

1940

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

Utah Supreme Court

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No. 6200

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.

Appeal from Third District Court; Salt Lake County
Hon. Oscar W. McConkie, Judge

Supplemental Abstract

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Supplemental Abstract

STATEMENT

Attorneys for the State have prepared and filed this Supplemental Abstract because they feel the abstract made by defense counsel does not properly reflect the record and in some parts is contrary to the record. This failure to reflect the record is partly due to a failure

to place therein some of the details of transactions which were elicited at the trial, and in some instances facts were left out of the abstract. Possibly the only way that the State could get all these matters in abstract form would be to make an entire new abstract. Because of the work and the cost involved, attorneys for the State have come to the conclusion that the best way to bring to the attention of the Court this deficiency in the abstract on file herein would be to make a Supplemental Abstract pointing out some of the things which have been left out of the abstract and some of the places wherein the abstract is contrary to the record. By this method it is hoped that the Court will see the necessity of a rather detailed and careful inspection of the transcript of testimony in this case.

The numerals which appear on the left hand margin refer to the pages of the abstract filed by defense counsel, and the numerals in parenthesis in the body of the pages refer to the record.

- 14 ETHEL McDONALD. Ethel McDonald testified that she was the City Recorder for Salt Lake City, and had been for ten years; that E. B. Erwin on the first Monday in January, 1936, was assigned to the Department of Public Safety; that Harry Finch was appointed Chief of Police February 18, 1936, the appointment to be effective March 15, 1936. That he was discharged as Chief of Police on January 21, 1938. The minutes of the City Commission provide: "Resolved that the good of the service will be subservient by the immediate removal from office of Harry L. Finch as Chief of Police of Salt Lake City; and accordingly Mr. Keyser

moved that his employment as such be and is hereby terminated effective this date, which motion carried; all members present voted 'Ayes,' except Mr. Erwin, who voted 'Nay.' "

Certain city ordinances were offered by the State and admitted in evidence, the same being contained in Exhibits A, B, and C, and relate to the organization of the city government into departments; the duties of the head of the Department of Public Safety; the reports to be made by the various commissioners; manner of making appointments; appointment of the Chief of Police; control of the Police Department; the duties of the police officers and the various ordinances making it unlawful to carry on various gambling games and houses, to keep or maintain bawdy houses and disorderly houses.

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- 15 O. B. RECORD. Mr. Thacker was appointed Chief of the Anti-Vice Squad by the Chief of Police, but while the Chief of Police was out of town, he, Record, was in charge of the Police Department, but during the absence of the chief, Thacker did not at any time report to Record, and the conversation referred to in the Abstract arose as a result of this failure.
- 16 That the men in the basement of the Atlas building were "horse racing;" his attention was called to this place by the people going down and coming out of the basement. There were about twenty-five or thirty horse racing sheets on the blackboard and each table had horse racing sheets on it. No attention was paid to Officer Burke and myself until we got into the building and we then made the arrests.

In the conversation between Record and Chief Finch, following the arrests mentioned, the chief stated not only to let Thacker know of any complaints about gambling, but to also let the chief know, and that they (Thacker and Finch) would see it was taken care of. Both Thacker and Burt were in full uniform.

- 18 He stated that he thought Thacker chose the men for the Vice Squad and that he did not remember any discussion with Finch or Thacker about the members of that squad. That H. K. Record had been head of the said squad about a month and a half, and previous to that, Holt had been in charge about a year and a half. Witness did not testify as stated in Abstract that he did not know how many times Browning had been arrested by the squad under Mr. Thacker, but stated that he did not know that he had been arrested by Thacker.

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- 24 JOHN S. EARLY. The conversation with the mayor referred to in the first paragraph of this page was as follows:

“The mayor said that he had heard there was a pay-off through the Police Department; he was desirous of finding out to what extent the pay-off was and who was making it, if possible; he said: ‘Jack, get all the information that you can with reference to it’.” (R. 467).

On page 473 of the Record, it appears that the individuals named came into the Police Department after the change in the Anti-Vice Squad made by Finch.

- 27 The word “Mayor” as used in the third full paragraph on this page should be “Chief of Police.” (R. 487).

29 AUSTIN SMITH. Witness went down to the Finch home at the request of Mr. Finch. (R. 493).

33 On redirect examination, the witness stated that he did talk to the mayor about the contents of the memorandum and told him that it had been placed on his desk. (R. 514).

34 HENRY V. GOSLING, Counsel for Appellant states that the testimony of this witness has become immaterial because of Instruction No. 9 (b). This, of course, is not so, because by reading the instruction, it does not eliminate this testimony where such testimony, together with other testimony, can aid the jury.

