marked Exhibit 16 and admitted (1165), which read: 'Tribune reporters and officers seeking interview with me. Refused to date. What is your plans toward me. I want settlement by Tuesday answer via Western Union.'

I meant to ask what his plans were about settling this note. (1166)

Another telegram was marked Exhibit 17 and another Exhibit 18. They were admitted as wires sent by the witness to Mr. Erwin.

The wire of February 14 stated: "Stewart unable to take care of note for you as per your request. I now demand full payment of note from you at once." When I said in the telegram of February 13, "New note made under certain representations", I meant that he would pay it out of his salary. (1167)

I guess a lot of my statements about this matter

have been reduced to writing outside of court. I have made several statements to Mr. Rawlings. I made a statement to my attorney that was reduced to writing. The statement was after Mr. Erwin had quit paying and after he resigned. (1169) The statement contained two or three pages.

I don't remember whether I had in mind making such a statement when I sent the telegram, Exhibit 16, February 12, or not.

Mr. Erwin told me that if he got in a tight place he would resign. (1170)

I have stated in this court, once last year and once today, all the conversations I had with Mr. Erwin, all that I remember, I have never mentioned anything about Mr. Erwin resigning previously. (1171)

When I made the statement and sent the telegram I was trying to collect my money. I wouldn't say that I wanted to injure him. (1172)

I wouldn't say I could fix the time he talked about resigning and going to leave the country by the last receipt. No, that receipt doesn't fix the time; I can't fix the time by that. It would be in December, 1937. (1174) No, he didn't say he would leave the country, he said if I pressed him he would take bankruptcy. (1175)

In the month possibly of December, 1937, when he said he would resign and take bankruptcy he made me two payments of \$200.00 each, one on the 9th and one on the 11th.

I was in my attorney Mr. Lowe's office when he dictated Exhibit 19; and Exhibit 20 was written by Mr. Lowe also, to Mr. Stewart, at the time he was my

attorney; and when Exhibit 21, December 29, 1937, was written he was my attorney also.

In Exhibit 19, December 13, it was stated in part that a payment had been received and so that there would be no misunderstanding that I wanted the whole note paid by December 18, at 12:00.

Exhibit 20, December 18, 1937, that the writer had informed Mr. Hunsaker that Mr. Erwin stated he would be able to borrow \$2000.00 and no more and that Hunsaker had authorized him to accept \$2000.00 and \$2000.00 monthly. (1180) A letter of December 29, indicates that Hunsaker agreed to go back to the \$200.00 a month basis.

I claim that Erwin owes me around \$7000.00. My attorney still has the note.

Exhibit 22, a letter of January 12, 1938, written by Mr. Lowe, shown to the witness. (1181)

I think I was in Mr. Lowe's office when that letter was written. (1184) Seems to me that there was one little clause in there that just don't sound like it was meant for what it said. Mr. Lowe said I was there and I likely was. This letter was admitted. It said in part, referring to Mr. Hunsaker and Mr. Lowe, his attorney: "We have talked the difficulty over and while the account should be paid and probably would be paid if suit was filed, we both nevertheless want to help the Mayor and are very loath to see him embarrassed. The Mayor is a good man and we want to assist him in maintaining his high standing in Salt Lake. We have therefore decided to extend the note on the following plan:" (1187)

After the payments ceased I imagine I first reported these matters to my attorney Mr. Lowe. I did not report them to Fisher Harris.

Mr. Rawlings called on me at my attorney's office. Mr. Leichter was up there at another time. He is a detective here or something. I know he was up there and I believe Mr. Kinney was there with Mr. Rawlings at one time. (1194)

I don't know how many times I talked with Mr. Leichter about this case. I can't remember. I think it was after I sent these telegrams. I have never given up hope of collecting this money from Mr. Erwin. (1196)

#### RE-CROSS (1223)

I testified in effect in the other case against Mr. Erwin that I told Mr. Erwin that I had talked with Austin Smith and that he had told me that Mr. Erwin took enough money while he was in office to pay this note off and when I told him this Mr. Erwin said, "Austin Smith is a damn liar." (1228-1230)

I also testified at that time Mr. Erwin said I don't think I am getting any myself, and that was the last conversation that I had with Mr. Erwin. That was in November or December, 1937. At that time Mr. Erwin and Mrs. Erwin both drove up in the car. Mrs. Erwin was not in the car at that time. (1232)

#### RE-DIRECT (1236)

In my conversation with Mr. Erwin, December, 1937, he said I don't think either of the Commissioners are getting any money, and I don't think Mr. Finch is



getting anything, and I don't think I am getting anything myself.

And he also said at that time, I don't think at this time there is any graft going on in Salt Lake City.

CLIFFORD HUNSAKER sworn for plaintiff.  
(1204)

In 1936 and 1937 I was in the used car business in Ogden. I saw Mr. Erwin in the early part of 1936 about the 23rd of March. (It was agreed and ordered that the testimony of this witness applied to no one except Mr. Erwin. (1205)

(Objection to the giving of the conversation by attorney for Mr. Erwin upon general grounds and the ground that there was no foundation, that no agreement or conspiracy as alleged had been shown and no prima facie case of such made. Objection overruled. (1205)

Mr. Erwin said he still had hopes of getting the department of finance; that he did have public safety.

My father said to make the payments on the note so that they could be paid out of his salary. \$200.00 a month for 18 months was agreed upon. Mr. Erwin dictated and there was attached a rider that if it was paid before 18 months interest would be knocked off. This rider is exhibit 10. (1206)

Mr. Erwin said he had his Chief, that he expected him to bring him in money, and that he still expected to get the department of finance.

My father said he should go straight and he expected the note to be paid out of his salary. Erwin said they all took their money or cut and he was going to take his.

Three or four payments were made to me. All the payments to me were in currency.

(Motion to strike the testimony on the general ground and having no relation to the agreement or conspiracy charged in the indictment or as supplemented by the bill of particulars was made. Motion denied.)

### CROSS EXAMINATION (1208)

I was interested in the Gateway Chevrolet Company. The obligation on which the note was given was the original obligation of this company. Different loans were made by the company. At the time the loans were made our family and one outside party owned this company. We owned two-thirds. Mr. Erwin assumed the indebtedness. (1210)

After February of 1938 I was with my father in Attorney Lowe's office and Mr. Rawlings and a couple of other men came up there. It was early in 1938. It may have been before he resigned. It was while the trouble was on. Mr. Kinney was there and I think Mr. Leichter. I don't recall any other meeting until we came down to the Grand Jury; that was along late in the spring.

At the meeting in Mr. Lowe's office a record was made of my father's statement. This might have been in February, I wouldn't try to fix the time. (1214)

I know Mrs. Erwin and I recall seeing her up in Ogden. I wouldn't say I remember her the particular times that I received the payments. I saw her but which times I couldn't say.

She was in the car once when he paid my father;

I don't recall whether Mrs. Erwin was there. (1215)

Mr. Erwin said in March of 1936 that he expected to make good money while he was in office.

I don't remember whether he said specifically he would pay the \$200.00 a month out of his salary.

JACOB WEILER sworn for plaintiff. (1238)

I am deputy County Clerk and have been since 1935. (Order that this witness's testimony had nothing to do with any defendant except Pearce and Erwin.) (1243)

I was in Judge Thurman's court on March 19, 1936. I think the trial of the case consumed between two and three hours. Mr. Pearce was one of the counsel. (1243) I saw Mr. Erwin there. He took the witness stand. Counsels for both sides examined him on the stand. (1245) As I remember it he set in the spectators' section before he went on the witness stand and I can't remember whether he went back to the spectators' section or whether he sat at the counsel table afterwards.

(Discussion. Mr. Mulliner: I will stipulate that Mr. Pearce put Mr. Erwin on the stand as a witness and examined him if it is understood that there is eliminated any insinuation that Mr. Erwin employed Mr. Pearce as attorney in that civil case. Mr. Rawlings: I couldn't prove that.)

It was then stipulated that the civil case was first filed July 25, 1934.

(Stipulations were made subject to the objection to this testimony, and at the close a motion was made to strike it on the general grounds and that there was no foundation or conspiracy shown and no improper

conduct involved in this incident. Motion denied.) (1251)

H. K. RECORD sworn for plaintiff. (948)

I have been on the police department for 15 years. There was a change made in the anti-vice squad in 1936, I think on the first of March.

Q. Do you know whether it was before or after Chief Finch took office.

A. After he took office. (Mr. Finch took office March 15, 1936. (949)

This change took place about 15 days afterwards or two weeks. I was put on the detective bureau.

Mr. Rawlings stated that as he understood it the witness was on the anti-vice squad from January until April, 1936; the witness said that was right (949)

I was in the detective bureau the remainder of the year. In 1937 I was placed on the anti-vice squad at about the first of March, as head of the squad and was there for two months. Then I went back on the detective bureau.

“Q. Did you see him (Mr. Pearce) around the middle of April?

A. I did.”

This was in 1937. I went to his office.

‘Q. Had you talked to Mr. Pearce over the telephone before going over there?

A. I had.”

He asked me to come over to his office. Ben Harmon was there.

(This conversation was objected to upon the general grounds and that no sufficient foundation had been shown as to any conspiracy or agreement as alleged,

also upon the ground that it was an overt act claimed in this case and which had been introduced and in which this defendant had been tried in case 10785. Objection overruled.) (953)

Mr. Pearce said he had been responsible for having me placed head of the vice squad; that the Mayor had instructed him to make collections from gambling houses and other forms of vice. I asked how much they expected to get. He said \$1700.00 a month. I asked him where: he said \$600.00 from lotteries, \$600.00 from bookmakers and \$400.00 from card games. I said I wouldn't be a party to it. He said, if you will string along with us and keep things in line you will get \$165.00 a month. I told him I didn't want to be a party to it. He said, all right, we will get someone else to do it.

### CROSS EXAMINATION (955)

I related this same conversation in the previous trial of Mr. Pearce, case 10785. This is the same conversation that I related in that case. I am attempting to state the same conversation exactly. (956)

(By Mr. Loofbourow)

I never did report this matter to the Chief of Police.

(Mr. Erwin was given the benefit of the objections made. (956)

(By Mr. Mulliner)

This is the first conversation I ever had with Mr. Pearce and the last one. I had seen him around the courts practicing as an attorney. That was all that I knew of him previously. It is not true that the only

time I was ever in Mr. Pearce's office was when I discussed Sadie Campbell who testified on the witness stand. It isn't true that Mrs. Campbell made charges against me and Mr. Pearce tried to arrange a meeting between us or tried to get her on the telephone while I was trying to hurt her in some adoption proceedings or deportation proceedings. These things were not discussed. Mr. Pearce was never my attorney. I didn't report this to the City Attorney at that time. I didn't report it to the District Attorney or the County Attorney. Fisher Harris talked with me about it December, 1937.

#### RE-DIRECT (960)

I reported it to my brother.

GOLDEN HOLT sworn for plaintiff. (962)

I am connected with the police department as a patrolman. Before Mr. Finch went in I was on the radio car. I think I was on the anti vice squad in January, 1936, under Mr. Record. In March, 1936, I was on the radio car. The first of April, 1936, I was appointed on the Anti Vice Squad when it was reorganized by the Chief. Two men were assigned to me, Duncan and Hoagland. Just prior to the first of April I talked with Mr. Finch, and after my appointment also. It was a few days after the first of April.

(Objection on the general grounds and that there was no foundation and hearsay. Overruled.)

We just talked over the vice situation. The Chief said I don't particularly object to vice but I don't want them to get the best of us, not let them run too openly.



The witness was then asked if he had a conversation with Austin Smith and Captain Taggart in the Federal Building in Captain Taggart's office. (A motion to strike out his testimony as to this was made and denied. (965)

This was around June of 1936 and the following day I had a conversation at the Public Safety Building; the Mayor and Austin Smith and the Chief were there. I told them I had had a conversation with Mr. Smith and that "we had heard a pay-off was going on and that they were accused of participating in it." That was all of the conversation at that time. (966)

(A motion was made to strike this testimony on the general grounds and no sufficient foundation and that there was nothing that amounted to an admission by anybody here as against themselves or as binding upon any other defendant. Motion denied.)

' THE COURT: Who was there at this conversation?

MR. RAWLINGS: The then-Mayor, the then-Chief of Police, Austin Smith, and Mr. Holt.

THE COURT: Well, that is the way I understand it, but I became suspicious that perhaps I had misunderstood.

MR. MULLINER: My point, Your Honor, is, there is nothing there that calls for any denial. The absence of a denial doesn't make an admission.

MR. RAWLINGS: The purpose is to show what happened the next day."

I had a conversation with the Chief the following day. (968) He told me to close everything up. That

as I recall, was in the latter part of June, 1936. I went around and notified them to close. It appeared to me that they were closed up "through about the month of July." I went to the places of prostitution and lotteries.

I talked with the Chief about the latter part of July. (The court stated that defendants would have the objection that there wasn't any general foundation to these conversations without repeating it. (969)

At that time he mentioned Mr. Rosenblum and told me to go see him. Nothing was said about the places of vice. I went and saw Abe Rosenblum and he told me that—

(Objected to on the general grounds and hearsay and in addition that there had been no foundation. Objection overruled.) Rosenblum told me to go and collect from the women; told me the places that were operating and the amounts to collect. And thereafter I went to the houses of prostitution and I collected money and turned it over to Rosenblum.

He then gave names of different houses of prostitution mentioned in the Bill of Particulars. (971)

I started collection around the first of August and continued up to the first of January, 1937. (972)

Before I made the collections I talked with the operators of the places of prostitution. (Being asked for conversations with these operators objection was made on the general grounds and as being hearsay and there being no foundation. Objection overruled. (973)

I told them what was expected of them and I told them I would be around about the first of each month. I told them what payments they were to make. I gave

them certain amounts. Mr. Rosenblum gave me those amounts.

(Same objection as to conversation with Mr. Rosenblum were made and overruled.)

About the first of August I had a conversation with Mr. Finch. He said he thought the heat was over and to let them reopen and not to let them run too openly. No specific places were mentioned. After then I just let them run up until the first of January with the exception of the lotteries. (975)

Around the middle of January, 1937, I had another conversation with Finch. He told me to close everything up. That he was going to give me another man on the squad, and to see that there was absolutely no more pay-off. (976)

I had another conversation in February, 1937. He told me that he thought I was the one who was making the town too hot and that if he moved me things would calm down. I was removed the first of March and Record was put in my place. I was in the Detective Bureau for two months then I went back on the vice squad. (977) This was May, 1937, when Mr. Thacker was made chief of the anti-vice squad.

The witness then testified that he had a conversation with a man by the name of Gus Captain; that he had known him for 5 years and after this I went to see Ben Harmon.

(Motion was made to strike the reference to Captain and the conversation with him, and after argument the statement was stricken.)

The following transpired: (978)

“MR. MULLINER: Well, he said he had a conversation with Gus Captain, but he hasn't asked him what was said; but they would be claiming something for it. It is conduct entirely outside of the knowledge of any defendants.

MR. RAWLINGS: We would be pleased to introduce that conversation, but we are afraid there would be an objection.

MR. MULLINER: I assign counsel's statement as prejudicial error. \* \* \* That there is no point to referring to it at all. That is what I am objecting throughout the case. Just things from which inferences can be drawn without any testimony being introduced with regard to them.

THE COURT: I will order stricken the statement that he had a conversation with Gus Captain.

Q. Well, after you saw Gus Captain I think you said you saw Ben Harmon?

A. Yes, I saw Ben Harmon at the Mint, 27 East Second South.

(The conversation was objected to on the general grounds and that no foundation had been laid here generally or otherwise for the conversation and it was hearsay. (Objection overruled.) (979)

Harmon said he was going to put me back on the Vice Squad. He told me I would work under Captain Thacker, that he was going to be head of it. At that time I hadn't heard from the Chief.

In the first few days of May I had a conversation with Mr. Thacker at the police station. (981) He told

me I was to take charge of the prostitution and that he would take charge of the gambling.

About a week later I had a conversation with Ben Harmon at the Mint.

(The same objection as above was made and overruled.)

He told me he wanted me to collect from places of prostitution. He wanted me to pick up the money on the first of the month. The witness then gave the places substantially as before. (984)

(Over objection the conversations with the operators were allowed to be started again which were in substance that he told them that they had to make payments on the first of each month and he told them how much they had to pay.) and then:

“Q. But from whom did you get the amounts they were to pay?

A. Oh, from Mr. Harmon.”

I collected each month up to the first of January, 1938. (985) I made the first collection in January, 1937, took it to Mr. Harmon and he told me to take it over to Mr. Pearce’s office. It was the 3rd or 4th of June. (969)

The same day I talked with Mr. Harmon I saw him in the evening around 6 o’clock in the Continental Bank Building in Mr. Pearce’s office. (Upon the conversation being offered there objection was again made and an offer of the indictment in proceedings in case 10785, the objection made that this could not be proved as an overt act in this case or at all, because Mr. Pearce had been tried on this matter in that case and acquitted.

The indictment, the Bill of Particulars, and the supplemental Bill of Particulars and the Verdict in case No. 10785 were offered, showing that the charge there was collecting money, the earnings of prostitutes, and that Mr. Pearce was acquitted. (993-995) These were offered upon the proposition that this issue had been tried and the defendant acquitted. The offer was denied and the objection overruled. (998) This was in addition to the objection that no sufficient foundation had been laid, no conspiracy, either prima facie or at all, shown. (1000)

When I got to Mr. Pearce's office Mr. Harmon was there, the door was open, I entered the lobby of his office and he told me to come in. I laid the money on his desk. He asked me if that was all of it and I told him it was. He picked the money up and put it in the drawer. The drawer was on the left hand side of his desk. Mr. Harmon was sitting to the left of the desk, about 6 feet from Mr. Pearce. There was around \$500.00. (1002)

About the latter part of September or the first of October, 1937, I had another conversation with Ben Harmon. He called me. I couldn't give the date any nearer than I have stated. I went and saw him at the Mint. "Mr. Harmon told me that Mr. Pearce had told me to go to Mr. Pearce's office and see him."

I went. There was no one else there.

(Again an objection was made on all the general grounds and that this incident and issue had been tried in the previous case and that there was no foundation whatsoever of any conspiracy or agreement between the defendants. Objection overruled.)

He had a slip of paper with a list of places on it and



he asked me the amounts of the different places of prostitution I had been collecting from and he had some other addresses. There was no collection made at these. He asked me why. I told him they were residences and those girls weren't making a living out of it and I wouldn't collect from them. He said it was all right, thought I was doing a fine job and I left. (1005)

"Q. Now, I call your attention to around January, 1938, first of January. Did you have a conversation with Ben Harmon?

MR. MUSSER: I object to that as leading. Why doesn't he state when he next had a conversation?

MR. RAWLINGS: I assume there are a lot of conversations that have no materiality.

THE COURT: He may answer.

A. That was around the middle of January, maybe a little before that, I had a conversation with him."

(Objection was made on the general ground and including the ground that this was after the conspiracy is alleged to have concluded. The objection was sustained.)

Witness was then asked as to whether he was familiar with the house at 143 West Broadway, operated by Kitty Spiegel and as to what the reputation of that house was in 1936 and 1937.

(This was objected to on the general grounds, in addition to other objections previously made. Objection overruled.)

The reputation was that it was a house of prostitution.

(Similar questions, objections and answers were

given to 128½ West First South, 63½ West Second South, the Walla Walla Hotel, Tillie Allen's place and others. (1010)

(It was stipulated that the testimony of Margaret Newman and Mrs. Campbell relative to the year 1937 was substantially the same in this case as in 10785) (1013)

A formal offer was made of the conversation of Mr. Holt with Mr. Harmon in the middle of January, 1938. (1015)

(Over the same objections on all the grounds witness was allowed to testify to the reputation of Bill Browning's place in the Atlas building in 1937 and testified that it had the reputation of being a bookmaking establishment.)

Over objection the witness testified he had a conversation with Ben Harmon, possibly about the 20th of December, 1937, and he wanted me to collect from Sally Bennett at 123 West Third South. I told him I thought I had enough to do and I didn't want to collect from there; and he said he would get somebody else. (1019)

### CROSS EXAMINATION (1024)

(By Mr. Loofbourow)

When Mr. Finch came in as Chief I had been on the police force since 1928. I am pretty positive it was the first of April, 1936, when I came to be in charge of the anti-vice squad. I was given two men on that squad. The Chief said he was going to give me two men, I didn't ask him about them. There was no division of work. (1026)

It isn't safe for a man to go around places of that type alone for his own benefit. I knew this from previous experience. I had been on the anti-vice squad twice prior to that. First time I probably served around 2 years, second time probably 3 years. (1028). I had served, prior to April, 1936, altogether about 5½ years on this squad.

Under Mr. Thacker I traveled with Mr. Boyd and Mr. Rogers. I traveled with Mr. Rogers first and then Mr. Boyd. In April I was instructed about bringing in prostitutes for examination. I was told by the Chief to bring them in and see that they were examined regularly. I knew what that process was from having experience previously. I knew what was to be done. He didn't tell me how it was to be done, he just told me to do it as it had been done in the past. (1030). We brought them in every two weeks as nearly as we could by just notifying them. We tried to keep track of where the girls were. As prostitutes came to town we would find out where they were and see that they were brought in. We told them what they were to do about coming in. They booked on the blotter at the police station; they went to the desk sargent and were booked in the rear of the regular blotter. In booking the blotter gave the hour of arrest, where arrested, nationality, occupation and under offense we put "Board of Health." We would book a section of the ordinances otherwise it was Board of Health. That was the method I understood was to be followed, when Mr. Finch told me to go ahead as in the past as far as the Board of Health was concerned. (1034)

When Mr. Thacker came in on May 4, 1937, I was still on the detail of the prostitutes and they were handled in this period the same as before. (1035)

When I became Chief of the anti-vice squad Abe Rosenblum was a bondsman. He didn't have a place of business that I know of. He didn't have anything to do with the card license that was issued to the place over the Bailey Seed Store in April. That didn't occur until May or June, 1936. I couldn't give the exact time.

I was Chief of the anti-vice squad and we had complaints about what happened in Rosenblum's place there. I don't recall whether the Chief told me about these complaints or whether they came to me direct and I told him about them. (1036). Mr. Finch told me that they couldn't tolerate that place and I was to put a man there and keep him there to see that he didn't indulge in infractions of the law. That was later in the summer of 1936. It was closed up around the first of July and later sometime the latter part of August or September. It wasn't opened any more by Abe Rosenblum that I know of. Some other fellow opened it. "I took the license for him." (1037)

While Abe Rosenblum was running it the Chief gave me special orders to make every effort to see that no infractions of the law occurred. That wasn't in connection with closing any other place. He singled out that place. It had the reputation of being a gambling place. This was during the time that I was making collections and taking the money to Abe Rosenblum. (1039)

I continued taking collections to Rosenblum after his place was closed and until the first of January, 1937;

I didn't have to go any place to see him; he used to call me. I knew his place had been closed but I was still taking money to him.

I remember a conversation in Chief Finch's office about January 20, 1938, when Herman Bauer and Inspector Record were there. Asked if the Chief said "something that you men have done or not done may cost me my job" the witness said he didn't know whether the Chief said that or not. Asked if the chief said, "They say there has been a pay-off in Salt Lake City. I want you to tell me before these witnesses, have I ever asked you to favor any of the games, bookies, prostitutes, or anyone else", and as to whether he answered "No", the witness said I don't recall that being said; I wouldn't say I didn't answer that way; I wouldn't say either way. (1042)

Asked if the Chief didn't say, "Have I ever asked you to coerce or intimidate any of these people", and if the witness didn't say "No", he said he didn't recall. It wasn't asked to me that way. As to whether the Chief said, "Have any of these people ever paid you any money?" and whether he answered "No", he said I don't recall everything. He never asked me that many questions. I wouldn't say I didn't make that answer to that question. I don't recall. I may have done. As to whether the Chief asked, "Have I ever asked you to do anything other than to enforce the ordinances and laws" and as to whether his answer was "No", he said he couldn't answer on that either. That he didn't recall the different parts of the conversation. That Captain Thacker was in there, too. I wasn't in there



long enough for him to ask me that many questions. (1044)

I didn't get invited to conferences with the Chief once a month. I never did attend monthly conferences. I wasn't invited. I frequently saw Mr. Finch at the police station and talked to him. Unless there was something I wanted to ask him I didn't go to his office. I frequently met him in the hall and talked with him there. I never told him that I was making these collections. (1045)

I remember in May or June of 1938, Mr. Hoagland and Mr. Finch were in an automobile in front of Mr. Hoagland's home. I drove up from the rear and got out of the car and got into the car with Mr. Finch and Mr. Hoagland. The conversation there was in effect as follows: I wouldn't say in these words. Mr. Finch said at that time: "I don't see what has been done that would cause this talk about taking money from the underworld and about the Department being tied up with the underworld." And I said, "I don't know how anyone could have anything on you. You don't need to worry. I don't know anything that involves you in this." I told Mr. Finch that at that time.

"Q. Was it true what you said?

A. Well, no. \* \* \*

Q. You didn't even tell him then that you had been making collections did you?

A. I didn't; figured he knew.

Q. But you didn't even tell him, never speak to him about it?



A. Only the time he told me to quit making them; see they quit being made.

Q. Now, just a moment.

A. You asked for that.

Q. Did he tell you to see to it no more collections were made?

A. Yes, he did.

Q. When was that?

A. In his office on around the middle of January, 1937.

Q. 1937?

A. Yes." (1047)

I don't remember a conversation with Mr. Finch in his office the latter part of 1936 or early in 1937, when he said he heard a rumor that I had been taking or accepting money from various people and I said I have never taken a dollar from anyone. I can go right out and arrest anyone. No one has any strings on me.

"Q. Did you tell him you were making collections in 1937.

A. He told me to quit making them.

Q. Did you tell him you were making collections.

A. I didn't tell him, never.

Q. You didn't tell him anything?

A. He told me in the office to see there was no more made." (1049)

I was chief of the anti-vice squad for 10 months commencing April, 1936, and ending about March, 1937. I was a member of the anti-vice squad having to do with prostitution from May 4, 1937, to June 20, 1938. That was 8½ months. (1050)

(By Mr. Mulliner)

The time I said Mr. Finch told me to see no more collections were made was around the middle of January, 1937. That is the time that I testified that he told me to close these places up.

“Q. And at that time you said Mr. Finch said to close these places up?

A. If I recall, I said he told me to see there was no more pay-off.”

I testified to this same conversation in case 10785.

“Q. And you said at that time, did you not, that Mr. Finch said to close the places up?

A. I did.”

As near as I can recall I said in all those places that Mr. Finch said there should be no more collections. I testified that Bill Browning's place had the reputation of being a bookmaking place. That was in 1937. In 1936 for a while he was in the rear of the Windsor Hotel, about 128 South Main, until they tore that down. I have known him for 4 or 5 years, maybe longer than that. He has been in the business of bookmaking ever since I knew him, either in the places I mentioned or in other places.

I have made several arrests for bookmaking. There was no difference between a place having a reputation as being a bookmaking place and the actual evidence in order to make an arrest or procure a conviction. We don't close places up on reputation. It isn't necessary in order to stop people from doing something to have evidence to convict them. You can just run them out.

“Q. Well, you couldn’t convict them and you never tried to have a case in court unless you got certain evidence from those places, did you?”

MR. RAWLINGS: I object to the question as being duplicitous, immaterial, irrelevant.

THE COURT: I will sustain the objection.”  
(1054)

I knew from my experience as an officer that it was my duty when I saw a violation to make an arrest and have the person booked and report the violation to some prosecuting attorney, either the City, County or District attorney.

In houses of prostitution it was difficult to get evidence and in these gambling places it is difficult to get evidence. (1056)

When prostitutes came to town they were required to report for examination by the Board of Health and then they reported to the head of the Purity Squad as to where they were working or going to work. That has been the practice all the time that I have been connected with the Purity Squad. I have never heard of any change up to and including 1938. (1057)

I testified if we could keep track of the girls we brought them in. It was sometimes very hard to keep track of them. If we put a man in these places to watch them they would move out and go somewhere else and we would have to try to find them. If they went out they would walk the streets or do whatever they could to get their customers. They can try to stop prostitution I imagine but I don’t suppose they could do it. They

move to some place else if you chase them out of one place.

When counsel asked me about houses of prostitution I meant a "place where prostitution is being practiced."

"Q. Now, under that definition, Mr. Holt, do you know of a hotel in Salt Lake City that isn't a house of prostitution?"

MR. RAWLINGS: We object on the ground it is immaterial and irrelevant.

THE COURT: I will sustain the objection.

MR. MULLINER: Well, I don't know that I can argue that, but it certainly goes to this charge in this Indictment, failure of our clients to stop them." (1060)

When I met Mr. Harmon in Mr. Pearce's office I knew that Mr. Pearce was an attorney. I had seen him in Court off and on. I couldn't say whether I had seen him representing Mr. Harmon. (1061)

I had never had any dealings whatsoever with Mr. Pearce before. I testified in the previous trial No. 10785, that I had never had a conversation with him that I could recall, and that is true. I have seen him around Court and I might have spoken to him on the street. It is my recollection, as I testified before, that I never had a conversation with him previously. (1063)

There was very little conversation in his office. I took some money and put it on the desk; they asked How I was; I was there a minute. Mr. Pearce put the money in his desk and I left. (1064) That is about what happened. I didn't stay in the office at all. The only

conversation was they asked me how I was and I said I was fine.

After this the witness added (1064) He asked me if that was all of it. His testimony was read in 10785 where that clause was not included, and he said that that was his best recollection then "and now." (1065)

The only other conversation I ever had with Mr. Pearce was the one I said I had in September or October, 1937. These are all the conversations I ever had with him and I have stated all that was said as near as I can remember. (1065)

I collected money from about July 1936 to January 1937 continuously, and I paid all that money to Abe Rosenblum. I never paid any of it to anybody else. I started collecting from the women again in June, 1937 and collected from them to and including the first of January, 1938, and I paid all of the money to Ben Harmon, or when Ben Harmon was present as in June, and to nobody else. I was the only one that was collecting money so far as I know. I always went alone when I made these collections. (1067) I went alone when I turned the money over to Rosenblum and I was alone when I turned the money over to Harmon except the occasion in June, when I said Mr. Pearce was there.

I was either supporting a family or paying alimony in 1936 and 1937. I was divorced in 1936 and re-married the same woman in 1937. During part of this time, in addition to supporting the family, I was living at the hotel myself—The Moxum Hotel. I lived there 16 or 17 months. I was driving an automobile. I owned it and drove it myself. It was a 1933 Buick Sedan. I bought

some stock in 1936 and 1937. Dead Cedar Mining Company and Lead Strike. I invested \$600.00 at two different times in 1937; \$300.00 each time in currency. This was within one or two months. I bought Lead Strike a little at a time. In April 1937 I bought 5000 shares and paid \$50.00 for it. May, 2500 shares; May again, 1500 shares; May Again, 1000 shares. I have got 10,000 shares altogether. I am quite positive that was all there was. This stock isn't worth anything.

I made quite a few trips in my car to the Dead Cedar Mine in 1937 and took company with me on those trips. I made one trip over to Ely with my wife and brother in law and his wife. There were ladies out to the Dead Cedar Mine but I never took any lady out there other than my wife. I have taken some people out there to look at the mine. (1075) I didn't exhibit any bills out at the mine. I took some beer out there once or twice. I didn't buy any liquor there. I didn't take any Scotch; there might have been some in the party that went. I couldn't tell exactly how many times I went. I don't think I went three or four times in any month. I don't think I went over twice as I recall in any one month.

I had an interest in a motor boat but I acquired that back in 1930. I think we had the boat out a few times in 1936. I can't say whether we did in 1937.

My salary in 1936 was \$165.00—either \$155.00 or \$165.00. In 1937 it was \$165.00. (1078)

I am still a member of the police force and I haven't been complained against or prosecuted.

I may have testified previously in 10785 that by reason of testifying the way I had I did not expect to



be prosecuted. I don't know that I testified just exactly that way. I may have testified something to that effect. (By Mr. Musser)

Up until the trial of the last case in September, 1938, I never did have a conversation with Mr. Erwin. I might have said 'How do you do' or something of that sort. I never associated with him. I have been to a few Footprinters meetings when he was there. I never associated with him. I was never present at any conversation at any place when any one had a conversation with the Mayor about any pay-off or anything of that kind or when there was any discussion as to vice conditions. I never reported to the Mayor any vice conditions.

### REDIRECT (1081)

Q. (By Mr. Rawlings) You were asked a question if you ever reported the vice conditions to the Mayor and you answered it in the negative. Now, what years do you refer to?

A. Oh, through any of those times. \* \* \* \* any of 1936 or 1937. I don't recall of ever talking to him.

Q. Do you recall talking to him after you had a conversation with Austin Smith?

A. Well, that was in a general conversation. I wasn't talking direct to the Mayor. He was present.

Witness was asked if he ever saw Abe Roseblum up at the place he formerly operated after it was closed and another person got a license.

(Objection was made to the question unless it was shown that Rosenblum was up there afterwards unless

some or one of the defendants had knowledge of it. Objection overruled.)

The witness answered that he saw him up there running around the place taking charge of it.

I had a conversation with the Chief before Abe's place was closed up and the Chief said that Ben Harmon was making complaints and he didn't see what Ben Harmon had against him.

I don't remember whether it was in that conversation he told me to close it up or not.

I had the conversation in June or July in the presence of Mr. Hoagland and the Chief of Police. He asked me something about himself and I said I didn't think he had anything to worry about. I don't recall whether I said I wasn't in it or not. The reason I said that was because I was told not to discuss anything that happened with anybody. (1092) Mr. Fisher Harris told me that. I was told not to discuss anything that happened with anybody.

Q. Now, you were asked by Mr. Loofbourow whether or not you reported the conditions to the Chief of Police, and you indicated that, as I recall it, you talked to him only once about it and that was in January, 1937. Is that right?

A. Yes, sir.

Q. Why didn't you discuss the conditions with him further?

MR. MULLINER: That is objected to as calling for the conclusion of the witness; no foundation.

MR. RAWLINGS: Well, Your Honor, Mr. Loofbourow asked on more than one occasion, Now did you

tell the Chief about these conditions? Then quibbled somewhat about this one as to whether he actually did or did not tell the Chief on January 1 about the conditions; and by asking that same question two or three times, it would create an influence, which I think we have a right to explain particularly in view of the questions asked by Mr. Loofbourow, and it is only those answers that we are asking this witness to be given an opportunity to explain. (1093)

MR. MULLINER He says something like he did in this court. "You don't have anything to worry about." Now he comes back and says that was because Fisher Harris told him not to talk with anybody about it. Now can a person go on for two or three years and then make up some reason for not doing something and come in here and give it on the witness stand?

MR. RAWLINGS This has nothing to do with Fisher Harris's conversations nor any of that subject matter at all. It is redirect on questions asked by Mr. Loofbourow; questions directed to this witness which are in substance, Why didn't you tell the Chief about it? He was your Chief and you knew about these conditions and the pay-off. Why didn't you tell?

MR. LOOFBOUROW: I didn't ask any such question, Your Honor I asked if he did.

MR. RAWLINGS: Yes.

MR. LOOFBOUROW: And he said no and I left it. I didn't pursue it any further.

MR. MULLINER It only goes to the Chief's knowledge, Your Honor.

MR. HANSON: We will make the further objec-

tion, Your Honor, into the record as to reserve our record that under such a question and under the guise of that kind of question the witness may answer anything that comes into his head; hearsay and incompetent testimony that wouldn't be competent otherwise; and because the State wants to introduce it and ask the question is no reason why it should be permitted.

THE COURT: I will let him answer the question.

A. You will have to read it.

(Question read.)

A. Who did you refer to?

A. Chief Finch.

A. Because I was told not to discuss.

Q. No. you were asked by the Judge—

MR. MULLINER Just don't lead him. Let him testify.

MR. RAWLINGS: Okeh.

A. I was told by Mr. Harris not to discuss or tell anything that had happened to anyone.

Q. And when was that?

A. That was either when I talked to him the latter part of December or the first part of January.

Q. All right, now, in the two years preceding that why didn't you report it to the Chief?

MR. MULLINER: We would like our objection.

Q. Preceding your conversation with Fisher Harris during 1936 and 1937.

THE COURT: He may answer.

A. Because I had had my orders from the Chief in the first place, and I presumed he knew what was going on." (1095)

Q. Now, you were asked by Mr. Mulliner if it was difficult to get evidence against the houses of prostitution. Now, I will ask you whether or not you were able to close them up at any time you were instructed or you desired to do it.”

To this leading question the witness answered “yes.”

RECROSS: (1100)

(By Mr. Mulliner:)

When I said \$600.00 to Mr. Rawlings that I invested in the Dead Cedar Mining Company I didn't mean that \$600.00 was the total that I put in or that I didn't put in \$900.00. I misunderstood the question and thought he referred to the two payments of \$300.00 each.

These card clubs that I testified about were licensed. I made the statement at the places that were running we could close them up. I meant we could stop gambling. I know they gamble where people play cards. (1101)

I know there is gambling going on this afternoon. I don't know whether there is a hundred places or not. I don't mean that we could go to these licensed card rooms and close the door and lock them. We could not do that without an injunction or something from the courts. I didn't refer to closing them up. We never did close them up. I meant we could put a man in there and stop gambling. He could stop it so far as paying any money over the table is concerned, but if they played there and played cards and kept the score or played with chips, we couldn't stop them and we couldn't tell whether they were gambling or not unless some money passed.

(By Mr. Musser:)

If we could have closed up houses of prostitution in 1936 and 1937 we could have closed them at any time during the 5 years before that.

After some discussion and an argument as to conversations after January 1, 1938, the time recited in the indictment as the end of the conspiracy or conspiracies, the witness Holt was recalled for further re-direct examination. (1383)

Ben Harmon called me on the telephone around the middle of the month of January, 1938.

“Q. And I as remember your testimony, he asked you to pick him up on First South and Regent Street?

A. Yes sir.

Q. Tell us what happened when you did that.

MR. MUSSER: Object to it as incompetent, irrelevant, immaterial; not within the issues of this case; long after the alleged conspiracy is alleged to have ceased.

THE COURT: The objection is overruled.

MR. MULLINER: I think the—

THE COURT: Did you have some observation to make that you wanted to make before the Court ruled?

MR. MULLINER: I think the nature of this conversation has been indicated to Your Honor.

(Discussion.)

MR. HANSON: Is this the same conversation that we made objection to because it wasn't with any of the defendants here and after the alleged conspiracy had ended?

THE COURT: This is the conversation the Court reserved.



MR. HANSON: This is the conversation which we objected to on that ground?

MR. RAWLINGS: Yes.

MR. HANSON: Let the record show that so far as Mr. Thacker is concerned we renew the objection made at that time.

THE COURT: Yes, the record may show the objection.

MR. HANSON: That is, that it is hearsay, incompetent, because it is hearsay; made after the alleged conspiracy had ended and not in the presence of any defendant on trial.

MR. RAWLINGS: Of course, it is our contention that this conversation was what ended the conspiracy.

MR. HANSON: Well, the Indictment is what ends it.

MR. RAWLINGS: No.

THE COURT: Well, there is no need of going into that I presume now. The witness may answer the question.

Q. State what you did then.

A. Picked him up at First South and Regent Street, and he said "Drive over on the west side of town," which I did, and he said to me—

Q. Where did you go?

A. Oh, out along 4th or 5th North, down by the Union Pacific tracks.

Q. And then what did you do?

A. Well, I stopped the car and parked for a minute, and he said that—

MR. MULLINER: May we have our objection to all this, (1384) Your Honor?

THE COURT: Yes.

MR. MULLINER: Particularly to this conversation?

THE COURT: Yes.

MR. MULLINER: The nature of this conversation.

Q. Go ahead.

A. He said: "For God sakes, don't take any more collections whatever because Mr. Harris and Mr. Lee have got hold of Mr. Pearce and accused him of being in the pay off." He said "For God sakes, see that there is no more of it. Don't take anything from anybody," he said, "because it may blow over."

MR. RAWLINGS: This is all.

MR. MUSSER: If Your Honor please, we move to strike this testimony on the grounds it is incompetent, irrelevant, and immaterial, and not binding on any of the parties to this action. If it could be binding on anyone, it would only be binding on Mr. Harmon, and Mr. Harmon is dead, so that he is no longer a party to this action and, therefore, it isn't admissible to him.

MR. RAWLINGS: But he is a party to the conspiracy, Your Honor, and for that reason we feel that this evidence is competent.

MR. MUSSER: And also on the ground, of course, the conspiracy had ended as alleged in the Indictment.

THE COURT: I will deny the motion.

MR. MULLINER: I didn't watch the grounds on that, Your Honor. I would like to have the ground included that there is not sufficient foundation and par-

ticularly that it wasn't in furtherance of any conspiracy, and particularly that there is nothing in it in the nature of an admission and that there is no foundation, that Mr. Harmon is dead and is not being tried, and I don't think there is any authority for the admission of such an alleged statement or of such alleged conduct on his part or on the part of the witness.

THE COURT: The motion to strike is denied.

MR. MUSSER: I have no cross examination.

MR. LOOFBOUROW: No cross examination.

MR. MULLINER: Oh, I have one question." (1385-1386)

All that I have testified to relating to Mr. Pearce on this case was testified to by me in case 10785. I do not recall any conversation or statement with reference to Mr. Pearce that has been made by me in this case in my testimony that was not also stated in the other case as accurately as I could state it. (1387)

Mr. Musser was given the same record as to Mr. Erwin.

FISHER HARRIS sworn for plaintiff (1287)

I have been City attorney of Salt Lake City for just over 7 years.

"Q. Now, during the fall of 1936 I will ask you if you undertook an investigation in regard to the affairs of Salt Lake City."

(This was objected to upon the ground that to state anything with relation to an investigation or what they thought they found in an investigation was damaging and prejudicial and improper, also upon the ground that Mr. Harris had given his testimony in a previous case

upon the theory that certain statements were made in conversations and that the objection was now made and the court asked to consider the point that the reactions or statements were not admissions and the conversations hearsay. Objection overruled.)

“A. In the fall and winter of 1937 I did.

Q. Now after you made this investigation did you have a conversation with Mr. Erwin?

(Objection was again made to the matter of investigation and overruled. (1290)

I had a conversation with Mr. Erwin and prior I delivered him a letter, Exhibit R. I prepared and delivered it on January 15, 1938. Mr. Erwin put the lead pencil marks on the letter in my presence.

“Q. Now, at your first conversation with Mr. Erwin did you discuss the contents of this letter?

(Objection was made as to discussing the contents of the letter and on the general grounds and that the time was after the time when the conspiracy had closed according to the indictment. Objection overruled.)

I had more than one conversation; the first one about one or two o'clock of January 15, 1938. I delivered the letter about 12 o'clock.

(The conversation being asked for objection was made on the general grounds and not within the issue and hearsay and after the agreement is alleged to have ceased and no proper foundation. The court then ordered that this testimony was not to be considered relative to any other defendant than Mr. Erwin and the objection was overruled as to him. (1294)

Mr. Erwin said I received the letter you left in my

office. It presents an interesting situation. I never heard anything like that before. Perhaps we should discuss it. I said, I shall be glad to confer with you at any time. He said how about Monday at 1:30 and I said it was agreeable. At that time we discussed the contents of the letter Exhibit "R". It was offered.

