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Writ of Error.

New Jersey Supreme Court

State of New Jersey, to wit:

The State of New Jersey to Charles W. Parker, Judge of the Court of Oyer and (Seal) Terminer of the County of Morris, holden at Morristown, in and for the County of Morris of the term of January, in the year of our Lord, one thousand nine hundred and twenty-six.

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against George P. Claypoole, of the Town of Boonton, County of Morris and State of New Jersey, for wilfully, maliciously, knowingly, corruptly and unlawfully combining, uniting, confederating, conspiring and binding himself and others, by agreement, to pervert and obstruct justice, and the due administration of the law of the State of New Jersey, as charged in said indictment.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said George P. Claypoole, as it is said, manifest error hath intervened to the great damage of the said George P. Claypoole, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be,

and that speedy justice be done to him, the said George P. Claypoole, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the entire record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court of the State of New Jersey, on the 2nd day of April, 1926, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

Witness, Hon. William S. Gummere, Chief Justice of our Supreme Court at Trenton aforesaid, the 13th day of March, in the year of our Lord one thousand nine hundred and twenty-six.

EDWARD J. KELLEHER,
Clerk.

WILLIAM A. DOLAN,
Attorney.

Return.

To the Hon. Chief Justices and Associate Justices of the Supreme Court of Judicature at Trenton:

The record and proceedings in the case of The State *v.* George Claypoole, with all things touching and concerning the same, as before the Court of Oyer and Terminer of the County of Morris, they remain, or are in the custody or control of the Clerk of said Court, whereof mention is within made, we do hereby certify and send under the seal of said Court as within we are commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County (Seal) at Morristown, this 24th day of March, A. D. Nineteen Hundred and Twenty-six.

CHARLES W. PARKER,
Judge.

Indictment.

State of New Jersey,
County of Morris, to wit:

BE IT REMEMBERED, That at a Court of Oyer and Terminer, holden at Morristown, and in said County of Morris, on the second Tuesday in January, in the year of our Lord nineteen hundred and twenty-six, by the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and C. F. Wilson, Esquire, Judge of the Court of Common Pleas, in and for the said County of Morris, by the oath of John Gill, Edward T. Davey, Bertha M. Ackerman, Charles Cook, L. Harold MacCracken, Augusta Kamm, Oscar Benson, Frank R. Morse, John B. Howell, Gertrude Moller, Albert Sedgeman, Thomas H. B. Davey, Walter Kurtz, Jr., Mildred Merchant, John Obner, Russell Budd, J. Fred Bryant, Myra Scribner, Charles Newman, George Lyon, Elizabeth McMurtrie, Warren P. Edris, and William Hummel, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to inquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:

MORRIS OYER AND TERMINER
JANUARY TERM, 1926.

Morris County, to-wit:

The grand inquest of the State of New Jersey, in and for the body of the County of Morris, upon their respective oath

PRESENT, That George P. Claypoole, lately of the Town of Boonton in the County of Morris aforesaid, on the seventh day of May in the year of our Lord one thousand nine hundred and twenty-five, and at divers other times, and from thence hitherto, was a Constable and Special Officer working on Prohibition Enforcement, engaged in enforcing the "Prohibition Enforcement Act" of New Jersey, duly employed and appointed by Charles E. Estler, Sheriff of the County of Morris and acted as such Constable and Special Officer; and as such Constable and Special Officer engaged and employed by the Sheriff of the County of Morris it was his duty to prosecute offenders against the "Prohibition law" of this State within said County of Morris, and to enforce said Prohibition law within said County of Morris; and the Grand Inquest aforesaid, upon their respective oath aforesaid do further present, that on the seventh day of May, in the year of our Lord one thousand nine hundred and twenty-five, and at divers other times, and from thence hitherto, Raymond Tillotson and Andrew McDonough, lately of the County of Morris were employed by the said George P. Claypoole, Constable and Special Officer as aforesaid under the authority and direction of the Sheriff of the County of Morris, as special officers for the detection of violations of the "Prohibition Enforcement Act," and the arrest and prosecution of offenders,