This witness testified that during the years 1936 and 1937, he was in all of the lotteries set forth in the State's Bill of Particulars. He testified as to the method of operation, stating that it was customary for the drawing in each of these places to be at different times and the people would walk from one place to another to attend these drawings. The number of people would be anywhere from thirty to one hundred and fifty. He testified that no identification cards were required in order to get in these lotteries. He testified that lottery tickets were placed around the walls of the places and generally that the lotteries were operated openly.

35 D. L. HAYS. This witness described the following card rooms: Pastime Club, Bank Smoke Shop, Wilson Card Room, Peter Pan, The

Horseshoe, The Mint, Abe Stubeck's place, and the Ace Billiards. He testified as to the method of operation, stating that there was generally a man with a money apron on in these places, and chips were bought from him, and after the player was through, if he had any left, he would cash them in and receive the money for them. He testified that no identification cards were ever required for admittance to these places. In general, this witness's testimony gives the details of the operation of the above named card rooms, and which are again, those mentioned in the Bill of Particulars filed by the State, and which the State alleges that the defendants permitted, allowed, assisted and enabled to operate in violation of law.

- 37 WILLIAM SCOTT. In addition to the things observed in the Atlas Building as set forth in the abstract, witness also saw betting taking place there. At no time did he need a card to gain admittance to the place. Counsel for appellant set forth a statement made by Mr. Rawlings at the top of this page and that stated that the court was asked to instruct the jury to disregard such statements and that this request was denied. At page 652 of the Record appears the following, in connection with said statement:

“THE COURT: What do you want the court to do?”

MR. HANSON: I asked the court to instruct the jury to disregard that statement.

THE COURT: I don't like to continuously admonish the jurors, but upon this request

I will do it again now, that statements of any attorney in the case, or the court, as to what the fact is, is not testimony and is not to be regarded by you as testimony. You may proceed."

The witness testified that the barbutte game at 351½ West Second South was there not only in 1936 but also in 1937. The only raid made by Thacker in this place was the one mentioned in the fourth full paragraph on this page of the abstract. The reference in the third full paragraph of the said abstract that "it was raided by Thacker" apparently refers to the incident when Thacker in 1937 went into this place while the game was in operation and the players continued to play. (R. 663).

In connection with the witness's testimony on seeing gambling going on at The Mint, he testified that he saw Thacker in the card room on three or four occasions, when gambling was in progress and on two occasions he saw him there with Ben Harmon. He testified that at none of the places which he visited was it necessary to have an identification card to gain admittance.

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- 64 DAR KEMPNER. On redirect examination, this witness testified that no one but Stubeck, Harmon and the cashier and himself were near at the time the money was placed on the counter. The nearest person, other than the four of them was fifteen or so feet away. (R. 893-894).

AUGUSTA FRIEND. At the conclusion of this witness's testimony, it was stricken and the court stated:

“Well, I will grant the motion to strike the testimony of this witness, and will admonish the jurors that they are to not consider any statement or any inference that might be drawn from anything that this witness has testified to.”

65 E. A. HEDMAN. The following portion of the conversation between Thacker and Hedman, in the presence of Finch is left out of the abstract.

“I (Hedman) says: What if the condition comes up, such as this came up, that you weren't here? The nature of it was that it had to be taken care of immediately. What will I do then?

He (Thacker) says: You still put it in an envelope and leave it on my desk, and I will take care of it.” (R. 627).

67 ANN COLLINS. This witness claimed her privilege and refused to tell what work she did at the Blackstone Hotel. (R. 910).

68 BOBBY CARLTON. On cross examination this witness testified that 1937 was the only year in which it was necessary to go every two weeks to the Police Station. In other years, it was only required when they came after her,

that she had to go to the Police Station. (R. 924).

- 69 On redirect examination, this witness testified that in 1937 the prostitutes went to the desk sargeant and booked themselves, which they were ordered to do, even though they were not arrested and even though they went voluntarily. (R. 927).
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- 72 MARGARET NEWMAN. The statement in the abstract "There has been a criminal action pending against me since a year ago, April, 1938" is obtained from a question and answer which the witness said she did not understand, (R. 945) and from a reading of the transcript it clearly appears that the statement "I do not know of any case against me" is the answer she gave upon understanding the question.

In the abstract counsel sets out a question and the objection thereto, however the question and answer next preceding this are as follows:

"Q. You understood that you might be indicted, didn't you, if you didn't come in to testify?

A. No, I didn't understand.

MR. RAWLINGS: She said No.