(Objection was made that it was pure hearsay and on all the general grounds; that the letter was not evidence in the case; that it had been presented to Mr. Erwin and contained such a charge of guilt of the offense here alleged, he might be called upon to admit or deny; it might be considered as an admission or an admission might be involved. That there was nothing of this kind in the letter counsel for the state stated in answer to the Court, that they were not offering it as proof of the contents. Defendants proposed offering authorities. Prosecution stated they did not claim anything for the facts stated in the letter and that they wanted to present it to show the charge in the letter to the jury so that they will have in mind the contents when they gave later conversations. The court stated it could not be considered as against any other defendant. The Court's attention was called to the fact that the reaction had already been stated by the witness that it presented an interesting situation and that there was nothing in the letter or in the reaction that admitted guilt of the charge here. (1298)

"MR. RAWLINGS: Now, Your Honor, Mr. Mulliner overlooked or neglected to remember that in the second conversation the contents of the letter were discussed and the letter itself in the first. Now, so far

as the first conversation is concerned, there might be some merit in what he said.

Here is the City Attorney, the chief law-enforcing officer of the city, making charges against the Mayor. What would he do? And this letter shows it is very material.

MR. MULLINER: I assign counsel's statement as loud as he could speak it, as the reporter has it, as prejudicial error and I ask it be stricken and that the jury be asked to disregard it.

THE COURT: You may proceed, Mr. Musser. I have admonished the jury time and time again that the statements of counsel are not evidence, and I can't do it every time there is a statement made.

MR. MULLINER: But they are prejudicial, Your Honor, and the Supreme Court has just held so in another case, if they are permitted to stand in the record.

(Mr. Musser then made further objections and asked the Court to examine the contents of the letter to see that there was no charge made or reaction admitting to an admission and to the discussion of the contents before the jury. Exhibit "R" admitted. (1301)

(Mr. Musser then made the objection that if there was anything connected with this letter which was claimed to be an admission on the part of Mr. Erwin of the charge that it should be shown before the letter was read to the jury and the Court should determine the matter. Attention was also called to the prosecution that they were familiar with the letter and also with the conversations which the witness would relate by reason of his having related them in the previous case



10785. Mr. Musser then requested the Court to examine the previous testimony of the witness, out of the presence of the jury, to determine that there was no reaction which constituted admission of the charge. This request was refused. (1304)

The witness: On Monday we discussed certain routine matters of city business and the mayor said now as to this letter. You say all these places are operating and I said yes, no question about that, no doubt about it at all. He said: Do you think they ought to pay Salt Lake City something for the privilege of operating. I said "No. If they are permitted to operate at all and if anything is paid on account of them, I would suppose that the amount should be paid to Salt Lake City as a part of the expense of their regulation, if they are regulated." He said, "What would you suppose they should pay in that event?" I said, "Well, here's various things enumerated." We had the letter there at that time. Here are lotteries that pay \$500.00 a month and I named some figure which I don't remember, less than \$500.00, I said I assume they would be willing to pay \$500.00 I enumerated card rooms and said they pay from \$50 to \$100 a month, and here are the houses of prostitution now paying from \$50 to \$125 a month. Here are the dice games now paying \$300 a month. I was referring to the dice game mentioned. I said there is enumerated in my letter these various things. (1306)

(Objection was made before this last answer to the giving of the contents of this letter in this way and after the answer the court said: "I understood that is what he said. I will overrule the objection.")

I was referring to the dice games mentioned in my letter. The letter said that the dice games now pay \$300.

“Q. Were there any other institutions mentioned, do you recall, at that conversation?

A. May I examine the letter? I enumerated all the illegal activities which were mentioned in my letter. I don't now think of any that I haven't mentioned. I have already mentioned the lotteries, the dice games, the book-makers, and the houses of prostitution.” (1308)

(Objection was made again and not sustained.)

I said houses of prostitution pay from \$50 to \$125 depending upon the number of girls, and that I supposed those that paid \$50 would be willing to pay \$40 and those that paid \$75 would be willing to pay \$60 and I enumerated them all.

As I made these statements the mayor was making notations in pencil on the letter. The witness was shown Exhibit “R”. Yes, those are the notations made. One of them is mine. The words: “South First West.” After I finished giving my enumeration he added up the notations and stated that “comes to so much—\$19,000 as I remember.” And I said that would buy quite a few automobiles. We talked about city automobiles before we entered upon this. He said, “All these people pay off you say?” and I said, “Yes, there isn't the slightest doubt about it.” He said, “Do you think it would be all right if I would ask the Chief of Police, Mr. Finch, to collect the amounts from these places which you have mentioned? And I said, I don't believe anybody that knows anything about the work that I have done would be willing to have Mr. Finch continue in office. He

said, "Well, we will talk about that some other time."  
(1311)

Nothing was said about who collected these amounts.

"Q. Did Mr. Erwin make any inquiry?

A. He did not.

Q. Did he inquire of you as to who ultimately received this money?"

(This was objected to on all the grounds and involving no admission of any kind whether he did or did not and that nothing had gone before to provoke such an inquiry. Objection overruled.)

Judge Straup made the further objection that the witness was being permitted to testify merely to hearsay and not to anything in his personal knowledge. Also that this manner of examination enabled the witness to put in mere hearsay statements and if the witness had personal knowledge of the matters he might testify to that but this testimony was incompetent. Objection overruled. (1312)

"A. No, he did not inquire about that."

A. No, he did not ask me where I got my information.

(This was over objection also.)

I had another conversation in my office with Mr. Erwin January 18, 1938.

(The same objections were made on all the grounds previously above recited. The Court stated that the testimony did not relate to any other defendant and overruled objections as to Mr. Erwin.)

Mr. Erwin came to my office and said "There were questions I ought to have asked you yesterday." I said

I would be glad to answer. He said, "You say in your letter that you know who collects this money, this pay-off." I said, "Yes, I do." He says, "Who is it?" And I enumerated certain names, and he took them, made some notes in a little notebook he had. He said, "You say all these places pay protection money?" I said, "Yes, there is no question about that at all." He says, "Well, they wouldn't feel natural if they weren't paying to somebody, and what difference does it makes who gets it?" and he left.

"Q. On that occasion did he ask you who ultimately got the pay-off?"

(Objection was again made on the grounds previously stated as to similar questions; not in any way related to the agreement; no admission. Motion was made to strike the answer to this and also the previous answer as being filled with hearsay statements by Mr. Harris and on the previous ground that it involved no admission of the offense charged. Overruled. (1315).

"A. No."

I attended a meeting of the City Commission on January 21, 1938. Mr. Erwin, Mr. George B. Keyser, Pat Goggin and Mr. Murdoch were there.

(Testimony limited by the court to Mr. Erwin.)

"Q. Will you state what was said at that time about this letter?" (1316)

(Objection was made on all the general grounds; that the conversation involved no admission or acquiescence; doesn't tend to show any conspiracy. Overruled.)

Commissioner Keyser said to Mr. Erwin, "You received from the City Attorney several days ago a letter

addressed to the Board of Commissioners in regard to this matter," they having been then discussing it, the subject matter of that letter. Mr. Erwin said, "Yes, I did,". This is the letter, Exhibit "R".

Somebody then moved that it be filed and it was and taken in possession of the City Recorder for filing.

There had been two commission meetings between January 15 and 21. I don't recall whether I attended or not. They held two meetings on Tuesday and one on Wednesday and one on Thursday and a special meeting on Friday. This matter had not been discussed at those meetings.

I had a conversation with Mr. Finch relative to the contents of this letter about the middle of January, 1938. I had a conversation with Mr. Thacker about it on the same day. The conversation with Mr. Finch was about two hours after that with Mr. Thacker. My conversation with Mr. Thacker was before the letter was delivered. These were the first conversations I had had with Mr. Thacker and Mr. Finch about the subject matter embodied in the letter. (1318)

The witness examined by Mr. Hanson stated that he had summoned Mr. Thacker to his office because he was a city officer.

(Objection was made to the conversation as to Mr. Thacker on the ground that the City Attorney was attorney for the police officers under Section 603 of the ordinances and that the testimony was not admissible. The City Attorney was charged with defending the officers and was their attorney. Objection overruled.)

(Testimony limited by statement of the court to Mr. Thacker.)

Conversation fixed as January 10, 1938.

(Objections overruled as to Mr. Thacker.)

Thacker told me how long he had been in the police department I ask him if he had a family and he said he did. I said, "Now, Captain Thacker, your relationship with Ben Harmon and the pay-off situation in Salt Lake City is well known to me. I know all about it." And I said "I am not so much interested in you or what you as a simple police officer may have done. The thing I am interested in principally is in those above you, in higher offices than yourself and in such relations outside of the city government." He said, "Well, you are not going to make me the goat, I didn't receive any of the graft money." I said, "I know you don't receive much" and I said "I am not much interested in that." I said: "If you will make me a complete and full disclosure of all you know about this thing I will regard that as a public service and as far as I can I will seek to protect you." He said he would answer questions I would put to him. I said, "You knew there was a pay-off in regard to all forms of vice, and he said "Anybody would know that." I said, "Why don't you, as head of the vice squad, do something" and he said "I can't because I act entirely on orders from the Chief." He said, "I don't make any arrests unless the Chief tells me to arrest that place." I said, "How did you get in touch with Ben Harmon in the first place?" He said "Chief's orders." The Chief said that Ben Harmon knew all about underworld conditions and in the performance



of my duties I was to take advice from him. I didn't take any advice and directions from him." I said, "All right, let's see about that." I said, "before the last election everything was closed up and he said "yes." "Chief's orders." and I said, "After election they opened up" and he said "No, they didn't." I said, "Didn't you have your men in Bill Browning's to see they didn't open up," and he said "yes." He said, "Harmon said it was necessary to whip Bill Browning in line." I said, "You were having trouble with Bill Browning about the pay-off." He said "Yes." and I said, "After that was adjusted he was allowed to open up" he said "Yes." I said, "There must have been other occasions when you took directions from Harmon," and he said "No, there wasn't." The Chief and Harmon would talk things over."

I told him I couldn't talk to him any more on this case but that I preferred to keep confidential between him and me, not only that we had talked but what he had said. He said that was impossible because the Chief knew he came to see me and I said, "Well, tell him we were talking over the Cayias situation." (1325)

I saw the Chief about two hours later.

The witness then said: "I feel a little woozy," and the Court took a recess until the following Monday morning.

The Chief telephoned me about an hour after I talked with Thacker. He said, I have been talking to Captain Thacker and I understand you have been accusing him of all sorts of crookedness. I said, "Yes," and

he said I would like to talk to you about it. So we met in an office in the Felt Building at 2:00.

(Court instructed he wanted it understood that this talk with Finch didn't apply to the other defendants.)

(Objections were made to the conversation on the general ground and that it was an occasion after the date charged in the information, and that there was no general foundation laid, and that there was no sufficient foundation for it. Overruled. (1332)

Mr. Finch said "I understand you have accused Mr. Thacker of all sorts of crookedness. I said, "I have stated to Mr. Thacker that there are all kinds of illegal activities in operation running in Salt Lake City in connivance with the Police Department." and I said "I wouldn't have any argument with you on matters of judgment as to how the town should be run. Nobody will claim that public officials should personally profit from illegal activities." He said, "Well, the last thirty years I have been hearing stories about pay-offs in Salt Lake City. How is one to prevent such stories?" I said "Maybe the least that any one can do or maybe the most is to see that the stories are not true; but in this case the stories are true, and public officials are profiting from illegal activities in Salt Lake City." I went on to enumerate them, and I enumerated dice games—

"Q. Now, just a minute. At that time did you know who had collected this tribute?"

(Objection to it as incompetent, irrelevant, immaterial, leading and prejudicial, calling for a conclusion.)

The witness answered: "Oh, yes."

The answer was stricken.

“Q. Did Mr. Finch ask you at that time who anyone was who was involved?”

(Objection to this as contrary to the rule as to relating conversations. Overruled.)

“A. No, he did not.”

“Q. Did he at any time?”

(Objected to on all the general grounds, without sufficient foundation, interrupting the witness in attempting to give a conversation, and trying to put in any and every conversation in one question. Overruled. (1334)

“A. No, Mr. Finch has never asked me the name of any person involved or asked me to give him the name of any person involved.”

I went on to enumerate to Mr. Finch the activities, the illegal activities which were being carried on in Salt Lake City and which had been carried on for a long time prior to our conversation.

(A motion was made to strike that statement as a conclusion. Refused.)

The witness then volunteered:

“A. Oh, no, it isn't my conclusion. I know it to be so.”

MR. MULLINER: Now, I ask that that go out.

THE COURT: I think I ought to strike it.” No other order was made.

I went on to tell Mr. Finch that the activities I referred to were dice games, pool games, houses of prostitution, book-making establishments, Chinese lotteries. He said, I don't see how anything of that sort could be true. We have collected \$2000 in fines from gamblers

in Salt Lake City during the past year. I said, "Mr. Finch, one man pays graft protection money of \$3,600 a year, one man alone, and you talk about getting \$2000 for Salt Lake City. Here is one group of people who pays \$6000 a year for protection money, and you talk about getting \$2000 for Salt Lake City. Here is another group that pays \$7200 a year to Salt Lake City." I said, "Here is card rooms—I haven't figured it up exactly—but they pay thousands of dollars a year; and here are the prostitutes paying thousands of dollars a year, and you talk about getting \$2000 for Salt Lake City, when all this money is going into the hands of public officials and people interested in them, in the underworld." He said, "Well I thought the town was run pretty well," and that was about all that was said at that conversation. I think that was on the 10th of January.

(Motion was then made to strike out this testimony on all the general grounds that it is not admissable as an admission. That there was no sufficient foundation for it; that it was after the alleged conspiracy had ended. Denied.) (1336)

I had a conversation at the Alta Club while Mr. Finch was present, January 20, 1938.

"Q. From the 10th day of January until the 20th of January, did you hear from Mr. Finch?

A. No, I had no word from him in any way or nature."

(This question was answered promptly and a motion was made to strike it on all the general grounds that it was not in the nature of an admission; after any charge

in the indictment and having no bearing in the case. Denied.) (1337)

(Conversation at Alta Club limited to Mr. Finch.) (1337) Then limited to Mr. Erwin. (1338)

There was a running question as to whether in the conferences he had with the Mayor on the 15th, 17th, and 18th he would state whether or not the subject matter was mentioned as to whether or not he knew who ultimately got the money.

(Over objection on all the grounds, and that the question was leading the witness was allowed to answer at length that he mentioned that he knew, and he stated in the letter that he knew.)

(Motions to strike this testimony on all the grounds above stated were denied.)

“Q. Now prior to that conversation with the Mayor and, of course, prior to the conversation with Mr. Finch, I will ask you to state whether or not you had made an investigation personally to determine whether or not these places had been operated.”

(This was objected to again as incompetent, irrelevant and immaterial and prejudicial, without any knowledge, and out of the presence of the defendants. That they had worked the same thing in over objections previously and it was repetition. That if he saw anything himself that was material he should be qualified and testify to it like any other witness. Objection overruled. (1342).

Yes, I made personal investigation between August 1937 and the first of the year 1938, and it continued beyond that time. I went to the lotteries in August, I went

to the pool games in September, or August or October. I went to all of them.

(Objection was made and overruled.)

The witness then stated that he "went to" a number of card rooms and that he went to Margaret Newman's on West Third South and the Bristol on West Third South and other places, and he went to Bill Browning's place in the Atlas Building, and if they would show him his letter that he wrote to the Mayor on the 14th, he could tell the name of all of them.

(Objection to reference to the letter or for its use as a refreshing document was overruled.)

After looking at the letter he mentioned the Mission and the Wilson card room.

I went between August and January 1938. Commencing about August, 1937.

(He was asked what he saw at the lotteries and objection was made that this was too indefinite and general and no proper foundation.)

I found Chinese Lotteries running. This was stricken. (1347).

I can tell from the letter where the lotteries were. Then the witness gave addresses. I don't vouch for the precise accuracy of these addresses. They are in that vicinity.

(Over objection to the witness stating as to what he saw lotteries doing he said "I saw what I recognized as Chinese Lotteries and people coming in and going out. I will say that I didn't see anybody hand over any money to anybody in exchange for lottery tickets or I didn't see any proprietor of those places pass out any money to



anyone who had won or lost. So to a certain extent it is my conclusion it was a Chinese lottery.”

“Q. Now, will you describe what you saw in the places, Mr. Harris? I mean physical set-up.

A. Well, I didn’t do anything more than to look in. I didn’t go in the Chinese lotteries, inside of them, No.”

He was asked if he went in card rooms and he said, “I did.”

He was given the letter to the mayor and allowed to testify that he wrote every word, that he wrote it out in long hand and that he didn’t dictate it, that he gave it to the stenographer to copy.

I didn’t go to the card rooms consecutively. I was pursuing my ordinary business as City Attorney and general counsel for the Metropolitan Water District, and I would go down at noon to this place and after work to this place, and whenever I could find time. I went to one in August and one in September. I covered the “field.”

(A motion was made to strike out this testimony on all the general grounds and as argumentative, and that the witness should tell of the places he went to and what he saw if that were admissable, Motion denied.)

(Further objection was made that none of the defendants were present or knew anything about any of the general matters testified to. Overruled.) (1351).

In the card rooms I found “Pool” being played.

“Q. And did you see any of the operators of the games there when you saw pool being played?”

(Objection to this was made, that it was a conclusion

as to what an operator of a game is and as being leading. Overruled). (1352).

“A. They were playing pool as pool is played.”

(Objection was made to lumping all of the card rooms in town and making general statements with relation to them. That if testimony was to be given as to violation there should be proper foundation. Agreed that this objection should go to this line of testimony without repeating.) (1353). Overruled.

They were using chips, they got the chips from the game keeper. I saw them sitting around, in most cases playing poker. I saw the keepers with money belts around their waist. They would give out the chips in exchange for money.

Sometime in this period I went to Bill Browning's place. I saw people making bets.

I have been around the New Grand Basement to see what the patronage was but I didn't go in.

I didn't go into any of the houses of prostitution. I went by them and was solicited by tappings on the window. By the way, I have actually been in two of them.

I had a conversation with Mr. Pearce, in Harold B. Lee's office in January, 1938. It was the day before or the day after I talked with Mr. Thacker and Mr. Finch. I arranged the conversation there. I called on the telephone. The three of us, Mr. Lee, Mr. Pearce and I were present.

“Q. Will you give us the conversation that took place there, if any did?”

(Objection was made to this on all the general

grounds; that no foundation had been shown; that no agreement of anything of that kind existed. It was stated in the objection that the transcript of this testimony by this witness as given previously in Case 10785 was available; that it will appear from his testimony that there was no admission by Mr. Pearce to the offense charged and that the transcript was available so that the court could determine the question. Overruled. (1356) )

After some inconsequential or preliminary matters of greeting I said, "Mr. Pearce I have been making an investigation of the illegal activities in Salt Lake City and the official connection with them and the pay-off that I have found existed." I was just introducing the subject to Mr. Pearce, telling what I wanted to talk to him about, telling him "I had made an investigation and that I had found certain illegal activities and pay-off situation," etc., and then I told him I knew of his relationship with it and I repeated, as I have before, that the principal thing I am interested in is the official connection with it. The persons in the official body of the city who are connected with it and I tell Mr. Pearce that I know of his relation with it and that he is involved with Mr. Harmon and others, and I think it would be to his interest to make a full and complete disclosure of all he knows about it to me.

"Q. What did Mr. Pearce do, if anything."

MR. MULLINER: Now, just a minute. Let the witness tell what went on.

THE COURT: He may answer.

Q. What did Mr. Pearce do?

A. When I first said that, Mr. Pearce sat there and said nothing. He sat there licking his lips.

Q. For about how long?

A. Two or three minutes or more. He ultimately said, "Who says that I am involved in this thing?" And I said, "Dick, I am not at liberty to tell you precisely, but I will tell you the names of some of the persons who say you are involved." I went on to enumerate perhaps fifteen different persons."

On inquiry the prosecuting attorney stated, "The testimony is introduced for the purpose of affecting Mr. Pearce only at this time."

The court so stated to the jury.

Among the persons mentioned was the name of H. K. Record. Mr. Pearce said, "Well Mr. Record might say this about me because he has it in for me." I said I didn't say Mr. H. K. Record was one of them, I said he was among those. "Why do you pick him out?" He said: "Because he has got it in for me." He said, "Well, maybe I can help you stop this pay-off situation. I can talk to Ben Harmon, I am his attorney." I said, "I don't need anybody to help stop the thing. It is probably stopped now. It can be stopped as soon as it is known that it is being investigated and something known about it." "Rather than have you speak to Ben Harmon about it I want you to promise you won't speak to him or anybody else that I have talked to you on the subject.

I recall no other conversation that affected Mr. Pearce on that occasion. (1358)

The next day I called him over the telephone, I said, "Dick I am sorry you have taken the attitude that you

have in regard to this thing. You may think it's clever to say nothing but I think it is not to your interest. I think you ought to make a full and complete disclosure." He said, "Why should I talk to you?" and I said, "Because if you don't you are going to be indicted as sure as Hell." He said he would call me in the next day or two and that was the end of that conversation. (These conversations were all given over objection.)

A few days later I called him. He said, "I told you I would talk to you about it. I will talk to you some other time." That was all that conversation. (1359)

"Q. Now, you stated that there was a conference at the Alta Club at which Mr. Finch was present.

A. Yes. It was at the Alta Club and there was present Harry Finch, E. B. Erwin, H. B. Heal, LeRoy Bourn, A. L. Fish and myself. I arrived last, about 2:00."

(Asked to give the conversation it was objected to on all the general grounds, and that no proper foundation had been laid, not within the issues, after the alleged conspiracy had ceased, not in furtherance of the conspiracy, and that the conversation itself did not show acquiescence on the part of the defendants or either of them, or any admission on their part. The Court said the jury would be instructed that it would not apply to any one except Mr. Erwin and Mr. Finch. Objection overruled.)

Mr. Fish said that he had heard rumors of an investigation made in regard to underworld activities and official corruption relating to them and he made a demand of me particularly and asked if I had made such investigation. I answered that I had, that I had made a complete report to E. B. Erwin in writing. He asked me if

I knew what illegal activities were in operation and I said that I did, he asked me to enumerate them and I did. I enumerated them—to save time, if you gentlemen don't object—as I have enumerated them before. I can do it again if you wish.

“Q. Was anything said about the amounts that each establishment was paying?”

A. Yes, I am coming to that. \* \* \* I enumerated them as they are enumerated in this letter (Exhibit R,) and I stated the amount that each kind of activity paid; and Mr. Fish said, “Do you know who gets this money and to whom it is finally distributed?”

(This was objected to upon all the grounds next hereinabove mentioned and on the general ground, and as not being binding on any of the parties here. Overruled.)

I said I did and he said “Who?” and I said “E. B. Erwin gets \$750 a month; Harry Finch gets \$500 per month, the amount collected.”

Mr. Finch and Mr. Erwin were both at the table; Mr. Finch about two and a half feet distance from me and Mr. Erwin about five feet away. Neither one of them said anything at that time. (1362)

At various times Mr. Erwin and Mr. Finch remarked that this was the first time they ever heard of any pay-off situation in Salt Lake City. When Mr. Finch had said that at least 3 times I said, “Don't say that again because it isn't so.” Mr. Erwin suggested Mr. Finch should resign. Mr. Finch said that he would resign the next day.

Asked if anything was said on the subject of how



long this pay-off had been going on witness answered:

Mr. Finch asked me how long this had been going on and I said it had been going on since the last of 1937, and it had been going on before that but that was the scope of my then investigation.

I believe the suggestion came from me that Mr. Finch be allowed to resign under such circumstances that it would not appear that it was on account of these charges I made. I am not certain I made the suggestion, somebody made it. I think it was me because that was the way I felt about it. Nobody opposed the idea.

There were lots of other details in the conversation but I don't recall them. (1365)

Exhibit "S" was marked. It was stipulated Mr. Erwin signed it. It was offered and objected to. Witness said it was delivered to him at his home January 22, 1938 by Mr. Erwin's attorney, Ralph Stewart.

(It was objected to on all the general grounds and as not being within the issue. Mr. Rawlings stated it was offered against Mr. Erwin. The objection was overruled and the Exhibit admitted. (1366))

It purported to be a letter dated March 15, 1938 addressed to the Board of City Commissioners. It stated that Mrs. Erwin "has been in ill health for some time, necessitating my taking her, on various occasions, to California." and that he could not devote his time to the city business. Also that there had been a failure of harmony in the Commission and he had felt unable to co-operate with the problems of the public safety department to which he was assigned. That his resignation and the appointment of someone else would result in

more harmony and that he hoped his successor would have more hearty cooperation. (1368)

I delivered the Exhibit "S" to Ethel McDonald, City Recorder. It was not delivered to the City Commission. (1370)

Exhibit "T" was offered as against Mr. Erwin.

(Objection was made on all the general grounds and overruled.) (1371)

The Court announced that it was received as evidence against Mr. Erwin.

It was dated February 5, 1938, addressed to the City Commission, called attention that in his campaign the reorganization of the financial department was an issue. That his experience was along business lines of that kind, and that if he had anticipated appointment to the Public Safety Department he would not have sought election. That he tried to avoid this appointment. Recognizing the rumors attendant upon previous administrations and that department, he disregarded political pressure and selected Mr. Finch as a man well known to the Commission, and recognized as "above reproach," in whom he had confidence and he felt he could leave that department to those in charge and devote himself to other more important problems of the city. That he tried to procure reorganization so as to be relieved of the department.

That his services on the Commission had not been pleasant but had been made difficult. That there should be harmony on the Board. That the Commission had abolished the office of manager and had removed the Chief and that he felt that he should resign. (1373)

I had a conversation with Mr. Stewart concerning this letter just before the date of it.

“Q. Were matters discussed at that conversation that were later embodied in the second resignation?”

(Objection was made on all the general grounds and on the ground of hearsay, and not binding on the defendant and no proper foundation. The Court said, I will let him answer without stating the conversation. Objection was then made that the question was leading and he could not answer without giving the contents of the conversation. Objection overruled.)

“A. Yes.”

The witness was then asked if, prior to this time he talked to Mr. Stewart at his home, the question of this resignation had been discussed.

(This was again objected to on all the general grounds and as being leading. Objection overruled.)

It was discussed by me and Mr. Stewart. (1377)

“Q. Now, Mr. Harris, do you know whether or not a demand was made for the second resignation of Mr. Erwin?”

(Objection to this as calling for a conclusion was made on all the general grounds and leading and suggestive. Objection overruled.)

“Yes, I know. I made the demand.”

(Motion to strike the answer on the previous grounds of the objection. Overruled.) (1378)

## CROSS EXAMINATION

(By Mr. Loofbourow)

Mr. Finch stated at the Alta Club in substance and

effect that he had repeatedly told the Mayor in the last number of months that if his occupying the position of Chief of Police was in any way embarrassing to the Mayor that he would resign.

Mr. Rawlings interrupted to offer Exhibit "R." (Mr. Harris' letter.) He stated that it had been received in evidence but that there was a question about having it read to the jury. The court said he had reconsidered and thought it shouldn't go to the jury.

(Motion was made to strike it and the Court said he would grant the motion to strike it as an exhibit "and it may remain in the record of the proceedings as an exhibit which has been marked but not admitted in evidence." (1380)

Asked if Mr. Finch said at the Felt Building in that conversation in substance and effect that he had no knowledge of any pay-off and had certainly not been a party to any pay-off, witness said he did not think that he gave the latter part of the statement. He did, substantially, give the first part.

I did say that I was going to report these matters to the mayor and that it was my duty to report to the mayor, but I didn't decline to give him information that was asked of me. It is very likely I said I will make a report to the mayor. If anyone asserts that I do not deny it.

Mr. Finch and I didn't talk at the outside over one-half hour.

He sought the conversation, he phoned me.

I have given all the conversation I remember there. (1382)

Mr. Finch sent word to me that he would resign on January 21, 1938. He was dismissed from the position of Chief of Police on that day I think it is. (1388)

(By Mr. Hanson.)

I may have called Mr. Thacker the night before our conversation. I am not sure. It may have been the next morning. I may have called and left word at the department for him to contact me. This is my best recollection. I haven't the faintest idea as to whether I called him directly on the phone or left word. He and Mr. Beckstead came. Mr. Beckstead started to come in and I told him to stay outside.

I had talked with Mr. Thacker one or two days before. (1390)

I said I knew that vice conditions were going on. I don't remember whether I had a paper before me or not. I didn't unless I had it on my stomach. I was lying down. If you asked me as to whether I was sitting in the chair and said I was feeling ill and then went and laid down on the couch, I haven't the faintest idea whether I was in the chair or on the couch, I think I was on the couch. It has been over a year ago.

I didn't make any notes. I have gone over it with other people since.

I will have to correct something he said, if I gave the impression that I was lying on the couch during the transaction. I didn't. I went back to my desk and I read from a paper to him. Mr. Thacker didn't say I knew how hard it was to get evidence when I asked him why he didn't do something about it. He didn't say I can't be in two places at once to me, and that he had all the beer

licensing and other things to go over. He did say that he had not been taking orders from Ben Harmon. I don't think it occurred that when I told him I had these places down in black and white and that they were paying-off, that it was news to him. (1397)

I had a number of conferences and conversations with different people. I would say I have talked about the subject about 100 times; maybe 150 and maybe 175. (1399)

I don't recall when the Prohibition Law was repealed. I didn't go around town at all in 1934 and 1935. I ordinarily don't get on Main Street once a month. I didn't make any investigation as to any of these matters then. This is the first time I ever made any. I did something about it in 1933. (1401)

(By Mr. Musser)

I didn't take lunch at the Alta Club. The others had finished their lunch. I don't know what had transpired up to the time I got there. Mr. Fish called the meeting. Mr. Heal invited me to be present. The table was about as large as the tables in the court room. Same shape. Mr. Fish sat at the end of the table; Mr. Erwin at the other end. I was sitting at the corner of the table by Mr. Fish. Mr. Finch was on the other side of the table from the corner from where I sat. I had a piece of paper in front of me and doing what I call doodling.

In the matter of who gets the money I rather think I just wrote that down on this piece of paper and showed it to Mr. Fish at my left, and that paper had on it \$750 in one place and \$500 in another.

I was at a conference in the City Commission some-



time after December 21, it may have been the latter part of December or the First of January, a meeting in which the sale or distribution of narcotics was discussed. (1409) There was an anonymous letter read there. I didn't see it so I don't know whether the Exhibit 25 is the letter or not. This was not the letter that was read. The letter read was a letter written in long hand on the same subject as this one. They didn't discuss as to whether an investigation of this vice ring should be made. Something like that did occur.

When asked if the Commission authorized the mayor and the witness to make an investigation of the vice conditions or narcotic conditions the witness answered "no." I am answering you literally, you asked "of the vice conditions."

"Q. I corrected it and said narcotic."

(It was objected to by the state on the general grounds. Objection sustained. (1412))

(By Mr. Hanson) (1412)

I think I did tell you that I had hoped it wouldn't be necessary to file charges against Mr. Thacker and if he had kept his agreement not to divulge our conversation that I would have not filed any charges. You didn't tell me that he didn't know anything about it.

(By Mr. Mulliner) (1417)

The conversation with Mr. Pearce was about the 10th or 12th of January.

I started out and made a very long statement to Mr. Pearce; it was directed to asking him to give me information. I said I wanted information from him, as he

could give it to me, and I was particularly interested in the public officials that might be involved.

At the close of the conversation Mr. Pearce told me he didn't know anything about it.

He told me that he was attorney for Ben Harmon and if I wanted him to he would talk to Mr. Harmon and see if he could get any information. I had told him twice in the early part of the conversation that all I wanted was information. I didn't use the word "information" but I told him I wanted him to disclose all about the situation. It is "Probable, even" that I did use the word "information" at least twice in the early part of the conversation. I won't question it, I used the word "Information." (1418)

I told him that I knew the facts and what I wanted was cooperation. I wanted his information to corroborate what I knew. I did ask Mr. Pearce for information. That was what my question was directed to and that was what the conversation was for.

I knew prostitution was going on before my investigation. (1420) I knew almost 30 years before I was city attorney. I didn't know that the girls were reporting up to the police department. I know it now. I know that the law requires the board of health to require persons suspected of venereal diseases to report for examination. I know that the ordinances provide that the City Board of Health is empowered and directed to make regulations with relation to these diseases and aid in the control of prostitution.

Asked whether he knew that the girls had been reporting up there and being booked for all the time he

had been in office he answered that he assumed that the board of health was carrying out its duties under the law but that he had no personal knowledge. There wasn't anything unusual about prostitution in 1937. No more in the year 1937 than the year 1607.'" (1422)

I knew that card games were licensed in the city. The ordinance was drawn before my time. They weren't amended by me but the ordinances were revised while I was in, and this put in.

I knew every card room I visited was licensed by the city.

"Q. And I suppose you knew or at least suspected that they played pool in those licensed card rooms?"

A. Well, I didn't know it, no. Had no interest in those things in those days, as a matter of fact. As I told you, I don't get on Main Street even to this day once a month, right now even."

I have been in three of them the last 60 days and they weren't playing pool while I was in there. (1423)

I didn't know that the card rooms were required to pay as much as \$150 or \$200 for table license. I don't know what the city ordinance is on that. I have only been the city attorney for 7 years.

"Q. You know, Mr. Harris, that in order to pay those license fees, whatever the ordinance provides, these people have to collect money from somebody who uses the tables in there, don't you?"

(Objection by the state that it was immaterial, irrelevant and had no bearing on the issues was sustained. (1425))

The witness volunteered that he had testified that

they had money belts on in some of these places. Pursuing this he said he didn't know anything about the way these people ran their business or how they made their money. (1425)

I didn't say I saw Bill Browning, I said I saw his establishment. I don't think I would know him if I saw him. I didn't see him there. I saw him in 1927; I haven't seen him since that and I wouldn't know him if I saw him. I didn't see him making any book in 1937.

When people are arrested and booked a list is not given to us at my office at the City & County Building. Probably a complete list is given to Mr. Kesler who is assistant City Attorney with office in the Public Safety Building. (1427)

"Q. Mr. Harris, do you think there is any year since you have been in office that Bill Browning has not been arrested for bookmaking in this town, as shown by your own records?"

(Objected to on the general grounds and calling for conclusion. Objection sustained. (1427)

I haven't the faintest idea whether Bill Browning has been arrested in every year I have been City Attorney for making book or not. I just don't know. I think it isn't so that the records of my office will show that there has been no six months period that I have been in office that he has not been arrested. I will not get our complete records. The records are available to you if you want to examine them. I believe I could show a six months period since I have been in office when he hasn't been arrested. (1429)

"Q. Do you think you can show me any six months'

## RECROSS:

The witness was then asked as to enmity between Mr. Keyser and Mr. Erwin and objection was sustained.

Witness then volunteered:

“A. I don’t know whether I have any rights as a witness, but—

Q. Just a moment. You are not answering my question.

A. I know I’m not. I am addressing the Court.

THE COURT: I take it the witness is appealing to the Court.

A. Yes, I am appealing to the Court.

THE COURT: To ask the Court to permit him to answer the question.

MR. MUSSER: Well, I don’t care to have any statement made by the witness at this time, Your Honor, unless he wants—

A. I can certainly address myself to the Court if I please.

THE COURT: I will hear what the witness has to say. The witness happens to be a lawyer and knows, I take it, what he should not say.

A. There has been an offer to prove that something I may have done is a result of bias or prejudice. If that offer is contended and not withdrawn, and I would prefer that the matter be gone into. That’s all, but I would suggest to counsel that he withdraw it.

MR. MUSSER: Does Your Honor make the ruling?

THE COURT: I rule that your former question was improper. I sustained the objections to Mr. Keyser’s feeling.

MR. MUSSER: That's all.'' (1440)

Motion to strike the foregoing voluntary statement denied. (1441)

Stipulation that the places mentioned in the Bill of Particulars and the Public Safety Building were in the City and County of Salt Lake, State of Utah.

STATE RESTS (1442)

Section 602 of the City Ordinances admitted (1444)  
This ordinance relates to the City Attorney's duties in the matter of law enforcement. Stipulated that copies of the Ordinances offered may be made and introduced.

Offer of the indictment and Bill of Particulars and verdicts in case No. 10785 renewed.

Agreed that Mr. Hanson could offer the City Ordinances on the relationship between Mr. Thacker and Mr. Harris as bearing upon the competency of Mr. Harris' testimony as to him and a copy substituted. (1446)

Section 603. (1447)

Proceeding in the absence of the jury the offer of the documents in No. 10785 was discussed and court explained willingness to rule upon them favorably and it was suggested that the ruling should be made in the presence of the jury. (1449) The motions were then made as if these documents had been admitted.

It was stated that the evidence in this case, as against Mr. Pearce, was shown to be exactly the same evidence as was introduced in 10785.

Motion was made to strike the alleged conversations of Mr. Holt with Mr. Harmon on all the general grounds and that there had not been at that time and had never been shown herein any agreement between the conspir-



ators here, or that such conversations were in furtherance of the conspiracy alleged which related to an agreement to permit certain things to operate. (1451)

A separate motion was made to strike the evidence respecting the statement and conduct of Holt as testified in Pearce's office upon all the grounds of the previous motion and that there was no evidence that Pearce knew where the money came from and,

Secondly, that the receipt of that money is irrelevant, incompetent and immaterial and if introduced to show that Pearce received the money knowing it to have come from prostitution that that issue had been presented and tried in 10785, and the defendant had been acquitted of the same testimony from the same witness. (1451)

A separate motion was made to strike the alleged conversation in which Mr. Harmon was alleged to have stated something that Mr. Pearce said to him as hearsay, twice removed, and that Pearce claimed that Mr. Harmon was holding out money on him, on all the grounds of the previous motions with relation to conversations with Mr. Harmon. This conversation was testified as being 4 months after the conversation of June 2 or 3, 1937. (1452)

A separate motion was made to strike the alleged conversation in Mr. Pearce's office; the conversation about Holt collecting from 3 or 4 places, on the ground of the previous motion and that there was no sufficient foundation then or now; that this was not in furtherance of any agreement or conspiracy as alleged, or in any way tending to show such agreement.

A separate motion was made to strike the testimony of Fisher Harris, and particularly what Mr. Harris stated about operations of vice and collections therefrom, and wherein he asked Mr. Pearce for information, on all the general grounds and as being hearsay and not tending to prove the agreement alleged, or any connection with any such agreement, or in furtherance thereof. That there was no admission involved and no charge calling for an admission, and that there was a denial by Mr. Pearce of any connection with the things of which Harris said he knew. That it amounts to merely bringing in damaging hearsay statements of the City Attorney.

A separate motion was made as to the other item of testimony wherein Mr. Pearce was mentioned as stated by Holt, that Mr. Harmon in January, after the conspiracy is alleged to have ended, stated that Mr. Pearce had been accused by Mr. Harris. It was what Mr. Holt had said that Mr. Harmon had said that Mr. Harris or Mr. Lee had said. (1454)

The court stated he would rule upon all motions including motions to strike and motions to dismiss at one time. These motions were not immediately ruled upon but were afterwards all denied.

## MOTIONS TO DISMISS

“Comes now the defendant, Pearce, the State having introduced all its evidence on its allegation of a conspiracy and agreement to permit certain things as therein designated to operate in Salt Lake City, and moves the court for a dismissal as to him, and an order of discharge,

upon the following grounds and for the following reasons:

This motion is based upon all the grounds stated in the motion to quash, filed here in by this defendant on June 20, 1938, and on September 6, 1938; said motions being incorporated herein, and made a part of this motion.

Upon the ground that there is no prima facie case made out here for the State as against Mr. Pearce.

That there is no evidence here of the conspiracy agreement alleged, no admissible evidence or any evidence sufficient to take this question to the jury, or, separately, to sustain a conviction of this defendant under the charge.

That the evidence offered was inadmissible as proof of the charge here, or at all, and that the evidence or purported evidence, except as it came from Fisher Harris, came from an accomplice, and is uncorroborated. It appears now definitely, and as a matter of law, and is a question for the court, that Holt, the witness from whom this testimony came, was an accomplice; and it also appears that there is no corroboration of his testimony with relation to this defendant.

I would like to have it understood that I incorporated the last grounds of my motion also in my motion to strike the evidence of Golden Holt as to this defendant.

On the further ground that if there is any evidence that tends to prove any conspiracy at all it tends to prove two more separate and distinct conspiracies and not in any way the conspiracy alleged.

As a further ground, that there is no proof of any

overt act as alleged in the indictment, or otherwise, or at all." (1454-1456)

The reference to the grounds of the motion to strike Mr. Holt's testimony raises the question again of the trial of Mr. Pearce upon the same evidence from the same witnesses as in case 10785.

Motion was made by Mr. Musser on the general grounds and on the ground that it did not in any way or fashion connect the defendant Erwin with the conspiracy charged, and moved to strike the testimony of O. B. Record and H. K. Record, Ethel McDonald, Henry V. Gosling, A. H. Ellett, E. A. Hedman, William Scott, David L. Lucy and Gussie Friend; and of Holt, Margaret Newman, Bobbie Carlton, Sadie Alder and Anne Collins, and the grounds were added that each of the last group of witnesses were proved, as a principal to the offense as defined in Section 101-21-39, page 277 of the Laws of Utah, 1935, and each one is an accomplice as defined in 105-32-18, R. S. U., 1933, and that the testimony of neither of these witnesses was corroborated as required by law. (1460)

A separate motion was made to strike the testimony of Ben Hunsaker, Clifford Hunsaker, Fisher Harris, Austin Smith, J. S. Farley, Jacob Weiler and Dar Kempner, on the general grounds and also upon the ground that the testimony was not within the issues of this case; and related to matters not occurring during the pendency of any agreement or conspiracy.

Motion to dismiss by Mr. Musser:

On all the grounds stated in the objection to the in-

troduction of evidence at the beginning of the trial. (1460)

That the indictment is insufficient; that the indictment does not show the nature and cause of the accusation as required by the Constitution or by the Statute, Title 105, R. S. U., 1933.

That the allegations of the indictment are insufficient; that it does not attempt to allege by giving the common law or statutory name or state sufficient facts.

That the indictment alleges more than one offense in that it is alleged that the defendant conspired with other defendants on the 6th day of January, 1938 and also that he conspired with other defendants on divers other days. That if the offense is to conspire as alleged in the said indictment on one day, it was a separate offense to conspire on other days.

That recognizing the indictment did not give the nature and cause of the accusation as required, the Court ordered the State to furnish a Bill of Particulars upon the alleged means employed by the defendants and other particulars. That the State did furnish a Bill of Particulars and the case was tried upon the indictment as supplemented. That the said Bill was not furnished in any sense by the Grand Jury or by anyone in attendance upon the Grand Jury.