with said County of Morris of said "Prohibition Enforcement Act"; and the Grand Inquest aforesaid, upon their respective oath aforesaid, do further present that on the seventh day of May, in the year of our Lord, one thousand nine hundred and twenty-five, in the County of Morris aforesaid and within the jurisdiction of this Court, the said George P. Claypoole, Constable and Special Officer as aforesaid, Raymond Tillotson and Andrew McDonough, Special Officers, being persons of evil minds and dispositions, together with divers other persons of evil minds whose names are as yet to this Grand Inquest unknown, wilfully, maliciously, knowingly, corruptly and unlawfully did combine, unite, confederate, conspire and bind themselves together by agreement to pervert and obstruct justice, and the due administration of the law of the State of New Jersey, to-wit, "The Prohibition Enforcement Act," by aiding, abetting, counselling, encouraging and procuring the unlawful sale, barter, transportation, import, delivery, furnishing and possession of intoxicating liquor in, into and within the said County of Morris, in violation of said "Prohibition Enforcement Act," and by knowingly and corruptingly soliciting and encouraging divers persons, within said County of Morris, to violate as aforesaid then and thereafter, the said "Prohibition Enforcement Act," upon the promise and assurance of immunity and protection from arrest, hindrance and prosecution by the said George P. Claypoole, Constable and Special Officer as aforesaid such promise and assurance of immunity and protection to be made by the said George P. Claypoole, Constable and Special Officer as aforesaid, and conveyed, carried and transmitted by the said Raymond Tillotson and Andrew Mc-

Donough, Special Officers as aforesaid, to George Knipper, Joseph Migdoff, Leonard Ringenback, Frank Lansing, William Ramitski, John Vincent, Henry Marino, William Everman and Michael McCormick, and to such other persons as the said George P. Claypoole, Constable and Special Officer as aforesaid, Raymond Tillotson and Andrew McDonough, Special Officers as aforesaid might induce and procure to give and offer and promise to give to the said George P. Claypoole, Raymond Tillotson and Andrew McDonough, a sum of money and other things of value, therefor; said promise and assurance of immunity and protection to consist of the promise and assurance by the said George P. Claypoole, Constable and Special Officer as aforesaid, to the said George Knipper, Joseph Migdoff, Leonard Ringenback, Frank Lansing, William Ramitski, John Vincent, Henry Marino, William Everman and Michael McCormick, and to such other divers persons as would pay and give such money and other things of value as aforesaid, that he, the said George P. Claypoole, Constable and Special Officer as aforesaid, would refrain from prosecuting hindering or thwarting violations by such divers persons within the County of Morris of the said "Prohibition Enforcement Act"; and would permit, suffer and aid such divers persons so to him knowingly violating and guilty of violating said act to go at large unrestrained by arrest and free from examination, prosecution and punishment;

And the Grand Inquest aforesaid, upon their respective oath aforesaid do further present that afterwards in execution of said agreement and conspiracy the said Raymond Tillotson and Andrew McDonough did visit, call upon and communicate with William Everman and Michael McCormick, and with divers other persons whose exact names are to this Grand Inquest as yet unknown within said County of Morris and did solicit and receive from such persons divers sums of money and things of value, and in return therefor and in consideration thereof, did knowingly convey, carry and transmit the promise and assurance of the said George P. Claypoole, Constable and Special Officer as aforesaid of the immunity and protection as aforesaid; and in further execution of said agreement and conspiracy the said George P. Claypoole, Constable and Special Officer as aforesaid, did corruptly and contemptuously make and give such promise and assurance of immunity and protection as aforesaid to the said divers persons so paying the money and other things of value as aforesaid, and did refrain from prosecuting and proceeding against such divers persons so paying the money and other things of value as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

ALBERT H. HOLLAND,
Prosecutor of the Pleas for Morris County.

Indictment.

(Endorsed):

No. 59

MORRIS OYER AND TERMINER

January Term, 1926.

The State

v.

George Claypoole

Indictment for Conspiracy

Albert H. Holland,
Prosecutor of the Pleas.

A True Bill
Jno. J. Gill
Foreman.

Received and filed in the Court of Oyer and Terminer, January 29, 1926.
E. Bertram Mott, Clerk.

Recognizance.

THE STATE *v.* GEORGE CLAYPOOLE, Defendant, GEORGE ESTLER, Surety.	On Recognizance $2,000 On Indictment Conspiracy.