Q. What was it?

A. I said, no, I didn't understand that."

- 75 A. H. ELLETT. The conversation had with Mr. Finch and referred to on this page was, in the words of the witness:

"In the afternoon of the day that I had finally refused to sign a complaint against

the keeper of a gambling game.” (R. 1269).

77 After the statements, as contained on this page, were made to Finch, this witness testified that Finch said nothing and after about a minute or two, made some remark and the meeting broke up right thereafter. That during the minute or two referred to Finch was looking down at his shoes. (R. 1274-1275).

78 The following question and answer occurs on page 1279 of the Record, the purport of which we do not think has been properly abstracted.

“Q. Well, did you think that Mr. Finch had the duty of filing complaints and prosecuting these cases as the Chief of Police?

A. I certainly did in view of my directions in open court to his deputies.”

In connection with this same matter and on cross examination by which the examiner was trying to elicit the answer that it was up to the city attorney to determine where the complaints should be filed, this witness answered that the Chief of Police could direct his evidence to the proper place and place it before the proper authorities. (R. 1280).

79 The effect of the redirect examination of this witness is as follows:

“It was after this affair in which I ordered them to take these cases down to the County Attorney’s office that Chief Finch called me. It was immediately after I got off the bench. I will say, no more than fifteen or twenty minutes after I was off the bench

that the above phone conversation came. It was probably about three hours after I had indicated that they would have to take these felony cases to the County Attorney's office. I wouldn't say what time they were disposed of. I don't know whether it was three or not because we went on the bench at 10:00 o'clock and we went over some considerable time past the noon hour and I don't know just when we disposed of those felony cases finally."

- 82 BEN HUNSAKER. There should be inserted at the bottom of this page the following testified to by the witness:

"Now you come to me and say that you have had a hell of a time making collections from the different joints, and there is nobody in the world to blame but yourself." (R. 1128).

- 83 In the second full paragraph on this page in Erwin's statement, he refers to the Chief of Police as "his" Chief of Police. (R. 1131).

The fourth full paragraph does not fully reflect the testimony, which should be as follows:

"About the same time the following year, around the latter part of the summer, the Mayor said that he thought the Chief of Police was taking in a lot of money, but he says: 'I don't think that I am getting my right split.' He says: 'I can't be down to his office watching him, knowing what he is doing and attend to my office at the

same time; so I have to take just what he hands me and be satisfied'." (R. 1132).

89 In the first full paragraph counsel states:

"His previous testimony was read and makes no reference to the question of making money out of the Police Department or the Finance Department."

This is incorrect because the following forms a part of the testimony read to the witness:

"At that time Mr. Erwin said he hoped to get the financial end of the city's business. As it was then, he only had the Police Department or the Public Safety, but if he could get the financial end of the city, he would make plenty of money." (1156-1157).

89 The witness said with respect to Exhibit 22:

"I didn't approve of this letter exactly. I didn't put my sanction on it or anything. He was my attorney writing to another attorney. I would not have 'wrote' that kind of a letter. I did not object to it." (R. 1188).

On redirect (R. 1198) witness said:

"I couldn't say that Exhibits 11, 12, 13, 14 and 15 were all of the receipts signed or given to Mr. Erwin."

94 JACOB WEILER. The case referred to by Mr. Weiler is H. A. Pearce v. Erwin Motor Company (R. 1238), and he stated the same was tried in Judge Thurman's court on the date

mentioned. He stated that the defendant, Mr. Pearce acted as counsel for defendant (R. 1244) in that case and that it was his recollection that Erwin was in the courtroom during all the proceedings in that case. (R. 1245).

95 H. K. RECORD. Record states that Chief Finch reorganized the Anti-Vice Squad fifteen days after Finch took office. (R. 949). He also testified that on the 1st of March, 1937, that Finch placed him on the Anti-Vice Squad and that he (Record) was relieved of his duties March 1st and that Chief Finch was the one who relieved him. (R. 950).

96 Witness testified that he was relieved as Chief of the Anti-Vice Squad about fifteen days after the conversation with Pearce. (R. 954).

97 Redirect of this witness should be that he reported the conversation with Pearce the same day to his brother, O. B. Record, who was at that time Inspector of Police. (R. 960-961).

99 GOLDEN HOLT. Holt stated that after the conversation with the Chief that he went all around town to the places of prostitution, to the gambling places and to the lotteries and gave them orders they had to close up. (R. 968). Mr. Holt not only gave the names of the different houses of prostitution mentioned in the Bill of Particulars, but also gave the addresses and the persons who operated them, and that he made collections from these places during 1936 and testified to the amounts which he had collected. (R. 971-972).

102 In the conversation with Ben Harmon, Ben

Harmon told Holt the amounts he was to collect and Harmon stated to Holt that the places named were the ones from which he was to collect. (R. 984).