That the State never supplied a Bill of Particulars responsive to the request made by defendants or as required by the order of the Court.

That the said Bill of Particulars do not furnish the alleged means employed by the defendants to permit,

allow and assist houses of ill fame, etc., to operate as required by the order of the Court, or at all.

There is no competent or other evidence offered or received in this case sustaining the burden of proof of the State, of the allegations of the indictment herein.

That no conspiracy or agreement or other understanding of the defendant, Erwin, with any other person named as a co-defendant or co-conspirator, or at all, has been proved or shown, the purpose or effect of which was to do the, or any of the things alleged in the indictment, or to commit any offense.

That no conspiracy or agreement is shown to exist:

(a) Between this defendant E. B. Erwin and any other person.

(b) The date of which is at a time between January 5, 1936, and January 1, 1938, as alleged in the indictment, or at any other time; and

(c) Which agreement was entered into at Salt Lake County, as alleged in the indictment; and

(d) To obstruct justice and/or the due administration of the laws of the State of Utah and/or for the perversion of justice; and

(e) To do any of the things alleged in the indictment as supplemented by the bill of particulars by then and there failing and refusing to make arrests, or by failing and refusing to enforce the statutes of the State of Utah and the ordinances of Salt Lake City, as referred to in such bill of particulars or otherwise or at all.

That no connection has been shown between the alleged collection of money by Mr. Stubeck, as testified to by the witness Kempner, and the money alleged to have



been collected by the witness Holt, and/or with the defendant E. B. Erwin.

That if any money was collected by the witness Holt, as testified to by him, or as referred to by the witnesses, Campbell, Newman, Carlton, and Collins, said evidence cannot be used against this defendant, or at all, because and for the reason that each of said persons is a principal, and each of said persons is an accomplice, and neither of them was or is corroborated as required by law.

There was added the ground that there was no proof of any overt act as alleged in the indictment or otherwise, or at all.

Under the understanding each had the benefit of any motion or objection by any other defendant. The ground was stated that there was no evidence supporting any agreement to "*committ an act*" as required by the statute, and separately no agreement shown to permit lotteries or prostitution or other things to operate as was shown or any agreement to allow or assist and enable things to operate, or that defendants, through any conspiracy or agreement, enabled or allowed or assisted such things to operate; or separately that there was sufficient evidence of any agreement between defendants to collect money each month from the houses of prostitution or to collect money from other forms of vice at all, or that the defendants now being tried did collect money.

As a separate ground for dismissal, also that a good deal of evidence was received as to conversations and statements made in the presence of one and in the absence of other defendants, and a good deal after the said conspiracy is said to have been concluded, and that such

statements and conversations at different times and places of what different people claimed to know, etc., were not properly admitted and were so prejudicial that a dismissal was required.

The court's attention was then called to the fact that in making motions to strike, attorney for Mr. Pearce had overlooked the alleged conversation between H. K. Record and Mr. Pearce in March, 1937, at which Mr. Harmon was present and in which some suggestion was made that Record collect money. Motion was made upon all the general grounds and of Mr. Pearce's previous motion, and particularly that in no way was it in furtherance of the conspiracy alleged or having any tendency to prove any such conspiracy. (1473.)

Parties agreed to waive any objection as to ruling on any of the motions outside of the presence of the jury. (1475)

The State in connection with the offer of documents in No. 10785 proposed the offer of the instructions in that case also. (1476) It then reversed the offer and withdrew it. (1477) The State asked time to consider and it was stipulated that no objection would be made to offer later on the ground that the offer was not timely. (1477)

Ordered by the Court that Mr. Musser, attorney for Mr. Erwin, may have the same record as to the benefit of Mr. Erwin as was made to Mr. Pearce. (1478)

"THE COURT: Is there any objection to reserving the part of the ruling as to whether or not the exhibits will be read to the jury?

MR. MULLINER: The exhibits are now admitted, as the record stands. Now, if the question becomes one

for the Court—I may urge myself that it is—then I would not contend that the exhibits should be considered by the jury. If it appears that the court thinks it is not a question for the court, but a question for the jury, then I would of course expect that they would be considered by the jury.

THE COURT: I would expect it to be so. (1478)

MR. ROBERTS: I fully concur in that.

THE COURT: Then, with that understanding, we will proceed.

MR. MULLINER: In view of the fact they were offered before, I suppose the Court considered them, in making the ruling on the motions, denying the motions to dismiss.

THE COURT: Yes, yes.”

MR. MULLINER: May the record show now, Your Honor, that the files in Case 10785, which were admitted, are now marked as follows, in the following order:

The indictment, “Exhibit 26-A”, the bill of particulars, “Exhibit 26-B”, the supplemental bill of particulars, “Exhibit 26-C”, and the verdict, “Exhibit 26-D”.

THE COURT: Yes. Do you desire to make a statement to the jury?” (1479)

#### DEFENDANTS' CASE:

Opening statements were made by Mr. Loofbourow, Mr. Hanson and Mr. Mulliner. Statement of Mr. Musser was reserved.

The following witnesses were sworn as character

witnesses on behalf of Mr. Finch and testified generally that his reputation for being honest and law-abiding was good:

C. Clarence Neslen (1482)	W. A. Folland (1485)
A. Blair Richardson (1489)	W. G. Williams (1494)
E. A. Hedman (1496)	

O. B. RECORD sworn for defendants: (1499)

(By Mr. Loofbourow)

On or about January 20, 1938, at the police station I heard a conversation between Mr. Finch and Golden Holt. Mr. Bauer was also there. Mr. Finch stated to Mr. Holt in substance, "Something that you men have done may cost me my job. They say there has been a pay-off in the city and I want you to tell me if I ever asked you to favor any of the games, bookies, prostitutes, or anyone else?" and Mr. Holt said "No".

Mr. Finch said, "Have I ever asked you to coerce or intimidate any of these people?" and Mr. Holt said "No". Mr. Finch said, "Have any of these people ever paid you any money?" and Mr. Holt said, "No". Mr. Finch said in substance, "Have I ever asked you to do anything other than enforce the ordinances and the laws" and Mr. Holt answered "No".

### CROSS EXAMINATION (1501)

I am not sure whether Mr. Hedman was present with Holt or not. I believe he was. Mr. Thacker was also there.

I haven't talked with Mr. Loofbourow about it since—I talked to Chief Finch. (1502)

Mr. Loofbourow called and told me that he would

want me down here. He never presented any typewritten sheet to me. He had some papers but he didn't present them to me. He asked me if I recalled these questions being asked in this conversation. I don't pretend to know everything that was said there at this time nor the questions exactly.

Questions were asked Mr. Thacker, H. K. Record and Mr. Holt.

(By Mr. Hanson)

Mr. Beckstead was there on one occasion. I think that was when Mr. Thacker was in there. The questions were substantially the same to each one of them and they each answered "No" to each one.

(By Mr. Rawlings)

I think the conversation was the day before the Chief left. I talked with Mr. Finch about it only once.

I believe this conversation was in the afternoon. Nothing was said about the Alta Club. I am not sure whether it was after 2:00 or not.

HARRY L. FINCH sworn as a witness. (1507)

I am 65 years old, have lived in Salt Lake about 45 years. I came here when I was 19. I went in business at 20 East 2nd South about 1902 or '03. I was in business before that over on Main street running a restaurant, my own.

My brother was with me originally. He went to Klondike in '97. Mr. R. E. Rogers afterwards came in with me.

Mr. Mulvay was in charge of the beer room on Second South in connection with our business; when the town went dry we bought him out. We went out of

business on Second South in '32 or '33. I was in the City Commission at that time.

I first became a City Commissioner in '25, (1509) and continued until 1934. (1510). I was first appointed by the Commission and was re-elected twice for 4 years each time. I had charge of Parks and Public Property for about 9 years while I was on the Commission.

I was appointed Chief of Police in February, 1936, effective March 16, 1936. (1511)

The first time I met Mr. Erwin was in Mr. Brown's office after the primaries in 1935. I have since learned that he occupied an apartment in the Ivanhoe Apartments in which I was interested, but I did not know him at that time.

I did not support him in the elections. I supported his opponent. (1512)

Between February 15 and March 15 I was looking after my own business but I went around the police station sometimes familiarizing myself with it.

I saw Mr. Payne there a few times. (1513)

When I became Police Chief I had never had any experience at police work and had held no public position except as stated. Since I came in as Chief I have found out the method of controlling prostitution that was in vogue. The prostitutes were brought in once a month and booked. My information was that they were turned over to the Board of Health. I didn't actually do any of it myself. They were turned over for examination for venereal diseases. (1515)

When I became Chief I had no acquaintance with Mr. Thacker. He was a Sargent at that time.



I had no personal acquaintance with Mr. Pearce. I knew him when he went to school by way of his just dropping in to eat, and when I was in charge of the Parks, Mr. Pearce had an accident at Nibley Park and at that time we had some conversations. Other than that I had had no acquaintance or association or dealings with him. After I became Chief of Police I had only one conversation with him. Mr. Pearce was acting as attorney for an applicant for a license of a phrenologist. There was no conversation on any other subject. (1517)

I knew Ben Harmon before I became Chief. He was next door neighbor to us on Second South for quite a long time; maybe 10 years. He ran a soft-drink parlor, a card room, cigars, tobaccos, etc. I never had a single business transaction with him. It was just an acquaintance. I never had any social association with him. He was still in business on Second South when we discontinued our business there. I was never in his card room. I went into his place of business a few times for change or something of that kind. I was never in his place at any other time. 1519)

It was about the middle of January when I first learned that my name had been suggested as Chief of Police. I was east and it was after I came home in January.

I had a conversation with Mr. Erwin some time later. My name was recommended by him for Chief of Police.

I did not know John S. Earley at all when I became

Chief. I didn't know him by sight. I had nothing to do with his appointment.

A good many years ago Abe Rosenblum used to eat with me a little. Then he opened a business of his own and I did not see him for a good many years. I had no association or connection with him at all except as an occasional customer as stated. I never had a single transaction or dealing with him. (1510)

When I went in as Chief the law allowed us 150 men. We were never full and we dropped down to 11 short. I had nothing at all to do with the selection of the men who were there. (1521) The men were all under civil service. The department was organized, I took it as it was set up with the officers. From time to time men dropped out and their positions were filled. I advanced Hedman and I advanced Record from Captain to Inspector. Those appointments all had to be made through the civil service. You asked the civil service for a man for inspector or captain or private or anything else and they cite you three men and from that you select one. That is the method. (1522)

During the time I was Chief the Mayor consulted me about other matters in the city government.

“Q. Of what nature, what sort of matters?”

(Objection was made. Objection sustained. (1523)

Cliff Jennings and Bill Browning and a Chinaman named Wong never, to my knowledge, came into my office. I never had any conversation with them at all. (1523)

I saw Bill Cayias a number of times. He was a bondsman. I saw him maybe half dozen times while I

was up there. I think he was once or twice in my office. I never talked with him about any subject relating to graft or collections.

As to Ben Harmon, the first 30 days I was up there he was up to see me about three times.

“Q. What about, what was the conversation about?

A. The first two times there was practically no conversation, excepting just in general. I got the impression—

MR. RAWLINGS: Just a minute.

Q. Can you tell us what the conversations were about?”

(The answer was stricken on motion of State.)

There was nothing in any of these conversations said about graft or pay-off or anything in connection with collections from any of the underworld.

In the third conversation he wanted to know if he could not run after midnight, keep the card room open. I told him no, that we couldn't grant him any privileges at all. That is all that was said. I think I did say that if he closed at midnight and got out in 15 or 20 minutes we wouldn't quibble about that, but that he had to close at midnight. That was the ordinance. That was the only conversation I had with him about that. (1526)

Application for card licenses were made at the city license department at the office of the county treasurer.

A good many of them were referred to the Public Safety Department. They were then turned over to various men for report.

The rooming houses, hotels, card rooms and beer

licenses, everything of that character, was turned over to the Vice squad for report.

There were other licenses such as cigars, cigarettes, tobacco, soft drinks, dozens of them. (1527)

I think the vice squad reported on card room licenses that were sent up.

I don't know what was done prior, but I suppose that was the routine.

They just left a report as to whether it was O. K. or something like that. Then I signed them and they went back to the license department.

I acted on the information of my men. I made no personal investigation. I think I went with the Inspector and Captain Thacker once to the Ace Billiards. I think that was the only personal investigation, except that we took the afternoon off and visited several beer halls. I didn't visit the places at which card licenses were applied for. (1528)

H. K. Record was Chief of the Anti-Vice squad when I became Chief. I think he stayed until May. (1936) I made the change from Record to Mr. Holt because my idea was that I didn't want anybody on that squad very long. Record had been there for some time. Holt had been on the squad previously for a number of years. I let him organize it. I don't remember who went on the squad. I know Bert Coleman was one. Holt was in charge then until after the first of the year '37.

I had a conversation with Holt about Abe Rosenblum's place over the Bailey Feed Store, probably half dozen conversations over a period of weeks, maybe months. The first was about July or August of 1936.

I never in any of these conversations told Holt, in substance or effect, that he should go to Abe Rosenblum and take or deliver instructions from him. I never made any statement like that. I had a number of conversations about Abe Rosenblum's place commencing about July, 1936, and extending over 1936. This was at the time that Abe Rosenblum's card room over the Bailey Feed Store was closed.

(Mr. Loofbourow offered to prove what the conversations were with relation to closing this place and objection was made and sustained. (1533)

I told Mr. Holt that I had information that gambling was being carried on at Rosenblum's place and asked him to check up on it closely. Within a short time I had another conversation on the same subject. (1535) I told him that my information still indicated that unlawful activities were being carried on at Rosenblum's place and I wanted him to pay close enough attention to it and if necessary visit it often enough or keep a man there to see that unlawful acts were not carried on. It with within a week or ten days after that that the place was closed.

Afterwards, within a week or two or a month or something like that, another fellow procured a license for that place. That license continued for a month or two. Then the place was closed again. (1537)

My information is that it closed for good. I think it is still closed.

When I became Chief the card licenses for 1936 had already been issued. They were issued during the first 2 or 3 months and are good for a year. (1539)

When it came to the licenses for 1937 we had some trouble with card clubs and I told Mr. Holt to tell these people that we had had more or less complaints and arrests. He suggested that I call them in. There were 10 or 15 of them there; so far as I know all of them. I told them that we had had more or less complaints and I wanted it definitely understood that when we okehed these licenses that they would run their places according to law; that was the understanding when they left. (1541)

Mr. Holt was there at that time. That was before any licenses had issued for 1937. After that they were investigated rather closely and we recommended some 10 or 15 licenses.

In the spring of 1937 I took Mr. Holt off and put in Mr. Record as head of the Anti-vice squad. There was a good deal of complaints, the newspapers were riding us over the women's clubs. I thought it advisable to make a change. I had no conversation with Holt other than to tell him that I was going to make a change. Record continued about two months.

I began to have reports from various sources. Mr. Earley informed me that Mr. Record and another officer were interested in a crap game on 4th South. The mayor's secretary made the same report to me. One member of the Anti-vice squad gave a similar report, Mr. Hoagland. He said that Record had told him and his partner to leave this place alone, that he would look after it. Shortly after he told them to go over and check it and at the time they checked it was empty. Mr. Hoagland said you could see where the table



stood and the cigarette burns around. The table was dismantled and in the basement. I had a report also from a friend of mine.

I removed Mr. Record for the reasons above stated. Thacker was then appointed.

I talked the change over with Inspector Record and he agreed. I recommended Thacker. I thought he was a good man.

The instructions I gave him was to the effect that we wanted the places run just as closely as they could regulate them, and no infractions of the law that they could help.

The women would be let alone as they were being brought in twice a month.

Thacker continued until January of 1938. He was then removed and Falkenrath put in. (1548)

I can't tell you just how the work of the vice squad was divided under Holt. I didn't know just how Mr. Record's crew was divided. Mr. Thacker was given six men with himself. One of them devoted his time to checking licenses of marble machines; two of them were checking women, Holt and Boyd; Thacker, Crowther and Beckstead attended to all other conditions, licenses and everything that was going on.

I don't know exactly how many marble machine licenses there were,—six or seven hundred. Rooming house licenses, hotel licenses and other licenses required by the ordinances are referred to the Public Safety Department by the License Department. Beer licenses started in May, 1937, May 15, if I remember right. The men had to visit each one of these places

and inspect and make a report on three hundred places. We had a questionnaire to be filled out on these places. I was primarily interested in the financial backing, the ownership, the money invested and things of that kind in a beer hall. There were two sets of papers filled out. There were 300 or 375 applicants for beer licenses altogether. The vice squad made these investigations. Aside from our questionnaire there was the questionnaire prepared by the City Attorney. (1555)

I heard about the arrest Mr. O. B. Record made at Browning's place through Mr. Thacker. He said these arrests had been made in his department and he thought they ought to talk to him or something to that effect. It aroused a little bit of jealousy. (1556)

I had a conversation with Mr. Record and Mr. Thacker was present. I haven't any definite remembrance of the actual conversation. The substance was that Mr. Thacker stated that he thought he ought to be notified and he would be glad to do anything he could. He had no objection to the arrest except that he should be kept posted. I was getting them together to straighten out a petty squabble in the department. (1558)

The practice in the department particularly the detective department, is that all information is supposed to be coordinated through the men who have that work in hand. It all should be brought to a single point. This does not apply so much in the traffic department. (1559)

Mr. H. K. Record never mentioned to me any conversation as related by him in evidence here, with Mr.

Pearce. I never heard of any such conversation until after I was removed as Chief of Police.

I think I heard a rumor of it before the other trial in the Erwin-Pearce case. (1561)

I had a conversation with Fisher Harris in the Felt Building. I called up to get an interview after he had talked with Mr. Thacker.

I said to Mr. Harris, "We are both employees of Salt Lake City and if there is anything wrong in the department I will do my best to straighten it out." I asked him to give me the information about the matter so if there was anything wrong in the police department I could straighten it out. He declined to give me the information and said he must first present whatever information he had to the Mayor. I told him I had no knowledge of any pay-off and I certainly had not been any party to any pay-off. (1562) He did not give me any statement of places, or amounts they were paying off. He told me that his report was to be made to the mayor and he did not feel at liberty to make a report to me. I knew nothing about what he had in the report until it was published in the newspapers. (1563)

O. B. Record was made inspector of police during the summer or fall of 1936. Mr. Thacker was put on the squad in 1937 and he could select his own men as near as could be. We went over Mr. Record's list. Some of the men he wanted we couldn't release at that time. Mr. Record, Captain Thacker and I went over the list. This was on the Inspector's table. The Inspector has the assignment of the various shifts. I never knew exactly how he placed the men. I did not pay any

great attention to it. Mr. Record had to do with the personnel and assignments of men. He kept a record of credits and debits for each man, the idea being that if possible, they should be promoted on the record. He had all of them in charge. The Inspector was very definitely in charge of the men, so that each individual man stood on his record. (1567)

After I removed Mr. Holt the woman's organization, which had been taking quite an active part in vice conditions, came to me and they wanted to know why I had removed him. They felt that he was doing a good job. They had never made complaints, or words to that effect, and felt I had made a mistake in taking him off the vice squad. They influenced me when I came to put him back on the squad under Thacker. (1568)

I had a conversation with Holt early in 1937, before I removed him. At that time I said to him in substance, "I have heard rumors that you have been operating, or accepting money from various people", and he said, "I have never taken a dollar from anybody. I can go right out and arrest anyone. No one has any strings on me." (1568)

I heard Judge Ellett testify and after hearing it I recall the conversation with him. I met him in the hall and we went into my room. My officers had been telling me—

(Objection)

The conversation was about fines being levied against gamblers and the extent of them, and the question had been raised by the Judge, not in my presence, that they should be prosecuted on a felony charge, or

something that way. I told him that as I understood the ordinance, he had the power to fine to the extent of \$299.00 and six months in jail, and that if we brought these fellows in about twice a year that probably would answer every purpose. Meantime we could get the fines in the City Treasury. At the same time I told him that he had the final disposition in the matter, that we would just as soon furnish our evidence one place as another and if he and the City Attorney felt so disposed, it was immaterial to us where these cases were tried. Then he brought up the rumors of graft. I told him that I had been on the street down here for 35 years and that I had heard these rumors all my life. I have used some time and effort to run them down and all of my stories were "somebody told me so". I never could get to the bottom of them that I have heard in years.

It was not expressed in that conversation that I had my hand behind my back "Not in that way at all, no sir."

I had only been there a few days. I did not take it at all that it applied to me.

I would not say for sure, but I don't recall that any amount was mentioned. (1572)

I heard the testimony of Hays about the conversation he said he had with me about November, 1937, where gambling was mentioned. I don't remember any such conversation. I would say that that would not have been an answer that I would give him. I never made any such statement, as Mr. Hays testified, to anybody. (1574)

With reference to my office, the other door referred to by Mr. Record opened into another room in which has always been located the National Auto Theft and its secretary, sometimes occupied by other groups,—the Pawn Shop Detail had a desk there. It had a spring lock on my side. It was never used by people to come into my office. I sometimes used it when I wanted to go back to the Detective Department, but nobody ever came in that way. (1574)

There was never a conversation with Austin Smith pertaining to graft money or otherwise at any time. He stated that he met my wife. At that time she was sick in bed. During the first month after I was Chief of Police Mrs. Finch was not up and about the house. She was ill in bed.

I never at any time stated to Austin Smith that there was a pay-off of \$2000.00 a month in Salt Lake City. I never, to Austin Smith or to any one else at any time, ever said in substance that Abe Rosenblum would collect graft in Salt Lake City.

There was a conversation at the police department with Holt when he brought up the question of being over to Taggart's office and talked over certain things and I made the remark, "Why do you want to take our affairs over to the enemy camp?" I explained to them why I felt it was the enemy camp. I told them Mr. Taggart had called me up making an application for a job for some friend. I didn't have anything open and I told him so. He called again about the same matter and I didn't have anything, and he said, "Oh, well, you will not ever do anything for me, anyhow, and I



will remember you when the time comes." Mr. Taggart's daughter was an employe of the department when I went there. (1579) I don't remember Austin Smith being present.

I heard the testimony of Fisher Harris about a conversation at the Alta Club at which he and Mr. Heil, Mr. Bourne and Mr. Fish were present. I had had 3 or 4 conversations with the same group except Mr. Harris at the Alta Club before the one at which he was present.

On this occasion Mr. Harris came in after the dinner was practically concluded. The conversation was between Mr. Fish and Mr. Harris.

The table was about 3x7 or 8 feet. I sat on one side of the table next to Mr. Fish. Mr. Harris did not occupy a place at the table, he sat on the other corner. Mr. Erwin was on the other end. (1587)

Mr. Fish took the rather examining position when Harris came in and told him he thought or understood he had some information applying to the graft situation. Harris said "yes".

Harris had, as I remember it, a yellow sheet in his pocket which he would take out once in a while and refer to. He said he knew there had been a pay-off. He brought up the proposition that the Mayor was getting \$750 a month and I was getting \$500 a month. I said that I had no knowledge of any pay-off and I certainly had not been a party to it.

The conversation developed between Mr. Fish and Mr. Harris. Mr. Fish wanted to see the slip that Mr. Harris had taken out of his pocket. Mr. Harris showed

it to him. Mr. Harris said that certain parties were interested in this matter and he felt sure that the least that would be acceptable to them would be my resignation. I stated that months previously, along in the fall of '36, I had heard rumors, traced to the City and County Building, that I was going to resign, and that I had eventually taken it up with the Mayor, and told him what I had heard, and told him that at any time I stood in his way, politically or socially, or in any manner, I would be glad to resign. That was a couple of months before. I told them that I had tendered verbally my resignation to the mayor months before, and he had denied that the rumor had originated with him. So that that was a closed book, as far as I was concerned. That was about all I participated in.

Mr. Harris and Mr. Fish may have had further conversations but I do not definitely remember.

As we were going out of the Alta Club the conversation turned on my resignation. I said that I had no objection to resigning but that I would not resign under fire.

Mr. Bourne was in the group. He died last week. The mayor was there. I thought Mr. Fish was in the group in which that statement was made but he said he was one of the party that went into the cloak room. (1592)

I never made a statement to Holt about Rosenblum's place, that I had received complaint from Ben Harmon. (1593)

I never received any money from Rosenblum, or from Harmon or from Holt. I never had any conver-

sation with any of them about any pay-off. I never had any knowledge that a pay-off was being conducted. I never had any conversation with Mr. Erwin, Mr. Thacker or Mr. Pearce or Mr. Harmon about collecting money from the underworld, or about a pay-off. I never had any such conversation with anyone else. I never received any money from Mr. Erwin or Mr. Thacker or Mr. Pearce or Mr. Harmon or I never gave them any money. (1593)

The witness then asked if the attorney had mentioned Mr. Erwin, and being told that he had, he said, "During the campaign of '36 Mr. Erwin said he had a certain amount that the Democratic Committee had asked him to raise and I gave him 2% of one month's salary. That was 2% of my own salary." I had nothing to do with anybody else contributing during all the time I was on the police department. I never received any money except from my salary and my investments, and when Mrs. Finch died I got some insurance. That is all that came to me during that time. Oh, possibly, a couple of small loans paid to me, \$100.00 apiece.

The first I knew of any pay-off was my conversation with Fisher Harris. (1595)

(By Mr. Hanson)

When I discussed with Mr. Thacker the appointment of Chief of the Anti-vice squad he said he would rather be left where he was; he was just getting acquainted with the job he was on and would much prefer to be left where he was. Before Mr. Thacker's appointment I discussed the appointment with the Inspector, O. B. Record. (1597)

While Mr. Thacker was on the Anti-vice Squad he complained to me about Mr. Holt. It was June or July of 1937. There was the International Footprinters Convention in town and Mr. Thacker told me they had some nude women dancing at the Brass Rail and that Mr. Holt had furnished the women. He said he heard of it the next day and stopped it. It may have been true that he asked for Mr. Holt's removal. (1598)

I have already testified that Mr. O. B. Record placed the men on shift changes and one thing and another, that way. That was within his work. It was done on his own judgment. He had the power of assigning the men, I don't think I ever interfered with it in any way. (1600) I had no complaints concerning Mr. Thacker or his work in this department.

### CROSS EXAMINATION

(By Mr. Rawlings)

I succeeded Dr. M. R. Stewart on the City Commission. I am acquainted with Charlotte Stewart She acted as Recreational Director while I was in charge of the Parks. She was Ralph Stewart's sister. I never knew Ralph Stewart any more than just to say "Hello." I knew he was Mr. Erwin's campaign director. He never contacted me about the job of Chief. I didn't know that he was chairman of a committee for appointments for Mr. Erwin. I was never familiar with that. (1602)

I never talked with Charlotte about Ralph being the mayor's campaign manager. I suppose possibly I mentioned it.

I never went to see Mr. A. S. Brown during the

period of January, 1936. I don't believe I was ever in his office except when he called me down to introduce me to the mayor. That was after the primary elections and before the finals, in the fall of 1935. He didn't request me to support the mayor. We discussed it. I would not say that it did not come up. I may have said I would give him some help. (1603)

The first one I talked with about my appointment was Austin Smith. I had just one conversation. It was out at Mr. Gardner's house. Mr. Gardner was a friend of mine and he told me that he thought that Mr. Smith and Mr. Pinney wanted to talk with me. Mr. Pinney was a reporter on the Tribune and Mr. Smith was then the mayor's secretary. Mr. Pinney was later the mayor's secretary.

I next talked with the mayor about it, probably the latter part of January or the first of February, 1936.

I owed him an obligation for my appointment and responsibility for the reporting of the affairs of the department to him as I understood it.

I had a number of conversations with him. For the first 6 months the department heads were called in the mayor's office—he had an office in the Public Safety Building at that time. We may have met at Mr. Earley's office once or twice. This is a bare possibility. I don't remember that. I met him in my room or in the hall. During the first 6 months I met him about once a week. (1607)

The first six months these conferences were held in the mayor's office in the City and County Building. He came up to the Public Safety Building from time to



time. This was very seldom,—seldom that he came in to see me. They were having trouble with the Health Department. I heard of him and seen him in the building. He did come into my office occasionally. (1608)

While on the City Commission the license practice existed as now. I had to do with approving licenses then.

During that time there was difficulty with the police department and these were discussed in the Commission. (1609)

I had no knowledge of the direction of the police department. During that time while I was on the Commission we had to do with the appointment of the Chief of Police on the recommendation of the Public Safety Commissioner.

While I was on the Commission we heard something about the underworld conditions,—some of them.

I ran the restaurant on Second South for 35 or 37 years. I didn't meet Abe Rosenblum often as a customer. I met him occasionally. I didn't know he was a gambler, I thought he was a bondsman. He ran a restaurant over the Bailey Seed Store for a good many years. I never associated him with a gambling establishment. I never was sufficiently acquainted with him to know anything about him. (1611)

I knew that Ben Harmon ran a card room.

During my experience with the City Commission I knew that the Commission had had trouble with men in Ben Harmon's place.

During the time I ran the cafe there were card rooms, I think, in the Wilson Hotel. There was a card room above the restaurant. I have no doubt that some



of the men from there ate in our restaurant. Others ate in our restaurant that were connected with card rooms. I knew very few of them but I did know some of them. We ran our restaurant all night. I seldom worked night shift but I suppose it might be true that underworld characters came there in the early morning hours and ate. (1614)

When I went to the Police Department I was not totally oblivious as to the conditions that had existed in Salt Lake relating to the underworld over the period of 35 years. Before I went on the police department I asked some questions about the girls and 2 or 3 months after I went on they were brought in twice a month. I made no investigation before taking on the job. It was just a matter of asking. I found out how the girls were handled previously. I never got a list of them or of the madams who ran the houses.

Daily reports were requested from the Anti-vice squad and every other officer.

I didn't find out anything about who was operating these places, I was interested in the method of handling them. I don't recall asking for a list of the houses. I knew prostitution was against the law. I knew it was my duty to enforce the law. I knew you could not enforce any law against the prostitutes and prostitution. (1619) I knew it had never been done in the history of Salt Lake.

There were arrests made while I was Chief of Police but you didn't stop it. Later on I rode around with the men to see where these places were. There was no

need for me to familiarize myself with the location of card rooms, they were licensed.

I was interested in knowing how many bookies there were and where they were. I did not investigate these myself, I asked the men about them. I may have written down where they were located, I can't tell right now. (1621)

I don't know Bill Browning. I knew he was a bookmaker. I did not know Cliff Jennings, I knew of him by reputation and understood he was a bootlegger. I did not think he was a bootlegger in '36 or '37, that was all out. I didn't know what he was doin in '36 or '37. By reputation I understood he was a bookmaker but I did not know him personally. The reputation came to me by my men. (1622)

I never heard of Lefty Newton until after I was on the police department.

I didn't make any investigation personally about lotteries.

I didn't have any knowledge about the Anti-vice squad that was on when I went up there. I didn't know before that the the Anti-vice squad was the hot spot of the department and the rumors that I had heard for 30 years came as a result of the activities of that squad.

The only added responsibilities to my office that I now recall was that of the beer licensing.

There may have been only three men on the Anti-vice squad when I went up there. I could not tell for sure. (1625) It may be true that the vice squad from May to December, 1936, consisted of Holt, Hoagland and Duncombe.

I knew that I could make assignment of men in the department as I desired. (1626)

I did not fire any one without accumulation of evidence sufficient to present the case before the civil service commission that they would back me up in. I could not fire the men arbitrarily or for lack of judgment or lack of doing something which possibly he could not—well, he could not just prove that he had acted on his best judgment. My understanding is that I could suspend a man and file charges against him, but it was never done except in one or two cases. I could suspend him for a few days, I believe 15 days.

The civil service system has been in effect since around '20.

I never had any experience with it when I was on the City Commission. (1629)

In hiring men I had to apply to the civil service commission. (1630)

I did not fire any men, I suspended two or three. I could promote men on recommendation from the civil service commission. (1621)

It is true, as I stated, that I did not know Mr. Thacker until I went into the department.

Matters of consequence I would discuss with the mayor. I tried to keep as much away from his, probably, as I could. He had troubles of his own. He was mayor and that is the biggest job in the town. I knew, so far as the activity of the Commission is concerned, his assignment was the Commissioner of Public Safety.

I didn't say in July I told Holt to put a man in Abe Rusenblum's place. I said to watch it to see that

law infractions were not being carried on. I didn't know that Abie Rosenblum had the license in his name or not. It was spoken of as Abie's Place. I approved the granting of the license to the fellow who operated it afterwards. My signature is on the document which you showed me that indicates that it was in May that the license was transferred from Abie Rosenblum to G. B. Lamar. I didn't know G. B. Lamar at all. I didn't know that he was a brother-in-law of Rosenblum's.

I never read the ordinance about licenses. I approved thousands of licenses.

The City Commission turned it over to me and my men to investigate. I took the word of the men.

When I sent in my letter I would take the drift of my letter from the men. (1639) I didn't make any personal investigation.

I didn't know anything about any relationship with Rosenblum. My letter with reference to this place and the assignment that you refer to seem to be entirely prior to the trouble. (1640)

I knew from being Commissioner that card room licenses may be revoked by the Board of Commissioners upon notice and hearing, for violation of ordinances or the law. I didn't recommend revocations while I was in there. I knew that gambling had gone on in the card rooms. I knew because we picked them up every once in a while. I don't recall whether 4 men were arrested in 1937 in the Mint or not. I probably saw the arrests on the sheet.

I don't remember that on January 18, men were arrested in the Mint and that men were arrested at the

Bank Smoke Shop, and at Stubeck's and the Wilson Card Room, and the Pastime Club. I have no way of remembering. I had a record in front of me undoubtedly.

Beer licenses started in May, 1937, as I remember. (1645) I was interested in who owned the fixtures in the beer places because I wanted substantial beer places. I thought they would be most responsible to the ordinances and law and it would be easier to enforce the law if they had some real investment. I wanted responsible people running card rooms.

I was just as interested in the card rooms although there were not so many of them. (1648) They were probably easier to check because there were fewer of them. I never thought of it in that manner.

“Q. The ordinance provided that you must think of it, didn't it?

MR.MULLINER: Just a minute.

Q. Let me read it to you again.

MR. LOOFBOUROW: He stated he had not read the ordinance. He said he handled these matters of inspection through his men.

MR. RAWLINGS: Ignorance of the law is no justification.

MR. MULLINER: I object to counsel's statement, and I assign it as prejudicial error. I ask that the jury be instructed to disregard it.

THE COURT: Well, the jury has been instructed to disregard all statements of counsel on these matters.”

The District Attorney then read the same ordinance at length for the second time on the examination and

then asked if that same ordinance was in effect when he was on the Commission. The witness then said: "I am like Mr. Harris, I did not learn all this in 9 years. I had no occasion to read those ordinances unless something was called to my attention. (1650)

I did not investigate the card places personally. I knew that they should not be permitted to operate in violation of law and that they were arrested and fined. (1650)

On February 8 I recommended that a number of card licenses be granted, including the Ace Billiards, Bank Club, Horseshoe Billiards, Pastime Club, Rialto Billiards and the card club in the Mint.

I don't know whether a representative of the Salt Lake Telegram informed me that the Federation of Women's Clubs had stated that there was open gambling in Salt Lake City in these card rooms. I don't know whether I said I will have to look it up:

Pursuing this, the following transpired:

"MR. LOOFBOUROW: Give us the name of the reporter, in order to fix the occasion.

MR. RAWLINGS: We will get it for you. I will give you the dates of the newspapers, so that you can find it yourself. It is on the front page of the Salt Lake Telegram, November 27th, 1936, under the heading of "Dice and Card Games."

MR. MULLINER: This is something some woman said?

MR. RAWLINGS: No. This is what the Telegram published.

MR. MULLINER: Something that some woman said? (1656)



MR. RAWLINGS: Mr. Finch was told that the women had made this charge.

MR. STEWART HANSON: That is what you say.

MR. LOOFBOUROW: Or is that what the newspapers say?

MR. RAWLINGS: Of course, that is rather serious business, Your Honor, for the defendants. If I were representing them I would be a little careful about being so facetious.

MR. LOOFBOUROW: I object to that statement, and I ask Your Honor to instruct the jury again not to pay any attention to these facetious statements.

MR. HANSON: I would like to ask that the District Attorney be instructed not to make them.

THE COURT: I can't admonish the jury every time anything is said. I have given the jury a number of admonitions upon that matter. They have been informed again and again that the statements of counsel on both sides are not evidence. They know that. I am not going to keep telling them over and over again.

MR. MULLINER: Your Honor, may we have stricken the things counsel has been stating with reference to the newspapers, and what somebody has said?

THE COURT: It has never been the practice of this court to strike the statements of counsel from the record. They are not testimony. There is no occasion to strike them. The jury does not take them as testimony. They are observations of counsel. If I struck out all that counsel say in these records, there would not be much left in the transcript. (1657)

MR. MULLINER: May I ask now, Your Honor, in order to make my record, that the jury be instructed to disregard what counsel just said in relation to the newspapers?

MR. RAWLINGS: The record will show that it was in answer to a question by Judge Loofbourow.

MR. LOOFBOUROW: No, there was no question by me at all.

THE COURT: Well, the record shows whatever has taken place."

Witness then said he took the Telegram and usually read it.

The witness was then asked on December 1, 1936, if he had a conversation with a newspaper man in which his attention was called to charges by the women's club.

(Objected; there was no foundation so that the conversation could be identified.)

"THE COURT: I think counsel has stated that he did not have the same. I will permit the question to be answered."

I would not say that it did not occur. I met the newspapermen every day. I wouldn't say whether or not I told the newspapermen, "I have nothing to say. I am doing all I can about gambling." I wouldn't say I did not make that statement. I was trying to do my best to get the vice squad going and doing the best we could to control it. (1660)

I do not believe we revoked any licenses but some of the places were closed by watching them closely.

"Q. Commissioner, didn't you think at that time, and at all times when you were in the Police Depart-

ment, that the best way to prevent gambling in a place was to revoke its license? Don't you think that is the way to stop it?

A. That is the way to stop it, but I don't think—

Q. And on one occasion—

MR. LOOFBOUROW: He was still answering the question, Your Honor, I think he ought to be allowed to answer.

THE COURT: Most of these questions, Judge Loofbourow, could be answered "Yes" or "No", and on nearly every question the witness wants to make a statement. Now, those statements are unnecessary to the answering of the question. \* \* \*

MR. LOOFBOUROW: If Your Honor indicates we are to be shut off on re-direct, by some of these explanations that were cut out, and not permitted to be made, that would not be fair.

THE COURT: I don't mean to indicate you would be shut out, but he has made a lot of explanations that, if objection is made, I will not allow him to make again.

Q. I will ask you to state whether or not, on one occasion—this is on December the 10th, 1936, and referring to findings that were submitted, and which appeared in the newspaper about gambling going on in Salt Lake City—I will ask you to state whether or not you did or did not make this statement December 10th, and I assume it was at the Department, as you say you talked to newspaper (1662) men there every day—

MR. LOOFBOUROW: He has not said he talked

to them there every day. He said he saw them there every day.

Q. Did you make this statement, in substance and effect: "I place no importance whatsoever on these reports"?

MR. LOOFBOUROW: I object to that as incompetent, irrelevant and immaterial. The foundation is not laid for it, the time, or the place, or the person.

MR. MULLINER: May we add it is not cross examination, and it in no way tends to dispute or refute anything the witness testified to on direct examination.

MR. RAWLINGS: Your Honor, I have read the law as to what is required of a Chief of Police, relative to the issuing of a license. I am introducing this evidence to show his knowledge and his discussion relative to these places, prior to the time—

THE COURT: I will permit him to answer the question. Counsel is entitled to have the information he asked for.

MR. RAWLINGS: I gave you the date December 10th, and I stated as near as I can tell it was at the Police Department, and I said it was made to a newspaper man. ,

MR. LOOFBOUROW: To whom?

MR. RAWLINGS: I can't give you the name.

MR. LOOFBOUROW: There are scores of them in Salt Lake City.

MR. RAWLINGS: He can say whether such a statement was made. (1663)

MR. LOOFBOUROW: I object to it. The foundation is not laid.

I will permit him to answer.

A. Will you give me that question again, please?

(Question read)

MR. LOOFBOUROW: It is just an effort to read these newspaper stories into the record, without any possibility of contradicting them in any legal way.

MR. RAWLINGS: He can deny it, Judge, if he did not make the statement.

MR. MULLINER: Whether he dies or admits it does not make any difference.

MR. RAWLINGS: It certainly shows what is in his mind relative to the places that are listed in the bill of particulars, and these places are listed in the bill of particulars, and one of the elements of the charge—

THE COURT: He may answer.

A. I can't remember it." (1664)

I will say that such a conversation did not take place.

I removed Mr. Holt because of criticism. I had confidence in him. There was apparently something wrong and a lot of publicity. The women were complaining and the newspapers were complaining and I thought a new man could clear up the situation. (1665)

Another question was asked as to some statement to the newspapers or to a newspaperman.

(Objection that there was no foundation laid, and that it was not cross examination. Objection overruled.)

I may have said that I was pleased with Holt's work, and that I was sure he would be just as valuable

in the Detective Bureau. I did not meet the women personally. (1668)

When I asked Holt about collecting money there was a rumor that there was collection. Someone had told me of the rumor. I took it myself as being a rumor, no places were mentioned as making any pay-off. (1670)

I removed Record because somebody told me that he was interested in a crap game. They told me that the crap game was on West 4th South. It is possibly 64½ West 4th South. Mr. Earley was the one who told me. (1672) He said he had heard the report. One of the men in the mayor's office told me—Mr. Pinney. He didn't say that he had investigated it. Hoagland told me something concerning that place. Hoagland had worked for me previously for a year. I asked him to go over and check it. When I talked with him he did say that Record finally told him to go over and check it. The only evidence I had of the operation of this crap game was the stories that were told me.

I didn't tell Record my reason for removing him.

I thought he was a pretty good officer. I had very little association with him. (1675)

I talked with O. B. Record about the change but not with H. K. Record. (1677)

The posting of a change was handled by O. B. Record.

Witness was again asked if he made a statement to a newspaper.

(Objection was again made that there was no sufficient foundation. Overruled.)

The witness stated that he didn't recall. (1678)



Mr. O. B. Record never stated to me that his brother, H. K. Record, had been called to the office of Mr. Pearce and that Mr. Pearce asked him to make collections in a pay-off. It was never stated to me either in substance or effect. (1680)

(This question and answer were over objection that such a statement of O. B. Record would be hearsay and that it was not cross examination of this witness. (1679))

The statement that I denied by Mr. Hays was that he had said he came to me and told me that gambling was wide open and wanted to know what I was going to do about it and I advised him that I was not going to do anything.

I may have made the statement to the newspapers that I was doing all I could.

On January 20 I called Mr. Thacker, Mr. Record and Mr. Holt and Mr. Hedman and asked them certain questions. Part of the time Mr. Bauer was there. I was attempting to get these questions before Mr. Bauer and Mr. Hedman. I didn't think about having the statements taken down in shorthand. That was not done. I wanted Mr. Bauer and Mr. Hedman there as witnesses. (1683) My remembrance was that it was in the morning. It may have been after the luncheon at the Alta Club but my remembrance was that it was in the morning.