BE IT REMEMBERED, that on this 30 day of January, A. D. nineteen hundred and twenty-six, personally appeared before the Court of Oyer & Terminer, George Claypoole and George Estler, and acknowledged themselves to be indebted unto the State of New Jersey in the sum of two thousand dollars to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions:

The conditions of the above recognizance are such that if the above bounden George Claypoole shall personally be and appear before the said Court of Oyer and Terminer to be holden at Morristown, in and for the County of Morris on the 1st day of February, nineteen hundred and twenty-six, at ten o'clock in the forenoon of said day, then and there to traverse to effect a certain indictment lately found in said court against him for conspiracy and from day to day thereafter during the present term and from term to term thereafter, until the said indictment is finally disposed of and shall not depart the said Court without leave, then the above recognizance to be void, otherwise to remain in full force and virtue.

Plea.

At a Court of Oyer & Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Saturday, the 13th day of February, A. D. nineteen hundred and twenty-six.

Present—Hon. CHAS. W. PARKER, Judge, &c.

THE STATE *v.* GEORGE CLAYPOOLE, Defendant.	No. 59 January Term, 1926. On Indictment for Conspiracy.

The defendant George Claypoole being set to the bar, and charged on this indictment, pleads thereto not guilty.

Bail continued for two or three days.

Recognizance.

THE STATE *v.* GEORGE CLAYPOOLE, Defendant, GEORGE ESTLER, Surety.	On Recognizance, $2,000. On Indictment Conspiracy.

Be it Remembered, that on this 15th day of February, A. D. nineteen hundred and twenty-six, personally appeared before the Court of Oyer & Terminer, George Claypoole and George Estler, and acknowledged themselves to be indebted unto the State of New Jersey in the sum of two thousand dollars to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions:

The conditions of the above recognizance are such that if the above bounden George Claypoole shall personally be and appear before the said Court of Oyer and Terminer to be holden at Morristown, in and for the County of Morris, on the 23rd day of February, nineteen hundred and twenty-six at ten o'clock in the forenoon of said day, then and there to traverse to effect a certain indictment lately found in said Court against him for conspiracy and from day to day thereafter during the present term and from term to term thereafter, until the said indictment is finally disposed of and shall not depart the said Court without leave, then the above recognizance to be void, otherwise to remain in full force and virtue.

Demand for Bill of Particulars.

MORRIS COUNTY OYER AND TERMINER.

THE STATE OF NEW JERSEY
v.
GEORGE P. CLAYPOOLE.
} On Indictment for Conspiracy.

To

ALBERT H. HOLLAND, Esq.,
Prosecutor of the Pleas of
Morris County, New Jersey.

SIR:

Please take notice that the defendant demands a bill of particulars for use at the trial of the above-named defendant, fixed for Monday, March 1, 1926, upon the following matters:

1. Upon which count in the indictment does the State intend to proceed at said trial?

2. What charge in the indictment will the defendant be called upon to meet?

3. State particulars of the charge to be pressed by the State, and the evidence intended to be relied upon.

4. In the above indictment the State charges that certain promises and assurances were conveyed, carried, and transmitted by Special Officers, Raymond Tillotson and Andrew McDonough, to George Knipper, Joseph Migdoff, Leonard Ringenback, Frank Lansing, William Ramitski, John Vincent, Henry Marino, William Everman and Michael McCormick.

Demand for Bill of Particulars.

When, where and how was this information conveyed, carried, and transmitted, and which of the charges alleged will be relied upon by the State at the trial of said indictment?

WILLIAM A. DOLAN,
Attorney for Defendant.

Endorsed:

MORRIS COUNTY OYER AND TERMINER.

The State of New Jersey,

vs.

George P. Claypoole,
Defendant.

On Indictment for Conspiracy
DEMAND FOR BILL OF PARTICULARS

William A. Dolan,
Attorney for Defendant,
Newton, New Jersey.

Due and legal service of a copy of the within demand for particulars is hereby acknowledged this 23 day of February, 1926.

Albert H. Holland
Prosecutor
&c.

Filed March 2′ 1926
Morris County Clerks office
E. Bertram Mott
Clerk.

Bill of Particulars.

MORRIS COUNTY OYER AND TERMINER.