In testifying as to the collections in 1937, Holt stated that he made the first collection on June 1st or 2nd, 1937, not January. And he further testified to the amounts which he collected, the addresses of the places and the names of the operators, and testified to Ben Harmon's increasing the pay-off on one place, and he also stated that new places were opened up after June and that they were collected from. (R. 986-988).

103 The quoted portion of the second full paragraph on this page is incorrect. The following reflects the record:

“Mr. Harmon told me that Mr. Pearce had accused him of holding out on him, and he wanted me to go — he told me to go to Mr. Pearce's office and see him.” (R. 1003-1004).

105 The following comments with respect to the houses of prostitution heretofore mentioned, should be inserted immediately before the cross examination on this page:

“MR. HANSON: We are not going to deny the existence of any of them .

THE COURT: Or that they were used for the purposes the witnesses have testified they were?

MR. HANSON: My understanding is they were not only used for the purpose

the witnesses said they were, but for many years prior and since.

MR. RAWLINGS: I expected that speech.

MR. MULLINER: I admit they were used for those purposes. I don't want to admit they were the only places." (R. 1020-1021).

110 The first paragraph after the questions and answers is not correct. Holt did not say that he did not remember the conversation. He stated that he did not make any such statement and that there was no such conversation (R. 1048-1049).

111 The following should be inserted at the bottom of this page, being the testimony of said witness:

"Just on those places we just kept making them so much they couldn't book, that was all. I never put men in the places. The way I do is make the places so much, by the time they get their paraphernalia out we would be back again. They would have to hide it." (R. 1051).

116 Just after the questions and answers under redirect, the following should be inserted:

"I first closed Abe's place up around July 1st. The other gambling places were closed by me at the same time. The other places, as well as Abe's were later permitted to open." (R. 1082).

129 FISHER HARRIS. The first objection referred to on this page was made after the answer was in. After Erwin said: "All these

people pay off you say,” Mr. Harris answered: “Yes,” and Erwin said: “You don’t say.” (R. 1310).

131 The objection and motion which appears between the first question and answer on this page, in fact, transpired after the answer was made. (R. 1350).

132 After Erwin said that he had the letter, Keyser demanded that he produce it, and thereupon Erwin did produce it. (R. 1317).

The letter was produced at the fifth meeting after it had been turned over to Erwin. (R. 1010).

133 In the conversation between Thacker and Harris, Thacker stated:

“Well, *they* are not going to make me the goat of the thing. I didn’t receive any of the graft money.”

Harris said: “I know you didn’t receive much.”

Thacker said: “Damn little.” (R. 1323).

134 On the first line of this page according to the transcript, Thacker was not only to take advice but also directions from Ben Harmon (R. 1324). There should be inserted after the statement: “After election they opened up,” the fact that Thacker said:

“Yes, it did.”

Harris said: “How was that?”

Thacker said: “On the Chief’s orders.”

And Harris said: “Did everything open up?” (R. 1324).

Thacker also stated that the reason they were having trouble with Bill Browning was that he was complaining that the pay-off was too much. (R. 1325).

135 The objection referred to at the bottom of this page was made after the answer. (R. 1333).

140 The statement that Mr. Harris went to one place in August and one in September does not reflect the record. The following does:

“Now over a period of several months, I can’t tell whether I went to the Mission on Saturday and the bookmaker’s on Thursday and one in August and one in September.” (R. 1351).

147 At the time Exhibit S was received by Harris, Erwin was in town. (R. 1369). Exhibit S was delivered to Ethel McDonald in a sealed envelope to be put in the safe for Fisher Harris. (R. 1370).

Exhibit T was another resignation of Mr. Erwin received at a later date by the City Commission. Said letter appears to be from Los Angeles. (R. 1371-1372).

149 Mr. Harris stated:

“I have a very distinct recollection that Mr. Finch didn’t ask me for specific information. I expected him to ask me.” (R. 1382).

Mr. Harris said that Finch did not say at any time:

“We are both employees of the City, and if there is anything wrong in my Depart-

ment I will do my best to straighten it out.”
(R. 1380).

157 In the redirect examination of Harris on this page he stated:

“I do not remember whether I showed the figures to Mr. Fish before or after he asked me relative to who the parties were who ultimately got the graft.” (R. 1437).

171 HARRY L. FINCH. Mr. Finch stated that he was at the Police Station almost every day over a part of the day between February 15th and March 15. (R. 1513).

The following should be inserted at the end of the next to the last paragraph on this page:

“If they were clean, or rather as they said, if their slides were negative, they were released; if they were not, they were not, they were held until they were cured; I adopted the same method of controlling prostitutes, except that we brought them in twice a month.”