I don't remember asking Mr. Thacker about testifying to the facts there stated by these men. There was some discussion and he said if I get in trouble I will expect you to do as much for me. After that discussion and after Mr. Thacker had stated that I never asked

him to do certain things in violation of the law, I removed him as head of the Anti-vice squad after a discussion with Mr. Earley. That was on account of the trouble that had arisen. I believed that he was a good officer. (1687)

I may have said that it was the policy to change the anti-vice squad every few months. (1687) That was my intention.

When I said we don't tell the newspapers the truth I meant we didn't tell them all the truth, we were not always quoted properly and I told them as little as possible.

What I told them at the Alta Club was the truth. (1689)

I stated I hadn't seen a copy of the Harris letter (Exhibit "R") until it was published in the newspaper. The mayor had talked with me before the Alta Club meeting about the contents of the letter. I am not positive as to this but I believe it is true.

"Q. And he (Erwin) told you that Fisher Harris had said in that letter that he actually knew who collected the tribute?"

(Objection was made to this on all the general grounds; that it was for the purpose of letting something in the record and building up statement by question and exhibit in asking what was said by reading in a part of Exhibit "R" which had been excluded from the jury; without sufficient foundation. That the witness had never denied that he had heard rumors of payoff. Objection overruled.) (1691)

"A. No." (1692)

Q. He told you that Fisher Harris had charged that he knew to whom the pay-off, the tribute, was actually distributed, didn't he?"

MR. MULLINER: I would like the record to show, at this point, that counsel pretends to be reading from a letter that has been stricken from the evidence here. I object to the question as incompetent, irrelevant and immaterial, and pure hearsay, and no sufficient foundation.

"MR. RAWLINGS: I might say that all these questions that I will ask have been asked Fisher Harris, and answered, and that he told the mayor about them.

THE COURT: You may continue your examination. He may answer.' "

The question in substance was repeated.

(Objection again made to the reading from this letter and on all the previous grounds.)

"THE COURT: Tell me this, what was the examination of this witness upon which you are seeking to proceed?"

"MR. RAWLINGS: Your Honor, he stated to his own counsel that he had never heard anything about a pay-off."

The Court asked if that was what he was going into and the Counsel said "Yes" and the court said he might pursue it.

MR. MULLINER: This witness's testimony is that he talked with Fisher Harris before the Alta Club, and talked with him about this pay-off, and went there after Mr. Harris had talked to him. (The Fisher Har-

ris conversation was fixed by him as the 10th of January.)

(Objection was again made to counsel reading from the exhibit and he was asked to give the exhibit number of the letter so that the record would show it. He said the exhibit number is off.)

On answer to this and further similar questions the witness answered that the mayor made no explanation at all. All he said was that he had received the report of Fisher Harris. He made no explanation to me. (1695)

I didn't tell the City Commission that I had refused to resign but I sent word to them.

I consulted with my lawyer after the Alta Club meeting.

I told the mayor and some of the newspapermen at the time of the Alta Club meeting this.

This meeting happened one day and I was discharged the next day. I didn't send my attorney down until the next morning. My attorney did advise that he thought it would look bad for me to resign under fire. (1697)

## RE-DIRECT

I stated I had a conversation with Ralph Stewart about the job of Chief of Police. The conversation was that he asked me who would make a good chief of police. I said, "Why don't you keep the one you got." He said, "We are going to make a change." I said, "Mr. Leichter has spoken to me and Mr. Pritchard." That was all of the conversation.

It was between the election and the 15th of December.

He afterwards spoke to me again a little later over the telephone and I said, "Why don't you appoint Joe Burbidge? I think he is the best Chief of Police the city has ever had. (1699)

Nothing was said in either conversation about me being Chief.

At the weekly conferences of the heads of departments that I mentioned during the first 6 months, Mr. Earley, Dr. Howell, Chief Knight and myself were present. Dr. Howell was the City Physician and in charge of the Board of Health. (1700)

The card room that I was examined about over our restaurant at 202 Second South and to which I referred to as a club, was occupied by the Cooks and Waiters Union. It was a labor union that occupied this place as a club room and paid the rent. (1701)

The thing that I was primarily interested in as Chief of Police was traffic. 30 or 40 people were being killed a year. I was interested in crime, the way of burglaries, house breakings, murders, etc., and very much interested in juvenile crime prevention. I thought with the liquor situation out of the road that the vice problem that was left was somewhat nominal. The above are some of the graver problems that gave me concern.

Exhibit 27 about which he was examined by the District Attorney was offered and admitted in evidence. This exhibit is just lists of licenses that came up from the Treasurer and referred to the Chief of Police, and were investigated by the men, and recommend-

ed back to me. The things investigated were cigar and tobacco licenses, auto tourist camp licenses, cabaret dance licenses, rooming house licenses, soft drink licenses, card club licenses, pawn brokers' licenses and numerous others. In this exhibit there are 80 applications for licenses reported upon at that time. (1703)

I didn't keep track of who paid the rent at the licensed card room at 611½ East 2nd South. I didn't keep track of who paid the rent on any of these places. (1707)

I recall an occurrence when some arrests had been made through Mr. Hedman's department for alleged gambling down near the Rio Grande, or 4th South and 8th West, somewhere in that vicinity. Mr. Thacker spoke to me and said he had a stool pigeon looking after that thing down there for a few days, that it would cost around \$20.00. That this arrest had caused him to lose a chance to make an arrest with sufficient evidence to convict.

He did not blame Mr. Hedman at all. It was an emergency call and he should have answered it. (1709)

(Question as to whether there was a conviction was asked, and objection thereto sustained.) (1710)

Mr. Hanson tendered to prove the absence of a conviction on the arrest made by Mr. Hedman. The District Attorney said: "Just a minute." Mr. Hanson said: "I want to make the offer." The Court said: "The objection, I take it, is to your making a tender in the presence of the jury." Mr. Hanson: "I have a right to make the tender." The court said, "You haven't a right to make a tender in the presence of the jury, if there is objection to it." Mr. Hanson said: "I have, Your Hon-



or.” The court said: “I say you haven’t.” Mr. Hanson: “I will take my exception to the refusal of the court to permit me to introduce evidence and to make my tender.” The court said: “The court will permit you to make a tender, if you want to do it out of the hearing of the jury.” Mr. Hanson said he was satisfied to stand on the tender and offer of proof was made. (1710)

KENDALL VINCENT sworn for defendants. (1712) I am employed at the Mint and was in March, April and May of 1937. I was cashier there. I was there until the 17th of May. There was a cashier that relieved me in taking the cash for the soda. (1713)

I weigh about 186 pounds. The cashier that relieved me was Mr. Ralph Harmon. Nobody else acted as cashier there.

I never saw Abe Stubeck come in and lay down a bunch of bills. I never saw him lay any money down outside of for his meals, maybe. I never took any money from him and put it under the counter.

I have seen Dar Kempner this morning in the hall. His face is familiar but I don’t know him. I don’t remember ever seeing him in the Mint. (1714)

The other person who acted as cashier there is Ralph Harmon. He is about the same age as I am, light complexioned. He weighs about 155. He combs his hair pompadour, back like I do.

The man who has succeeded me as cashier after May 17, was Fred Rose. He is about 5.7 and weights about 150, and is dark complexioned.

## CROSS EXAMINATION

I was in there between 2 and 4 from January to May 17, unless there was an emergency.

“Q. In March, April and May of 1937, you had the license at The Mint, didn't you? At the Mint card room.”

(It was objected to as improper cross examination and on the general grounds. Objection overruled.) (1716)

“A. Yes, it was.”

(Further questions as to whether he was running it were objected to on the same grounds and objection overruled.) (1717)

I know Thacker. I can't say that I have seen him in The Mint on many occasions and talked to him in there several times. I have seen him there several times.

“Q. How many employees did Ben Harmon have? Downstairs in the Cafe.

A. About 14.” They did not have access to the cash register.

We had two cash registers down stairs.

I was a salesman at the bar and also handled the cigar stand, also took money from those purchasing meals.

Ben Harmon had access to the cash register.

There was no relief cashier in March, April and May except Ralph Harmon. (1719)

Ben Harmon did not operate the card room. Bailey operated it. (1721)

## RE-DIRECT

We took all the cash receipts and put them in the safe each night, and each morning I would take them out and make up the change. Nobody else had charge of the safe and the money that was in it. I had full charge of that while I was there. I checked in every morning and night. There were others who had the combination of the safe but I had full responsibility for the money. The bookkeeper, Ben Harmon and Ralph Harmon had the combination.

## RE-CROSS EXAMINATION (1722)

The two cash registers were located one at the bar and one at the cigar counter. There were no drawers underneath them. There is a drawer under the bar where we cash payroll checks.

The following were sworn as character witness for Mr. Thacker and testified generally that his reputation for being law abiding and honest was good.

Eugene M. Cannon (1723)                      Frank Howard (1831)  
U. L. Thorpe (1725)

The witness Thorpe also testified that he worked on the police department at the same time with Mr. Thacker, and while Mr. Thacker was head of the Anti-Vice Squad the witness was on the night shift and Thacker had instructed them if they saw anything out of the ordinary or where the law was being violated in beer parlors and such places that they were to report it. That they did make some reports and Mr. Thacker and the other officers with him immediately went and raided the places and took care of the condition. (1728)

L. C. CROWTHER sworn as a witness for Mr. Thacker (1732)

I have served in practically every branch of the service. I served on the Anti-vice squad when Hedman was at the head of it, and also under Captain Smith. I went on the squad again under Captain Thacker in May, 1937. In November, 1937, I was promoted to a Sargent and am such at present. The members of the Anti-vice squad were Duncan, Boyd, Beckstead, Christensen and Holt and myself. We were usually assigned in pairs. That is for the officers' protection. (1736)

The Anti-vice squad is the most undesirable part of the police work.

The witness testified as to the assignments under Mr. Thacker which does not seem to be very material, and to the large amount of work involved in the investigation of applicants for beer licenses, and as to the questionnaires required, (1740) and as to the different classes of beer licenses, (1742) also to their work in preventing prostitutes from being in these places, (1742) and after May, 1937, he spent practically all of his time on the beer licenses and Captain Thacker and Mr. Beckstead were with him every day. That their shifts required 8 hours and they never worked less than 8 hours. (1747)

I became acquainted with the card rooms on the Anti-vice squad under Captain Smith and under Mr. Hedman. We had the job of trying to keep minors out of these card rooms, they were not allowed.

We were required to keep intoxicated persons, or lewd persons out of these licensed places. We were re-

quired to go in from time to time to take care of this.  
(1750)

Most of these licensed card rooms were operating before Mr. Thacker went in. They were there when I was on the Anti-vice squad under the previous heads.  
(1752)

I was in the lotteries under Mr. Thacker 4 or 5 times attempting to get evidence. (1754)

All of the localities where card licenses were granted were patrolled by patrolmen.

I was not told by Mr. Thacker or anyone else not to make an arrest when a violation had been committed. Whenever I saw a violation, or considered that I could make a case, I would make an arrest. (1757)

During the time I was on the squad the lotteries moved from the places where they were supposed to be conducted. They used to shift around from one building to another down there. One time they moved clear away from Second South. (1761)

We would have some complaints on the card rooms. Whenever this happened we tried to get the person making the complaint to sign a complaint against the establishment or place of business. We could not get them to do this. We visited these places as often as we could, which was not very often as our other duties called us sometimes clear out of the business district. When we were in these places and saw gambling we made arrests. We never hesitated. If they were simply playing cards and we saw no gambling we could not make an arrest. They had licenses to play cards. (1766)

There were 2 or 3 places where horse race betting

was supposed to be made. Lists of the races were published in the daily papers. These fellows got telephone information also from the tracks.

They carried this information around on the streets.

While I was with Mr. Thacker we were in these places, where these bets were supposed to be made, 4 or 5 times. We tried to get hold of what we call a Master sheet. It is the sheet that gives the odds paid on the horses. We tried to find anyone placing a bet or receiving a card for a bet. We visited all of these places. They were closed up off and on. We could close them by visiting and staying there until their crowd ran out so that there would be no one to bet. We never in any of these places saw anything we considered a violation of the law without making an arrest. (1772)

I have known Ben Harmon ever since I was a small boy. He ran the Mint on Second South and then on the corner of Regent Street and Second South. I ate in his place many times. I was in there with Captain Thacker quite a few times. I never heard Harmon make any request of Thacker or ask that anything be done in regard to his duties. He never gave him any money. Or asked for any favor of any kind.

All the time that I was on the squad with Mr. Thacker no one ever gave me any money to violate the law and I never saw anyone give or offer to give Captain Thacker any.

Mr. Thacker never asked me to favor anyone so far as law enforcement is concerned.



We had nothing to do with the women, that was left entirely to Holt. (1775)

Mr. Thacker did not want to keep Mr. Holt. He wanted him off the squad. Witness related the Brass Rail incident. Mr. Thacker said he didn't think Holt was on the job.

We gave as much time as we could to the card rooms and lotteries and bookmakers and all these things. (1778)

### CROSS EXAMINATION (1779)

The majority of the beer licenses were in the vicinity of the business district. I couldn't say that as many as 50% were. (1786) When we spent most of our time on beer licenses it was true that Mr. Thacker was the boss and he said that we would have to do it.

I was with Mr. Thacker most of the time. (1788)

"Q. Do you mean to tell me if you had gone to either or any of these men who were operating these card rooms, where there was gambling, and say to them: 'If you don't cut this gambling out, we are going to revoke your license', do you mean to say that would not have stopped it?"

(Objected to as calling for the witness' conclusion; that there is no duty upon the witness to say to these people they had to do something. Objection overruled.)

"A. I don't believe you could stop them, no." (1792)

If you revoked their license you could probably stop that person in that place but there would be another license or another place. (1793)

Two of the places that I have mentioned did move and one of them went out of business.

I don't recall making any arrests in these matters when Mr. Thacker was not with me. (1797)

I do not know how Chinese Lotteries are operated. I never found anyone who could tell me just how these things were marked. (1801)

I don't recall Pratt Kesler, Assistant City Attorney, ever having told me, or told Mr. Thacker in my presence, that in case of gambling games it was not necessary to see any money pass from one to the other, that all we needed to do was seize the paraphernalia.

(This question was answered over objection that it was irrelevant, immaterial and incompetent, and if such an opinion was expressed it was not the law.)

I am positive that no such statement was made in my hearing. (1802)

I knew that Bill Browning had been making books for some time. I imagine that a master line ran into his place.

Ben Harmon was not related to me. He was related to my grandmother on my mother's side. I never visited his home or anything like that. (1809)

I "held sack" at Bill Browning's place. I don't know whether it was election time or not. Captain Thacker told me to. That means we stay in a place and see that it doesn't open up.

### RE-DIRECT (1812)

I have stayed in other places to see that no law violation took place.

So far I I know we never had any control of the phone company in the matter of installing telephone wires for bookmakers or the newspapers in the matter of publishing race information.

Card rooms are open now. (1815)

S. D. BECKSTEAD sworn as a witness for Mr. Thacker. (1819)

This testimony assisted in disproving the intimation that Mr. Thacker or Beckstead or Crowther tipped off a proposed raid on the lotteries. (1823) It covers pretty much the same ground as the Crowther testimony.

It then relates to Mr. Thacker wanting Mr. Holt off his squad and of his attempt to get him off after the nude women were taken by Holt to entertain the Footprinters at the Brass Rail, and other reasons for his not wanting Holt on the squad. (1827)

I have known Ben Harmon since I have been on the Police Department. At this time the cafe part of the Mint restaurant belonged to "Blackie" Wells. He was a chef. He used to be with Ray and Harvey. They sold beer there. I ate there on occasions. (1829)

I never at any time, while I was on the squad, ever receive any money from anybody for the purpose of permitting a violation of the law and I never saw Mr. Thacker receive money. I didn't know that Holt was collecting from the prostitutes. I never heard of it while I was on the squad. (1830)

## CROSS EXAMINATION

Blackie Wells was managing the cafe at the Mint in 1937. I don't know in whose name the license was.

I don't know whether Harmon had anything to do with the management of it or not. The man who ran the card room upstairs was named Bailey. I was in the card room at different times. I saw Ben Harmon up there once. I saw him down in the restaurant on other occasions. (1835)

Blackie Wells spent most of his time back in the kitchen and Mr. Harmon seemed to be looking after the restaurant part. (1836)

"Q. Did you make any arrests in any of these card clubs while you were working with Mr. Thacker?"

(Objection was made that it was irrelevant and immaterial and not cross examination; that the matter of card clubs had been gone into with Mr. Crowther but not with this witness. Overruled.)

"A. Yes.

Q. And you arrested them without any evidence, in some cases, didn't you?"

(Same objection including the ground that it was not cross examination. Objection overruled.)

I would not say that the arrest was made without any evidence, no. It wasn't our practice to go into these places and take them without evidence.

Witness was then asked if he hadn't testified before the civil service commission, and the purported testimony was read to him in substance. You said you made arrests, not in this particular place, but speaking about places in general, and you said you arrested them without having secured evidence against them. He was asked if he did not answer "Yes".

(Objection was made on all the general grounds

and that it was not cross examination; an attempt to build up a strawman to knock it down. Objection overruled.) (1838)

(The question was read, and the testimony read, and it was objected to again on the same grounds.)

Witness answered that he did so testify. I probably did make an arrest on somebody else's evidence which would not be in my presence.

Then other testimony, before the Commission, about the Mint having two entrances, one on Regent street, and whether the Mint was referred to as Harmon's place, was read.

(Objection was again made on all the general grounds and that it was not cross examination. Objection was further made that they couldn't read from a transcript witness's testimony when he had given no contrary testimony in this case.) Objection overruled. (1841)

He said he couldn't remember what was read and it was all read over again and the same objections made and the same ruling. (1842)

Several questions and answers were then read from the witness's purported previous testimony. The witness said that he testified as was read to him.

That they had made the Mint a time or two trying to make arrests and someone asked them if they wanted an arrest there and he told them "Yes" and there was an arrest made.

"Q. Who was it that came to you up in the Mint and asked to be arrested?

(Objected to on the general grounds and improper cross examination. Overruled.)

“Q. Who was it?

A. I don't recall who passed that remark, but the remark was passed.”

I don't know whether the party who passed the remark was arrested or not.

Now, I can explain what was meant by that testimony by an arrest that I made night before last. (1843)

The district attorney said “No”, and the explanation was not given.

The arrest at the Mint was on Captain Thacker's evidence. I did not say there was no evidence, I said I did not have any evidence. If I said that I arrested them without any evidence I meant my evidence. I don't know whether I said any evidence or not in the Commission hearing. I don't say that I did mention Captain Thacker's evidence before the civil service commission. (1844) I did testify that they plead guilty without any evidence.

When I was first on the Anti-vice squad I was a detective. I have been reduced in rank to a patrolman. It is a demotion. Not a demotion in civil service but a reduction in salary. (1846)

## RE-DIRECT EXAMINATION

Inspector O. B. Record recommended my reduction, and said that Fisher Harris had requested it and forced him to do it. I had an interview with Fisher Harris and it was before that that my rank was changed. (1848)



## RE-CROSS

I hadn't talked to Fisher Harris before my reduction. That was what I talked to him about. (1848) I couldn't appeal this reduction to the civil service commission. There is no appeal.

“Q. And you can't be fired, I understand, without having an opportunity to appeal under the Civil Service?”

(It was objected to as irrelevant and immaterial and improper in form as to the attorney's understanding. Objection overruled.)

“A. No.”

FRANK A. THACKER sworn as a witness on his own behalf. (1856)

Mr. Thacker testified as to the duties of himself and Mr. Crowther and Beckstead, and other members of the squad. This has been covered by other witnesses and without dispute.

Since he was acquitted, matters relating purely to him personally and not involving any of the other defendants or any matters of information which they might have had is not abstracted.

The matter of the time of appointment, etc., to this squad under Mr. Thacker, has also been covered by other witnesses and is not in dispute.

I first came on the police force in '25. (1856) I objected to becoming head of the vice squad and tried to avoid it. I never had been in this line of work before.

I picked officers Beckstead and Crowther for two men. I talked with the Chief and Inspector Record re-

commended Duncombe to handle the marble machines as he had been doing that, and the inspector said he would give me a man to go with him. I wanted Clyde Smith and he said I couldn't have him, he couldn't spare him. He said he would give me Officer Rogers, and he went to work with Duncombe.

About the women. I talked with the Inspector and the Chief and the Chief suggested Holt. The Inspector said that Holt had had previous experience with the women and would know what to do with them.

He told me that I could have Al Boyd to go with Holt. That made up the entire squad. (1863)

He also testified that they had nothing to do with tipping off a raid on the Chinese Lotteries. That they knew nothing about the other officers going down there and just happened to drive by a little later, having been in other parts of the city. (1867) None of us three could have tipped off anyone about these officers going down because we were all together and we were not around the station anywhere near the time that they left. We didn't know anything about them going down. (1869)

I knew Ben Harmon for a few years and I ate occasionally in his place. We checked up on it as we did other beer joints, or where there were card games or marble machines. We checked to see that minors were not playing the marble machines or whether other people not allowed were in these places.

Ben Harmon never made any request for any favor or offered any money.

I never had any instructions from the Chief of Po-

lice to take any orders from Ben Harmon. (1871) My orders from the Chief were that no matter where I was if I saw any violation of the law to arrest them. (1872)

There was an occasion when the Chief directed me to see Ben Harmon and other places regarding a particular matter. We were having an epidemic of burglaries in Salt Lake City. It is pretty hard to give the time. I would say around about the first of June. He said: "We are having an epidemic of burglaries around the city. I would like for you to contact Ben Harmon and Bert Hayes and Joe Vincent"—and I guess he named over a dozen different places where there were card games and beer joints—"And see if you can get them to give you any information concerning suspicious characters hanging around there, who might be pulling these burglaries, that I might in turn give it to the Detective Bureau, and help them out."

The situation was bad and it seemed that they were unable to catch up with them at that time.

I went to these places as requested. (1872)

I never received any money from anyone from any source, to permit a violation of the law. Not a cent, and never requested any.

I did not know that Holt was collecting from prostitution at any time that he was on the force.

The witness then described his efforts to get rid of Holt as described by the other witnesses.

I reported to Mr. Finch and Inspector Record that down at the Brass Rail at that convention, they had been shooting craps and playing 21 and had slot machines and they had two naked women dancing there

that had been brought from the houses of prostitution by Officer Holt. (1876)

I never selected Holt for the anti-vice squad at all. I didn't want him on that squad; afterwards I attempted to get him off. (1882). Mr. Finch told me to go to Inspector Record. He said he is in charge of the getting up of the roster of the police department, and see if he would give me a change. I went to see Inspector Record immediately. He said, "On the first of the month I will give you a change", but the first of the month never came.

Inspector Record was in charge of this roster and the placing of the men throughout the department. He could place them wherever he chose.

I made several complaints after that (1884) about Holt because he didn't meet us when we wanted to go to different places to check up and at one time he left the city without giving us any word and was gone for 3 days.

I took these matters up with Inspector Record.

Witness was asked whether Holt told him where he had gone without letting the witness know. The witness said he did and he was asked to tell what Holt told him about this.

(Objection was sustained) (1885)

I told the Inspector what had happened. He said he guessed there was nothing that could be done about it. (1886)

Fisher Harris called and left word at the station I believe on the evening of January 9, for me to call him in the morning. I did, and went to his office at his

request. I went to the Chief's office, which was the regular routine, to see if there were any new complaints and reported to him that I was going down to the City Attorney's office. Beckstead went with me but Mr. Harris sent him out.

Mr. Harris had a heart attack and laid down on the couch for two or three minutes. After taking some treatment he got up the second time and said there was a pay-off going on around the town and he was going to break it up and he said you know all about this pay-off. I told him I didn't know anything about it.

He took out a set of papers where he had listed houses of prostitution and gambling places and he asked me if I knew that such and such a place was paying so and so, and I told him I didn't know anything about it. He went over the list and then he said to me, "I think you are a liar." I said, "I resent being called a liar by anybody. I have always tried to do my duty to the best of my ability." He said, "You go into Ben Harmon's quite often" and I said, "Yes, I go in there quite a few times." He said, "Didn't the Chief of Police tell you to go to Ben Harmon and take orders from him", and I said, "No sir, the Chief has never instructed me that way at all", and he said, "Well, I know he did." And I said, "Oh, no he didn't."

I said, "The Chief did instruct me the one time to go to all of these places, Ben Harmon's and Hayes and Joe Vincent's place, and a number of other places, to see if I could get these parties to cooperate with us in giving us information upon suspicious characters hanging around these places who might be pulling burglaries

at that time, as there was an epidemic of burglaries going on." He said, "You are awfully careful how you say that, aren't you?" and I said, "I don't know that I am so awfully careful, I am only stating the truth as I know it." (1890)

He asked me if I knew Mr. Pearce. I said, "I only knew him in the way he had come to the station when he had clients there to get them out of jail or plead their case. I wasn't intimately acquainted with him at all." He said, "Do you know that Pearce may never practice law again." I said, "I don't know anything about that, and he said to me, "Do you know he is mixed up in this pay-off and if you don't tell me I am going to make it plenty hot for you. I will get your job, I may get you out in the Penitentiary." I said, "Well, I can't tell you something that I don't know anything about." He said, "You better know about it and tell me or it is just going to be too bad for you." He said, "Have you a family?" and I said, "I have a wife and two boys" and he said, "Do you think anything of them?" and I said I certainly did. He said, "Well, if you do, you had better be talking and talking fast. I said, "Mr. Harris, I have told you the truth, that is all that I can." And he said: "I am going to make the goat out of you" and he walked around the table and repeated the word "goat". I said, I don't see why you should do anything like that to me, and he said, "Well, you better get out of here. (1892)

He called me up two or three weeks after that and said I had better come up to his home and I said, "All right".



The first conversation was about the 10th of January. I would say the second one was along toward the last of January.

(Objection was made to this conversation and the court ruled that both conversations had been testified to by Mr. Harris and the objection overruled.)

That conversation was very much the same as the first. He asked me whether I knew Holt was collecting or not, and I told him that I had no idea in the world that he was doing any collecting. He asked me if Beckstead and Crowther were doing any collecting and I told him that I was almost positive that they were not doing any because they were so intimate with me and my work and that I would know something about it if anything of that kind was going on. He asked me if I had a conversation with Bill Cayias and I said along in November, Bill Cayias had asked me for permission to run a barbut game at 56 West 2nd South. He wanted to know what the conversation was and I told him that I told Cayias that nobody does any gambling with my permission. I told Fisher Harris that Cayias had told me that he had paid Ben Harmon and Earley and I said to Cayias, "If you pay anybody you are a fool because if I catch any violation or gambling I am going to arrest you for it." (1895)

Mr. Harris asked me if Cayias didn't mention the Chief, as to paying the Chief, and I said, "No", he said nothing about paying the Chief. He said he had talked with the Chief but he couldn't get any consolation from him.

Mr. Harris then mentioned about having me dis-

charged and bet he could have me fired within 3 months, he said, "I will do better than that, I will bet \$100 I can have you off the force inside of a month—I will go better than that, I will have you off the force within a week." I was discharged within a week. Inspector Record discharged me. He told me who requested it.

I was discharged on the 8th of February. Immediately prior I had a conversation with Inspector Record. He was the acting Chief. (1897) He said that Fisher Harris had told him that unless we would tell who these parties were that were mixed into the pay-off, and come clean with that, that he was going to have me discharged from the Force.

Yes, in the first conversation Mr. Harris told me not to tell the Chief; he didn't want the Chief to know anything about it. I told him that I had already told the Chief that I was coming down there and he would more than likely ask me what it was about. After all, he was the Chief of Police, the man I am working for. I did tell the Chief the conversation.

### CROSS EXAMINATION

I told the Chief that Mr. Harris had charged there was a pay-off in Salt Lake City and all that I recalled of the conversation.

I did testify that Mr. Record told me to take the job of Chief of the Anti-vice Squad.

The District Attorney then read previous testimony of the witness before the Commission where he was asked if the Chief of Police requested him to take the position and he had said "yes".

(Objection was made to it that it was not contrary to his testimony; that the testimony was that the Chief had asked him, and that Mr. Record had asked him and also that was Mr. Record's testimony. Objection overruled.)

Same testimony was read again. (1902) Some objections were made. The court criticised the defense attorney for making the objection, said if we don't get through with the cross examination the court's going to rule that it will hear no objections. An objection can be made for the record.

The court then explained that it was just being used as a method of refreshing the witness's memory. It is just refreshing the witness' mind.

Objections were overruled and the witness then testified that he had so testified and that he didn't recall whether he had testified that Mr. Record had also asked him or not.

Other of his testimony was read on a previous hearing and he agreed that it was his testimony. It was generally to the effect that the Chief had instructed him that Holt had been working with the prostitutes and he had better put him on these, and that Duncombe had been working on the marble machines. I don't remember whether I mentioned that Record had told me to put Duncombe on or not in the other hearing.

The district attorney read again from former testimony of the witness in his hearing, a number of questions and answers, and none were contradicting. (The objection was made again. Objection overruled.) (1912)

ABE STUBECK sworn as a witness for defendants. (1917)

I was subpoenaed by the state in this case and sworn as a witness. I have not been called to testify previously.

In 1937 I operated a pool hall at 2 West 2nd South.

I knew Dar Kempner. I never had any business dealings with him of any kind.

I did not, in the spring of 1937 or at any time, go with Dar Kempner to the Ace Billiards Hall; I didn't go with him to the Peter Pan Billiard Rooms; I did not go with him to the card room in the Wilson Hotel. I never was in the card room at the Wilson Hotel in my life. I never went to any of these places, or any such places, or any places of any kind with Dar Kempner at any time.

I never took any bills, greenbacks, or money and placed them on the counter of Ben Harmon's place.

I did not have a conversation with Dar Kempner in the spring of 1937 in which I stated in substance or effect that the card rooms were paying off and that the money was going to Ben Harmon and that Harmon was splitting it with Erwin, or anything of that kind or character. I never did discuss any such subject as that with Dar Kempner.

## CROSS EXAMINATION

You did tell me after I was subpoenaed and sworn that you didn't know whether you would use me or not, but to stand by. (1919) I was with the sworn witnesses

when they were admonished by the court not to talk with anybody.

I read in the newspaper about Dar Kempner's testimony.

Mr. Hanson, attorney present, is not my attorney so far as I know.

Other questions were asked as to his talking with Mr. Roberts or Mr. Hanson, and objection was made and the court said he would clear up the matter, and that there was no provision against the witness talking to the attorney involved in the case.

I saw Mr. Hanson on the 8th of the month over at the Ace Billiards and talked with him. I went into the Ace Billiards Hall and the Peter Pan with Mr. Hanson, and we spent a few minutes. We were just walking around. (1922) We went down that side of the street. (1923) We went right from the Ace Billiards to the Peter Pan. It is about 40 or 50 feet. There was no discussion about going in.

I was never hi-jacked at any time when I was making collections from any of these places. I was robbed about 5 years ago, I was held up. (1934)

I knew Mr. Thacker and I knew Mr. Harmon. (1925)

“Q. You ran, in 1937, a gambling game there, didn't you?

(Objected to. Objection overruled.)

“A. Yes—I ran a card room. (1926)

Q. Now, it was your understanding you could, and you did run your gambling place, and the anti-

vice men would come in and go out, to which you paid no attention?"

(Objected to on all the general grounds, improper cross examination; that this man was subpoenaed as their witness and if they did not want to make a case out of him as their witness they had no right to go beyond the scope of the direct examination. Objection overruled.)

"A. I ran a card room.

Q. You conducted, when you say a card room, you conducted gambling during '37, didn't you; that is you permitted it to be conducted in your place?"

(Objected to on all the general grounds and as not proper examination.)

"THE COURT: I think on the District Attorney's representation as to his motive, I will permit the question to be answered. You may answer the question."

"MR. MULLINER: Your Honor, this man is not being tried. His motive has nothing to do with it.

THE COURT: I know.

MR. MULLINER: This shows no interest.

THE COURT: I will permit him to answer.

A. I ran tables—

Q. I am asking you whether or not you permitted gambling to take place in your establishment from May 4th, '37 to January 1st, 1938?

(Same objection, overruled.)

A. Yes. (1928)

Q. Your game was run openly, and police officers, that is, Anti-Vice Squad officers were permitted to come and go at will, weren't they?



(The same objections, also calling for a conclusion, a double-barreled question, and also objected to the use of the word 'permitted' on the ground that he probably could not prevent people from gambling. Overruled.)

## REDIRECT

Mr. Hanson didn't ask me to go to these places. I met him and walked down that way. We went down to meet these people, to find out who they were. I told him I would show him who the proprietors of these places were (Ace and Peter Pan.) We discussed with the proprietors as to whether they had ever paid any money, and after that I came up to your (Mulliner) office and we discussed there as to my testimony and as to what these people had told me. (1932)

## RECROSS EXAMINATION

"Q. Why did you go and ask them if they did, if you knew?

A. I wanted to prove to Mr. Hanson that they did not.

Q. Oh, you were trying to prove to Mr. Hanson that what you said was true?

A. He just wanted to go down and ask them."

W. C. SMITH sworn on behalf of Mr. Thacker (1933) testified generally that Mr. Thacker did not want to keep Mr. Holt on the anti-vice squad and that he wanted to get him on there in place of Mr. Holt.

He gave as reasons stated by Mr. Thacker, the Brass Rail and some other instances, and that he wanted all the men on the department to report to him and said that

Holt, instead of reporting to him, was reporting to the Chief.

(Mr. Loofbourow moved that this testimony be limited to Thacker whose witness Mr. Smith was, and the jury be instructed not to receive or consider it as against the defendant, Finch. After discussion the Court ruled that the motion should be granted and that the jury should remember the motion, and that it was adopted by the court. (1993)

MRS. THACKER was sworn for defendant Thacker. (1988) I am the wife of Frank A. Thacker. Witness was asked as to Mr. Thacker's willingness or objections to going on the Anti-vice Squad.

(Objection was made and sustained.)

FRED ROSE sworn for defendants. (1994)

I am employed at the Mint Cafe. I have lived in Salt Lake City 34 years. I was employed as cashier at the Mint from May 9, 1937 on. I served for sometime while Mr. Vincent, who testified as a cashier, was there. We were both there for a time and then I remained as cashier.

I had charge of the safe and any money that came in there.

Mr. Ben Harmon and Ralph Harmon may have taken money on the bar side but outside of these there were no cashiers on that side except me and Mr. Vincent.

I continued to be cashier after Mr. Vincent left until June or July and until the present time. (1995)

At no time while I was there did Abe Stubeck ever bring any money in there and place it on the counter. He never left any currency there to my knowledge at any time. (1995)

## CROSS EXAMINATION (1996)

I was on shift from 11 in the morning until 8 at night. Only one of us handled the cash register at a time.

When you go in, the cigar counter is on the right. There is one cash register there and then there is a glass partition and then the bar and there is another cash register there.

When the bar tender was on he had charge of the cash register on the bar. Mr. Vincent was the bar tender and cashier. He had access to both cash registers. (1998)

During the period I was there I don't ever remember being relieved during the afternoon. Ralph Harmon paid me. He had access to both cash registers and the safe.

While Vincent or I was on shift we were the only ones who had access to the safe. The bookkeeper was never there when we were on shift. I suppose he had access to both the registers and safe. (2001)

After May 17, I left at four in the afternoon.

The following witnesses were sworn and testified generally that the reputation of Mr. Pearce as to his being law abiding and honest was good.

DON B. COLTON (1853)

O. F. McSHANE (1951)

CHESLEY BARTON (1948)

EDWIN Q. CANNON (1953)

The following witnesses were sworn and testified generally that the reputation of Mr. Erwin as to his being law abiding and honest was good:

DR. E. L. SKIDMORE (1982)

JAMES W. COLLINS (2121)

RAY H. BIELE (2133)

FRANK A. JOHNSON (1985)

HORACE A. SORENSEN (2129)

It was also stipulated at page 1989 that if A. E. Christensen of 1407 Harvard Avenue, and Wilford W. Christensen, 1455 Harvard Avenue, the neighborhood in which Mr. Erwin formerly lived were sworn that they would testify as to his reputation substantially the same as the witness Frank A. Johnson.

#### REBUTTAL WITNESSES:

A. PRATT KESLER sworn for plaintiff (2011)

I am assistant City Attorney under Fisher Harris. I am acquainted with Mr. Thacker and Mr. Beckstead. I saw them in May or June 1937.

The witness was asked if he told them "in substance of effect, that in regard to arrests for bookmaking the only evidence that they needed was the paraphernalia that was used—and in addition they would need to testify to the general reputation of the place.

(Objection was made on all the general grounds; that it was improper impeachment, and impeaching on an immaterial matter; that it had not the remotest tendency to prove the agreement alleged; and it was the statement of a legal proposition which was probably not correct. Objection to all defendants except Thacker were sustained and as to him, overruled.)

There was further argumentative statements by the

prosecution attorney that as to the testimony and as to the other defendants, "We will not abandon anything that is true." apparently referring to the previous statements.

Requests were made that the jury be instructed to disregard the prosecuting attorney's statements. The court then made an order generally overruling the objection and the witness answered the question "yes." (2016)

## CROSS EXAMINATION

I became prosecuting attorney for the city in March 1935, and have been so since. I do not recall who was on the Anti-vice squad before Mr. Holt and Mr. Record.

"Q. Do you know of anyone, on any Anti Vice Squad, since you have been there, bringing in chairs, and telephones and tables, as bookmaking paraphernalia?"

(Objection was made as improper cross examination. Counsel for Mr. Thacker stated that he wanted to find out if he knew so that he could follow it up. That the question was whether the officers knew that they could do such things and if they did know, if they had done it. The Court said the question was as to whether the witness had told Thacker certain things and he sustained the objection.) (2017)

H. K. RECORD was sworn on rebuttal but no questions asked were answered. (2019)

E. A. HEDMAN called on rebuttal.

I was present in the office of the Chief on the 20th day of January, 1938. Mr. Thacker was there and Mr. Finch. I had seen Mr. Fish and other newspapermen coming out of the Alta Club prior to this conference. I don't know whether it was on this day or a day ahead. I



am not sure.

At that conference certain questions were asked Mr. Thacker. (2022)

Over objection the witness was asked if Mr. Thacker said to Mr. Finch, "If any trouble comes up I want you to remember this and I will expect you to do the same for me." The witness said "yes", and also over objection was asked if in the conversation Mr. Finch said to Mr. Thacker "I want you to remember this" and the witness answered "yes".

(Motion to strike was made on the grounds of the objection—the general grounds, and not proper rebuttal, and on a purely collateral matter, and having no bearing on the issue. Motion denied. (2024))

B. O. HOAGLUND sworn as a witness for plaintiff on rebuttal. (2025)

I am a police officer and have been such going on 7 years. Prior to that I worked in the Park Department under Mr. Finch and I previously worked in his restaurant back in '21 or '22.

I was on the Anti-vice Squad under Mr. Thacker in March and April of 1937. I didn't say to Mr. Finch that Mr. Record had told us to stay away from 64½ Fourth South Street.

### CROSS EXAMINATION

I did have a talk with Mr. Finch about that time, on that subject. That is about this crap game on 4th South. I heard it was approximately 64½ West 4th South.

The occasion for me going to the Chief was that there had been rumors. The Chief came to me to talk about it. He asked me if I had heard any rumors in regard to a



crap game in that location. I made the statement to him that there was supposed to be a crap game in that location and that H. K. Record and some other officers were supposed to be interested in. (2026) At that time I had not been down there. Some few days after that I went down. There were no crap tables there at that time. I believe I made a written report to the Chief about that visit and I discussed it with him the next day. I said it looked like there could have been a pool table or crap table there because the linoleum was rather new and there were cigarette burns on the floor, the shape of a table of that sort. I don't recall whether we found the table. It seems to me that we did not. (2027)

O. B. RECORD sworn by plaintiff on rebuttal.

“Q. I will ask you to state whether or not about ten days before your brother H. K. was removed from the Anti Vice Squad, in 1937, he reported to you a conversation that was had with Dick Obart Pearce?”

“MR. MULLINER: That is objected to as incompetent, irrelevant and immaterial, not rebuttal of anything, because there has been no evidence on the part of Mr. Pearce with relation to it. It is apparently an effort to bolster the testimony of H. K. Record.”

MR. RAWLINGS: We don't want to bolster anything, Your Honor, but we do want to show here that this matter was carried to Mr. Finch, by this witness.

MR. MULLINER: All right. Then they should have done it on their main case.

MR. RAWLINGS: Don't get excited.

MR. MULLINER: I object to that statement as incompetent, irrelevant and immaterial, and prejudicial

in this case, and I assign it as prejudicial error. I say to Your Honor that there is absolutely no excuse. If they wanted to show anything with relation to that conversation they should have done it on their case when they made their case. \* \* \* \* There is no excuse for bringing this in here at this time in any way, shape or form; it is absolutely prejudicial error to do it. It is just bolstering up something that they tried to show previously, on which there has been no evidence offered at all.

MR. RAWLINGS: We think all these things are prejudicial to the defendant, Your Honor, just as prejudicial as indicated here, and as Mr. Mulliner thinks it is." (2030)

The district attorney then discussed this as impeachment of Mr. Finch.

"MR. MULLINER: This could not possibly be anything on impeachment of Mr. Finch.

THE COURT: Mr. Mulliner, the court recalls that the questions indicated by Mr. Rawlings were asked Chief Finch." (On cross) (2031)

This discussion continued for several pages. The counsel for the State discussing the conversation between the two Records.

(There was then a discussion over the record. (2034) and the Court said he was inclined to sustain the objection.)

"Q. (By Mr. Rawlings) Did you have a conversation with Mr. Finch about ten days before H. K. Record was relieved of his duties as chief of the Anti Vice Squad, about a conversation—"

(Objection was made that the question was leading, in the nature of cross examination, and argumentative

up to this point. Objection was overruled.)

“A. Yes sir.”

Mr. Rawlings asked to finish the question and added:

“Q. that your brother had had with Mr. R. O. Pearce?”

(Objected to as incompetent on all the general grounds; attempt to impeach; without any foundation; having no tendency to prove the charge of any agreement between the defendants; and without any foundation as to such. That the whole matter was collateral and that they were not entitled to impeach, and that the question was an effort to bring in the very same testimony as to Mr. Pearce on which the court had ruled. The Court then sustained the objection as to Mr. Pearce after counsel had said it wasn't applicable to him. Mr. Loofbourov made the further objection that if it was offered as claimed to show any knowledge on behalf of Mr. Finch, that that was the matter for their main case and no foundation had been laid to impeach as to the conversation recited. The court stated that the evidence was offered as against Mr. Finch only, and overruled the objection.)

The witness answered “Yes”. (2036)

“Q. I will ask you whether or not at that time you said in substance and effect—

MR. MULLINER: They are now, your Honor, about to ask the impeaching question.

MR. RAWLINGS: We will withdraw the question.

“Q. What was said by you to Mr. Finch?