THE STATE
v.
GEORGE P. CLAYPOOLE.
} Sur Indictment.

To

William A. Dolan, Esq.,
Attorney of Defendant.

The following is a bill of particulars as demanded by you in the above entitled cause.

1. All counts.

2. All charges.

3. This request is no part of the defendant's defense, and answer is declined.

4. This request is no part of the defendant's defense, and answer is declined.

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
Morris County.

Endorsed:

MORRIS COUNTY OYER AND TERMINER.

The State,

vs.

George P. Claypoole,
Defendant.

Bill of Particulars.

Sur Indictment
BILL OF PARTICULARS

Albert H. Holland, Esq.,
Prosecutor of the County of Morris,
Morristown, New Jersey.

Due and legal service of the within Bill of Particulars is hereby acknowledged this 26th day of February 1926

William A. Dolan
Attorney of Defendant.

Filed March 2, 1926.
Morris County Clerks Office
E. Bertram Mott
Clerk.

Extract of Minutes.

At a Court of Oyer & Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Tuesday the 2nd day of March, A. D., Nineteen Hundred and twenty-six.

Present—Hon. CHAS. W. PARKER, Judge, &c.

THE STATE *v.* GEORGE CLAYPOOLE, Defendant.	No. 59 January term, 1926. On Indictment Conspiracy Plea of Not Guilty.

Attorney for State, ALBERT H. HOLLAND.
Attorney for Defendant, WILLIAM A. DOLAN.

This Indictment being moved, the following Jury was called and sworn:

1. Maurice Patterson
2. Ferdinand Altaugh
3. Freda Hendberg
4. Arnold Corey
5. Levinia Jacobus
6. May Hetherington
7. Bessie La Roach
8. William C. Zeek
9. Archie Faulkner
10. Alice Britton
11. William Morrison
12. Emma Minton

Motion to withdraw Plea Granted for the purpose of making a motion "overruled." Plea Not Guilty. Severance of Indictment as to George Claypoole, Granted.

WITNESSES

1. Chas. E. Estler
2. Raymond Tillotson
3. Harry Fancher
4. Andrew McDonough
5. Minnie Thebaud
6. James Burchell
7. Henry H. Hall
8. Ernest Burdge
9. Lena S. Tillotson
10. James H. Fancher

Court adjourned to Wednesday, March 3, 1926.

Extract of Minutes.

At a Court of Oyer & Terminer, holden at the Court House in Morristown, in and for the County of Morris, on Wednesday the 3rd day of March, A. D., nineteen hundred and twenty-six.

Present—Hon. CHAS. W. PARKER, Judge, &c.

THE STATE *v.* GEORGE CLAYPOOLE, Defendant.	No. 59 January Term, 1926. On Indictment Conspiracy Plea of Not Guilty.

Attorney for State, ALBERT H. HOLLAND.
Attorney for Defendant, WILLIAM A. DOLAN.

Trial Continued.

WITNESSES:

Harry H. Hall, recalled.
Andrew McDonough, recalled.
1. George Claypoole.
2 Wilfred Jayne.
3. Furman H. Reed.
4. Chas. E. Estler.
5. William Smith.
6. Gladys Claypoole.
7. Edwin W. Orr.
8. Helen Munson.
9. Emma Claypoole.

REBUTTAL:

Wilfred Jayne.
Harry K. Fancher.
Becker Jamieson.
Samuel Gould.
Eugene Vileria.

The evidence in this case being closed, the jury after argument of Counsel, and a charge from the Court, retired to a private room to consider their verdict, with a Constable sworn to attend them. After being out some time, they returned into Court, saying they have agreed upon their verdict, and by their Foreman say they find the defendant Guilty in manner and form as he stands charged in the indictment. And so say they all.

Recognizance.

THE STATE *v.* GEORGE CLAYPOOLE, Defendant GEORGE A. ESTLER, Surety.	On Recognizance, $2,000. On Indictment. Conspiracy.