177 The statement at the end of the first paragraph on this page to the effect that “that was the understanding when I left,” was stricken. (R. 1541).

Finch stated that he did all of the talking and that the applicants did not say or do anything. (R. 1541).

In the last paragraph, the transcript reflects that Mr. Early told Finch that he (Early) was informed that Record and another were interested in a crap game. (R. 1543).

178 At the top of this page the abstract says:

“I had a report also from a friend of mine.”

The witness refused to give the name of this friend and the question was withdrawn. (R. 1546). In the sixth full paragraph on this page, Finch stated that among other things Thacker, Crowther and Beckstead attended to gambling. (R. 1548).

189 In connection with his knowledge of police affairs, Mr. Finch stated that he did know something of the affairs of the Public Safety Department, (R. 1609) and also that during his nine years as a City Commissioner, in view of the difficulties that had arisen at the Public Safety Department, he learned something about part of the underworld conditions. (R. 1610).

190 In the first full paragraph of this page there should be inserted the testimony given by Finch as follows:

“I have no doubt that it is true I was acquainted with the facts that card rooms had operated, and that the City had difficulty with them on account of law violations.” (R. 1615).

There should be inserted in the last paragraph on this page as follows:

“They were brought in twice a month. I knew I could close up places where they were being operated. They were right where they had always been, I suppose. I didn’t pay any attention. I was not interested in that. Just to the extent they were there and we knew where they were at. I did not investigate to find out where they

were.” (Mr. Finch was here speaking of prostitution). (R. 1620).

191 In the fifth full paragraph on this page is contained the following statement:

“I didn’t know before that the anti-vice squad was the hot spot of the Department, and the rumors that I had heard for thirty years came as a result of the activities of that squad.”

A question embodying this statement was asked the witness, but he refused to answer the same yes or no. (R. 1624).

192 There should be inserted in the second full paragraph on this page the statement by the witness as follows:

“I think it is true I had the right to fire any officer that I desired, and he would have the right to appeal to the Civil Service Commission.” (R. 1628).

In speaking of firing men in the Police Department witness testified that he never had occasion to do so, and that he was not familiar with the routine. (R. 1630).

193 Witness stated in connection with Abe Rosenblum’s place that he did not think it was Mr. Holt’s province to close it up. (R. 1636). He further stated that a new license was taken out for the place, and he said in answer to a question whether he approved that license, “I think so.” (R. 1637).

In connection with the Rosenblum license, witness stated that he could not tell who investigated Rosenblum’s place. He imagined it was Holt. He did not file a report of his

investigation unless he would just come back and say,

“This is all right. I knew that a number of complaints had been made about Abie’s place but I made no personal investigation about the applicant to whom it was transferred. I did not personally find out who this man was. I did not find out from any source his relationship with Abie Rosenblum.” (R. 1639).

194 There should be inserted before the first full paragraph on this page the testimony of the witness that he would say that prior to February 1, 1937, men had been arrested in the places mentioned. (R. 1645).

195 On page 1651 of the Record, witness stated that a card room license, as far as he was concerned, definitely did not permit a person to continue gambling. He was then asked why he issued a card room license and he answered:

“Well, I don’t think that I can answer that question.”

197 In connection with the questions in the middle of this page the foundation was laid as to time, December 1, 1936; place, Salt Lake City; to whom, a representative of the Salt Lake Telegram. (R. 1659).

200 In connection with the removal of Mr. Holt this witness testified:

“I removed Mr. Holt from Chief of the Anti-Vice Squad on complaint of the women’s clubs of this city. That was on this build up. There was no woman who suggested that he be removed. Neither

women's clubs nor any newspaper requested his removal. The change was made on account of these continued articles in the newspapers questioning the enforcement of the vice situation. I did not change him for publicity purposes. We were being criticized. Holt was not being criticized personally. The department was." (R. 1664-1665).

201 This witness further testified in connection with this removal:

"I was well satisfied with Holt's work. I promoted him to detective shortly after he went off the vice-squad. Prior to this time I had heard that Holt had taken some money. That was a serious charge. I had no way of investigating it. It was just a rumor I heard. I called it to his attention. He denied it positively and I took his word for it. That ended it. I didn't hear from anyone definitely that he had taken the money. I heard it from a party. It was no one in the Department. It was not one of the operators of houses of prostitution. I never met one of these women."

When asked for the name of the party giving this information, the witness consulted the judge as to whether it would be necessary for him to answer the question, and the District Attorney withdrew the question, "If it is going to be embarrassing." (R. 1666-1667). (This should take the place of the first full paragraph on this page, and also has some of the content of the preceding paragraph).