(It was objected to as not rebuttal; that if they had laid the foundation by impeachment question that they should put that question now. That this was hearsay and not rebuttal and they could not ask for the general con-

versation instead of putting in an impeaching question. A motion was also made to strike out what had gone before with this witness on this subject. The objection was overruled and the motion denied.)

The witness answered "Yes."

The witness was then allowed to state the conversation generally. (2038) "About every morning the Chief and I talked over different things in the Chief's office. I brought up to him that H. K. Record, my brother, had spoken to me about Pearce wanting him to collect and offering him additional money, that is to raise his wages."

(Motion was made to strike on all the grounds previously stated as to foundation and not being rebuttal. It was made on behalf of all the defendants and especially on behalf of Mr. Pearce. The court said the motion was good as to everyone except Mr. Finch. The motion was denied.) (2038)

Mr. Finch didn't give me any reason for removing my brother, H. K. Record.

(This was objected to and a motion to strike on the ground that Mr. Finch had never testified that he did, and it was not rebuttal of anything. Denied.) (2040)

The first or second month Mr. Thacker was on the anti-vice squad he told me he wanted to get off.

"Q. I will ask you to state whether or not you told him:

'I will tell you how to get off. Go out and arrest every gambler and prostitute and put them in jail and fingerprint them, and you won't last fifteen minutes.'

I will ask you if he did not say:

‘I can’t do that;’ and that is all he said.”

(This was objected to on all the general grounds and hearsay, and not rebuttal, having no tendency to prove the issue here involved at all, inferring impeachment on a purely collateral matter, and a matter that was conjured up by the state and then an attempt to knock it down. It was stated that it was offered as to Thacker.)

“MR. MULLINER: Your Honor, can anybody possibly conceive—

THE COURT: Listen, Mr. Mulliner, this does not involve anybody but Mr. Thacker, and Mr. Hanson has not objected.

MR. MULLINER: If the failure of Mr. Thacker to do anything is any agreement, then it is going to affect all of us. If that is not going to be contended, then I have nothing more to say about it; but, your Honor, it is so purely collateral to the issue here, and the question itself conjured up from the witness on cross examination, and then he attempted to repeat that.

THE COURT: Well, the record may show your objection.

(Objection overruled.) (2046)

The witness answered “Yes”.

## CROSS EXAMINATION

I don’t know what Mr. Thacker did or what any one did. They were given 6 to 7 men to work with them. What Thacker did with them on the squad I don’t know.

They divided up the work and had certain routine. (2055)

I never heard about Holt having the nude women down there dancing for the Footprinters. (2057)

All the women that were arrested for prostitution were fingerprinted then, I don't know whether they do that now or not. They fingerprint all the people that are arrested for gambling or on any other charge. (2060)

After the witness had testified that he didn't say a number of things to Mr. Harris and Mr. Thacker the following occurred:

"Q. You did say you did not think Thacker was guilty?

A. I did tell you that."

### REDIRECT EXAMINATION

"Q. Did you have any evidence submitted to you pertaining to his misconduct in office?

(Objected to as leading and not rebuttal. Objection overruled.)

"A. Yes. \* \* \* \*

Q. But you received numerous complaints about Thacker, did you not?"

(It was objected to on all the general grounds and as hearsay, leading and suggestive. Objection overruled.)

"A. Yes." (2067)

"Q. When you said you did not think he was guilty—guilty of what?

A. Collecting money, what they accused him of.

Q. Did you think he was guilty of anything else?"

(Objected to as calling for the opinion and conclusion of the witness. Overruled.)



Q. What did you think he was guilty of when you discharged him?

A. Misconduct in the office, not taking care of his work as head of the Vice Squad.” (2068)

FISHER HARRIS recalled by plaintiff on rebuttal. (2072)

This testimony related to Mr. Thacker and to denial or confirmation of certain statements that Mr. Thacker said the witness made in the conversation previously testified to by the witness and Mr. Thacker. The court said that he thought that the witness testified that he gave all of the conversation previously but that he would not stop to search the record. (2074)

(Objection was made that counsel was asking him if he said things and in so doing counsel included things that Mr. Thacker hadn’t said that the witness stated.)

“THE COURT: I will let the witness settle the controversy or attempt to.” (2075)

Witness was asked if in the second conversation if he had asked Thacker if Holt was making a collection. (2076)

(Objections were again made that the conversation had been gone into with this witness on this same subject.)

“THE COURT: The witness tells me that he has not testified upon that matter; and in view of the doubt, I will permit the question to be answered.”

I knew all about Holt. I didn’t mention Holt to him.

The State rested subject to having a motion to strike. (2078)

## SURREBUTTAL

FRANK A. THACKER was sworn on his own behalf. He testified to conversations with Mr. O. B. Record and Mr. Harris. The testimony does not seem to effect any knowledge or any matters connected with the other defendants.

With relation to the opening statement of Mr. Pearce the following occurred:

“MR. MULLINER: Now, in view of the state of the record at this time, I will not offer any more testimony, and it is agreeable with me that any statement that I made, in opening, as to any evidence or any matter that has not been covered by the evidence, may be considered as withdrawn, and I understand that all counsel rest at this time.” (2003)

Mr. Hanson then indicated that he wanted to put Mr. Thacker on for the matter just above referred to. This was done.

“MR. RAWLINGS: I think if Mr. Mulliner will indicate that he will withdraw his entire statement—and I think he did—I don’t think we would have any objection to that even if I have any right to object to it.

THE COURT: Is that what you mean?

MR. MULLINER: I said so.

THE COURT: Your entire opening statement?

MR. MULLINER: The entire opening statement may be considered as withdrawn.

THE COURT: There is no objection?

MR. RAWLINGS: No objection.” (2011)

Counsel for defendants requested that a day be given to discuss all motions to strike and motions for a directed verdict.

“THE COURT: I don’t think I will give you a day to argue questions of law now; I am sure I will not. I have got to get the instructions ready for the jury and I can’t get the instructions ready if I listen to argument all day tomorrow.” (2086)

Counsel were asked to state what time they would want after the court had said that he would give the forenoon to it and defendants would have to divide the time, and if one of them took it all the others would be out, and that counsel would have to make their own arrangements. (2087)

After the counsel stated the time that they would require,

“THE COURT: You have asked for one hour and forty-five minutes for the defendants. I am agreeable to meeting you at nine o’clock in the morning. I want you to present to the court the things you have in your minds, in a manner that is understandable. Of course, you have to have a little time to do that; but I can’t let this argument tomorrow run over the time. I have got to have some time to get these instructions. \* \* \* \* ”

#### PROCEEDINGS IN THE ABSENCE OF THE JURY

Exhibits 5, 6 and 7 relating to the licensing of marble machines were reoffered. A motion to reopen for that purpose was denied. (2090)

A motion was made to strike evidence supplementing the motion made in the course of the plaintiff’s case and to withhold evidence from the jury as follows:

“I move, at this time to strike and to withhold from the consideration of the jury, all the testimony of Golden Holt upon the ground that, as a matter of law he is an accomplice and as a matter of both law and fact there is no corroboration.” Separately, I move to strike all his testimony with relation to Mr. Pearce, involving any alleged conversation or contact with Mr. Pearce, upon the ground that he is an accomplice as a matter of law—both as a matter of law and as a matter of fact and there is absolutely no corroboration of his testimony in these matters.”

Both motions were denied. (2102)

“I move at this time, your Honor, that in accordance with the practice here and your Honor’s rulings with relation to other alleged conspirators, that the testimony of Dar Kempner, as to acts, and separately the testimony of Dar Kempner as to statements of Abe Stubeck, be limited to Abe Stubeck, and not considered as evidence against any other person.” (2102)

The motions for directed verdict as made by any attorney applied to all and an effort will be made to state the points covered with reference to the record without unduly lengthening the abstract.

1. That there is no evidence of any conspiracy formulated or the taking part therein by either of the separate defendants.

2. That there is no evidence that the offense charged in the indictment and supplemented by the Bill of Particulars, was entered into by the separate defendants, or consented to by them, or that either performed any act in connection with the conspiracy as set forth in the

indictment and Bill of Particulars.

3. That the testimony does not show that the defendants here, or any of them, received any money or committed any overt act in pursuance of the conspiracy alleged, or at all.

4. That the evidence shows that if any money was collected from prostitution it was collected by Mr. Holt without any agreement or conspiracy as alleged with the defendants.

5. That it is not shown that any money was collected from any one except from the prostitutes and that by Holt, and if it is the theory of the state that money was collected from gamblers by Stubeck that the defendants are in no way connected with it and knew nothing of it so far as the evidence shows.

6. That there is no evidence that any money was received from anything else other than the matters mentioned in the above 2 paragraphs by anyone.

7. That no overt act in furtherance of the conspiracy, or at all, or as alleged, has been established as against any defendant or at all.

8. Motions were made upon all the grounds previously stated in the motions to dismiss herein, and these were incorporated as to all defendants.

9. That there is not sufficient evidence of the entry of the defendants or any of them into any conspiracy, or on any date, as alleged in the indictment, or in the bill of particulars supplementing the indictment. (2093)

10. That there is no evidence that there was any agreement to permit or allow or assist houses of ill fame to operate in Salt Lake City at any time alleged in the

indictment. In this connection that the evidence shows that the things that operated had operated previously and since, and there was no change, and therefore no evidence of any such agreement from any such operation. (2100)

11. That there is not only no evidence of or no agreement to permit or allow or assist operations, but that no evidence that the defendants did permit or allow or assist operations, or that there was any change in the manner of operation.

12. That there is no evidence that the defendants here collected or caused to be collected, any money, if any was shown to be collected.

13. That there is no evidence that any defendant here, if a foundation had been laid sufficient to admit the admissions or the evidence claimed to have been admissions, ever made any admission of the offense charged in the indictment in any way or manner or form.

14. That the state has not made out a prima facie case as against the defendants, or any defendant, as to the conspiracy or agreement alleged in the indictment, or separately, as such was supplemented by the Bill of Particulars.

15. That no agreement or conspiracy as alleged was shown, either prima facie, or so as to go to the jury, or to warrant a conviction, and on which the jury could find beyond a reasonable doubt that such agreement as alleged existed. More particularly because:

(a) There is no direct evidence of any association for any purpose or of any agreement or conspiracy between the defendants.



(b) That there were no sufficient admissible circumstances to establish any such agreement when considered under the rule that only such circumstances can be considered as are consistent only with guilt and inconsistent with innocence.

16. That the circumstantial evidence here is insufficient because it consists

(a) only of evidence that in licensed card rooms gambling took place and that prostitution and lotteries operated and that such does not point directly and unerringly, and it is not consistent only with the existence of the agreement alleged.

(b) The other evidence relates to alleged admissions by alleged accusations and silence; that such evidence is not admissible to lay the foundation, or separately to prove the alleged agreement or conspiracy; that such did not relate to the charge as laid in the indictment; that the evidence of the foundation of the agreement has to be absolutely independent of any alleged admission by any individual defendant by silence; and that any such statements or admissions did not connect any defendant here with any such agreement, if one had been shown; and that eliminating the foregoing, there is nothing remaining to show any agreement or conspiracy or to tend to show the same.

(c) That the evidence with relation to alleged admissions by silence was not admissible as to the defendants here, or as to each defendant. That the said alleged admissions by silence contained no admission of the charge here and said defendants were not connected up with the conspiracy alleged in any way or manner. Fur-

ther that no charges were made of the offense here that called for or required, under the circumstances, any denial so that the failure of any constituted no admission of the offense charged.

17. Separately that the evidence with relation to admissions constituted hearsay statements, particularly by Fisher Harris, which were inadmissible and can not be considered evidence here; nor did said statements contain any direct charge requiring a denial; nor did the conversations by him with the defendants, Pearce, Erwin or Finch, constitute any admission of the offense. (2106)

18. That the testimony of Holt should be ignored and not considered, and such in no way recited circumstances tending in any way to prove the conspiracy or agreement alleged and must be ignored for the reason that the said Holt has admitted herein to be a conspirator and therefore an accomplice and that his testimony is in no way corroborated.

19. That the Dar Kempner testimony can not be considered as in any way supporting the case of the State here for the reason that the same was inadmissible and subject to the objections and motions made with relation thereto, and that such incidents as were testified to by him were excluded by the Bill of Particulars as filed herein.

20. Separately as to Mr. Pearce the point was covered that the matter of the collection of money with which he was connected did not prove the conspiracy; that he was tried on that issue by the same witness and the same evidence throughout and acquitted; and further that in such matter of the collection of money, he

was excluded by the Bill of Particulars herein. The same point is covered as to Mr. Erwin on the matter of trial and acquittal in case 10785.

The state then presented a motion. (2111) The motion was now presented, after the arguments on the motions to strike, and the motions for directed verdicts, and after Mr. Pearce's opening statement had been withdrawn before the jury and the statement made that on the record as made he would not present any further evidence. The motion was to strike Exhibit 26A, B, C and D, being the indictment, the Bill of Particulars, the Supplemental Bill of Particulars, and the Verdict in case 10785. Counsel for the State stated that authority had been cited to the court when the ruling was made admitting these Exhibits, and that he now had other authority which they were willing to cite.

The following then transpired:

“MR. MULLINER: Your Honor, I have heard no suggestion of any motion to strike out evidence. We have rested here. I have argued my motion for a directed verdict. I am certainly not going to be in the position of getting up before the jury and withdrawing my statement, relying upon that evidence, and then have it taken out of this case and a problem presented to me as to whether I should have put witnesses on to deny Holt's evidence as to the receipt of this money.

MR. RAWLINGS: Mr. Mulliner was advised that we would make such a motion. He knew of it all along.

MR. MULLINER: Counsel never mentioned it to me at all. Counsel, in your Honor's room, said they wanted to consider whether they would offer the instruc-

tions in that case. That was the discussion, as to whether they would offer them, and asked about securing them for your Honor, and that your Honor would not have to decide that matter right at that time. I said in there—I don't know whether we had a reporter or not—I said: "It is all right, if they want to offer it."

MR. RAWLINGS: That was not the understanding. The matter was mentioned by me as to whether or not that should be read to the jury. Your Honor said, in there, in the presence of Mr. Mulliner and Mr. Musser, Judge Loofbourow and Mr. Hanson, that your Honor had not made up your mind whether or not it should be submitted to the jury, whether or not there had been facts which would make it a matter that should be presented to the jury.

After discussing whether or not it should be presented to the jury, I stated:

"If your Honor thinks there is evidence justifying it, that it should go to the jury, then we would like the opportunity of presenting the instructions in the case. That was stated before Mr. Mulliner had any thought of resting.

MR. MULLINER: He never made any such speech as that about their evidence making it a factual matter. They said they would not like it read to the jury. Your Honor looked over at me and said:

"Do you expect to read it to the jury"? and I said:

"No." (This was on the opening statement.)

THE COURT: What is the plan now? Is it the plan to read the exhibits to the jury?

MR. MULLINER: Your Honor, it is an issue, and

certainly the issue as to whether he received money from the earnings of prostitution, knowing it to be such, was determined in that case. Now, it is a question if it should be limited, if your Honor should limit it as he thinks it should be, by instructions.

THE COURT: I am trying to clarify this: It is your idea that this indictment and the bill of particulars and the supplemental bill of particulars are in evidence, to go before the jury if you see fit to read them to the jury, the same as any other exhibit.

MR. MULLINER: Yes, I told your Honor I did not intend to read them at that time. I did not; but I have rested. My whole case has been planned and determined. I have withdrawn my statement, and everything, upon the theory that that evidence was in. Counsel has not suggested to me that they were going to move to strike it.

MR. RAWLINGS: Oh yes.

THE COURT: There was a plea here of former jeopardy.

MR. MULLINER: That is disposed of, your Honor.

THE COURT: You had a plea of once in jeopardy in this case. Now you introduce these exhibits as evidence of that former jeopardy.

MR. MULLINER: No.

THE COURT: I guess I am a little confused on this.

MR. MULLINER: Your Honor, the plea of jeopardy—which may be a good plea, or it may not, in view of the facts, of the evidence here, but that is passed over.

THE COURT: Yes.

MR. MULLINER: This is what is called *res adjudicata* or estoppel by judgment: and in every case that they had it was at least suggested that this procedure should be taken.

In the cases the Supreme Court cited there, it is clearly indicated that this procedure should be taken, as well as indicated in the authorities that were cited, when it was offered.

(Discussion with reference to authorities heretofore cited.)

MR. RAWLINGS: You can't jockey us into such a position and get by this, after you know what the agreement was.

MR. MULLINER: There was no such statement made as you said.

MR. RAWLINGS: I will leave it to his Honor.

MR. MULLINER: There was a statement as to whether I intended to read it. There was a statement that you would not be required to offer the instructions at that time, and that is all there was to it.

But, we have gone on beyond that, Your Honor, with the statement there was no further evidence, and nothing was said about striking any of our evidence.

Then I decided not to put Mr. Pearce on, and I said so, in effect, and we had a discussion about withdrawing my opening statement. I agreed to withdraw that entirely, and now we have gone on and argued our motions based upon the record as it existed, and now counsel suggests that we go back and change that record.

THE COURT: I think I ought not to do it now, Mr. Roberts, particularly in view of the situation stated by



counsel.” (2112, 2113, 2114, 2115)

There was then a discussion as to the theory on which this matter might be presented to the jury, the state contending that it should not be presented.

“THE COURT: I will take this matter under advisement and I will rule on the motion to strike in the morning. (2117)

MR. RAWLINGS: We do not desire to introduce the instructions. We desire to stand on the proposition as Mr. Roberts stated it.”

The next day the matter was resumed. The court stated that this motion to strike remained to be disposed of. The state had also made a motion to withdraw the stipulation with regard to the testimony of Mr. Sorenson as to the reputation of Mr. Erwin. The state was allowed to withdraw this stipulation over Mr. Musser’s objection. (2120)

Mr. Sorenson was afterwards put on the stand and gave this testimony as hereinabove mentioned. (2129)

The matter of striking the exhibits in 10785 came up and was discussed. (2136-2139)

Attorney for Mr. Pearce stated that his position was that he had been overruled on the plea of former jeopardy and the court said: “I think that has been passed upon by the court as a question of law.” (2141)

The record as hereinabove abstracted made at this time upon the question of reading the exhibits to the jury on the opening statement was, in part, read again. (2142) The court asked if it was the contention that this was to remain in the record in support of a plea of former jeopardy. It was stated that they were offered in

that connection and it was urged as a matter of law on the court and not abandoned, but now that we had the other matter above mentioned in mind as to adjudication and estoppel on the issue as there outlined and tried. (2143)

The court then ruled that the exhibits could remain but that they could not be read to or considered by the jury, and exception was taken to the limiting of the evidence in this way. (2144)

## INSTRUCTIONS TO THE JURY

Mrs. Baysinger and Gentlemen of the Jury: (240)

1. The Grand Jurors of the County of Salt Lake, State of Utah, accuse E. B. ERWIN, HARRY L. FINCH, FRANK A. THACKER, R. O. PEARCE, and BEN HARMON of the crime of CRIMINAL CONSPIRACY, in Violation of Title 103, Chapter 11, Section 1, Revised Statutes of Utah, 1933, committed as follows, to-wit:

That the said E. B. Erwin, Harry L. Finch, Frank A. Thacker, R. O. Pearce, and Ben Harmon, together with divers other persons to this Grand Jury unknown, the said E. B. Erwin at all times herein mentioned being the duly elected, qualified and acting Mayor and Commissioner of Public Safety of Salt Lake City, a municipal corporation, and the said Harry L. Finch, at all times herein mentioned, since the 15th day of March, 1936, being the Chief of Police of said Salt Lake City, and the said Frank A. Thacker, at all times herein mentioned being a police officer of said Salt Lake City, and during all of the said time subsequent to the 15th day of April, 1937, the Captain of the Anti-Vice Squad of the Police

Department of Salt Lake City, on the 6th day of January, 1936, and on divers other days and times between that day and the first day of January, 1938, at the County of Salt Lake, State of Utah, did willfully and unlawfully agree, combine, conspire, confederate, and engage to, with, and among themselves and to and with each other and to and with divers other persons to this Grand Jury unknown, to commit acts injurious to public morals and for the perversion and obstruction of justice and the due administration of the laws of the State of Utah, to-wit: (241)

That the said E. B. Erwin, Harry L. Finch, Frank A. Thacker, R. O. Pearce, and Ben Harmon did wilfully and unlawfully agree, combine, conspire, confederate, and engage to, with, and among themselves and to and with each other and to and with divers other persons to this Grand Jury unknown, willfully and corruptly to permit, allow, assist, and enable houses of Ill Fame, resorted to for the purpose of prostitution and lewdness, and lotteries, dice games, slot machines, bookmaking, and other gambling devices and games of chance were being kept, maintained, and operated at various places in Salt Lake City, Salt Lake County, State of Utah, the said Defendants then and there well knowing that said Houses of Ill Fame, Lotteries, Dice games, slot machines, bookmaking and other gambling devices, and games of chance were being kept, maintained and operated in said Salt Lake City in violation of the Statutes of the State of Utah and the Ordinances of Salt Lake City, and in furtherance of said Conspiracy did commit the following overt acts:

1. That during all the period of time between March 15, 1936, and January 1, 1938, the said Defendants permitted, allowed, assisted, and enabled Houses of Ill Fame, resorted to for the

purpose of prostitution and lewdness, to be kept, maintained, and operated at various places in Salt Lake City, Salt Lake County, State of Utah.

2. That during all the period of time between March 15, 1936, and January 1, 1938, the said Defendants permitted, allowed, assisted, and enabled lotteries, dice games, slot machines, bookmaking, and other games of chance and gambling devices to be kept, maintained, and operated at various places in Salt Lake City, Salt Lake County, State of Utah. (242)

3. That on or about the first day of each and every month, between the months of June, 1937, and January, 1938, both months inclusive, the Defendants collected and caused to be collected money from the operators of various Houses of Ill Fame in various places in Salt Lake City, Salt Lake County, State of Utah.

4. That at various times, between April 1, 1936, and January 1, 1938, the Defendants collected and caused to be collected money from the operators of various lotteries, dice games, slot machines, bookmaking, and other games of chance and gambling devices at various places in Salt Lake City, Salt Lake County, State of Utah;

contrary to the provisions of the Statute of the State of Utah, in such case made and provided, and against the peace and dignity of the State of Utah. (243)

2. The gist of the indictment is that the defendants named agreed among themselves, and with other persons unknown, wilfully and unlawfully to permit, allow and assist houses of Ill Fame, gambling devices and games of chance to be kept, maintained and operated in Salt Lake City and County, State of Utah, knowing said things

were unlawful. The indictment alleges that through such agreement and conspiracy and in furtherance thereof and as in the indictment alleged, defendants wilfully and unlawfully permitted, allowed, assisted and enabled houses of ill fame resorted to for the purpose of prostitution and lewdness, to be kept, maintained and operated at various places in Salt Lake City, and that between March 15, 1936, and January 1, 1938, the defendants in furtherance of such agreement and conspiracy, wilfully and unlawfully permitted, allowed, assisted and enabled lotteries, dice games, slot machines, bookmaking and other games of chance and gambling devices to be kept, maintained and operated at various places in Salt Lake City in violation of the Statutes of Utah and the ordinances of Salt Lake City, and that between the month of June, 1936, and January, 1938, the defendants collected and caused to be collected moneys from operators of various houses of ill fame in various places in Salt Lake City, and that at various times between April 1, 1936, and January 1, 1938, the defendants collected and caused to be collected moneys from the operators of various lotteries, dice games, slot machines, bookmaking and other games of chance and gambling devices at various places in Salt Lake City. (244)

3. Evidence has been given as to good character of each of the defendants. Such good character, when proven, is a circumstance to be considered by you in connection with all the other evidence in the case in determining the guilt or innocence of the said defendants, and is of value, not only in doubtful cases, but also when the

testimony tends strongly to establish the guilt of the accused. When such character is proven it is a fact in the case, and should not be put aside by the jury in order to ascertain of the other facts and circumstances considered in themselves do or do not establish the guilt of the said defendants, or any of them, but should be considered by you in connection with all the other testimony in the case, and not independently thereof. When so considering it, you have the right to give such weight to it as you may think it entitled to, and it may be sufficient, if so regarded by you in connection with all the other evidence in the case, to create a reasonable doubt in your minds as to the guilt of said defendants, or any of them, through no such doubt might exist but for such good character.

4. a. You are instructed that the basis of the conspiracy here charged is the agreement as alleged. That the offense, of any offense has been committed by the defendants, must consist in the agreement as alleged in the indictment. The basis of the conspiracy charged is the agreement and the uniting of defendants therein. . It is distinct from the offense, if any, intended to be accomplished as the result of a conspiracy.

b. You are further instructed that before you are justified in rendering a verdict against the defendans, or any of them, the State is required to establish, and you must find beyond a reasonable doubt, that such conspiracy or agreement as alleged in the indictment actually existed and that the defendant or defendants sought to be convicted participated therein with knowledge of the existence of such agreement.



c. In this connection you are further instructed that even the doing, or failure to do, or the participation in some act which is alleged as the object of the conspiracy, is not sufficient to convict any defendant unless you are convinced beyond a reasonable doubt that such agreement existed, and that the act or omission of defendant, if any you find there was, was done with the knowledge of the existence of such agreement, and that such defendant knowingly participated therein. (245)

d. You are further instructed that if you are convinced beyond a reasonable doubt that such conspiracy or agreement existed and that one or more of the defendants had knowledge thereof or failed to object thereto, or prevent the carrying out thereof, that this is not sufficient to convict any such defendant or defendants; that mere knowledge or approval without an agreement to cooperate to accomplish such object or purpose, is not enough to constitute one a party of the conspiracy or agreement.

e. You are instructed that although you may from the evidence find that the defendants, or some of them, in the discharge of their official duties or otherwise, were guilty of the commission of some offense with respect to matters charged in the indictment, yet that will not justify you in rendering a verdict against such defendants, without further finding beyond a reasonable doubt, that such commission or commissioners were the result of or in furtherance of a conspiracy or agreement entered into or participated in by them, and as in the indictment alleged.

f. You are instructed that the defendant Pearce had no official, or any, duty to enforce the laws of Salt Lake City as to any of the matters alleged herein. (246)

g. You are therefore instructed that before you are justified in rendering a verdict against the said defendants, or any of them, you are required to find beyond a reasonable doubt that an agreement or a conspiracy as alleged in the indictment actually existed, not necessarily as between all of the defendants, but between two or more of them; but in such case, you can render a verdict only against such defendants who, if any, did so conspire together or actually participated in the conspiracy or in carrying out the said agreement as in the indictment alleged, but not as against any of the other defendants who were not parties to the conspiracy or the said agreement, or who had not participated or acquiesced therein in furtherance thereof or in carrying out the same.

5. You are further instructed that before you can convict any of the defendants, you are required to find beyond a reasonable doubt that he was a party to or an actual participant in the charged conspiracy or agreement, and that it is not enough that you may believe or find that he merely was cognizant of or acquiesced in any of the unlawful overt acts charged in the indictment, or that he lacked in diligence or reasonable efforts to prevent the existence of any such unlawful acts, unless such want of diligence or efforts was the result of a conspiracy or agreement or common design or purpose to which he was a party or actually participated therein; but from the mere fact or facts that he was cognizant of any such

charged unlawful acts or acquiesced therein or was lacking in diligence or in reasonable efforts in an attempt to prevent such unlawful acts, does not justify you, in the absence of other evidence, in finding that he was a party to the alleged conspiracy or agreement, or that he in furtherance thereof participated therein in carrying out the same. (247)

6. Certain evidence was adduced to show various or different conversations had between one or some of the defendants with other persons in the absence of other defendants, which evidence was admitted by the court only as against the defendant present or participating in such conversations; and upon the State then and there claiming and asserting that such evidence was not offered in such case as against the absent defendants, the court then and there, when such evidence was so received, admonished the jury that such evidence in the absence of the other defendants was not binding upon them and could not be considered by the jury as any evidence against them, and the court now again so admonishes and directs the jury. (247)

7. The court charges you that there is no sufficient direct or positive evidence that the defendants, or any of them with each other or otherwise, actually met or came together or expressly agreed to commit or to pursue such or any common design or purpose, nor that they expressly agreed to commit or to do any of the things or matters alleged in the indictment. However, in such connection, the court charges you that such agreement or

common design or purpose need not be shown by any such express agreement, but may be shown by what is termed circumstantial evidence, or by inferences deducible and justifiable from other proven facts and from acts and conduct of the defendants, and each of them. But to justify a finding by you on such circumstantial evidence or inferences from other proven facts, such circumstantial evidence and proven facts must point to the guilt of the defendants or to some of them and as charged in the indictment, and must exclude every reasonable hypothesis of innocence, and that, in the absence of other evidence, such circumstantial evidence must alone be sufficient to convince you beyond a reasonable doubt of the guilt of the defendants, or some of them, as charged in the indictment, and as having committed the unlawful acts or some of them in furtherance and in pursuance of the alleged agreement or conspiracy. To justify a conviction based on circumstantial evidence, the circumstances must themselves be proven, and must be consistent with the guilt of the accused as charged in the indictment, and inconsistent with innocence, and incapable of explanation or any other reasonable hypothesis than that of guilt; and where the circumstances are of such character as merely to raise a suspicion of guilt, or as fairly to permit an inference consistent with innocence, then and in such case, such circumstantial evidence in and of itself cannot be regarded sufficient to justify a conviction. (248)

8. In arriving at your verdict in this case you must wholly disregard the fact that the defendants E. B.



Erwin and R. O. Pearce did not take the witness stand in their own behalf. In a criminal case a defendant is not required to take the witness stand and to testify in his own behalf. The fact that a defendant fails to take the witness stand as a witness does not in any manner prejudice him, nor can it be used against him, nor can it be considered by the jury in arriving at their verdict. (249)

9. a. You are further instructed that before you are justified in rendering a verdict against the said defendants, or any of them, you and under the charge of the court, are required to find beyond a reasonable doubt that a conspiracy or an agreement as alleged in the indictment actually existed, not necessarily as between all of the defendants, but between two or more of them; but in such case, you can render a verdict only against such defendants who, if any, did so conspire together or actually participated in the conspiracy or in carrying out the said agreement as in the indictment alleged, but not as against any of the other defendants who were not parties to the conspiracy or the said agreement, or who had not participated or acquiesced therein in furtherance thereof or in carrying out the same.

b. In this connection you are instructed that the operating of gambling, prostitution, lotteries, etc., either before, after or during 1936 and 1937, in and of themselves cannot be considered by you as evidence of an agreement or conspiracy between the defendants in this case. Such conditions may or may not exist by agreement, and their operation is consistent with the absence of such agreement. (250)

10. You are further charged that the fact that the defendants by the indictment have been accused and charged of the offense as in the indictment alleged, cannot be and is not to be considered by you as any evidence or inference of guilt against the defendants, or any of them. The defendants, notwithstanding the indictment, are presumed to be innocent and are not, nor is any of them, required to prove his innocence. As heretofore charged, before you can render a verdict of guilty against the defendants, or any of them, the State is required to prove their or his guilt beyond reasonable doubt.

11. a. The municipal government of the City of Salt Lake is divided into five departments—one of which is the Department of Public Safety and one of the subordinate departments within said Department of Public Safety is the Police Department. (250)

b. Under the ordinances of said City, the Commissioner of Public Safety has sole executive and administrative powers and authority and under the direction of the Board of Commissioners of said City has charge and controy of each of the subordinate departments which includes the Police Department. The Commissioner of Public Safety is responsible to the Board of Commissioners for the proper conduct of each department under his supervision.

c. Under the ordinances of said City, the Board of Commissioners has the power to appoint a Chief of Police.



d. The Police Department is under the management of the Chief of Police, except as otherwise provided by law or ordinance and he has control, management and direction of all members of the Department in the lawful exercise of his functions with full power at any time to suspend any subordinate officer, employee, men or agents in the Police Department for a period of not exceeding 15 days, when, in his judgment, the good of the service requires it. (251)

e. The Chief of Police has in the discharge of his duties like powers and is subject to like responsibility as sheriffs and constables in similar cases and it is his duty to apprehend all persons committing any offense against the laws of the State or the ordinances of the City and he should at all times diligently and faithfully discharge his duties and enforce all ordinances and regulations of the City for the preservation of peace and good order, and the protection of the rights and property of all persons. It is the duty of the Chief of Police to consult and advise with the Commissioner of Public Safety and act with his approval on all matters pertaining to the Police Department, not specifically mentioned in this paragraph, and shall from time to time make such reports as the Commissioner of Public Safety shall require.

f. You are further instructed that police officers of the City of Salt Lake possess the powers conferred upon constables of the law and they are at all times to prevent crime, detect and arrest offenders, protect persons and property and enforce every law, both State and municipal relating to the suppression of offenses.

12. You are instructed that if you believe that the Defendants Erwin, Finch and Thacker wilfully failed to diligently and faithfully perform their duties as set forth in Instruction No. 11, and in that manner knowingly permitted, allowed and enabled and assisted the operation of houses of ill fame, lotteries, bookmaking and poker games in violation of State Statutes and City Ordinances, then you may take such facts into consideration in determining whether or not they, or any one of them, so failing to perform his duties are guilty of the conspiracy charged in the Indictment. (252)

a. You are further instructed that from the mere fact that the defendant Erwin was the Mayor of Salt Lake City, the defendant Finch the Chief of Police, the defendant Thacker the Captain and in charge of the so-called anti-vice squad, or though you may believe or find that they or some of them were cognizant of the unlawful overt acts charged in the indictment or some of them as alleged therein, and though you may find that none of such defendants used reasonable diligence or made reasonable efforts to stop or prevent such alleged unlawful acts, yet you are not justified from such mere facts, in the absence of other evidence, to find the defendants guilty of the charged conspiracy, or as having entered into any agreement as in the indictment alleged. In other words, to find said defendants, or any of them, guilty as charged in the indictment, you are required to find beyond a reasonable doubt that they were parties to the alleged conspiracy or agreement, or actually participated therein in carrying out the same, and unless you so find,

your verdict should be not guilty. (253)

13. You are further instructed that if you, under the charge of the court and upon the evidence adduced, find beyond a reasonable doubt that a conspiracy or an agreement as alleged in the indictment actually existed and was entered into by the said defendants, or by any two or more of them, then the court charges you that any statement or declaration, if any, made by any or more of such conspirators in furtherance and in pursuance of the said conspiracy or agreement, and while carrying out the same and the said common unlawful design or purpose and while it still was in progress, is admissible as against all persons engaged in such conspiracy or agreement, and while carrying out the same and the said common unlawful design or purpose and while it still was in progress, is admissible as against all persons engaged in such conspiracy or unlawful agreement as parties thereto or actually participating therein; but such statements or declarations, if any made, after and when such conspiracy or agreement had ended and the common purpose or design accomplished, are not, in his absence, admissible and may not be considered by you as against any other alleged conspirator; nor are such statements or declarations, whether made before or after the ending of the conspiracy or accomplishment of the said common purpose or design, admissible and may not be considered by you as against any other defendant or person not a party to the conspiracy or agreement or to the alleged common design or purpose, or who had not participated therein, if and when such statements or declarations were made in his absence. (254)

14. You are further instructed that any statement or declaration, if any made, out of court, by any of the alleged conspirators and in the absence of other alleged conspirators or other persons claimed to be conspirators, may not be considered by you as evidence against such absent persons, as to the existence or relation of an alleged conspiracy or unlawful agreement or as to a joint or common design or purpose, and that, in such case, such existence or relation, as to such absent persons, must be shown by other evidence, either direct or circumstantial beyond a reasonable doubt. (254)

15. You are instructed that if you believe that either officer Holt or the witness Stubeck, or both of them, collected money, as they testified, you may not consider this evidence as any proof of the agreement here even though you may believe the testimony of these witnesses as to these matters, unless you believe that such collections were made, if you believe they were made, as a result of the agreement alleged here; or that such collections were made, if you believe they were made, because of the agreement alleged against the Defendants here. Such circumstances as these, when offered as evidence of the proof of a conspiracy and agreement, can only be regarded as proof of such if they point to the existence of the agreement alleged and are consistent with the existence of such agreement and tend to establish the same beyond a reasonable doubt. (255)

16. Before you can find the defendants, or any of them, guilty of the offense charged in the Indictment, you must find from facts in evidence, from which it may

be reasonably inferred that the offense was committed in Salt Lake County, Utah, and you must find beyond a reasonable doubt, each and every one of the following elements :

(1) That defendant E. B. Erwin was, between January 6, 1936, and February 5, 1938, the duly elected, qualified, and acting Mayor and Commissioner of Public Safety in and for Salt Lake City.

(2) That defendant Harry Finch was, between March 15, 1936, and January 21, 1938, the duly appointed, qualified, and acting Chief of Police of Salt Lake City.

(3) That defendant Frank A. Thacker was, between May 4, 1937, and January 20, 1938, a police officer and Captain of the Anti-vice Squad of the Police Department of Salt Lake City.

(4) That on divers times, between January 7, 1936, and January 1, 1938, the defendants herein, or either of them, conspired, agreed, and confederated among themselves, or with Ben Harmon, or with Golden Holt, or with Abe Stubeck, to permit, allow, assist, and enable houses of ill fame, hereinafter mentioned, resorted to for the purpose of prostitution and lewdness or to permit, allow, assist and enable the lotteries, dice games, bookmaking and poker games, hereinafter mentioned, to be kept, maintained and operated in Salt Lake City, Salt Lake County, State of Utah in violation of the Statutes of the State of Utah, and the Ordinances of Salt Lake City, as hereinafter set forth.

(5) That at least one of the following overt acts



was committed:

(a) That in the spring of 1937, a collection of money was made at the Ace Billiards, 248 South Main Street, Salt Lake City, Utah.

(b) That in the spring of 1937, a collection of money was made at the Peter Pan Card Club, 222 South Main Street, Salt Lake City, Utah.

(c) That on or about the first of any month from June, 1937, to January, 1938, money was collected from a house or houses of ill fame, as alleged in the Indictment.

(d) That between January 6, 1936, and January 1, 1938, the defendants permitted, allowed, enabled, and assisted a house or houses of ill fame to operate in violation of State Statutes and of the Ordinances of Salt Lake City.

(e) That during the time herein alleged the defendants permitted, allowed, enabled, and assisted lotteries, bookmaking places, dice games, and poker games to be kept, operated, and maintained in violation of the Statutes of the State of Utah. (257)

(6) That any such overt act or acts was or were in furtherance of said conspiracy, agreement, or combination charged in the Indictment.

17. You are instructed that the agreement is the assence of the charge, and while it is necessary, in order to establish a conspiracy, to prove a combination of two or more persons, by concerted action, to accomplish the



criminal or unlawful purpose, it is not necessary to constitute a conspiracy that two or more persons should meet together, and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the detail of the plans or means by which the unlawful combination was to be made effective. It is sufficient if two or more persons, in any manner, or through *any contrivance, come to a mutual understanding to accomplish a common and unlawful design*. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together, in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators. (258)

18. The court instructs the jury, as a matter of law, that to constitute the crime of conspiracy as alleged in the Indictment, it is not necessary that the defendants should succeed in their purpose and design. It is enough if the common purpose and design was formed in the manner and way as charged in the Indictment and that any one of the alleged overt acts was done in furtherance of such design and purpose by either of the defendants. If the conspiracy charged in the Indictment has been proved to the satisfaction of the jury, beyond a reasonable doubt, then the act of either one of the defendants, or the acts of said Golden Holt, Ben Harmon or Abe Stubeck, in furtherance of the common purpose and design proved, as

aforesaid, will be regarded as the act of all. (259)

19. You are instructed that a person may join a conspiracy after it has been formed, and, if he participates knowingly, he becomes a party thereto just as though he conceived the plan.

20. (a) You are instructed that it is a violation of the Statutes of this State and of the Ordinances of Salt Lake City for any person to keep a house of ill fame resorted to for the purpose of prostitution or lewdness in Salt Lake City, and County, State of Utah.

(b) You are instructed that it is a violation of the Ordinances of Salt Lake City and Statutes of this State for any person within Salt Lake City and County, State of Utah, to knowingly conduct, keep or maintain a house, building, room or other place where poker or dice games are played for money, merchandise or anything of value and the same is won or lost upon chance, or where bets are made on the result of a horse race by means of bookmaking.

(c) You are instructed that it is a violation of the Statutes of this State and the Ordinances of Salt Lake City for any person within Salt Lake City and County, State of Utah, to conduct or operate any lottery for the disposal or distribution of property, money or other valuable thing, in whole or in part, by lot or chance, among persons who have agreed to pay any money or to give anything of value for the chance privilege or opportunity of obtaining such property, money or other valuable thing, or portion of it, or for any share or

interest therein, upon any agreement, understanding, promise or expectation that it is to be distributed or disposed of in whole or in part by lot or chance among such persons. (260)

21. You are instructed that the witness Golden Holt was an accomplice in the commission of the crime charged in the Indictment, if such crime was committed, but such fact does not make the said Golden Holt incompetent as a witness. In order, however, that a conviction be had on the testimony of an accomplice, such testimony must be corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the accused with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstance thereof. It is not essential that the corroborative evidence shall be sufficient to support a verdict of guilty, nor is it essential that the testimony of the accomplice be corroborated on every material point. It is sufficient if the testimony of the accomplice is corroborated as to some material fact and if the corroborative evidence in and of itself connects the accused with the commission of the crime charged. (261)

22. The State contends that Golden Holt, Ben Harmon, and Abe Stubeck were co-conspirators of the defendants. You are instructed that the acts and declarations of a co-conspirator are the acts and declarations of the conspirator. So, if you believe, beyond a reasonable doubt, that the defendants, or any of them, were conspirators, as charged in the Indictment, and if you believe be-

yond a reasonable doubt that said Holt, Harmon, and Stubeck were co-conspirators, to the defendants, or any of them, then the acts and declarations of the co-conspirators may be considered by you as the acts and declarations of the conspirators, but said acts and declarations, before you can consider them, must be in furtherance of the conspiracy.

23. (a) The term "conspiracy" means a combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act. A conspiracy cannot exist without the combination or confederacy of at least two persons.

(b) The term "admission" means the act of acknowledging something asserted; acquiescence or concurrence in the truth of an allegation or statement; conceding that a statement is true.

24. You have been instructed that the basis of the conspiracy charged is the agreement, as alleged in the indictment, and the uniting of defendants therein, and that it is distinct from the offense, if any, intended to be accomplished, as the result of the conspiracy, if there was a conspiracy. The State has claimed that certain overt acts were committed by the defendants in the furtherance of the alleged conspiracy. You are now further instructed, in addition to all that the Court has heretofore instructed you, that before you can convict the defendants, or any of them, you must first all believe, beyond a reasonable doubt, that said defendants, or defendant, or any of them, you must first all believe, beyond a reason-

able doubt, that said defendants, or defendant, committed some one or more of the overt acts alleged in the Indictment, and that they did so in furtherance of the conspiracy as charged in the Indictment. If you do not so agree, then you must acquit the defendants. (263)

25. You are further instructed that some testimony on cross examination of the defendant Thacker was adduced, in substance, that after he was discharged from further service as a police officer of Salt Lake City he appealed or applied to the Civil Service Commission of Salt Lake City to be reinstated and that such application was denied; but that such evidence, when admitted was, as then stated by the court, received only for a limited purpose, but in connection therewith, the court charged you that such evidence may not, and should not, be considered by you as evidence tending to show the guilt of the defendant as to the offense charged in the indictment, or as to having any bearing thereon, and that whatever action the said Civil Service Commission may or may not have taken, can in no sense be considered by you as any determination of the guilt or innocence of the defendant Thacker of the offense charged against him by the indictment, nor as a determination of any material fact involved in the indictment. Such evidence was not admitted by the court for any such purpose. (264)

26. In instruction I the Indictment of the Grand Jury is recited, and instruction No. II gives the gist thereof. Neither of these are evidence, nor can they be considered by you as such. To the Indictment, and to the charge contained therein, the defendants have each

pleaded that they are not guilty. Their respective pleas puts in issue every essential fact constituting the offense charged, and casts upon the State the burden of proving every essential allegation thereof to your satisfaction beyond a reasonable doubt. (Other instructions were formal.)

“THE COURT: Now, gentlemen of the jury, there is evidence in this case of a former acquittal, touching the evidence relating to Messers Erwin and Pearce. The court has determined, as a matter of law, that that issue is not before you for your deliberations. So, any evidence in this case which touches upon the question of a former acquittal, as touching evidence introduced in behalf of Messers. Erwin or Pearce, is not to be considered by you.

Now, I take it there is no objection to that just being stated in the record that way, without writing a special instruction upon it.

MR. MULLINER: Your Honor, of course, we reserve our general objection, subject to the record that has just been made with relation to it.

THE COURT: Yes, but you do not object to having the court make this statement now without writing it in the instructions?

MR. MULLINER: No, not at all.

THE COURT: Very well.

MR. MUSSER: The record made by Mr. Mulliner for his client will apply to Mr. Erwin as well? (2155)

THE COURT: Yes; the record here and in chambers.”



## VERDICT

We, the Jurors impaneled in the above case, find defendant R. O. Pearce, guilty of the crime of Criminal Conspiracy, an indictable misdemeanor, in Violation of Title 103, Chapter 11, Section 1, Revised Statutes of Utah, 1933, as charged in the Indictment. (268)

We the Jury recommend leniency, in behalf of defendant R. O. Pearce.

Dated April 29th, 1939.

H. E. GIERS, Foreman

We, the Jurors impaneled in the above case, find defendant Harry L. Finch, guilty of the crime of Criminal Conspiracy, an indictable misdemeanor, in Violation of Title 103, Chapter 11, Section 1, Revised Statutes of Utah, 1933, as charged in the Indictment.

Dated April 29th, 1939.

H. E. GIERS, Foreman

We, the Jurors impaneled in the above case, find defendant E. B. Erwin, guilty of the crime of Criminal Conspiracy, an indictable misdemeanor, in Violation of Title 103, Chapter 11, Section 1, Revised Statutes of Utah, 1933, as charged in the Indictment. (270)

Dated April 29th, 1939

H. E. GIERS, Foreman

Exceptions were taken to the instructions as given and to the refusal of the court to give requests of defendants as follows: (2162)

## EXCEPTIONS

MR. MULLINER: The defendant Pearce at this

time excepts to the refusal of the court to give his Request No. 2.

He separately excepts to each numbered paragraph therein, which we stated in the title sheet to be separate requests.

## REQUEST NO. 2

You are instructed that before there can be any conviction in this case, proof of the alleged conspiracy or agreement must be made by the state to your satisfaction and beyond a reasonable doubt. If, after considering all of the evidence and the instructions of the Court, you have a reasonable doubt as to the entering of the defendants, or any of them, into such agreement as is alleged in the indictment, then it is your duty to acquit such defendants

1. The Court charges you that there is not sufficient direct or positive evidence that the defendants, or any of them, with each other, or otherwise, actually met or expressly agreed to permit or allow the places as alleged herein to operate. In this connection, however, the court charges you that such agreement need not be shown by circumstantial evidence, if such circumstantial evidence be sufficient to satisfy your minds beyond a reasonable doubt when considered in the light of the instructions as to circumstantial evidence given you herein. (189)

2. In this connection you are instructed that the circumstances relied upon to prove the alleged conspiracy or agreement must be independent of any of the alleged conspirators, and that only circumstances can be relied upon, if any there be, which point unerringly to, and distinctly indicate the existence of such agreement or conspiracy and the knowing and guilty participation of the de-

fendant or defendants sought to be convicted therein, and are consistent only therewith. Such circumstances as are relied upon must be themselves proven and must be consistent only with the guilt of the accused of the offense charged, and must be inconsistent with any reasonable hypothesis of innocence of the offense charged and not capable of explanation on any other reasonable hypothesis than that of guilt of the offense charged.

If the circumstances relied upon by the State do not comply with the foregoing instructions they are not to be considered by you as proof of the conspiracy or agreement alleged.

3. In this connection you are further instructed that in weighing and considering the evidence of circumstances, if any evidence of circumstances you find there are tending to prove the alleged agreement or conspiracy, you are not to consider in this connection, or as proof of the conspiracy, or the participation of the defendants or any of them, in said agreement, any statement of declaration or alleged admission made by any alleged conspirator. The existence of the conspiracy charged cannot be established against any alleged conspirator herein by evidence of the acts or declaration of any other alleged conspirator, done, or made in the absence of the conspirator sought to be charged. A conspiracy cannot be shown by the declarations of the alleged conspirators, nor are the declarations made by one conspirator to another evidence to establish the connection of a third person with the alleged conspiracy. The conspiracy or agreement, if any there was, must be shown to your satisfaction before you can consider for any purpose herein the alleged acts or declarations of any alleged conspirator as against any other alleged conspirator.

(57 F. x (2d) 1039; 36 L. Ed. 445.) (190)

4. In this connection you are further instructed that according to the evidence of the State's own witnesses, gambling in licensed card rooms and prostitution and lotteries operated before and after, as well as during, 1936 and 1937. Such operations are not to be considered by you as any evidence of an agreement or conspiracy between the defendants as alleged herein. Such conditions exist, or may exist in the absence of the alleged agreement, and their operation, therefore, is consistent with the absence of such agreement and cannot be considered by you as proof that such agreement existed. (193)

He excepts separately to the failure and refusal of the court to give Request No. 3.

### REQUEST NO. 3

Your attention is directed to a conversation between police officer H. K. Record and Mr. Pearce. Both of these parties testified that there had been but one conversation between them at any time. The testimony is in conflict as to the subject and also the circumstances of the conversation.

Regardless of what you may believe the conversation to have been, you are instructed that the mention of any other Defendant therein, if you believe one was mentioned, is not to be considered by you as evidence against such Defendant either of the conspiracy alleged or of his connection with it. These matters cannot be proved by statements of one Defendant in the absence of another Defendant, whose name may be claimed to have been mentioned.

Furthermore, you are instructed that if you

believe the testimony of H. K. Record as to the conversation, and also believe that Ben Harmon was present, and that there was some proposal as to Record making graft collections from gambling, still you may not consider this as any proof of the agreement or conspiracy here alleged.

This would have been, if you believe the testimony of this witness, another separate undertaking, involving the witness Record who is not claimed to be a conspirator here, and any such proposal as you may believe was made, if you believe that any was made, was never carried out.

In view of this conversation it is not shown that it came about as a result of the conspiracy here claimed and alleged. Whatever was said is as consistent with the absence of such conspiracy as with its existence. Such circumstances as are consistent with the absence of the agreement here alleged cannot be considered as any proof of such agreement. (192)

He separately excepts to the court's not giving any request covering the subject matter requested therein, or in Request 3A. He excepts to the failure and refusal of th court to give request numbered 3A.

### REQUEST NO. 3A

If the foregoing instruction is not given, Defendant Pearce separately requests that the following be given.

You are instructed that the testimony of H.K.Record as to an alleged conversation between himself and Mr. Pearce is not to be considered by you as any evidence or as tending in any way to prove the existence of the conspiracy here alleged. Such conversation, in any view, is as con-

sistent with the absence of the conspiracy here alleged as with its existence and was in no way in furtherance thereof. Such circumstances as are consistent with the absence of the agreement here alleged cannot be considered by you as any proof of the existence of such agreement. (193)

This defendant (Pearce) excepts to the failure and refusal of the court to give defendant's request number 4, either the first one or the alternative one, or any request sufficiently covering the subject matter.

#### PEARCE—REQUEST NO. 4

Evidence has been offered here from police officer Holt that he collected money from houses of ill fame, and from witness Kempner that Abe Stubeck collected some money at one time from the Ace Billiard Hall. This is not evidence of the alleged agreement here and is not to be considered by you as any proof of the offense here charged, even though you may believe the testimony of these witnesses to be true.

(Without waiving the foregoing request Defendant separately requests that if the above is not given as worded, that the following be given instead of the last sentence of the above request.)

You are instructed that if you believe that either Officer Holt or the witness Stubeck, or both of them, collected money, as they testified, you may not consider this evidence as any proof of the agreement here, even though you may believe the testimony of these witnesses as to these matters, unless you believe that such collections were made, if you believe they were made, as a result of the agreement alleged here; or that such collections were made if you believe they were made,



because of the agreement alleged against the defendants here. Such circumstances as these, when offered as evidence of the proof of a conspiracy and agreement, can only be regarded as proof of such if they point to the existence of the agreement alleged and are consistent with the existence of such agreement and tend to establish the same beyond a reasonable doubt.

150 P. 846. See also other cases cited on circumstantial evidence. (194)

The defendant excepts to the failure and refusal of the court to give his request No. 5.

And particularly in that respect excepts to the failure or the refusal of the court to give any request upon the question of separate conspiracies, or different conspiracies from the general one alleged.

### PEARCE—REQUEST NO. 5

You are instructed that it is not sufficient in this case that you may find that some one or more offenses may have been committed by one or more alleged conspirators or that there may have been some agreements or understandings, other than the agreement here alleged as constituting the conspiracy charged between different persons at different times.

The sole agreement alleged here is one between the alleged conspirators to permit, allow and assist houses of prostitution and lotteries and gambling devices, as alleged, to operate. It is this agreement that must be proved to your minds beyond a reasonable doubt before you can convict anyone here charged.

Even though you may believe that there was some understanding between officer Holt and Abie Rosenblum in 1936 to collect money from

houses of prostitution, or though you may believe there may have been some agreement between officer Holt and Ben Harmon in the later months of 1937 to collect money from houses of prostitution, or if you should believe that there may have been some agreement between Abe Stubeck and Ben Harmon to collect money in certain months in the early spring of 1937; and even though you may be convinced beyond a reasonable doubt that some of the defendants may have entered into one or more of these separate agreements, if you believe them to be such, still you cannot, by reason of this, convict any of the defendants in this case. The agreement charged against the defendants is not an agreement of this nature, nor an agreement to collect money at all. Moreover, where, as here, a single conspiracy, general in its nature, is charged, defendants cannot be convicted upon proof merely of other offenses or of other or smaller conspiracies or of any conspiracy different from that alleged. (195)

295 U. S. 78, 79 L. Ed. 1314.  
43 Fed. 2d. 890.

The defendant excepts to the failure and refusal of the court to give his request No. 6, or any instruction covering the subject matter of that request.

### PEARCE—REQUEST NO. 6

Your attention is called to the testimony of attorney Harris concerning certain conversations with Mr. Pearce, one of the defendants, in this connection the court instructs you that the statements claimed to have been made by Mr. Harris in these conversations concerning what he claimed to have investigated or had heard or had found

out, is not evidence of the facts thus stated by him or of the actual existence of any such things so stated; and, you are further instructed that there was nothing done or said by Mr. Pearce in those conversations which was or which can be considered by you as an admission on his part of guilt of the offense here charged or of guilt of any offense.

You are also instructed that whether or not you believe Mr. Pearce could or could not have given information to Mr. Harris concerning the matters discussed cannot be considered by you in this case. He was under no legal duty to give information even though he could. (196)

This defendant further excepts to the failure and refusal of the court to give his request No. 8, or any instruction covering the subject matter of that request.

### PEARCE—REQUEST NO. 8

You are instructed that the statements of attorney Fisher Harris, or the statements of any other witness or person alleged to have been made to Mr. Pearce, or to any other defendant, as to what the said attorney Harris, or any other said witness, or any person, had heard or had found out as to any fact, or as to any condition in Salt Lake City, or as to any alleged pay-off, are not evidence of the truth of anything asserted in any such statement, and cannot be considered by you as evidence of any alleged fact or of any condition or thing that the said attorney Harris, or any other witness, or any other person, stated that he or they had heard or had found out about. (198)

This defendant excepts to the failure and refusal

of the court to give his request number 9, or any instruction covering the subject matter of that request.

### PEARCE—REQUEST NO. 9

You are instructed that in another case referred to herein as No. 10785, by the State against Mr. Pearce and Mr. Erwin, two of the defendants herein, and Mr. Ben Harmon, it was charged that at a time on or about the first day of June, 1937, they received from the earnings of prostitutes collected by police officer Golden Holt from the houses of ill fame as herein alleged a sum of money knowing it to be the earnings from prostitution. On this charge the said defendants were tried and were acquitted. The testimony here given by Golden Holt as to this collection of approximately \$500.00 and the alleged delivery thereof to Mr. Pearce's office and the placing of the same on his desk, was given in support of the said charge of which the said defendants were acquitted. On the other charge the same evidence was considered by the jury as to the delivery of money to Mr. Pearce and by the same witnesses as has been given here.

The said defendant, R. O. Pearce, having been acquitted of the charge of receiving said money from the earnings of women engaged in prostitution, knowing it so to be such, you are instructed that he cannot be tried again on that issue. You are therefore further instructed that there is no evidence before you to be considered by you that any money was delivered to the said defendant R. O. Pearce, as testified to by the witness Holt, or that the said Pearce received any such money knowing it to be from the earnings of prostitution, or at all. (199)

Defendant also expects to the failure and refusal of the court to give his request number 10, or any instruction covering the subject matter of that request;

And particularly as set out in the paragraph commencing near the middle of the first page;

And again separately as to the paragraph commencing near the bottom of that page;

Excepts separately and particularly as to the last paragraph of that request; there being no instruction covering the point that the bill of particulars limited the matter of the agreement here, and the bill of particulars was given to the jury.

There appears to be no instruction on any limitations upon the indictment as contained in any of the provisions of the bill of particulars. (2164)

### PEARCE—REQUEST NO. 10

You are instructed that the State has alleged herein as overt acts, four matters:

1. That the defendant, between March 15, 1936, and January 1, 1938, permitted, allowed and assisted and enabled houses of ill fame to be operated.

2. That during said period the defendants permitted, allowed and assisted lotteries and other games of chance and gambling devices to be operated.

3. That on or about the first day of each and every month "between the months of June, 1937, and January, 1938" the defendants collected and caused to be collected, money from the operators of houses of ill fame.

4. That at various times between April 1, 1936, and January 1, 1938, the defendants collected and caused to be collected money from the operators of lotteries, book making and other games of chance.

You are instructed that before there can be any conviction here the State must prove beyond a reasonable doubt the commission of one or more of the said alleged overt acts by one of the alleged conspirators, at a time when the alleged agreement, if any, has been proved beyond a reasonable doubt to be in existence, and that such persons, if any, committing the said overt act, then had knowledge of the said agreement and was acting pursuant thereto.

It is not enough that you may believe that Golden Holt may have collected money and that Ben Harmon may have been interested in or connected therewith, or that Golden Holt may have collected money and that Abe Rosenblum may have been interested in or connected therewith, unless you also find that the said persons at said time were joined in a conspiracy and agreement with the defendants here accused as said agreement is herein alleged, and that they were acting pursuant thereto.

You are further instructed that the State herein has limited its claim that houses of prostitution, book making and games of chance were permitted to operate to the allegation that they were permitted to operate by the defendants herein, other than Mr. Pearce, and by the failure of the other defendants or the refusal to make arrests of such operators. In this connection you are instructed that any such failure or refusal, if any there be, must be shown to be under such conditions also that if there was any such failure or refusal



under any such conditions, that the person so acting was acting with knowledge of the existence of an agreement and conspiracy as herein alleged, if such has been proved, and acting with the other conspirators alleged, and, with such knowledge acting in furtherance of such conspiracy, if any there was. (201.)

We desire at this time to except to the failure and refusal of the court to give our request which is numbered in the file here as "11." It was mentioned in the record as being submitted by all of us, upon the subject of alleged admissions by silences; particularly that the court gave no instruction at all covering that subject.

Then we except separately to the failure and refusal of your Honor to give the last portion of that, which is written in pen and ink, or any other instruction covering the subject therein requested to be instructed upon.

### REQUEST NO. 11.

You are instructed in this case that it is claimed that some admissions, by some of the defendants, by their silence were made. In this connection you are instructed that there is no admission by mere silence unless there is a direct accusation of the charge made in the case, made to the defendant himself. It must be a charge that the defendant committed the offense and not that the person making the statement has merely heard it or heard a rumor or something of that character; and it must be such an accusation and under such circumstances that an ordinary reasonable man would feel called upon to deny. If it is not so made, under such circumstances, it is not to be considered as an admission.

(Ink)

You are further instructed that the offense of conspiracy cannot be proven by statements or admissions of the defendants or any of them out of the presence of the others. (202)

MR. LOOFBOUROW: Comes now the defendant Harry L. Finch, and excepts to the refusal of the court to give request No. 1 by the defendant Harry L. Finch.

REQUEST NO. 1 BY THE DEFENDANT  
HARRY L. FINCH:

You are instructed that there is not sufficient, competent evidence in this case to support a verdict of guilty of the crime of criminal conspiracy charged in the indictment against the defendant Harry L. Finch, and you are instructed to return the verdict of not guilty as to the Defendant Harry L. Finch. (183.)

Excepts to the refusal of the court to give Request No. 3 by the defendant Harry L. Finch, or to give any request upon that subject. (2165)

REQUEST NO. 3 BY THE DEFENDANT  
HARRY L. FINCH:

You are instructed that an arrest is made by an actual restraint of the person of the individual arrested, or by his submission to the custody of an officer. The individual arrested must not be subjected to any more restraint than is necessary for his arrest and detention. In other words, manual custody or restraint is not essential to the effectuation of an arrest if the individual submits to a manifestation or claim of authority to make the arrest and an expression of intent to execute

such authority. (185.)

MR. MUSSER: Comes now the defendant E. B. Erwin and excepts to the court's failure or refusal to give this defendant's request for Instruction No. 6.

**E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 6**

You are instructed that there is no evidence that any money was paid by or collected from operators of lotteries, dice games, slot machines, book-making establishments, and other gambling devices. (158)

Excepts to the court's failure or refusal to give this defendant's request No. 7.

**E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 7.**

You are instructed that you may not consider as being evidence in this case the testimony of the witness, Dar Kempner, wherein he testified that one Abe Stubeck told him that he, Abe Stubeck, collected money from card games and took it over to Harmon's place and that Harmon split it with Erwin and his crowd. This is not evidence that the defendant E. B. Erwin ever received any of said money, nor is it evidence that Ben Harmon ever gave him any money, nor is it evidence that the defendant Erwin ever entered into a conspiracy or an agreement to take or receive any such money. (159)

Excepts to the court's failure or refusal to give this defendant's request No. 8.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 8.

You are instructed that there is no evidence that the defendant E. B. Erwin, with any of the other defendants, or with any other person, or at all, between the 15th day of March, 1936, and the first day of January, 1938, or at any other time, permitted, allowed, assisted, or enabled lotteries, dice games, slot machines, book-making, and other gambling devices or games of chance, to be kept, maintained, and operated in Salt Lake City, or at any other place. (160)

Excepts to the court's failure or refusal to give this defendant's Request No. 11.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 11

The Court charges you that as to the defendant E. B. Erwin, there is no evidence to show that he collected any money from any of the operators or inmates of any of the houses of ill-fame, or from any of the operators or other persons engaged in lotteries, dice games, slot machines, book making or of any gambling device or other games of chance, or that he authorized or directed or caused any such monies to be so collected for the purpose and what on the record has been referred to as "pay-offs" or otherwise, nor is there any evidence that he had any knowledge of, or acquiesced in any such collections, if any were made, during any of the times alleged in the indictment, between March 15, 1936 and January 1, 1938, or between April 1, 1936 and January 1, 1938, or at any other time claimed by the State when any such moneys were so collected or caused to be collected, and thus, if on the evidence, you find

that any such collections were made, such evidence may not be considered by you against the defendant E. B. Erwin. (163)

Excepts to the court's failure or refusal to give this defendant's Request No. 12.

**E. B. ERWIN'S REQUEST FOR  
INSTRUCTION NO. 12**

You are instructed that there is no evidence that the defendant E. B. Erwin at any time stated in the indictment, or at any other time, received any monies collected by witness Holt, or by any other person, from operators or inmates of any house or houses of ill-fame in Salt Lake City. (164)

Excepts to the court's failure or refusal to give this defendant's Request No. 13.

**E. B. ERWIN'S REQUEST FOR  
INSTRUCTION NO. 13.**

You are instructed that there is no evidence that the defendant E. B. Erwin received any moneys collected by anyone from operators or other persons engaged in lotteries or dice games or slot machines or book making or other games of chance or gambling devices operated at any place in Salt Lake City. (165)

Excepts to the court's failure or refusal to give this defendant's Request No. 17.

**E. B. ERWIN'S REQUEST FOR  
INSTRUCTION NO. 17.**

You are instructed that there is no evidence

that the defendant E. B. Erwin, between March 15, 1936, and January 1, 1938, or at any other time, with any of the other defendants named in said indictment or otherwise or at all permitted, allowed, assisted, or enabled houses of ill-fame, resorted to for the purposes of prostitution or lewdness, to be kept, maintained, and operated at various places in Salt Lake City, or otherwise, or at all. (172)

Excepts to the court's failure or refusal to give this defendant's Request No. 18.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 18

You are instructed that there is no evidence of E. B. Erwin ever receiving or taking any money paid by or collected from operators of houses of ill-fame in various places in Salt Lake City, or at all, and there is no evidence that the defendant E. B. Erwin ever collected any money from operators of houses of ill-fame in Salt Lake City, or otherwise, or that such operators or prostitutes ever paid him any money during any of the time mentioned in the indictment or in the evidence introduced in this case or at all. (173)

Excepts to the court's failure or refusal to give this defendant's Request No. 19.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 19

You are instructed that the witness Ben Hunsaker related certain conversations which he claimed he had with the defendant E. B. Erwin. You are instructed that you must not consider



any such statement alleged to have been made by the defendant E. B. Erwin to the witness Ben Hunsaker as in any sense being an admission of the said E. B. Erwin that he was guilty of entering into a criminal conspiracy as alleged in the indictment or that he committed any of the overt acts alleged in the indictment. (174.)

Excepts to the court's failure or refusal to give this defendant's Request No. 20.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 20.

You are instructed that the witness Ben Hunsaker related certain conversations which he claimed he had with the defendant E. B. Erwin. You are instructed to totally disregard all of such testimony with respect to said claimed conversations unless you first find that the defendant E. B. Erwin entered into the criminal conspiracy and agreement set out in the indictment with one or more of the defendants named in the indictment. (175)

Excepts to the court's failure or refusal to give this defendant's Request No. 21.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 21

You are instructed that the witness Fisher Harris related certain conversations which he claimed he had with the defendant E. B. Erwin. You are instructed to totally disregard all of such testimony with respect to said claimed conversations unless you first find that the defendant E. B. Erwin entered into the criminal conspiracy and

agreement set out in the indictment with one or more of the defendants named in the indictment. (176)

Excepts to the court's failure or refusal to give this defendant's Request No. 22.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 22

You are instructed that the witness Fisher Harris related certain conversations which he claimed he had with the defendant E. B. Erwin. You are instructed that you must not consider any such statement alleged to have been made by the defendant E. B. Erwin to the witness Fisher Harris as in any sense being an admission by the said E. B. Erwin that he was guilty of entering into a criminal conspiracy as alleged in the indictment or that he committed any of the overt acts alleged in the indictment. (177)

Excepts to the court's failure or refusal to give this defendant's Request No. 23.

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 23

The witness Mrs. Runzler testified that in the forepart of 1937 she had a conversation with E. B. Erwin in the presence of Mrs. Erma Van Cott and Mrs. Lee Wright at which she testified that Mrs. Van Cott stated that according to information she had received that Mr. Erwin was receiving a pay-off \$750.00 a month, to which the defendant E. B. Erwin replied "Oh, I am accused of that too, am I?"

Your are instructed that this reply of the defendant E. B. Erwin cannot be considered by you

as an admission that he was in any sense guilty of the offense he is accused of committing in the indictment, nor can it be considered by you as being an admission by him that he did receive any money from the pay-off, or had committed any of the overt acts alleged in the indictment.

You are further instructed that you may not consider said testimony as against the defendant E. B. Erwin, or any other defendant, unless and until you first find that the defendant E. B. Erwin with one or more of the other defendants entered into the criminal conspiracy and agreement alleged in the indictment. (178)

Excepts to the court's failure or refusal to give this defendant's Request No. 26. (2166)

### E. B. ERWIN'S REQUEST FOR INSTRUCTION NO. 26

You are instructed that in the case of The State of Utah vs. E. B. Erwin and R. O. Pearce, referred to herein as No. 10785, it was charged that the defendant E. B. Erwin accepted approximately \$500 collected by Police Officer Golden Holt from women engaged in prostitution. On this charge the defendant was tried and acquitted. The testimony here given by Golden Holt as to the collection of approximately \$500 and the alleged delivery thereof to Mr. Pearce's office and the placing of the same on his desk, was given in support of the charge in the above case, No. 10785, of which the defendant E. B. Erwin was acquitted.

The defendant E. B. Erwin having been acquitted of the charge of receiving said money from the earnings of women engaged in prostitution, knowing it to be such, you are instructed that he cannot be tried again on that issue. You are there-

fore instructed that there is no evidence before you to be considered by you that any money was delivered to or received by the defendant E. B. Erwin as testified to by the witness Holt or that the said E. B. Erwin received the or any such money. (181)

MR. MULLINER: Coming now to the instructions given by the court, the defendants except to the giving of the indictment as it was given, without eliminating therefrom the reference to dice games and gambling devices and other things on which there was no evidence whatsoever submitted.

Defendants further except that, in setting forth the issues to be tried here, there was no reference made to the limitations upon the indictment, or any restrictions as contained in the provisions of the bill of particulars, or any of them.

We want to save an exception to paragraph 6 in which the court restricted the evidence, by statements to the jury, at the time the evidence was offered.

In view of the refusals of the court as to our requests, we object to the sufficiency of No. 6 upon the ground that it should have been covered in conversations by any alleged conspirator or any other person until the conspiracy was separately shown and established, as not being binding upon any other defendant here.

The defendant Pearce excepts to Instruction No. 7 as given, on the matter of circumstantial evidence, as being insufficient in a conspiracy case, and being open to the same objection on which the case that I cited, from 7 Federal 2nd, was taken: (2167)

The defendant separately objects to the insufficiency of 7 and to the applicability of it here to the facts of this case.

Now, we will except to 11A to 11F, inclusive, and separately, as to each of those lettered paragraphs—they are instructions as to certain city ordinances—upon the ground that they are incompetent, irrelevant and immaterial.

We separately object particularly that the court gave the ordinances, or at least some of them, in that way, to the jury by these instructions, but did not instruct, so far as I can find, upon the ordinances introduced by us as to the Civil Service Commission, or as to the duties of the City Attorney in enforcing the law, so far as I am able to find, at all.

We except to Instruction No. 12, as given, and to the whole thereof.

Except separately and particularly to the last five lines.

We except to Instruction 12A, and to the whole thereof.

We except separately and particularly to the last three lines thereof, in which it is stated:

“Did actually participate therein in carrying out the same.”

Upon the ground that that instruction and that portion of the instruction must provide that they participated knowing of the existence of the agreement; and the mere fact that they may have done something, as to an overt act, would not be proper to instruct that that

would involve them.

THE COURT: Where is that? (2168)

MR. MULLINER: That is the last lines of 12, on page 14.

THE COURT: I think you are right. I think I should put "knowingly" in there.

MR. MULLINER: I doubt that "knowingly" is enough. It must be knowing of the existence of the contract.

THE COURT: I think the instructions, perhaps, are sufficient anyhow, but I don't think it would hurt to have that in there—

'In other words, to find said defendants, or any of them, guilty as charged in the indictment, you are required to find, beyond a reasonable doubt, that they were parties to the alleged conspiracy or agreement,'—"that they were knowingly parties".

I will change that. I will put the word knowingly in there.

If I do that, do you want me to bring the jury in?

MR. MULLINER: If you do I will still except to it, because doing something knowingly, like collecting money or gambling or going to these house of prostitution would not be enough. They would have to know of the existence of the alleged agreement.

THE COURT: I am inclined to think it is fully covered; but when I examine it, if I find that it isn't, and I make an amendment there, then I better bring them back and read it to them. (2169)

MR. HANSON: Yes, I think so. I think they better be all in and have it read to them.



MR MULLINER: I don't want that one read again.

MR. HANSON: All right. Then may the record show, if the court desires to amend it he may do so without reading it.

MR. MULLINER: Yes.

THE COURT: Just make the correction with pen.

MR. MULLINER: Yes.

THE COURT: I am in doubt, but I may do it that way.

MR. HANSON: Then may the record show an exception to the way the court amends it.

THE COURT: To the amendment that it made—not to the method I used.

MR. HANSON: No, not to the method.

MR. MULLINER: Except to No. 13, and to the whole thereof.

We except to the first six lines separately, down to the including the word "them", at the beginning of the 6th line.

Particularly where it says: "a conspiracy or an agreement as alleged in the indictment actually existed and was entered into by said defendants, or by any two or more of them." (2170)

That may refer to any alleged agreement or conspiracy that they might find here, or between any number here. In view of the other instructions here that might not have any reference to the general conspiracy alleged or to the defendants in that general conspiracy.

THE COURT: I will read that, and if I decide to make an interlineation there I may make it on the same terms as the other one; is that right?

MR. HANSON: So far as the defendant Thacker is concerned, we will agree to that.

MR. MULLINER: Yes, and we will, too.

MR. HANSON: You do, too?

MR. MUSSER: Yes.

MR. MULLINER: We except to the following lines: "Then the court charges that any statement or declaration, if any, made by any or more of such conspirators in furtherance and in pursuance of the said conspiracy or agreement and while carrying out the same," down to the semi-colon after the word therein;" at the beginning of the 5th line on 15. That is separately excepted to.

We except, commencing with the second word in the tenth line from the top of page 15, with the words "nor are".

We except separately to the balance of that instruction No. 13.

We except separately again to the last two clauses in the instruction, that he had not participated therein if and when such statements and declarations were made in his absence. (2171)

In that connection we except to the failure of the court to give our requests or to instruct, or to the sufficiency of that instruction, or any instruction, that such statements between persons alleged to be conspirators, or others, cannot be considered in any way as proof of the existence of the conspiracy, or as proof of the connection of any defendant mentioned in any such statement therewith.

We except to 14, and the whole thereof.

We make the same statement with relation to 14, and the sufficiency of any instruction to tell the jury they can't consider any statement made by any of the alleged conspirators as in any way tending to prove the conspiracy or any absent alleged conspirator's connection therewith.

We except to Instruction 15, and to the whole thereof.

We except to the first four lines of that instruction separately.

I except to it down to "result of the agreement alleged here", in the eighth line; and separately to the first four lines.

MR. HANSON: It should be the first three shouldn't it?

MR. MULLINER: As to 16, we except to the subdivision 4 of that paragraph, as being an insufficient statement, and as being in conflict with the other statements of the court in the previous instructions as to the agreement, and not limiting as the bill of particulars limits the State in this case. (2172)

We except separately and particularly to Paragraph (a) of 16, as to an overt act that can be proved here, being the alleged collection of Abe Stubeck from the Ace, and as being a sufficient overt act.

That is all of (a) under "(5)"—5-(a).

We make the same exception separately as to each one of the lettered paragraphs.

Under paragraph No. 5, and, of course, we maintain the position we have always taken, that an allegation that somebody permitted something to go on is not an allegation of an overt act.

We except to paragraph 17, and the whole thereof.

We except separately to the first five lines at the top of page 7;

Then we except separately as to the next three lines—7, 8 and 9—from the top of the page down to and including the word “design”.

Those parts have no application to this case, and they are misleading when given to this jury. They refer to accomplishing an unlawful design. The gist of it here, of course, is to allow and permit, and so forth, as your Honor has instructed; and they seem to affirm that there was a mutual understanding.

We except to the next sentence, commencing in the 9th line. We except to that particularly as being misleading and not in accordance with the law.

We except separately to the balance of that instruction. (2173)

We except to it upon the ground that it is in conflict with the previous instructions on the same subject.

We except to 18, and the whole thereof.

We except separately to the second sentence of that, commencing in the fourth line thereof, and ending with the words “such design and purpose by either of the defendants.”

We except separately to that particular clause.

We particularly except to the last portion of that;

“If the conspiracy charged in the indictment has been proved to the satisfaction of the jury, beyond a reasonable doubt, then the act of either one of the defendants, or the acts of said Golden Holt, Ben Harmon or Abe Stubeck, in furtherance of the common purpose and de-

sign proved, as aforesaid, will be regarded as the act of all.”

Of course, we object to it particularly upon the ground that there is no instruction in the Court’s instructions at all, requiring the existence of the conspiracy to be proved, that these fellows were members of it, and so proved independently of the acts or statements or any alleged conspirator.

We except to 19, and the whole thereof.

Then we except to these ordinances again, the recital of some of the ordinances, (20) as put in by the State, as being incompetent, irrelevant and immaterial.

We except, particularly, upon the ground that they are prejudicial, in view of the fact that the ordinances introduced by the defendants were not instructed upon.

MR. MUSSER: All of which appears from paragraph 20 of the instructions. (2174)

MR. MULLINER: The defendants except to 21, and to the whole thereof.

Except separately to the part beginning with the sentence at the middle of the page, in the fifth line from the bottom of page 21, with the words: “It is”, preceding “not essential”, to the words on the next line: “support a verdict of guilty”.

We except to that sentence.

Separately we except as to the next sentence.

We except to the insufficiency of the instructions as a whole to cover this situation here, as to accomplices.

We except also upon the ground that under this instruction the testimony of Mr. Holt could be completely believed and relied upon without any corroboration af-

fecting anything that he said or did in the case.

That is contrary to the holding of our Supreme Court in the Gardner case.

We except further upon the ground that this instruction, and the whole thereof; and in part thereof, while it may be in some cases where there is direct evidence to the commission of a crime, is a sufficient statement of the law, it is not a sufficient nor an applicable statement as to corroboration in this case.

The defendants except to instruction 22 as given, and to the whole thereof.

Of course, we except separately to the first sentence of that instruction, contained in the first four lines. (2175)

We except particularly upon the ground that the instruction is prejudicial, because it requires no foundation to be laid for the proof of the conspiracy before the statements of Stubeck and those might be entertained, and it contains no statement that such statements of Stubeck and others cannot be used so as to establish the agreement or the connection of somebody therewith, but indicates to the jury that they may be so used.

We except to the latter part of Instruction No. 23, as given, commencing with the words: "The State", in the fifth line, and down to the bottom of that paragraph.

And we, of course, except on the ground that that instruction does not contain any suggestion that the conspiracy has to be proved separately, or that the person acting has to have knowledge of the existence of the agreement.

We desire at this time to except to the failure and refusal of the court to give our request which is numbered



in the file here as "11". It was mentioned in the record as being submitted by all of us, upon the subject of alleged admissions by silence; particular that the court gave no instruction at all covering that subject.

Then we except separately to the failure and refusal of your Honor to give the last portion of that, which is written in pen and ink, or any other instruction covering the subject therein requested to be instructed upon. (2176)

MR. MUSSER: The record will show that that request was also made by the defendant Erwin; and we also except to it.

MR. MULLINER: I believe the record does show it was made by all of us.

MR. HANSON: If you are through, I would like to add a little to this one instruction—13—here:

Exception has been taken to it, and I want to specifically except to the following words in 13. That in on page 15 of the requests (instruction).

"is admissible as against all persons engaged in such conspiracy or unlawful agreement as parties thereto or actually participating therein".

Without limiting it so it would only affect those in the conspiracy at the time the declarations were made. If others joined them, it could not affect those who may have joined any conspiracy afterwards.

THE COURT: Isn't that your request?

MR. HANSON: I want to take a further exception to portions of 15. While exception has been taken to the whole of it, I want to take exception to the following words in 15: "or the witness Stubeck", in the second line,

and “as they testified”, in the third line, and also to the following: “you may not consider this evidence as any proof of the agreement here”, and especially to the word “evidence” there, and also to the following: “Even though you may believe the testimony of these witnesses as to these matters”—especially the word “testimony of these witnesses”. Also the word “collections”, “unless you believe that such collections were made.” (2177)

Also to the following: “That such collections were made, if you believe they were made, because of the agreement alleged against the defendants here.”

And to the words “such collections”.

Then, “Such circumstances as these, when offered as evidence”—especially to the word “circumstances” therein.

I think that is all.

MR. MUSSER: Of course, that applies to all of the defendants.

MR. HANSON: Oh yes, that applies to all of the defendants—and the other exceptions also.

THE COURT: We will be in recess, subject to call.

Now, if I make any amendment whatsoever, one word or more than one word, I will set it out fully in writing, and you will each get a copy of it, so you will know exactly what I did, if I do it. (2178)

The following exceptions were taken on arguments to the jury: (2157)

(Argument by Mr. Rawlings, on behalf of the State, in the course of which, the following record was made:)

MR. MULLINER: I submit the record shows, according to the testimony of Kempner, that he collected

that money in March.

MR. RAWLINGS: I expected that quibble; but the jury will remember collections were made up until June.

Kempner had known Stubeck. They were pals together. They had known each other over a long period of time.

(Mr. Rawlings' argument continued.)

In the course of his argument, Mr. Rawlings stated: "That Mr. Finch agreed to resign".

MR. LOOFBOUROW: I want to challenge the statement. Mr. Finch has not said, at any time, that he would resign.

MR. RAWLINGS: I said he agreed to resign.

(No ruling—Argument by Mr. Rawlings resumed)

Objection was made to the following statement:

"That those people wanted to be arrested or wanted to be taken to jail."

MR. HANSON: There is no such evidence in this record. There is no evidence that anyone said they wanted to be arrested.

MR. RAWLINGS: They were arrested. That is in evidence.

(No ruling. Argument resumed.)

Later, in the argument, reference was made by the District Attorney to Ben Harmon as "The King Pin of the Underworld", to which the following objection was made:

MR. MULLINER: Ben Harmon is dead. There is no evidence that he was the "King Pin of the Underworld"; and I object to the statement that they hired Mr. Pearce. There is absolutely no evidence in this

record that they hired Mr. Pearce—he is talking about the defendants here—there is no evidence that any of them contracted him or had anything to do with him. This is a mis-statement of the record.

MR. RAWLINGS: I am drawing an inference. I don't know how much they paid him, but Pearce himself said:

“I am instructed by the Mayor to make these collections”.

I don't know what else you need. If that is not hiring—you don't think he would do it for nothing.

(Argument resumed.)

Objection was made to the District Attorney's statement with reference to reasons for the defendant Thacker “not wanting Mr. Holt”.

MR. LOOFBOUROW: I object to that, and assign it as error—that that evidence can be used inferentially or otherwise, as to what the witnesses said was the reason for his “not wanting Mr. Holt.” The court expressly excluded that as to every defendant except Mr. Thacker, and the jury has been so instructed.

THE COURT: What is your memory?

MR. RAWLINGS: *That is my memory; but I say it because it shows a mutual understanding. I say it shows a mutual understanding between these parties.*

MR. LOOFBOUROW: I object to that.

THE COURT: If the evidence was excluded to everyone except Mr. Thacker, it is not in the record except as to Mr. Thacker.

(Argument resumed and concluded.)

(2159)

MOTIONS IN ARREST OF JUDGEMENT were made on all the grounds of the previous motions to quash the indictment and to quash the indictment as supplemented by the Bill of Particulars by all the appellants. (275, 278, 284).

MOTION FOR NEW TRIAL by each appellant was made.

The grounds were:

1. That the Court:

- (a) Misdirected the jury in matters of law, and
- (b) Has erred in the decision of questions of law arising during the course of the trial, and
- (c) Has done or allowed acts in the cause prejudicial to the substantial rights of the defendant.

2. That the verdict is:

- (a) Contrary to law, and
  - (b) Is contrary to the evidence in the case.
- (277)

Additional grounds: (289)

That the Court erred in admitting evidence without proper foundation, and in admitting evidence that was incompetent, irrelevant and immaterial, and in refusing to strike evidence improperly admitted, and separately that the Court erred in excluding evidence on behalf of this defendant, Pearce.

That the Court erred in not permitting him to argue evidence admitted on his behalf after the evidence was received and in the record.

That the verdict of the jury is contrary to law.

That the verdict of the jury is contrary to and not supported by the evidence.

Motions in arrest of Judgment and for new trial were denied. (291)

### NOTICE OF APPEAL (303)

To the STATE OF UTAH, Plaintiff, and to CALVIN W. RAWLINGS, District Attorney of the Third Judicial District of the State of Utah in and for Salt Lake County, and to BRIGHAM E. ROBERTS, his Deputy, and to the CLERK OF THE ABOVE ENTITLED COURT:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE. That E. B. Erwin, Harry Finch, and R. O. Pearce, defendants named above hereby appeal to the Supreme Court of the State of Utah from the verdict and judgment made and entered in said cause against said defendants on the 29th day of April, 1939, and from the whole thereof and from the Order denying defendants' motion in arrest of judgment made and entered in the Minutes of the Court on the 3rd day of May, 1939, and from the Order denying defendants' motion for a new trial herein made and entered in the Minutes of the Court on the 18th day of May, 1939; This appeal is taken on questions of both law and fact.

Dated this 14th day of July, 1939.

**BALL AND MUSSER**

*Attorneys for defendant E. B.  
Erwin*

**H. L. MULLINER**

*Attorney for Defendant Harry  
Finch*



H. L. MULLINER  
*Attorney for Defendant R. O.  
Pearce*

Received a copy of the foregoing  
NOTICE OF APPEAL this 14th  
day of July, 1939.

CALVIN W. RAWLINGS  
*Calvin W. Rawlings (D.A.)*  
BRIGHAM E. ROBERTS  
*Brigham E. Roberts, his Deputy*

Orders extending time, including time to prepare and present and settle the Bill of Exceptions, were made and filed. The same was prepared and settled within the time allowed. (2197)

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### ASSIGNMENTS OF ERROR

Come now the appellants herein and make and assign the following errors in this action on which they rely and each of them relies for a reversal of the judgment in said action. Each of these assignments is made by, for and on behalf of each of the appellants herein separately and individually.

(The first number following assignment is the abstract page, the next is the transcript page.)