The following should be inserted after the second full paragraph on this page:

"I did not do a thing to determine the truth

of that. I removed Record right after I heard these rumors and for the reason that I heard the rumors.” (R. 1675).

Witnesses testified that he did not tell Record his reason for removing him, “Because I did not want to hurt his feelings.” (R. 1675).

The following should be inserted in place of the fifth full paragraph on this page:

“After I received these reports on H. K. Record which predicated my taking him off the vice-squad, I did not reduce him in rank. I did not suspend him for any time at all. I did not discharge him. I did not give him any reason for his removal. (R. 1676). I called Inspector Record in and we talked it over. I did not call H. K. Record in. The notification of change was handled by Inspector Record. I don’t know just how it was done. I took no occasion to either speak to H. K. Record or do anything about it other than to make the change. I don’t think I gave any reason for making the change at the time to anybody.” (R. 1677).

The statement referred to at the bottom of this page is as follows:

“The shifts were made because we felt that one of the ranking officers should have charge of the moral squad when it takes over one of the larger jobs in the Department.” (R. 1678).

204-205 The question asked at the top of page 204, as well as the second question referred to on said page, were never answered and finally

after the first objection shown on page 205, the following question was asked:

“Didn’t the Mayor tell you that Mr. Fisher Harris had written him a letter in which he had stated in substance that there had been a pay-off in the Police Department?”

And there was no objection to this question.

205 The words “under fire” immediately preceding the re-direct examination were not included in the transcript, and then after those words the following should be inserted:

“After that I told him to go down and tell the Commissioners that I refused to resign.” (R. 1697).

206 There is no evidence in the transcript that the cardroom above Finch’s restaurant was occupied by a labor union “as a club room.”

There should be inserted before the last paragraph on this page the following:

“The letter, Exhibit U, doesn’t refresh my recollection as to the time when this place over the Bailey Feed Store was closed. I would say it was sometime after that. The closing occurred while it was licensed in the name of LaMar.” (R. 1702).

208 KENDALL VINCENT. The abstract states:

“There was a cashier that relieved me in taking the cash for the soda.”

The record reflects that witness states a cashier relieved him between two and four,

and that he just relieved him in taking the cash for the cafe. (R. 1713).

209 At the top of this page the following appears:

“I was not there between two and four from January to May 17th, unless there was an emergency.”

The record reflects the following:

“During February, March, April and May I went to work at the Mint at 7:00 o'clock in the morning, worked until two and came back at four. I was not there during that entire period between two and four unless there was an emergency.” (R. 1715).

There should be inserted the following as the testimony elicited from the further questioning referred to after the first answer on this page:

“The license was issued in my name, but it was operated by a man named Mr. Bailey. He was hired for me. He was hired through Ben Harmon and myself.” (R. 1717).

The following should be inserted in the next to the last paragraph:

“Either Ralph or Ben relieved me some of the time even during my regular shift. Most of the time it was Ralph.”

The following should supersede the last paragraph on this page:

“Ben and I were not in a partnership.”

The witness was asked how it was the two of them hired Bailey and the witness stated:

“I just recommended him to Ben. I didn't operate the card room. The license was in

my name. Bailey operated the card room. Ben Harmon did not. Bailey was the employee of Ben Harmon.” (R. 1720-1721).

- 210 The cash receipts referred to in the re-direct examination were cash receipts from “the card room and the lunch room and our bar.” (R. 1721).
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U. L. THORPE. This witness testified that Thacker told the night shift to report violations *to Thacker*. This witness only told of one report and this was in connection with the Bank Beer Parlor, where a number of drunks were causing a disturbance. (R. 1727-1728).

- 212 L. C. CROWTHER. Referring to the last paragraph on this page, rather than the two or three places, the witness gave the location of five places where bets on horseracing were made and not where they were *supposed* to have been made. (R. 1767-1768).

- 213 The list of races was published in the Telegram and the odds are not in the paper. They telephoned that direct from the track to a centralized station in Salt Lake which supplies that information for the newspapers and these bookmakers. (R. 1769-1770).

The first full paragraph on this page should read as follows:

“The man that handled books on the street carried a sheet of paper, probably with the last track where a race is coming up, with the names of the horses, and contacts the men that wish to gamble on horse racing

on the street and exhibits their bets.” (R. 1770).

214 The following should be inserted before the first question set out on this page:

“I enumerated the card rooms in the Orpheum Alley, the Wilson, the Bank, the Horseshoe, the Ace Billiards, under the Little Hotel, under the Keith Emporium, the Horseshoe Billiards, the Rialto and the Peter Pan. When I went in these places I knew they were operating. I imagine that they were gambling. They wouldn’t be playing for fun. I never have gone to them and told them to stop. Yes, certainly, we told them to cut it out many times.” (R. 1790).