1. The District Court erred in overruling appellant's motion to quash the indictment herein. (6) (21)
2. The District Court erred in its ruling and holding that the said indictment could be supported by a bill of particulars prepared and filed by the District Attorney, or his deputy. (6) (37)

3. The District Court erred in not requiring the respondent to file a sufficient bill of particulars or one in harmony with the indictment, or one conforming to the order of the court. (6) (39)

4. The District Court erred in overruling and denying appellant's motion to strike the bill of particulars filed herein. (13) (57)

5. The District Court erred in overruling appellant's motion to quash the indictment herein, as supplemented by the bill of particulars, as filed. (11-13) (42, 48, 52, 58)

6. The District Court erred in overruling appellant's objection to the introduction of any evidence upon said indictment and bill of particulars as attempted to be supplemented and supported herein, and separately in overruling defendant's motion requiring the state to elect which subdivision of R. S. U. 103-11-1 (5) it would proceed under. (14) (365)

7. The District Court erred in overruling and denying appellant's motion for a non-suit and for a dismissal of the said action at the conclusion of the state's evidence. (162-167) (1454-1473)

8. The District Court erred in overruling and denying appellant's motion for a directed verdict herein. (247-252) (2092-2110)

9. The District Court erred in that appellant was not given a fair trial.

10. The District Court erred in receiving the verdict and entering judgment, in that the evidence did not, and does not, support the verdict or the judgment herein.

11. That the District Court erred in allowing and permitting the district attorney to make improper statements and in allowing improper conduct on the part of the district attorney herein prejudicial to appellant.

12. That statements and misconduct of the district attorney in the trial of said action were prejudicial to the appellant.

13. That statements and misconduct of the district attorney, prejudicial to the appellant on the trial hereof and in the presence of the jury, were made, committed and allowed and had as follows:

(The following assignments under (a) are from the opening statement which is contained in the supplement to the record, Vol. V, and the pages after the assignments are to that volume.

Another matter of importance to be pointed out at this time is that during this statement it was stipulated and agreed that all motions and objections taken on the trial by any attorney for any defendant would be available to all.) (6)

(a) In his opening statement to the jury the district attorney made a general statement, the whole of which is immaterial and prejudicial. A considerable number of matters were stated on which no evidence whatsoever was offered. The statement was particularly prejudicial in that it refers to miscellaneous matters of wrong-doing and the fact that prostitution and other vices operated, which was wholly immaterial. And, assuming the whole statement to be true and that it could be and was supported, it would not establish the conspiracy or agreement as alleged in the

indictment. The following more particular matters in this statement are separately assigned:

(1) The statement throughout refers to rumors that were heard and investigations made by Fisher Harris and others and that they found certain violations of the law to exist. These were immaterial and incompetent.

(2) After telling the jury the "case is very important" he said that daily meetings were held between Early and Mr. Erwin. This was immaterial and incompetent. There was no evidence of this. (2)

(3) He stated that the defendants each had knowledge of the operation of houses of prostitution, book-making, card rooms and marble games and tolerated them, and that there was a pay-off from them and money therefrom went into the hands of the defendants. Card games and marble games were licensed. There was no evidence to prove this knowledge or that the money reached the individual defendants. (2)

(4) He stated that Early and Erwin discussed a pay-off early in January, 1936, and that Early investigated and determined that there was an aggregate pay-off of \$2,000.00. This was without any foundation at any time and had no reference to any conspiracy that did or could have existed between defendants. (3)

(5) He stated that Ben Harmon, Bill Browning, Abe Rosenblum and Cliff Jennings called on Early, early in 1936, and asked him what they could do to keep operating. This was subject to the exception taken, and wholly incompetent and immaterial. (4) This was repeated. (5)

(6) He stated that Mr. Early sent these men to the Chief of Police. There was no evidence of this but the evidence was to the contrary. (6)

(7) He stated that in the fall of 1936 there were rumors of graft prevalent on the streets of Salt Lake City (6) This was incompetent.

(8) He stated that soon after Mr. Finch's appointment he said to Austin Smith, relative to the matter of pay-off, there are a number of bills that have not been paid of Mr. Erwin's, and after that was taken care of, then this pay-off would be reorganized, and that the pay-off, \* \* \* would amount to approximately \$2,000.00 per month; that he planned to have Abe Rosenblum receive the money. This statement was never supported by evidence and was without any foundation as to the conspiracy here. (7)

(9) He stated that Austin Smith, in June, 1936, talked with a newspaper reporter about vice conditions and received from the newspaper reporter a memorandum showing a list of the places of vice and the amounts they were paying off. This was incompetent. (8)

(10) He stated that around June, 1936, rumors became prevalent, as he had indicated, of vice conditions and an alleged pay-off. This was subject to the exception taken, was incompetent and immaterial. This was repeated. (9)

(In making objection to the foregoing, attention of the court was called to the fact that counsel was making a number of statements as to rumors and as to rumors conveyed to Mr. Finch and Mr. Erwin without mak-

ing any statement of evidence to show any agreement or conspiracy as alleged.)

(11) He stated that the gist of these rumors was that there was a pay-off and referred to a discussion between Mr. Holt and Mr. Taggart on this subject and Mr. Taggart calling it to the attention of Austin Smith. This was incompetent and immaterial and subject to the exception and objection taken. (12)

(12) He stated that thereafter vice, "under the instruction of Chief Finch, were permitted to operate unmolested, including bookies, card rooms, dice games, lotteries." There was no evidence of any such instruction from Chief Finch at any time. (13)

(13) He stated that Mrs. Van Cott was the President of the Federation of Women's Clubs and that they made an investigation of vice conditions around November, 1936, and until May of 1937, and they talked to Mr. Finch and Mr. Erwin and called their attention to rumors of graft and that in the latter part of 1936 or early part of 1937 Mrs. Van Cott read from a memorandum to the Mayor, names of men who were alleged to be taking the pay-off and the Mayor's name was included. There was no evidence that any such report was made to Mr. Finch, or of any such lists being presented. The statement or rumor was incompetent. Objection and exception were taken, including objection to the argumentative nature of the statement and to the pounding of the stand in front of the jury. (15)

(14) He stated that Gus Captain had a conversation with Mr. Holt after Mr. Captain had informed witness Holt that he was the investigator for the women's



clubs and was desirous of Holt gathering evidence, and that Mr. Captain and Mr. Holt afterwards reported to Fisher Harris. This was wholly immaterial and incompetent and subject to the objection and exception taken, and was never supported by any evidence whatsoever. (19) This was repeated. (20)

(Attention of the court at this time on this objection was called to the fact that what was claimed to have been stated by any person to any of the defendants, as to what they had investigated or what rumors they had heard, was prejudicial and was not evidence. That such statements as were being made involved no admission of the offense charged.)

(15) In connection with this objection the district attorney stated: "The conversations themselves were not brought to their attention until after the money was brought to two of the defendants." This statement was subject to the objection made and exception then taken and was immaterial and was never supported by evidence. (22)

The Court then suggested that conversations between other parties that did not come to the defendants, it would be well to omit. The district attorney then said: "But, your Honor, there is a responsibility and burden on the State." He ignored the Court's suggestion. (23)

(16) Frequent statements were made to conversations that were conveyed to Ben Harmon. Objection was made that he was not a defendant. The district attorney said: "Well, it may be he is dead, but he is one of the conspirators in this case." (25)

(17) He stated that Mr. Thacker told Mr. Holt

that he was to leave gambling to him, Mr. Thacker. That he was to leave the gambling alone and look after the women exclusively. This statement was never supported by evidence. (25)

(18) He stated that in January, 1938, (after the time of the conspiracy is alleged) there was a conference between Mr. Pearce and Mr. Fisher Harris in the office of Harold B. Lee. That the latter was "working with the Church Security Plan". Objection was made that this evidence, previously transcribed, was available to the Court and that this involved merely a hearsay statement of Fisher Harris and no admission on the part of Mr. Pearce. The district attorney stated that there was an accusation calling for a denial and that no denial was made. (30) This was contrary to the evidence and was never in any way supported.

(19) In the discussion as to statements made by him as to separate statements to or by defendants after the conspiracy had ended, the district attorney asserted the right to make such statements "bearing on the crux of this case" and said: "If we are not permitted to introduce in evidence statements made by defendants after they are apprehended four or five days after the offense," (31)

(The Court commenting said: "That if it is counsel's intention to prove that a statement was made to one of the alleged conspirators, and that a tacit admission was made there," that "the Court ought to permit him to make the statement." (31)

(20) Reverting to the conversation with Fisher Harris and Mr. Lee and Mr. Pearce the Attorney stat-

ed that Harris said to Mr. Pearce, "I well know your connection *with the alleged pay-off*, and with Ben Harmon and *that you are collecting from operators* of vice establishments, and I knew your connection with them very well." (32) No such statement was ever testified to and on the contrary Mr. Harris testified fully that what he did was ask Mr. Pearce to give him information, if he could.

(21) He stated that on the same afternoon in January, 1938, (after the end of the conspiracy as alleged) Ben Harmon called officer Holt for a meeting and Holt drove him to the west side of the city and Harmon said to Holt, "Harold B. Lee and Fisher Harris have accused Pearce of being in on the pay-off; for God's sake, don't collect another dime. This thing will blow over shortly." (34) This was subject to all the objections made; that it was immaterial, incompetent; after the conspiracy was alleged to be closed; could not be in furtherance of it; and was hearsay.

(22) After stating that houses of prostitution operated in Salt Lake City and stating that the evidence would show how the girls turned over the money to the operators and then it was turned over to Holt, he said: "and again turned over to the defendants as above indicated." (35) This statement was not supported by the evidence and was subject to the exception taken.

(23) Referring to the 10th of January, 1938, he stated that Mr. Harris had a conversation with Mr. Thacker in which Thacker stated that Chief Finch had directed him when he went in the department as Chief of the Anti-vice Squad to take orders from Ben Har-

mon, and to do what Ben Harmon asked him to do. (41) This was incompetent, irrelevant, not supported, and subject to the objections and exceptions taken.

(24) Speaking of the same time in 1938, he stated that Fisher Harris would testify that Thacker told him that on the direction of Mr. Finch he would not permit Bill Browning to open up a bookmaking establishment because Bill Brwning would not pay Ben Harmon what he had assessed him. (41) This was over the previous objections and exceptions and was subject thereto, and was incompetent and immaterial.

(25) He stated that after O. B. Record had entered the basement of the New Grand and there made an arrest, after visiting Bill Browning's place, that he was "by Finch told, in substance and effect, to cease making arrests." (42) This was not supported by the evidence but the testimony was that Mr. Finch, never made such statement.

(26) He said that a police-women by the name of Gussie Friend had had numerous complaints made to her about gambling, that she reported to Mr. Thacker these complaints, and that for 10 days he did nothing. That about Christmas Eve complaints came to her and she turned them over to Mr. Hedman's men; that they made an arrest and Mr. Thacker reprimanded Captain Hedman for making any arrests on gambling. (43) There was no testimony as to the first part as to complaints generally, and no part of this statement was supported by the evidence. It was incompetent and subject to the objections and exceptions taken.

(27) He said that Mr. Hedman was told in the presence of Mr. Finch to stay away from gambling. (44) This was not supported by any testimony.

(28) He stated that when Judge Ellett was up at the police station about January, 1936, or the early part of 1936, possibly March or April, that there were arrests for operating gambling establishments and that the Judge suggested that a complaint of felony be brought against the operators. (Objection to the use of the word "suggested" was sustained). He then stated that Chief Finch called Judge Ellett into his office and stated: "Why can't we let this thing run on, fining these men intermittently, and let them operate?"

(46) That Judge Ellett said: "The reason we can't is that my friends tell me that you had your hand behind your back and have been taking about \$2,500.00."

(46) The evidence showed that Mr. Finch did not take office until March 15, 1936; that such statement as the first one was never made by him. The whole of the statement was immaterial, incompetent and unsupported.

(29) He stated that Mr. Erwin said to Mr. Hunsaker, about the first of May, 1936, "Things had not been lined up as he had expected or as he wanted them, but they are lining up now, and I am getting things lined up, expecting to get substantial sums from now on, from different types of graft." (48) Objection was made and the prosecuting attorney said: "I have written it down, Mr. Musser, so there will not be much misunderstanding about it." (49) This was objected to on the grounds that it was argumentative and an attempt to support his statement in attempting to read some-

thing that he claimed had been written down. The prosecuting attorney said: "I have all the confidence in world that this jury can determine, when that evidence comes in, whether or not I am telling the truth." (50) Objection and assignment of prejudicial error was made. The first statement, as made, was not supported, and the additional statements were arguments and were improper, incompetent, immaterial and prejudicial.

(30) He stated that Mr. Erwin said to Mr. Hunsaker concerning payments that were made to him by Mr. Erwin on a note, that since Mr. Hunsaker was not reporting it to the Government for income tax purposes he would not do so, and Mr. Hunsaker said to Mr. Erwin: "You had better report it", and Mr. Erwin said: "I will not report it." (52) These last statements were not supported by the record and the whole of this was without foundation as to any conspiracy or agreement and was immaterial.

(31) He stated: "Now, the evidence will show that Fisher Harris, the City Attorney, had made an investigation relative to conditions in Salt Lake City over that period of time." (54) Objection was made that counsel was proceeding to state that an investigation had been made and that something had been found out. The district attorney then said: "I can assure you it was not gossip. It was put down in a letter which was delivered to the Mayor." (54) A discussion and objection was made that such statements of Fisher Harris did not constitute admissions. The district attorney then said that he was going to predicate certain facts, as to admissions, and with relation to the letter "It



is, we contend, very important to show not only just what the condition was, but that there were no denials.” (55) (This letter became Exhibit “R”) The District Attorney then said: “This letter, or its contents, is the basis for about three or four conversations between Fisher Harris, the Mayor, and Chief, \* \* \* We shall endeavor most sincerely to present it to the jury, so they will know the contents. \* \* \* (58) That letter covered the facts that there were certain places operating, in Salt Lake City, Lotteries and dice games \* \* \* (59) This letter contains certain charges against the Mayor, and sets forth certain things that Mr. Fisher Harris will testify to, and in it the letter indicated that Mr. Harris knew who was getting the pay-off.” (62) The Court, during the discussion, attempted to limit the discussion of the letter. This limitation was ignored by the attorney. The foregoing statements were improper, incompetent and immaterial, and subject to the objections made.

(32) The District Attorney then proceeded for several pages of the record, 63 to 73, to discuss and state what Fisher Harris claimed he had found out as to conditions then existing. This was in January, 1938.

All of these statements were subject to the exceptions taken and were incompetent and immaterial.

(b) During the testimony of Austin Smith as to his discussion with a newspaperman and a memorandum that came on his desk as to pay-offs and gambling and prostitution, an objection was made that these were, and the memorandum were hearsay, and none of the defendants connected with it, and the District Attor-

ney made the following statement: "We will not be able to present to this Court, or to your Honor, any written memorandum prepared by the conspirators. They don't do it that way. If we were held down to any memorandum that the conspirators wrote out, as to what they were going to do, we could never introduce any evidence." This was objected and assigned as prejudicial error, and having no relation to the issues, or to objection made. The objection was overruled. (30) (498)

(c) A witness Scott was called and testified that he was in the Atlas building in the spring of 1937 and heard announcements of horse races. Objection was made to this, that it was not in the presence, and without the knowledge, of any of the defendants, and on all the general grounds. During the discussion the District Attorney volunteered the statement, that reports came in from the tracks and that they continued to make bets before the race is finally on, and when they went to the post announcements were made there and then the bets are laid, etc., and then said: "Why, of course, we contend that a majority of this wasn't in the presence of the defendants. Obviously they would not be there when it was going on, purposely, but we want to show that." These statements were excepted to and assigned as prejudicial error and the Court asked to instruct the jury to disregard them. The objection and motions and requests were denied. (37-38) (649-51)

(d) In the course of the examination of the witness Ellett (See assignment 15 dd.), the objection having been made that the witness had testified that his friends had told him something and that it involved

no admission on the part of Mr. Finch, that he did not deny this, the District Attorney said: "It was mentioned, Your Honor, over the telephone, and it is the basis; we are laying a basis to explain the conduct of the conspirator that afternoon. \* \* \* Well, of course, in regard to matters of denial I think the jury will be asked to determine whether or not these statements would require a reasonable person to deny them." Objection was made to the District Attorney turning around and facing the jury and making this statement and it was assigned as prejudicial error. The District Attorney then said: "I reiterate that the jury here is the person and institution that will be called upon to determine whether or not such a statement as will be introduced would be denied by a reasonable person. We reiterate that." After these statements, the question to which the objection was made, was withdrawn by the District Attorney. (76) (1269-71)

(e) During the testimony of the witness, Holt, he was asked and testified that he had a conversation with Gus Captain whom he had known for 5 years. Objection was made to this testimony or this conversation. The District Attorney said: "We would be pleased to introduce that conversation but we are afraid there would be an objection." This was assigned as prejudicial error; that there was no point in referring to it; that it was something from which they contended that an inference be drawn. The Court struck the testimony of the witness that he had had a conversation with Gus Captain, and then the Attorney asked:

“Q. Well, after you saw Gus Captain I think you said you saw Ben Harmon.”

(101) (978)

(f) While the objection to the testimony of Fisher Harris as to what he had found by his alleged investigation and what he had incorporated into his letter Exhibit “R” were being discussed, the District Attorney said: “Now, your Honor, Mr. Mulliner overlooked or neglected to remember that in the second conversation the contents of the letter were discussed and the letter itself in the first. Now, so far as the first conversation is concerned, there might be some merit in what he said.

Here is the City Attorney, the chief law-enforcing officer of the city, making charges against the Mayor. What would he do? And this letter shows it is very material.

MR. MULLINER: I assign counsel’s statement as loud as he could speak it, as the reporter has it, as prejudicial error and I ask that it be stricken and that the jury be asked to disregard it.

THE COURT: You may proceed, Mr. Musser. I have admonished the jury time and time again that the statements of counsel are not evidence, and I can’t do it every time there is a statement made.

MR. MULLINER: But they are prejudicial, Your Honor, and the Supreme Court has just so held in another case, if they are permitted to stand in the record.”

(126-7) (1299)

(g) After Mr. Finch had testified on cross ex-

amination by the state as to his interest in checking beer licenses and that he was also interested in card rooms, and after the attorney had read the ordinance requiring that applications for card licenses be submitted to the Chief of Police, and that he make a report as to the character and reputation of the place and his recommendation as to the granting or denial of a license, and after he had testified that the card rooms would possibly be easier to check than the beer licenses because there was not so many of them and that he had not thought of it "in that manner", the following occurred:

"Q. The ordinance provided that you must think of it, didn't it?

MR. MULLINER: Just a minute.

Q. Let me read it to you again.

MR. LOOFBOUROW: He stated that he did not read the ordinance. He said he handled these matters of inspection through his men.

MR. RAWLINGS: Ignorance of the law is no justification.

MR. MULLINER: I object to counsel's statement and I assign it as prejudicial error. I ask that the jury be asked to disregard it.

THE COURT: Well, the jury has been instructed to disregard all statements of counsel on these matters."

(194) (1648)

(h) There is also assigned here as misconduct of the attorney, assignment 15 ppp, the statement of the

attorney being there set up in full, and here, by reference, incorporated herein.

(i) O. B. Record was sworn by the State as a rebuttal witness after the defendant's testimony was closed and was asked the following leading question:

“Q. I will ask you to state whether or not about ten days before your brother H. K. was removed from the Anti-vice Squad, in 1937, he reported to you a conversation that was had with Dick Obart Pearce?”

Objection was made on all the general grounds, and that it was not rebuttal; that there had been no evidence on the part of Mr. Pearce with relation to it, and that the conversation was a part of their main case and that the conversation set out in the leading question was between O. B. Record and H. K. Record therefore incompetent, and was an attempt to bolster something in their main case.

“MR. RAWLINGS: We don't want to bolster anything, your Honor, but we do want to show here that this matter was carried to Mr. Finch, by this witness.”

Further objection was made that the question did not relate to any conversation with Mr. Finch, and the question and statement were prejudicial.

“MR. RAWLINGS: Don't get excited. \* \* \* We think all these things are prejudicial to the defendant, your Honor, just as prejudicial as indicated here, and as Mr. Mulliner thinks it is.”

Objection was made to the statement and the question as being misconduct on the part of the attorney.



The discussion continued for several pages of the record. The Court then said he was inclined to sustain the objection to the question, and made no other ruling. (238) (2027-34)

(j) In making his closing argument the District Attorney stated that Kempner had testified that Stubeck collected the money mentioned in June of 1937. Objection was made and it was submitted that the record showed that he collected that money in March.

“MR. RAWLINGS: I expected that quibble; but the jury will remember collections were made up until June.

Kempner had known Stubeck. They were pals together. They had known each other over a long period of time.”

This statement was on the whole incorrect, and was absolutely incorrect as to June because the witness Kempner did not so testify. The statement of the District Attorney was for the purpose of making the jury believe that it was after Mr. Thacker come on the Vice Squad and after Holt claimed that he had started to collect from the prostitutes. (312) (2157)

(k) In his closing argument the District Attorney also stated that these people wanted to be arrested and wanted to be taken to jail. Objection was made that there was no such evidence in this record.

“MR. RAWLINGS: They were arrested, that is in evidence.”

No ruling was made on the objection. (312) (2157-58)

(i) Later in this argument the District Attorney discussed Ben Harmon and characterized him as the "The King Pin of the Underworld". Objection was made that Ben Harmon was dead and was not being tried and that there was no evidence to support this statement. (312) (2158)

(m) Objection was made further to the statement of the District Attorney that the defendants, "hired Mr. Pearce", on the ground that there was absolutely no evidence that they hired Mr. Pearce or that the defendants here contracted with him as to the matters involved.

"MR. RAWLINGS: I am drawing an inference. I don't know how much they paid him, but Pearce himself said, 'I am instructed by the Mayor to make these collections.' I don't know what else you need. If that is not hiring—you don't think he would do it for nothing."

No ruling was made on the objection (312-13) (2158-59)

(n) Objection was made to the District Attorney's statement with reference to the reason for the defendant Thacker in not wanting Mr. Holt. Objection was made and an assignment of error that the evidence under discussion can not be used inferentially or otherwise as to the other defendants because the Court expressly excluded that testimony as to every defendant excepting Mr. Thacker and so instructed.

"THE COURT: What is your memory?

MR. RAWLINGS: That is my memory; but I say it because it shows a *mutual understanding*.

*I say it shows a mutual understanding between these parties.”*

Objection was further made to this statement. The Court remarked that the evidence was excluded to everyone except Mr. Thacker. There was no other ruling. This is a contention that all of the alleged statements to and discussions with individuals even after the conspiracy ended, excluded as to all other defendants, was relied upon as showing a “mutual understanding.” (313) (2159)

14. That the District Court erred by improperly admitting evidence prejudicial to appellant, and, separately, in refusing to strike such evidence on motions made herein, and separately, in excluding evidence offered on behalf of defendants.

15. That the court erred, as stated, in the preceding paragraph 14 hereof, more particularly as assigned herein and in the following lettered assignments: That there was offered and received as evidence defendant's exhibits 26 (a)-(b)-(c)-(d) and after the defendant Pearce had withdrawn his opening statement before the jury and rested, relying upon these exhibits being in evidence, the Court refused to permit this defendant to refer to or in any way to discuss these exhibits or the issues to which they applied, and which issues had been tried and determined, and instructed the jury that they were not to be considered for any purpose. And, separately the court failed and refused to give any consideration or effect to the exhibits or to the issue raised thereupon in any manner at all (168, 252-256, 279) (1478-1479, 2111-2118, 2155).

The record as to these matters was preserved also as to Mr. Erwin as shown by the above citation and this assignment also applies to him.

(a) Witness O. B. Record testified that he and another officer went into Bill Browning's place and made arrests and that Bill Browning had a place in the Atlas building in August, 1937. That after these arrests he had a conversation at which Mr. Thacker and Mr. Finch were present in which Mr. Finch said in substance that Mr. Thacker wanted to discuss these arrests in his department. The Chief asked the witness if there had been complaints and if he had had complaints, and the witness said he hadn't. The Chief suggested that Thacker handle the matters in his department and the witness said the Chief did not tell me to cease making arrests. (16) (583). Objection was made to this conversation as being immaterial, incompetent and irrelevant to the issue of conspiracy. A motion was also made to strike. (19) (620)

(b) After the witness O. B. Record had testified that Bill Browning had this place in the Atlas building in 1937, and had testified to his operation in this year, he was asked on Cross Examination as to his knowledge of Bill Browning's operations in other years before and after the conspiracy charged. This offered evidence was objected to by the State and excluded by the Court. (19) (614)

(c) O. B. Record testified that he saw Abe Rosenblum around the police station several times and saw him three or four times talk with Mr. Finch. Objection and motion to strike this testimony was overruled and

denied. (20) (1329) The witness on Cross Examination testified that Abe Rosenblum was a bondsman and that he had no idea what he was talking to Mr. Finch about. (20) (1330)

(d) Witness Early was asked the leading question as to whether in January, 1936, he had a conversation with the Mayor on the subject of a "pay-off". The question and the conversation were objected on the general grounds; that it was hearsay, and particularly that there was no foundation as to any agreement here or agency existing between the defendants. The Court indicated he would limit the testimony to Erwin "at this time"; that he assumed that hereafter a conspiracy "would be attempted to be shown, anyway that these various defendants will be brought into what they claim was an agreement." The Court was then advised that the essential thing charged here as the offense was the agreement alleged; that the authorities required that some foundation be shown by the showing of some contact or relation, or something, between the defendants before going into conduct and statement of the individual defendants. The Court overruled objections, but indicated that if it was not tied up to the other defendants he would hear about that later, and said: "If there is some evidence introduced of an agreement to conspire, as stated in the indictment, then the Court, unless it becomes convinced to the contrary, *will probably take the view that statements of anybody, anywhere, are pertinent to the issues.*" (23) (463)

(This matter is mentioned at this time because of

its relation to other assignments. It will appear that later, without any evidence of any agreement as alleged, the court let in statements "of anybody, anywhere.")

(e) The witness Early was allowed to testify that early in 1936 the Mayor had stated that he had heard that there was a pay-off and asked the witness to investigate it. The witness reported that he had asked of numerous officers about it and acquired no information, but that "another party" had said there was a pay-off. Objection was made to this testimony and a motion to strike on all the general grounds including the one of no foundation as to the conspiracy and as hearsay, and no evidence that a pay-off actually existed. Objections and motions were overruled and denied. (24) (469)

(f) The witness Early was allowed to testify that he told Mr. Finch that he had heard rumors that there had been graft going on. This testimony was objected to on all the grounds previously taken, which objections and also a motion to strike, were denied. (25) (472)

(g) The witness Early was then asked the following question by the District Attorney:

"Q. After that change was made in the Anti-vice squad, I will ask you to state whether or not any men came to see you about operating in Salt Lake City?"

Objection was made to this on the general grounds and the witness was allowed to answer, "Yes", and to give the names of Browning, Harmon, Jennings and



Abe Rosenblum. Objection to this question and to the conversation as between Early and these parties as thus generally testified to, and also motion to strike, were denied and overruled. (26) (473-479)

(h) Witness was allowed over objection, to testify further as to these men coming to see and talk with him. The witness testified that on one or two occasions he saw one or two of these people go toward the Chief's office or to the secretary's office, which was the ante-room of the Chief's office. Objections and motions directed to this testimony were overruled. (26) (480-2)

(i) The witness Early was then allowed to testify that he afterwards had a conversation with Chief Finch, didn't remember that he mentioned any of the persons above referred to. That he said to the Chief: "There are rumors that there has been a considerable pay-off going on", and that Mr. Finch said, "These people know their own business and would have to operate their own business; it is my duty to operate the police department and I propose to operate it." Motion to strike this testimony was overruled. (26-7) (485). Other similar conversations as to rumors were testified to by this witness over objection and motion. These were similar conversations with Mr. Erwin and Mr. Finch. (27-8) (485-9)

It does not seem necessary to make specific assignments as to this same character of testimony. Its immateriality to the issue here, and the lack of foundation as to the issue, were pointed out in the objections and motions.

(j) The following question was answered over the general objection and that it was leading:

“Q. During any of these conversations was it mentioned by you whether the Chief and the Mayor were involved?

A. No.”

The District Attorney then cross examined the witness Early as to statements made by him in the District Attorney's office in which it was stated by the District Attorney that he had answered a similar question in a contrary manner. Objection was made that the District Attorney was not entitled to cross examine without a foundation as to surprise. The objection was overruled and the witness answered that “there were such rumors around. It had slipped my mind for the time being.” He then testified that both the Mayor and Mr. Finch disclaimed any knowledge of it. Separate motions were then made to strike the testimony as to these conversations on all the grounds previously urged; that no admission was involved; and that it was simply hearsay, and on all general grounds. Motion denied. (28) (488-9-). A motion was then made that the jury be instructed that this evidence did not apply to the other defendants. This motion was also denied. (491)

(k) The witness Austin Smith was allowed to testify that shortly after Mr. Finch came in as Chief the witness went to his home.

“Q. I direct your attention to the subject; was anything said about the graft pay-off?”

Objection was made to the question and overruled, and the witness testified that he asked: "Approximately what is the pay-off existing at the time", and the answer was "Approximately \$2,000.00 a month". I asked who was getting it, or who collected it, or what became of it, and was told probably Abe Rosenblum *would* collect as he had had experience along that line. Motions were made to strike this testimony on the general grounds of the objection, and that there was no foundation by showing any agency or agreement. Motion denied. (29) (495)

(l) The witness Austin Smith testified that in June, 1936, he had a conversation with a newspaper man in Salt Lake City. This was answered over objection. (496) That afterwards he received a memorandum at his office purporting to contain a statement by someone as to vice and pay-off. This was answered over objection. (497) The witness afterwards testified that he left the same on the Mayor's desk and testified to the contents of it. This was answered over objection. (He did not see it in the Mayor's possession.) He stated that the memorandum contained a list of supposed pay-offs in town, gambling houses and houses of prostitution. This was answered over objection, and a motion to strike the above testimony was denied. (29-30) (496-500)

(See assignment 13-b, on attorney's conduct.)

(m) The witness Austin Smith was then allowed to testify that he had a conversation with Captain Taggart at his office where he met officer Holt. This was answered over objection. (31) (501) That he then told

the Mayor that he had talked with someone who apparently knew conditions to the effect that there was a pay-off and vice conditions being talked about, and that the Mayor said he would investigate. This was answered over objection. (31) (504)

(n) The witness Austin Smith was then allowed to testify over objection that he had not discussed Mr. Holt's name in the previous conversations and that it was in a later conversation at which the Chief and Mr. Erwin were present at which he had mentioned Mr. Holt, and that Mr. Holt made a brief statement to the effect that there was talk rampant all over town about a pay-off from houses of prostitution, and that he had told me this and referred to the conversation with Mr. Taggart, and that Mr. Finch said that, "We should not be washing our dirty linen in the enemy's camp." Objections and motions were made to this; that it did not relate to the issue of conspiracy; and on the general grounds; and that there was nothing involved by way of admission of the offense charged by the defendants, of any of them. Objections and motions were overruled and denied. (32-33) (506-10)

As indicating the nature of the procedure in this case objection was made as to the foregoing on the part of the other defendants not mentioned.

"THE COURT: Do you claim to connect Mr. Thacker up with this testimony?

MR. RAWLINGS: Absolutely, your Honor. Mr. Thacker will be mentioned a little later by witnesses."

(o) The witness Gosling testified to playing lotteries in 1936 and 1937 and for many years prior thereto, and of seeing other people playing in these times, and then asked on Cross Examination if he saw anybody play after February, 1938. Objection was made by the State that it was indefinite as to time and place and objection sustained. (35) (565)

(p) The witness D. L. Hays testified generally as to seeing gambling in Salt Lake City in licensed card rooms. Objection was made on the general grounds and no sufficient foundation as to any agreement or conspiracy, and no tendency of this evidence to prove such; and that his general testimony of this character was a conclusion. Objection was overruled and he was allowed to testify generally as to this matter in the years 1936 and 1937. (36) (830)

(q) The witness Hays was allowed to testify to a conversation with Mr. Finch in November, 1937, over the general objection, and that there was still no evidence as to any conspiracy or agreement and that the testimony involved no admission on the part of Mr. Finch as to the offense charged. That the witness stated to Mr. Finch at that time that he must know that gambling was going on in these licensed card places and that Mr. Finch said yes, he knew that gambling was going on, and the witness asked if he was going to do anything about it and he said he was not going to do anything about it, and gave the witness his reasons. (36-37) (836) Motion to strike this testimony on the grounds of the objection was overruled. (37) (837)



(r) Dar Kempner was allowed to testify that he met Abe Stubeck in the spring of 1937 and went with him to the Ace and Peter Pan Billiard Halls. The witness was first asked the leading question by the District Attorney:

“Q. Did you see Mr. Stubeck during the months of April, May, or June, of 1937?”

and he answered that he did. (40) (774) He later answered that it was “early in the spring.” (40) (774), and then testified that to the best of his recollection “it was around in March, possibly April.” (62) (875) (This was while H. K. Record was head of the Anti-vice Squad.) (95) (950) Objection was made to this meeting and conduct as being between people in no way connected with the charge, and on all the general grounds; that it was outside of the presence of any of the defendants; and also on the ground that there had been no general foundation for the charge here. (40-42) (772-776) All motions and objections were overruled.

(s) The witness Dar Kempner was allowed to testify that in the Ace Billiards Hall he heard Abe Stubeck talk with a man who was racking pool balls and ask him if he had the money ready. That the man said something and Stubeck said you had better get it in a hurry or you know the results, and the man said, “I will be back right away.” This was objected to on all the grounds of the previous objection and particularly on the ground of hearsay and the attention of the court was called to the authorities holding that some foundation must be laid to show an agreement in order



to establish any agency, and that this offer of testimony indicated the reason for that rule because if there was no such rule anybody could be called in and testify to anything that was said by anyone. The State indicated that they thought Stubeck was a conspirator and that "there is money involved". The court overruled all objections and all motions to strike as to these conversations. (44-47) (778-81)

(t) The witness Kempner was then allowed to testify that after they had left the Ace and gone to the Peter Pan Billiards Hall that Stubeck, out on Main Street, took some bills from each of his pants pockets and put them together and folded them and put them in another pocket. This testimony was over the objections as previously stated in the foregoing assignments as to Kempner. (49) (783)

(u) The witness Kempner was then allowed to testify that following the above incident he had a conversation with Abe Stubeck as follows:

"Why, he just told me that all card games were paying off and that some of them were trying to chisel by giving him less money than they should do. \* \* \* I asked him who all was paying off; and he said, All card clubs are paying off, and I said, Well what is the matter? Who gets this money? and he said, Well, I take it over to Ben Harmon's place and \* \* \* he splits it with Erwin and his crowd."

Objection on all the grounds stated as to the previous assignments with relation to Kempner were made; attention was again called to the Court that there was

no foundation showing any agency here whatsoever. The Court remarked that it was the contention of the State that this testimony "related to the alleged collection of money". The Court also said that he realized that the evidence was so important that if then it "should develop that it isn't pertinent, I presume it would be a mistrial. I am not saying it would, but I presume it would." (50-51) (52-53) (785-87)

Separate motion was made on behalf of Mr. Erwin as to the statement as to him, and motion to strike it out and the jury instructed to disregard as to him. (53) A separate motion was then made for a mistrial on the ground that this testimony was so plainly improperly admitted and so prejudicial that the effect thereof could not be eradicated from the mind of the jury—that the damage was already done. All motions and objections were overruled. (53-54) (787-88)

(v) The witness Kempner was then allowed to testify that Stubeck then went to the Wilson Card Room and then he and Stubeck went to the Mint Cafe and Stubeck laid the hand full of bills on the counter. That Ben Harmon was present as well as the other help and patrons of the place, and that the cashier picked it up and put it under the counter. This was objected to on all the grounds of the previous objections. Motions were also made on the same ground as above stated. All objections and motions were overruled and denied. (56-61) (790-91d))

(w) The witness Ann Collins testified that she was at the Blackstone Hotel and that Sadie Alder was landlady, and that she gave her \$2.00 out of \$5.00

which took care of the witness's board and if she made \$10.00 she gave her another dollar which took care of her laundry and cleaning. She was then allowed to be cross examined over objection and without laying any foundation as to surprise, as to whether she had not stated that the money was paid for a different purpose in the conversations with the District Attorney. (66) (904)

(x) The witness Sadie Alder was allowed to testify to a conversation between herself and Mr. Holt about the payment by her and the collection by him of money. This was objected to on the general grounds and on the ground of hearsay, and objection overruled. (It was at this time stated by the State that Holt was a conspirator.) (69-70) (934-36)

(y) The witness Alder testified on direct examination to the dates when the payments were made and testified positively that the last payment she made was February 1, 1938. The next day she was called to the witness stand and the State permitted, over objection, to ask the following leading question and receive the following answer:

“Q. Now, do you know whether the last payment he collected from you was before or after Mr. Finch left office?

A. It was before.”

(70) (937)

(z) The Court permitted testimony as to Hazel Wilson and other girls, as to their earning in prostitution and their payments to the landlady, over the objection and with the understanding and agreement

that objection was made and overruled as to this character of testimony upon the general grounds; and also upon the ground that no foundation had been laid as to any conspiracy or agreement even up to this time in the trial; and that the fact of prostitution being practiced among these girls had no materiality or relevancy to prove the charge here. (71) (937-38)

(aa) After Margaret Newman had testified that she was a landlady and employed certain girls and had paid Holt \$50.00 a month from January, 1937 to June, 1938 and from August 1936 to the end of that year, she was asked on Cross Examination if she knew whether or not she would have been indicted if she had not agreed to so testify, and was then asked: "You don't expect to be prosecuted for operating that place, do you?" Objection that it was immaterial and irrelevant was sustained. (72) (947)

(bb) Witness A. M. Prichard was allowed to testify, over objection, that in the fall or winter of 1936 he stated to Mr. Erwin that he had learned that there was a pay-off in town and the Women's organization had a list of the names of the parties paying off, and the amounts, and that they were going to have a meeting and give it to the papers. The Mayor asked if he could get a copy of the list and he got a copy and left it with the Mayor and the Mayor put it in his desk and stated that it was unbelievable. Objection that it was incompetent, irrelevant; hearsay; that there was no general foundation as to the agreement or conspiracy, or prima facie evidence thereof was overruled. (72) (118a) A motion to strike this testimony on all

the above grounds of the objection and on the ground that it involved no admission, even on the part of the Mayor of the offense charged, was overruled. (73) (1111)

(cc) The witness Mrs. W. T. Runzler was allowed to testify to an alleged conversation with Mr. Erwin after January 14, 1937. This conversation was limited to Mr. Erwin. (She did not testify that they had any list there as stated by the District Attorney in his opening statement.) She testified that Mrs. Van Cott was present, and said: "According to information she had received it was charged that Mr. Erwin was receiving a pay-off of \$750.00 a month and the Chief \$350.00 \* \* \* and other operators of gambling establishments \$250.00." She said the Mayor flushed and stated: "Oh, I am accused of that too, am I"? and that he then took a cigarette and asked if he might smoke and there was no objection and he changed the subject to parking meters. Objection was made to this testimony and also a motion to strike on the general grounds of no foundation as to the conspiracy alleged; no establishment of the corpus delicti and no prima facie case of either; and that there was no admission involved even on the part of Mr. Erwin as to the charge here. Objection and motion overruled and denied. (73-75) (1252-60)

(dd) The witness A. H. Ellett was asked concerning some matters that transpired in his Court about the middle of April, 1936, when some operators of gambling places were brought in. Objection was made to this and it was ruled out.

(See assignment 13-d on attorney's conduct.)



The witness then testified that Mr. Finch called him on the telephone afterward. It appeared that Mr. Finch had been in office about a month or less. The witness was then allowed to testify that the next day he met Mr. Finch at the station and went to Mr. Finch's office and there Mr. Finch said:

“Why can't we get together on the sentencing of these gamblers? Let them pay the fine; let the city get the revenue.”

And the witness said:

“The reason we can't do that is because my friends tell me you are taking \$2500.00 a month in your hand behind your back.”

Objection and motion to strike were made to this conversation upon the general grounds and the ground of no general foundation, and that it involved no admission because the witness had simply stated that his friends had told him something and this Mr. Finch was not called upon to deny. Objection and motion were overruled and denied. (77) (1274-75)

A separate motion and objection were made on the part of the defendants other than Mr. Finch and the Court asked the District Attorney if he was willing that the testimony be limited to Mr. Finch and he stated that he did not desire to so stipulate, and no order or instruction was given as to the other defendants. (1273-76)

(ee) Ben Hunsaker was offered as a witness particularly as against Mr. Erwin. He had previously given his testimony in case 10785 and this matter was



called to the attention of the Court and the District Attorney agreed that this testimony now offered was substantially the same. The claim was made by Mr. Erwin's attorney that these conversations with Mr. Erwin alone, relating to payments on the note and relating to matters as indicated in the testimony, were not admissible until some general foundation had been laid and prima facie proof offered of the agreement and conspiracy as alleged. That this had not been done at this late stage of the case, and if the Court had discretion he should now exercise it and require some evidence of this kind before these long conversations were gone into. The attorney requested the Court to look at the transcript of this testimony which was available, and the motions and requests were overruled and denied. (79-80) (1112-14)

(ff) The witness Ben Hunsaker was allowed to testify as to the note transaction and as to the failure of Mr. Erwin to pay the note. He was then allowed to testify that some of the payments were made in currency and then asked how long these currency payments continued and was allowed to answer that all of the payments except one were made to him in currency. This was objected to upon the general grounds and as not being within any issue, and the objection overruled. (82-4) (1129-35)

(gg) The witness Hunsaker was allowed to testify that in the latter part of 1936 the Mayor asked him if he was making a report of these payments for income tax purposes, and the witness said that he was not, and the Mr. Erwin said that he would not have

to, and then the witness said: "You had better go straight with Uncle Sam and the State." An objection was made to going into this matter and into this conversation as a whole, and a motion was made to strike, particularly to the last statement. Objection and motion denied. (85) (1149)

(hh) Clifford Hunsaker was offered as a witness, being a son of the previous witness, and the same record was made as to the introduction of his testimony as with reference to the previous witness and the same overruled. (92) (1204-6)

(ii) Motion was made to strike the testimony of Clifford Hunsaker as to the payments received by him and the conversations he had heard with relation to the payments, on the ground that this had no relation to the agreement or conspiracy charged in the indictment or as supplemented by the bill of particulars. Motion denied. (93) (1208)

(jj) Witness H. K. Record was allowed to testify that around the middle of April, 1937, while the witness was at the head of the Anti-vice squad, Mr. Pearce called him on the telephone and asked him to go over to his office and he met Ben Harmon there. That Mr. Pearce said that he had been responsible for having the witness placed head of the vice squad; that the Mayor had instructed him to make collections from gambling houses and other forms of vice; that they expected to get about \$1700.00 a month, \$600.00 from lotteries, \$600.00 from bookmakers, and \$400.00 from card games; that the witness said he wouldn't have anything to do with it and Pearce said if he would string

along he would get \$165.00 a month. The witness said he wouldn't be a party to it, and Mr. Pearce said they would get someone else. It was stated this testimony had been previously given in case 10785, and an objection and also a motion to strike it, made upon the ground that no sufficient general foundation had been laid as to any conspiracy or agreement as alleged; that if it was claimed as an overt act he had been tried on the same testimony of the same issue of the same witness and there disproved; and on the general grounds as to the issue charged. The objection and motion were overruled and denied. (95-6) (167) (949-56)

(kk) The witness Golden Holt was allowed to testify that he had a conversation with Austin Smith and Mr. Taggart in the Federal Building with relation to vice, and a pay-off, around June, 1936, and a motion to strike this testimony was denied. (98) (965)

(ll) The witness Holt was allowed to testify that subsequently in June, 1936, he had a conversation at the Public Safety Building at which the Mayor, Austin Smith and the Chief were present, and that he then said that he had had a conversation with Mr. Smith and stated to him that "We had heard a pay-off was going on and that they were accused of participating in it." Objection to this testimony and a motion to strike on the grounds of not sufficient foundation; and that there was nothing involved that amounted to an admission by anybody charged here either against themselves or as binding upon any other defendant was shown. Denied. (78) (967)

(The Court then discussed the question of admissions and it was pointed out that the absence of a denial, particularly that some one had heard or been told something did not constitute an admission. The Court then stated that the defendants would have their general objections that there wasn't any general foundation so as to admit these conversations with individual defendants without repeating it.) (99) (969)

(mm) The witness Holt was allowed to testify that in a conversation in July, 1936, Mr. Finch mentioned Mr. Rosenblum "and told me to go see him." (The witness did not testify as stated by the attorney in his opening statement that the Chief said that Mr. Rosenblum would tell him what to do. Both the witness and Mr. Finch subsequently testified that at the time Finch sent the witness, and the witness went to Rosenblum's to stop gambling in his place, that as a result thereof his place was closed.) (107-8) (1035-38) (175-6) (1530-37) A motion was made to strike this conversation on the general grounds as to the charge here; no general foundation for its admission. Motion was denied. (99) (970)

(nn) The witness Holt was allowed to testify that after the conversation with Gus Captain he had a conversation with Ben Harmon in which Harmon said he was going to put the witness back on the vice squad and that he would work under Captain Thacker. This was over the general objection, and the objection that no foundation as to the general conspiracy had been laid, and that it was hearsay. (101) (979)

(See assignment 13-e on attorney's conduct.)

(Other conversations were testified to with Harmon over the same objection and the same ruling; it appears unnecessary to make numerous assignments of this same character of testimony.)

(oo) The witness testified that after talking with Harmon he started to collect from the houses of prostitution about the first of June, 1937, and on the 3rd or 4th of June talked with Harmon and Harmon told the witness to meet him at Mr. Pearce's office, which he did. Objection was made to the meeting and conversation there upon the ground that it had been previously introduced in case 10785, and the issue of the receipt of the money from prostitutes tried and determined in that case. The Exhibits 26 A-B-C-D, in that case were then offered. There was the additional objection of no foundation as to the general conspiracy alleged; that this did not tend to prove the same.

The witness then testified that when he got to Pearce's office he entered the lobby and was told to come in and he laid about \$500.00 on Pearce's desk and Mr. Pearce asked if that was all of it and picked up the money and put it in his drawer. (103) 1002)

Motions were afterward made to strike this testimony at the conclusion of plaintiff's case and also at the conclusion of the evidence upon all the grounds previously taken and upon the ground that Holt was an admitted accomplice, and that there had been no corroboration of his testimony, and further that the bill of particulars excluded Pearce from the collection of money at all. Overruled. (159-63) (246-7)

(pp) The witness Holt was allowed to testify to a later alleged conversation with Mr. Pearce at the instance of Mr. Harmon who told him to go to Pearce's office. This was also a conversation with relation to collection of money from prostitutes in which Mr. Pearce asked why he had not collected from other addresses, and he said that he didn't collect from them because they were private residences and they were not making any money. This was over the same objections and the same motions as recited with relation to the next previous assignment. (103-4 (1105))

(qq) The witness Holt was allowed to testify to a number of addresses of alleged houses of prostitution set forth in the bill of particulars; that they had the "reputation" of being houses of prostitution; and also that Brownings place in the Atlas Building had the reputation of being a bookmaking establishment. This was over all the general objections. (104-5) (1008-19)

(rr) On cross examination with relation to the witness's testimony as to the reputation of houses of prostitution the witness was asked what he meant by such, and he said a place where prostitution is being practiced. He was then asked the following question:

"Q. Now, under that definition, Mr. Holt, do you know of a hotel in Salt Lake City that isn't a house of prostitution?"

This was objected to as immaterial and irrelevant and the objection sustained. It was urged on the Court that it went to the question as to whether the defendants here permitted prostitution as was claimed. (113) (1061)



(ss) On redirect examination by the State the the witness Holt was asked if he ever saw Abe Rosenblum at the place he formerly operated after it was closed and another person had got a license. Objection was made upon the ground that it hadn't been shown and that it was not proper unless shown that defendants had knowledge of this if it was a fact. The witness was allowed to answer and said that he saw Rosenblum up there running around the place as if taking charge of it. (116-7) (1081-82)

(tt) The District Attorney was then permitted to ask the following general leading questions:

“Q. Now, you were asked by Mr. Loofbourow whether or not you reported the conditions to the Chief of Police and you indicated that, as I recall it, you talked to him only once about it and that was in January, 1937. Is that right?

A. Yes sir.

Q. Why didn't you discuss the conditions with him further?”

This was objected to as calling for the conclusion of the witness and that a witness shouldn't be permitted to go on for some years and then make up reasons. It was further objected that Mr. Loofbourow had not asked this question as stated by the District Attorney.

“MR. MULLINER: It only goes to the Chief's knowledge, your Honor.”

The objection was overruled, the question was read again, and the witness started to answer that Fisher

Harris had told him not to discuss it. Then the District Attorney stopped him and asked:

“Q. All right, now, in the two years preceding that why didn't you report it to the Chief?”

All objections were renewed and overruled.

“A. Because I had my orders from the Chief in the first place and I presumed he knew what was going on.”

(118-9) (1093-95)

(uu) Similar questions were asked the witness as to why he had stated to the Chief of Police in the presence of Mr. Hoagland that the Chief had nothing to worry about. He was allowed to answer it first that he didn't know whether he had said it or not and then the same character of leading question as the preceding one was asked as to the reason why he had said that, and he was allowed to answer that it was because Fisher Harris had told him not to discuss anything that happened with anybody. (117) (1092) (This was in 1938).

(vv) The witness Holt being recalled was allowed to testify that Ben Harmon called him on the telephone around the middle of January, 1938, and asked the witness to pick him up, which he did, and Harmon told him to drive over on the west side of town, which he did, and then that Harmon said to him:

“For God's sake, don't take any more collections whatever because Mr. Harris and Mr. Lee have got hold of Mr. Pearce and accused him of being in the pay-off. \* \* \* See that there

is no more of it. \* \* \* because it may blow over.”

This conduct and this conversation were, at each stage, objected to on all the general grounds and as not being within the issues; and there being no foundation as to the conspiracy and that it was after the time when the conspiracy was alleged in the indictment to have ceased. All objections and motions to strike were overruled and denied. (121-4) (1383-87)

(As to the other conversations after the date when the conspiracy is alleged to have ceased, the Court limited them to the defendant involved in the conversation. This one was in no way limited.)

(ww) The witness Fisher Harris, after he had testified that he had been city attorney for Salt Lake City for over 7 years, was asked:

“Q. Now, during the fall of 1936 I will ask if you undertook an investigation in regard to the affairs of Salt Lake City?”

Objection was made on the general grounds to this and the Court's attention was called to the fact that this was leading into testimony as to what the witness claimed he had found by this investigation, and that what somebody claimed or thought they found was incompetent and damaging testimony. The Court's attention was called to the fact that this testimony had been given previously in 10785. Objection was overruled. The witness testified that he did during the fall and winter of 1937—not 1936—make this investigation. (124) (1288-90)

(xx) The witness Harris was then allowed to testify that he had a conversation with Mr. Erwin and prior thereto had delivered a letter to Mr. Erwin's office. This was January 15, 1938. Objection was made to this letter and particularly to the mention of the contents of it as having been written by the witness, or to the conversation, on the general grounds and that no foundation had been laid for the agreement or conspiracy alleged. Objections were overruled. (125) (1290-94) The court limited this testimony to Mr. Erwin.

The witness testified that he discussed the contents of his letter (Exhibit "R") with Mr. Erwin and Mr. Erwin stated that he had received the letter and that it presented an interesting situation. Objections and motions to strike were made as to the statement of the contents of this letter, and to the letter itself, on all the previous grounds above stated in the previous assignment, and the further ground that the reaction of the Mayor to it showed no admission of the offense here charged, and that it was purely getting before the jury hearsay statements of the witness as to what he claimed to have found. (126-8) (1294-1304) The letter Exhibit "R" was admitted.

The Court was asked to examine the letter and the testimony of the witness as given in the previous trial as to any reaction claimed on the part of the Mayor. All objections were overruled.

(As to the conduct of the District Attorney see assignment 13-f)

(yy) The witness Fisher Harris was allowed to testify then generally to the contents of the letter and

state that he called Mr. Erwin's attention to the matters mentioned in the letter and Mr. Erwin said, "Do you think they ought to pay Salt Lake City something for the privilege of operating?" and the witness said "If they are permitted to operate at all and if anything is paid on account of them, I would suppose that the amount should be paid to Salt Lake City as a part of the expense of their regulation, if they are regulated," and they discussed as to what the witness supposed they should pay, and he recited at length what he claimed he had found they were paying. (This was in January, 1938.) Objections and motions to strike were made throughout to this character of testimony as being hearsay after the conspiracy; subject to the general objections; no admissions involved; and no foundation even at this time having been laid by showing any conspiracy or agreement as alleged. This testimony was generally limited by the Court to Mr. Erwin and all other objections overruled. (17-30) (1301-12)

(zz) The witness Harris, after testifying to the conversation as aforesaid, volunteered that nothing was said about who collected these amounts. The District Attorney then asked:

"Q. Did Mr. Erwin make any inquiry?

A. He did not.

Q. Did he inquire of you as to who ultimately received this money?"

This was objected to on all the general grounds; that nothing had come before to provoke such an inquiry; that it involved no admission; and that there was no

evidence to support the indictment. Judge Straup then called the Court's attention to the fact that this witness was being allowed to testify generally as to hearsay; generally as to matters he claimed to have found out, not to any facts or conditions within his personal knowledge, that it was therefore hearsay and that the manner of examination permitted him to put in hearsay statements. This and the previous objections to the previous questions were overruled. (130) (1312) The witness was allowed to answer that Mr. Erwin did not inquire about that, and that he did not ask the witness where he got his information. This was over the same objection. (130) (1313)

(aaa) The witness was then allowed to testify to another conversation later (January 18, 1938) and then it was testified, over the same objections as to this conversation, that Mr. Erwin then did say that the witness had stated in his letter that he knew who collected the money and asked the witness if he knew. He said he did and Mr. Erwin asked "Who is it?" and the witness said, "I enumerated certain names." and Mr. Erwin took them. Mr. Erwin said: "You say all these places pay protection money?" and the witness said, "Yes, there is no question about that at all." and then Mr. Erwin said they wouldn't feel natural if they weren't paying to somebody, and what difference does it make who gets it. This conversation, at the different stages, was objected to on all the grounds given in the previous assignments as to these conversations, including the ground that they involved no admission of the charge here, and were overruled. (130-1) (1312-15)



(bbb) The District Attorney was then allowed to ask and have answered the following question:

“Q. On that occasion did he ask you who ultimately got the pay-off?”

Objection was made on all the grounds previously stated and that this related in no way to the agreement alleged and involved no admission. The witness answered “No.” Motion was then made to strike this testimony in the next previous assignment on all the grounds previously recited, and the motion was denied. (131) (1315)

(ccc) The witness Harris was then allowed to testify that he attended a meeting of the City Commission at which they discussed these matters and that Commissioner Keyser said to Mr. Erwin: “You received from the City Attorney several days ago a letter addressed to the Board of Commissioners in regard to this matter”, and that Mr. Erwin answered, “Yes, I did.” The witness testified that somebody then moved to file the letter with the City Recorder. Objections to this conversation were made on all the general grounds; that it involved no admission and did not tend to show the conspiracy here. Overruled. (This was later in January, 1938.) (131-2) (1316)

(The witness afterwards testified, on cross examination, that it was Mr. Erwin himself who moved the letter be filed.) (157) (1436)

(ddd) The witness Harris was allowed to testify to a conversation after the 10th of January, 1938, with Mr. Finch in which he was allowed to enumerate again what he claimed he had found out as to gambling and

vice conditions. This was objected to on all the general grounds and that it was after the conspiracy had ended; that there was no foundation. A motion was made to strike it on the same grounds. Objection overruled and motion denied. (135-7) (1332-36) In these statements the witness stated the amounts that he claimed he found was paid as protection for graft, and again there was no charge or admission of any kind involved.

(eee) The witness Harris was again asked the leading question as follows:

“Q. Now, just a minute. At that time did you know who had collected this tribute?”

Over objections on all the general grounds, including the one that it was leading and called for a conclusion, the witness was allowed to answer, “Oh, yes.” He was then asked:

“Q. Did Mr. Finch ask you at that time who anyone was who was involved?”

Over objection that it was contrary to the rule as to introducing conversations and leading, in addition to the general objection, the witness was allowed to answer, “No, he did not”, and further stated that he did not ask him this at any time. Separate motions were made to strike the foregoing. Objections were overruled and motions denied. ((135-6) (1333-35)

(fff) The witness Harris was then allowed to testify generally that in the conversations with the Mayor whether the subject of who ultimately got the graft money was mentioned and also whether the wit-

ness "knew who ultimately got it." He was allowed to answer that the subject matter was not mentioned, and that he knew who got it. (138) (1338-41) The first part of this was contrary to the witness's testimony above quoted that the Mayor did make inquiry as to who got the money, and the latter part was entirely improper. This was objected to upon the ground that the questions were leading; that conclusions were called for; and on all the general grounds including the lack of any general foundation. A motion was made to strike on the same grounds and both were overruled and denied. (138) (1339-40)

(ggg) The witness Harris was then allowed to testify and answer affirmatively the following question:

"Q. Now prior to that conversation with the Mayor, and, of course, prior to the conversation with Mr. Finch, I will ask you to state whether or not you had made an investigation personally to determine whether or not these places had been operated?"

This referred to the places mentioned in the letter and discussed, and on which the witness had testified that he had found that pay-offs were made. This was objected to on all the general grounds; that no personal knowledge was shown; nothing was shown in the presence of the defendants; that they had been working the same thing through other questions, and that if the witness had personal knowledge of anything material to the issues he should be limited to that. Objection was overruled. (138) (1342)

(hhh) The witness Harris was allowed to testify to an alleged later conversation in January, 1938, between himself and Mr. Pearce and Harold B. Lee. Objection was made that there had been no foundation showing the agreement or conspiracy alleged. That this conversation had been previously testified to in 10785; that it appeared that there was no admission on the part of Mr. Pearce involved; and on the general grounds. He testified that he said to Mr. Pearce: "I have been making an investigation of the illegal activities in Salt Lake City and the officials' connection with them and the pay-off that I have found existed". He was just introducing the subject to Mr. Pearce, telling that he had made an investigation and that, "I had found certain illegal activities and pay-off situation." Then I told him I knew of his relationship with it and I repeated, as before, that the principal thing I am interested in is the official connection with it, and that he was involved with Mr. Harmon and others and I thought it would be to his interest to make a complete disclosure of all he knew about it to me. (142) (1356-7) Harris testified that he started out by making a long statement to Mr. Pearce directed to asking him to give information, particularly any information as to the public officials. (152-3) (1418) He was allowed to testify that Mr. Pearce didn't say anything for 2 or 3 minutes, and then asked "Who says that I am involved in this thing?" (143) (1358) And that afterwards Mr. Pearce said that he didn't know anything about it. (153) (1418) Motions were made to strike this testimony on all the general grounds of the objection, including the

ground that it involved no admission whatsoever of the offense charged and was purely a hearsay and prejudicial recital of incompetent matters. (161-7) (246-7) All objections and motions were overruled and denied.

(iii) The witness Harris was then allowed to testify over the same objections, that he called Mr. Pearce later on the telephone and told him that Pearce may think it was clever for him not to give information to the witness and that if he didn't "he was going to be indicted as sure as hell." (144) (1359)

(jjj) The witness Harris was allowed to testify to a conversation with some newspapermen at the Alta Club about January 20, 1938. The newspapermen had had lunch, at which Mr. Erwin and Mr. Finch were present, and the witness testified that he came in after the lunch and had a conversation with Mr. Fish, one of the newspapermen, in the presence of the defendants, Erwin and Finch. He testified that Mr. Fish said he had heard rumor of an investigation by the witness in regard to underworld activities and collections relating to them, and asked the witness if he had made such an investigation and the witness said that he had, and that he had made a report to Mr. Erwin in writing. That he knew what illegal activities were in operation, that he enumerated them as stated in his letter and previous testimony, that he stated the amount that each kind of activity paid, that Mr. Fish asked him if he knew who finally got the money and he said he did, and that Mr. Erwin got \$750.00 and Harry Finch got \$500.00. In the matter of who got the money the witness testified that in the other case, 10785, he had tes-

tified he had a piece of paper in front of him and that he wrote the amounts down on this piece of paper and showed it to Mr. Fish and that was what he did. He showed the piece of paper to Mr. Fish and that he had on it the figures, \$750.00 in one place, and \$500.00 in another. (151) (140S) That neither one of the said defendants said anything "at that time". That at various times Mr. Erwin and Mr. Finch remarked that this was the first that they knew of this situation in Salt Lake City. That Mr. Finch asked how long this had been going on and the witness said, since the last of 1937, that it had been going on before that but that was the scope of his investigation. (144-6) (1359-65) This testimony was objected to throughout and motions were made to strike upon the grounds that it was incompetent; a recital of prejudicial matters; a statement of conditions after the conspiracy is alleged to have completed; that there was no general foundation as to the agreement or conspiracy alleged; and that there was no charge of the offense here requiring a denial, but merely recitals of what the witness claimed he had heard or found out and no admission by any one of the offense charged. All objections and motions were overruled and denied.

(kkk) The witness Harris was allowed to testify over objection as to two letters of resignation, Exhibits "S" and "T", submitted by Mr. Erwin later in January, 1938. (146-7) (1365-70) This was over the objection that there was nothing in the circumstance or in the letters that were material or relevant to the agreement



or conspiracy. The evidence was limited to Mr. Erwin and objections were overruled.

(Ill) As to the second letter of resignation the witness was allowed to testify that he had a conversation with Ralph Stewart, one of the attorneys for Mr. Erwin, at the witness's home, at which the question of his resignation had been discussed, and also that a demand had been made for the second resignation and that he knew of it and had made it himself. This testimony was given over all the general objections and a motion to strike on the grounds of the previous objections was made. Objections and motion were overruled and denied. (148) (1377-78)

(After all this testimony, the letter, Exhibit "R", the contents of which had been fully stated and discussed and from time to time, over objection, read to the jury, was called to the attention of the Court and the jury by the District Attorney and he intimated that the Court raised the question about having it read to the jury. The Court then said that he had reconsidered and thought that it ought not to be read to the jury and a motion to strike it was then granted.) (149) (1382)

(mmm) After the witness Harris had given his general testimony as stated above, he testified generally that he had visited licensed card rooms, and on cross he testified that he had been in three in the last 60 days. He testified that the apparent operators had money belts on in these places and that he saw them handle money. He then testified that he knew they were licensed but he didn't know that the ordinance re-

quired that they pay as much as \$150.00 to \$200.00 a year per table for the licenses. He was then asked:

“Q. You know, Mr. Harris, that in order to pay those license fees, whatever the ordinance provides, these people have to collect money from somebody who uses the tables in there, don’t you?”

Objection was made by the state that it was immaterial and irrelevant and the objection was sustained. (154) (1425)

(nnn) After the witness Harris had been allowed to testify as above indicated that Mr. Keyser had called upon Mr. Erwin with reference to the Harris letter in the Commission meeting, he was asked on cross examination as to his knowledge as to emnity existing between Mr. Keyser and Mr. Erwin, and objection of the State was sustained. The witness was then allowed to discuss the matter, over the objection of defendant’s counsel, with the Court and said:

“I certainly can address myself to the Court if I please.

THE COURT: I will hear what the witness has to say. The witness happens to be a lawyer and knows, I take it, what he should not say.

A. There has been an offer to prove that something I may have done is a result of bias or prejudice. If that offer is contended and not withdrawn, and I would prefer that the matter be gone into. That is all, but I would suggest to counsel that he withdraw it.”

The Court was then asked to rule upon the objection to

this voluntary discussion by the witness. He said he would sustain the objection to the question above referred to and made no other ruling. Separate motion was then made to strike this voluntary statement and this was denied. (158) (1440-41)

(ooo) On cross examination by the State of Mr. Finch the State was allowed to ask a series of questions as to whether the Salt Lake Telegram or the representative of that paper had not stated, or if it had not been published, that the Women's Clubs had stated, that there was open gambling in Salt Lake City. (195) (1656) Or if he had stated to a representative of that paper, or if it hadn't been published that he stated "I have nothing to say. I am doing all I can about gambling." Objection was made to these questions; that there was no foundation for the questions, and no time or place fixed, or person spoken or alleged to have been spoken to by the witness, as shown. The Court stated that the State's attorney had indicated that he didn't know the name of the representative, and required the witness to answer as to both lines of testimony, and he answered that he took the Telegram and that he usually read it. He couldn't answer positively as to the specific matters, that he couldn't say positively. Motion was made to strike the statements of the attorney in these matters as to these publications which he was apparently taking from the paper in the presence of the jury, and that the jury be instructed to disregard what he had said in relation to the newspapers. This motion was denied. (195-7) (1656-60)

(ppp) The defendant Finch was further examined with relation to newspaper statements by the State's attorney as to whether he talked to newspapermen, which he said he did, and as to whether he didn't make this statement with reference to the reports referred to in the above assignment. "I place no importance whatsoever on these reports." Objection was made again on all the general grounds; that there had been no foundation laid as to any conversation about which he was being asked; that it was not cross examination and was in no way tending to refute or limit anything the witness had asked. The District Attorney then said:

"I have read the law as to what is required of a Chief of Police relative to the issuing of licenses. I am introducing this evidence to show his knowledge and his discussion relative to these places prior to the time—"

Further objection was made on the ground that it was an effort to read into the record these newspaper stories without any possibility of getting to the source or contradicting them in any legal way. The District Attorney then said:

"He can deny it. \* \* \* if he did not make the statement \* \* \* it certainly shows what is in his mind relative to the places that are listed in the bill of particulars, and these places are listed in the bill of particulars, and one of the elements of the charge \* \* \* "

The witness was required to answer by the Court, and answered that he couldn't remember the particular matter as having taken place. (198-200) (1662-64)

(Other alleged newspaper statements were offered and objected to and subsequently the same record made. It is considered that the forgoing is sufficient for consideration of this matter.)

(qqq) After both the defendant Finch and the witness Harris had testified that the latter's letter, Exhibit "R", was not shown to Mr. Finch, and both had testified that Mr. Harris had said in his conversation that he was making a report to the Mayor, and the defendant Finch, under cross examination, had testified that he first saw the letter when it was published in the newspaper, the District Attorney asked the witness Finch on cross examination the two following questions, which he was required to answer:

"Q And he (Erwin) told you that Fisher Harris had said in that letter that he actually knew who collected the tribute.

A. No. \* \* \*

Q. He told you that Fisher Harris had charged that he knew to whom the pay-off, the tribute, was actually distributed, didn't he?

The witness answered that the Mayor had mentioned the letter but had made no explanation to him. Before these questions were answered attention of the Court was called to the fact that the District Attorney was purporting to read from the letter Exhibit "R" which had now been stricken. Objection was made to the question on all the general grounds; that he was simply stating into the record what Fisher Harris had asserted in this Exhibit; and that it was not cross examination;

that it related to nothing that the witness had ever denied; that the witness had stated that he had heard rumors of a pay-off. All objections were overruled and the witness was required to answer. (203-5) (1691-97)

(rrr) After the incident of Hedman and his men making an arrest for gambling west on 4th South, at a place not within the bill of particulars, and a discussion thereof between Mr. Finch and Mr. Hedman and Mr. Thacker, and after defendant Finch had testified thereto on cross, he was asked on redirect examination as to whether the parties arrested by Mr. Hedman were convicted. Objection was made by the State and sustained to this evidence, and an offer was then made to prove that the men arrested were not convicted as bearing upon the question as to whether there was any duty or neglect shown in connection with this matter. The offer was objected to and rejected. (207) (1710)

(sss) Kendall Vincent, cashier at the Mint, testified on direct that he had not seen Abe Stubeck lay down the money, or any money, as testified, on the counter in the presence of Ben Harmon, and that he did not remember ever seeing Dar Kempner in the Mint. On cross examination the Court permitted the District Attorney to examine him as to who had the licence to operate the Mint card room up-stairs, as to whether he was running the card room himself, and as to whether he knew Thacker, and as to whether he had seen him in the Mint. All of these questions were objected to as not being proper cross examination of this witness and all objections were overruled, and he testified that the license was in his name, that he was not running



it, that he knew Thacker, and that he had seen him in the Mint on several occasions. (208-9 (1714-21))

(ttt) After Abe Stubeck was sworn as a witness for defendants and testified merely that he did not, in the spring of 1937, or at any other time, go with Dar Kempner to the Ace Billiards, the Peter Pan Billiards, or the Wilson Card Room, and never was in the Wilson Card Room in his life, that he never took any bills or money to Ben Harmon's place as testified by Kempner, or at all, and that he did not have a conversation with Kempner in which he stated that the card rooms were paying off, etc., the District Attorney was permitted, on cross examination, to ask him the following questions concerning the witness's business, and he was required to answer them.

“Q. You ran, in 1937, a gambling game there, didn't you?

A. I ran a card room.

Q. You conducted, when you say a card room, you conducted gambling during '37, didn't you; that is you permitted it to be conducted in your place?

A. I ran tables.

Q. I am asking you whether or not you permitted gambling to take place in your establishment from May 4th, '37 to January 1st, 1938.

A. Yes.

Some of these questions were repeated. Objection was made to each and all of them; that it was not proper cross examination, and that the State was now trying

to make it's case out of this witness which it had subpoenaed and then not called. That the witness was not being tried here, and as to the last question that it was shown in previous testimony; and as to the word "permitted"; and it was probable that he could not prevent people from gambling on these licensed card tables. All of these objections were overruled. (230-2) (1922-29)

(uuu) (See assignment 13-i on misconduct of attorney). O. B. Record was called by the State on rebuttal, and was asked the leading question:

'Q. Did you have a conversation with Mr. Finch about 10 days before H. K. Record was relieved of his duties as Chief of the Anti-vice squad, about a converstation?"

(Question here objected to as leading. Overruled.)

"A. Yes sir.

Q. That your brother had had with Mr. R. O. Pearce?"

The whole question was then objected to on all the general grounds and on the ground that no foundation had been laid for impeachment; no impeachment question previously asked or now presented; that the whole matter was collateral, a matter connected with their main case and not rebuttal. The Court said the testimony was offered only as against Mr. Finch and the witness answered "Yes". The witness was asked further:

"Q. What was said to you by Mr. Finch?"

This was objected on all grounds previously mentioned and the witness was allowed to answer that about every morning he talked over different things in the Chief's office and brought up to him at one time that his brother H. K. had spoken to him about Pearce wanting him to collect and offering him additional money, "that is, to raise his wages." Motion was then made to strike on the grounds of the previous objections. Objections and motions all denied and overruled. (239-41) (2034-38)

(vvv) The witness O. B. Record was then asked if Mr. Finch gave him any reasons for removing his brother H. K. This was objected to on the ground that it was not rebuttal or anything and no foundation, and that Mr. Finch had never testified that he did. The witness was allowed to testify that Mr. Finch didn't give him any reason for removing his brother, and motion to strike the answer on the same ground as the objection was denied. (241) (2040)

(www) The rebuttal witness O. B. Record was asked whether he told Mr. Thacker, when Mr. Thacker wanted to get off the Anti-vice squad,

"I will tell you how to get off. Go out and arrest every gambler and prostitute and put them in jail and fingerprint them, and you won't last fifteen minutes."

and Mr. Thacker said: "I can't do that;" and that is all he said. This was asked as a leading question, and objected to and as not rebuttal; no foundation for impeachment; attempted impeachment on collateral mat-

ter; that it was from something conjured up by the State itself for the purpose of knocking it down.

“THE COURT: Listen, Mr. Mulliner, this does not involve anybody but Mr. Thacker, and Mr. Hanson has not objected.

MR. MULLINER: If the failure of Mr. Thacker to do anything is any agreement, then it is going to affect all of us.”

The objection was overruled and the witness answered, “Yes”. (241-2) (2041-46)

(xxx) After the witness O. B. Record, sworn on rebuttal, had testified on direct concerning Mr Thacker’s testimony that O. B. Record had told him that Fisher Harris demanded that Thacker be removed, and had testified on cross examination that he did say “I did not think Thacker was guilty”, on redirect examination by the State he was asked the following questions:

“Q. Did you have any evidence submitted to you pertaining to his misconduct in office?  
\* \* \*

Q. But, you received numerous complaints about Thacker, did you not? \* \* \* What did you think he was guilty of when you discharged him? \* \* \*

Over objection that the questions were improper, called for hearsay and conclusions, and that the second and third questions were leading, the witness was allowed to answer and answered “Yes” to each of the first two and to the last said:

“A. Misconduct in office, not taking care of his work as head of the vice squad.”

(243) (2067-68)

16. The district court erred to the prejudice of appellant in failing and refusing to give the following requested instructions and each of them, or any sufficient instructions covering the subject matter thereof, and to which exception was taken, as follows:

(The first number in brackets is the page of the abstract, and the second the transcript.)

Request No. 2, and, separately each of the numbered separate paragraphs thereof from one to four inclusive (281-3) (189-93). Request No. 3, and each of the separate paragraphs thereof (283-4) (192). No. 3A, (284-5) (193); No. 4 (285-6) (194); No. 5, and each separate paragraph thereof (286-7) (195); No. 6 (287-8) (196); No. 8 (288-9) (198); No. 9, and separately as to the last paragraph thereof (289-90) (199).

That no instruction was given in any way upon the bill of particulars or on any limitation upon the indictment by reason of the provisions of the bill of particulars, or any instruction relating to that subject. (290) (2164)

No. 10, and, separately each of the separate paragraphs therein numbered from one to four inclusive (290-2) (200-1); No. 11, and separately each of the two separate paragraphs of No. 11 (292-3) (202)

Request of Finch No. 1 (293) (183) (2165); request by Finch No. 3 (293) (185)

Erwin's request No. 6 (294) (158); Erwin's request No. 7 (294) (159); Erwin's request No. 8 (295) (160); Erwin's request No. 11 (295-6) (163); Erwin's request No. 12 (296) (164); Erwin's request No. 13 (296) (165); Erwin's request No. 17 (296-7) (172); Erwin's request No. 18 (297) (173); Erwin's request No. 19 (297-8) (174); Erwin's request No. 20 (298) (175); Erwin's request No. 21 (298-9) (176); Erwin's request No. 22 (299) (177); Erwin's request No. 23 (299-300) (178); Erwin's request No. 26 (300-1) (181).

Each of the foregoing statements as to each of the requests, and to each separate portion of any request where mentioned, is a separate assignment of error. The exceptions taken and the requested instruction are set forth in full in the foregoing pages of the abstract at the pages respectively shown in the first bracket after each assignment, and the same are hereby referred to and by reference incorporated herein and made a part of this numbered assignment.

17. The Court erred in instructing the jury in the following separate matters herein to which exceptions were duly taken as follows, and which are separately assigned as follows:

(a) The instructions as a whole, and as pointed out by the exceptions as herein specified, were so conflicting, repetitious and confusing as to leave the jury no clear cut idea of what might be considered by it as the law applicable to the evidence. And, separately, as to what might be considered by it as evidence of the charge on which the defendants were tried.



(b) The instructions as a whole and as pointed out by the exceptions herein designated, gave no clear, or other, expression to the jury as to the relation, if any, of the mass of intimations as to wrong doings, different from the offense charged, to this offense. After repeated statements by the prosecuting attorney that he could not lay a foundation as to prove such a charge, and that he ought to be allowed to put in all the matters introduced in chronological order, the instruction by the court reasonably left the jury believing that the specific agreement charged need not be proved, and that matters of other wrong doing might be considered in determining the guilt or innocence here. This is indicated by the acquittal of Mr. Thacker, the one person connected with, and who could allow prostitution and possibly other vices to operate, and the only defendant with whom any agreement to "allow operations" was necessary.

(c) In the first bracket after the following lettered assignments the first number is the abstract page of the exception, and the second number is the transcript of the exception; in the second bracket the first number is the abstract page of the instruction and the second number is the transcript page of the instruction.)

(1) The Court, in instructing, first set forth the indictment as being the charge, without eliminating therefrom reference therein to "dice games" and gambling devices" and other things on which there was no evidence whatsoever submitted, and gave no instruction in any way limiting the charge to the evidence.  
(301; 2167) (257-9; 241-3)

(2) After the bill of particulars had been read to the jury setting forth the long list of wrong doings therein, and limiting the generality of the indictment, the Court gave no instruction as to the bill of particulars and made no limitation upon the indictment by reason thereof. (301; 2167)

(3) In view of the refusal of the Court to give any of defendants' requests upon the limitation of conversations with individual defendants, particularly after the end of the conspiracy as alleged, the instruction No. 6 was insufficient to advise the jury that such evidence could not be used as proof of the conspiracy and this subject was not covered. (201; 2167) (264; 247). It was expressly urged by the State such could so be used, see 13-n, *supra*.

(4) Instruction No. 7, as to the proof of conspiracy by circumstantial evidence was not sufficient in this case where the offense is the agreement, and did not advise the jury as to what character of evidence might be considered as proof of the conspiracy. This is pointed out in the case cited to the Court in the exception. This instruction was insufficient and not applicable. (301; 2167) (264-5; 248)

(5) The separate paragraphs of instruction No. 11, being A to F inclusive, were immaterial because the Chief could not commit the offense here alleged alone, and served to emphasize to the jury that he could be convicted upon showing failure of duty on his part, instead of the offense charged. Also ordinances were introduced showing limitation upon the exercise of his powers by the Civil Service Commission, and these

were omitted, and also ordinances covering the coordinate duties and control by the city attorney. None of these were instructed upon. (302; 2168) (267-8; 251-2)

(6) The first paragraph of instruction 12, as excepted to, definitely indicated to the jury that these people may be found guilty here independently of proof of the agreement. The exception to the last 5 lines of that instruction are good for the same reason. (302; 2168) (269; 252)

(7) The first part of instruction 12A is bad because it says "in the absence of other evidence" they could not be found guilty here by reason of knowledge merely. Other evidence was not sufficient. There must be evidence of the agreement alleged. The last clause of the instruction is wrong and prejudicial, it says: "Or actually participated therein in carrying out the same." That could only mean to the jury that if any person did any act which the jury thought might be contemplated by any alleged conspirator, he could be convicted here. The Court used the disjunctive "or". It was also bad as pointed out because it permitted the conviction of a person doing some act although the act may be done without any knowledge of the existence of the agreement alleged. (302; 2168-9) (269; 253)

(8) Instruction 13 was bad as excepted to, and as to the separate portions thereof mainly because it indicated to the jury again that conviction may be had for acts independent of the agreement. This was a matter that was confused throughout the trial. The charge was entering into an agreement, and if this agreement was proved between the defendants the jury should

have been instructed that they were then guilty regardless of what anybody did or whether anybody did anything to carry out this agreement. The only evidence that was material then was evidence independently to prove the overt acts charged. The instruction was further bad in that it referred to acts by any two or more of the defendants and left the jury to convict here upon any theory as to any separate agreements or conspiracies, and not limited to the main conspiracy charged. No instruction was given on this. (310; 2177) (204-5); 2170-71) (270; 254)

(9) Instruction 14 was again insufficient to instruct the jury that such statements made, and particularly such alleged statements made after the conclusion of the conspiracy, could not be considered as in any way tending to prove the conspiracy or any absent defendant's connection therewith. (305-6; 2172) (271; 254)

(10) Instruction 15 was bad and subject to the exceptions taken in that it instructed the jury they could consider the collection of money by Stubeck as evidence of the agreement between defendants; it was bad because they were instructed that this could be used against defendants if it was collected as a result of an agreement, and even though it was done without knowledge thereof, or Stubeck being a part thereto; further in that it was indicated to the jury that this was a circumstance which might tend or did prove the agreement; it was particularly bad as to the intro-

ductory language which applied to the whole instruction as follows:

“If you believe that either officer Holt or the witness Stubeck, or both of them, collected money as they testified, \* \* \* ”

Stubeck did not testify that he collected money but specifically denied that he had done so. It was subject to all the separate exceptions taken to the separate parts thereof. (306, 310-11; 2172-77) (271; 255)

(11) Instruction 16 was insufficient and repetitious and, in part, conflicting with other statements of the Court on the subject of the agreement, and also as not limited in any way to the bill of particulars. Subdivision 4 was objectionable because it permitted conviction on any kind of an agreement or understanding, either between the persons charged or between any of them and any other persons named in evidence, and was in no way confined to the specific agreement alleged. It would permit conviction on any number of different or minor conspiracies at any time. The further instruction therein as to overt acts was subject to the exceptions separately taken as to each. (306; 2172-73) (272-3; 256-8)

(12) Instruction 17 was subject to the exceptions taken as to the whole and the separate parts thereof. It was inapplicable in this case where the offense was the agreement alleged. There was no instruction as to the means agreed upon or as to the purposes of the particular agreement alleged to “permit” or “allow”, but this instructed the jury that they may con-

vict, if there was an understanding between any of the parties here as to the accomplishment of any unlawful design. It was wrong in stating that a person might be convicted for doing something in furtherance of an unlawful design without instructing that it must be with knowledge of the specific agreement or being a part thereto. It appears to affirm that there was an understanding without requiring finding beyond a reasonable doubt that such agreement existed as alleged. (307; 2173-4) (273-4; 258)

(13) Instruction 18 was subject to the exceptions taken and erroneous and inapplicable here. The language "such design and purpose by either of the defendants" was erroneous, and reference to Harmon and Stubeck was bad and misleading, particularly in the refusal of the Court to instruct as requested that the agreement alleged must be established and that it must be proved that these men were parties to it independently of the acts or admissions of any alleged or assumed conspirator. It left the jury to believe that the conspiracy could be proved by the acts of Stubeck, or the misconduct of persons not charged. (307-8; 2174) (274-5; 259)

(14) Instruction 19 was erroneous and subject to the exceptions taken. It permitted conviction if a party did any of the things referred to in the bill of particulars or any of the acts which might have been the subject of the alleged agreement even though it was without any knowledge of the existence of the agreement alleged. (308; 2174) (275; 260)



(15) Instruction 20 was subject to the exceptions taken, and in view of the foregoing instruction it affirmed the previous ruling of the Court on the trial and other intimations in the instructions that these defendants could be convicted if involved in the minor violations referred to in the ordinances, and also as subject to the objection with relation to the failure of the Court to give any instruction as to the ordinances introduced by defendants. (308; 2174) (275-6; 260)

(16) Instruction 21 was erroneous and subject to the exceptions taken. Any possible conviction here of any wrong doing depended upon the uncorroborated testimony of Golden Holt. He was an admitted conspirator and his testimony was in no way affecting the charge corroborated by any witness. It is not made applicable to the charge of agreement here and is subject to the separate exceptions in this respect. It permits the testimony of Holt to be completely believed and relied upon without any actual or legal corroboration whatsoever. (308-9; 275) (276; 261)

(17) Instruction 22 was erroneous and particularly the first 4 lines thereof separately excepted to, containing the instruction to the effect that the acts or statements of Abe Stubeck, Golden Holt, or Ben Harmon, could be considered by the jury as establishing an agreement here instead of instructing that the agreement must be established, at least prima facie, before these could be admitted or considered. (309; 2175-6) (276-7; 262)

(18) Instruction 23 was subject to the exceptions

taken. The first part was repetitious and confusing and inapplicable to the agreement alleged here, and the second part, as to admissions, in view of the mass of statements made by witnesses as to what they had found and what they stated, was wholly insufficient and misleading, and not a correct statement of the law applicable here. (309; 2176) (277; 278)

Each of the foregoing mentioned exceptions, to each of the foregoing mentioned portions of the instructions, is made separately and as a separate assignment of error by each of the appellants herein separately, as to each such portion of the instructions.

The exceptions to the instructions referred to in each of the foregoing separate numbered and lettered assignments are set forth in full at the foregoing pages of the abstract as shown in each instance by the first number in the first bracket following each assignment; the instruction excepted to in each instance, is set forth in full in the foregoing abstract at the pages indicated by the first number in the second bracket following each assignment, and the aforementioned exceptions and also the aforementioned instructions as there fully set up are hereby referred to and incorporated herein and made a part of this No. 17 assignment and the separate subdivisions thereof, to the same effect as if again set out in full therein.

18. The evidence was insufficient to support the verdict and judgment here as assigned in assignment No. 10 hereof, and for the further reason that the cir-

cumstances offered in evidence did not point to or indicate the making or the existence of the agreement as alleged. This is indicated by the various assignments set out at the various pages of the abstract and transcript and herein assigned under assignment No. 15, and the absence of evidence to prove the conspiracy cannot be more specifically assigned or any record thereof more specifically designated.

19. Appellant was not given a fair trial by reason of the errors assigned, and the misconduct of the prosecuting attorney as hereinabove assigned; and, separately, that appellant was not given a fair trial by reason of the misconduct of the prosecuting attorney as hereinabove assigned, and, separately, by reason of the erroneous admission of the testimony of Dar Kempner and the instructions of the Court with relation thereto.

20. The State was not required by any instructions to the jury, or at all, to prove criminal intent, or any criminal or corrupt intent or motive, and the evidence did not prove or establish any such.

31. The Court erred in overruling and denying appellant's motion in arrest of judgment herein. (275, 278, 284; 291)

22. The Court erred in overruling and denying appellant's motion for a new trial herein. (277, 283, 289; 293)

WHEREFORE, appellants pray, and each of them separately prays, that the verdict and judgment as

against each, for and on account of the said errors and assignments, be reversed.

Dated this 5th day of January, A. D. 1940.

**H. L. MULLINER,**

**Attorney for Appelants Harry  
L. Finch and R. O. Pearce.**

**BURTON W. MUSSER,**

**EDWARD F. RICHARDS,**

**Attorney for Appellant E. B.  
Erwin.**

(Served on the Attorney General, this 5th day of  
January, A. D. 1940.)