“I know the men who were operating these places. They knew who I was. I imagine they knew who Thacker was. I knew there was gambling going on in those places.” (R. 1791).

The following should take the place of the last paragraph on this page:

“I wouldn’t think it would be possible to stop them. I imagine you could revoke their license if they kept it up. I couldn’t revoke it. I said if they were violating the law, the license could be revoked. If it was revoked they could not operate in the same place. The same persons could not operate in the same place. The same person could at another place under a different name. They have operated under a fictitious name. We did not know they did it. We knew they were in there. They would have some one else take the license

out for them and they would still be in charge of the same place. We found it out later. I didn't have the license revoked. I wouldn't because it was not my duty. I reported to the Chief to have it revoked. I don't know if they did it — the places are still running. They were not revoked." (R. 1792 to 1794).

215 The following should be inserted as a part of the cross-examination of this witness and immediately before the redirect:

"Thacker told me that he didn't want this place (Bill Browning's) to open. I don't remember when it was. It may have been around November 2d. As well as I understand the place didn't open. Thacker told me when to go and hold sack. He told me when to leave there. I believe it opened up after that. After I left the squad. It opened at the same place." (R. 1810).

The redirect on this as shown by the last paragraph on this page should be as follows:

"That is the only place that I held sack. I have visited other places. Holding sack is to stay on the job and to see that the violation is not committed. It takes one officer's time to stay right there. They did not operate." (R. 1812).

216 The first paragraph on this page to properly reflect the record should be as follows:

"A master line is a line that goes directly from your receiving station in Salt Lake to all bookmaking places. The headquarters were in the Utah Savings & Trust Building. It came in there and was phoned out

from there. It could be phoned out to any poolroom that operated. We had no control over the phone company to prevent these messages being phoned. I never did prevent the newspapers from publishing the results.” (R. 1812).

217 S. D. BECKSTEAD. Referring to the first full paragraph on this page, the witness never did testify that Mr. Harmon seemed to be looking after the restaurant part. On the contrary, he stated that,

“As I understand it, Blackie Wells managed the cafe.” (R. 1886).

218 The paragraph immediately preceding the question at the bottom of the page refers to the question asked the witness if he did not testify at the Civil Service Commission hearing that the reason he arrested them (The Mint) without any evidence was that they had made the place a couple of times and did not get the evidence and the proprietor asked “if we wanted an arrest and we told him ‘yes.’ Ordinarily our instructions were not to make any arrest without the evidence. By ordinarily I mean, if they don’t want to come in and plead guilty of the charge. We know what they are going to plead before we arrest them because we ask them.” Witness stated he so testified. (R. 1842).

228 FRANK A. THACKER. The second full paragraph on this page does not contain a fair statement of what transpired so far as the criticism of the court is concerned.

Starting on page 1902 of the Record, counsel for the defendant started to make objec-

tions in which he purported to state what the Record showed so far as certain testimony was concerned. He did this on more than one occasion, and finally, at page 1903, after Mr. Rawlings had made a statement as to what he believed the Record showed, Mr. Hanson stated that he could reply to that. Thereupon the court said:

“Mr. Hanson, you have already replied. Now, if you can’t get through with this cross examination, the court is going to rule that it will hear no *suggestions* whatever, but that an objection can be made for the Record. Now, I don’t want to have to do that, but that is what I am going to do if we can’t go forward on the examination.”

Mr. Hanson then again stated what certain testimony was and the court stated as follows:

“Mr. Hanson, the court hasn’t any objection to your making a record, but it does have an objection to your making an objection and then proceeding to tell what the record shows or what the witness said. In the opinion of the court that is just the method of refreshing the witness’ memory as to the thing you have in your mind.”

Counsel then denied that it was refreshing the memory and then the court again stated:

“I don’t want to have to do what I indicated, but unless we can make some progress, I will do it. I don’t want counsel to say the Record is so and so and the witness testified to so and so. It is just refreshing the witness’s mind.

MR. HANSON: If Mr. Rawlings mis-states the record, I am going to do it.

THE COURT: Well, if we can't make some progress, I will permit you only to make your objection and put it in the Record."

228 At the bottom of this page should be inserted the following:

Thacker stated that he reported to the Chief of Police every place where gambling was going on. Witness testified that he reported about lotteries as soon as he found out they were running and that this was in the latter part of June, 1937. (R. 1941).

Witness testified that he knew a few people who made their living gambling and that he saw them playing cards with chips at Ben Harmon's place and he supposed there was a houseman there who sold them chips. Witness said they have these dealers in all the houses where they have card games. He said he did not know this when he went on the vice squad, but that he later learned this while he was on said squad. (R. 1965-66). Witness testified that he never put a stool pigeon in Ben Harmon's place nor in Abe Stubeck's place. He stated that he knew that Bill Browning ran three places in town and that he was the biggest operator in town. (R. 1970-71).

230 ABE STUBECK. Just before the question and answers which appear at the bottom of this page should be inserted the fact that the witness stated he knew of the arrest of someone in his establishment in the latter part of 1937.

The last objection on this page is not placed in the correct position because the answer was made before the objection was made. The words "I ran a card room" are not in the answer to this question. (R. 1925).

231 The next question, which appears on page 230 of the abstract and runs on to page 231, was answered by the words "I ran a card room," before the objection was made. It appears from the Record that the witness was interrupted by the objection and this particular question was never answered any further than as above. (R. 1926). The answer "I ran tables —" was made before the next objection and here again it is indicated that the witness was cut off by the objection and this question was not otherwise answered.

235 The last statement on this page with respect to the further argumentative statements being made by the prosecuting attorney and over on to page 236 of the Abstract setting forth the statement of the District Attorney that "we will not abandon anything that is
36 true," was called for by the statement of Mr. Mulliner when Mr. Mulliner stated "I thought you said there was some agreement. If you have abandoned that —." It also appears that the court instructed the jury that the statements of counsel are not evidence unless they are sworn to and counsel is testifying. (R. 2014).

241 O. B. RECORD. Record testified, among other things, that he did not have the power of appointment. (R. 2040).

242 Referring to the objection which appears at the top of this page, it should be noted that

there was no objection made by the attorney for Mr. Thacker. Mr. Hanson stated that on behalf of Mr. Thacker he would make no objection, and if it was the understanding that it would affect nobody but Mr. Thacker it could be put in evidence. (R. 2045). There should be inserted before cross examination the following:

Thacker did not at any time complain to this witness about Holt or say that he wanted him off the squad and this witness stated he did not at any time say that he would replace Holt the first of the month. (R. 2046). Also, witness denies that Fisher Harris asked him to discharge Thacker. (R. 2047).

- 243 The second full paragraph on this page contains the statement that all the women that were arrested for prostitution were fingerprinted *then*. In fact, the Record reflects that the following is the answer of the witness:

“I have heard of women arrested for prostitution being fingerprinted, all of them.”
(R. 2059).

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- 244 FISHER HARRIS. This witness denied saying to Thacker that he would make it hot for him, that he would put him in the penitentiary, that he would get his job, or that he would make a goat out of him. (R. 2075). He also denied that he made a statement that he would bet \$100 he could get Thacker's job in a month or a week. (R. 2077).

The first objection referred to on this page did not have any reference to including things that Mr. Thacker hadn't said that the witness

stated. The force of the objection was that on the State's main case this witness, according to Mr. Hanson who made the objection, had been asked specifically whether or not he had made these statements rather than appeal to the Record. The court apparently believed that the memory of the witness would be better than the memory of anyone else — hence, the statement by the court following this objection. (R. 2075).

There are some matters appearing on this page with respect to the withdrawal of the opening statement of Mr. Pearce. The Abstract does not properly reflect the Record. The statement which was made by Mr. Mulliner and which is the first one made by him on this page, was made before the defendants had all rested. This, of course, was previous to the putting on of the defendant's or the State's rebuttal testimony. The next statement contained on this page is to the effect that Mr. Hanson then indicated that he wanted to put Thacker on for the surrebuttal testimony. Mr. Thacker's testimony appears at page 2004 of the Record, which is the testimony referred to by Mr. Mulliner.

256 The following should be inserted between the statement on the top of this page made by the court and the next statement by Mr. Rawlings:

“MR. RAWLINGS: If Mr. Mulliner wishes to reopen the case and put Mr. Pearce on, we will stipulate he may do that.

MR. MULLINER: How could I try my case that way without withdrawing my

statement and all that, and no mention of any change in the record?

THE COURT: If you would like to come into the chambers and discuss informally some of these instructions, I would be glad to have you do so."

There is a statement in the Abstract with respect to the withdrawal by the State of the stipulation with regard to the testimony of Mr. Sorenson as to the reputation of Mr. Erwin. In the Record from pages 2093 to 2099 appears the reason for this withdrawal and the consent given by the court. It appeared that the witness, H. E. Sorenson, was the manager of the Southeast Furniture Company and that one of the jurors sitting in the case was his employee, and the State raised the question immediately upon its finding out of this relationship.

Respectfully submitted,

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