Be it Remembered, that on this 3rd day of March, A. D., nineteen hundred and twenty-six, personally appeared before the Court of Oyer & Terminer, George Claypoole and George A. Estler and acknowledged themselves to be indebted unto the State of New Jersey in the sum of two thousand dollars to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions:

The conditions of the above recognizance are such that if the above bounden George Claypoole shall personally be and appear before the said Court of Oyer & Terminer, to be holden at Morristown, in and for the County of Morris, on the 13th day of March, nineteen hundred and twenty-six at

ten o'clock in the forenoon of said day, then and there to receive such sentence as may be pronounced by the Court under a certain indictment lately found in said Court against him for Conspiracy and from day to day thereafter during the present term and from term to term thereafter, until the said indictment is finally disposed of and shall not depart the said Court without leave, then the above recognizance to be void, otherwise to remain in full force and virtue.

Sentence.

At a Court of Oyer & Terminer holden at the Court House in Morristown, in and for the County of Morris, on Saturday the 13th day of March A. D., nineteen hundred and twenty-six.

Present—Hon. CHAS. W. PARKER, Presiding Judge.

THE STATE *v.* GEORGE P. CLAYPOOLE, Defendant.	No. 59, January Term, 1926. Sur Indictment for Conspiracy. Plea of Not Guilty, Trial Conviction.

The prisoner George P. Claypoole being set to the Bar, the Court, on motion of Albert H. Holland, Esq., prosecutor of the Pleas, order judgment and sentence the defendant George P. Claypoole to be confined in the State Prison, at Trenton, N. J., at HARD LABOR, for the space of Max. Term 3 years, Min. Term 2 years, and that he stands further committed until the costs of prosecution are paid.

Recognizance.

MORRIS COUNTY COURT OF
OYER & TERMINER.

THE STATE

v.

GEORGE P. CLAYPOOLE,
Defendant.

State of New Jersey, }
County of Morris, } SS.:

BE IT REMEMBERED, that on this 13th day of March, A. D. nineteen hundred and twenty-six, personally appeared before the Clerk of the Court of Oyer & Terminer, holden at Morristown in and for said County of Morris, and State of New Jersey, George P. Claypoole and George Estler and did acknowledge themselves to be indebted to the State of New Jersey in the sum of two thousand dollars, to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions:

AND WHEREAS, the said defendant George P. Claypoole has sued out of the Supreme Court of the State of New Jersey, a writ of error, directed to the Court of Oyer & Terminer, in and for the County of Morris, to review the conviction of the said George P. Claypoole for the crime of Conspiracy.

AND WHEREAS, upon application, bail has this day been fixed in the said sum of Two thousand dollars.

Clerk's Certificate.

The condition of this recognizance is such that if the said Defendant, George P. Claypoole, shall prosecute the said Writ of Error with the effect and shall stand to and abide the Judgment of the Court and not depart the said Court without leave, then the above recognizance shall be void, but this recognizance shall remain in full force and virtue until this case shall be finally determined or the recognizance discharged by order of the Court.

Clerk's Certificate.

State of New Jersey }
County of Morris. } SS.:

I, E. BERTRAM MOTT, Clerk of the County of Morris, and also Clerk of the Court of Oyer & Terminer, holden in and for said County, Do Hereby Certify, that the foregoing are full, true and correct copies of The Indictment and caption thereto, Recognizance, Plea, Recognizance, Demand for Bill of Particulars, Bill of Particulars, Trial, Recognizance, Sentence, and Recognizance to Prosecute Writ of Error, in the case of The State *v.* George P. Claypool, as fully and entirely as the same remain on file in my office and of record on the minutes of said Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County at Morristown, this 26th day of March, A. D. Nineteen Hundred and Twenty-six.

E. B. MOTT,
Clerk.

(Seal)

MORRIS COUNTY COURT OF
OYER & TERMINER.

THE STATE
v.
GEORGE P. CLAYPOOLE,
Defendant.
} Conspiracy.

Morristown, New Jersey, March 2nd, 1926.

Before—Hon. CHARLES W. PARKER, Supreme Court Justice, and a jury.

APPEARANCES:

ALBERT H. HOLLAND, Esq., Prosecutor of the Pleas.

DOLAN & DOLAN, Esqs., by WILLIAM A. DOLAN, Esq., for the Defendant.

Mr. Dolan: A material witness not being here, I don't feel the defendant can go to trial in all fairness to him without this witness. He lives in Pennsylvania and we cannot subpoena him. I refer to Furman Reed.

Mr. Holland: The only thing I know about the matter is that in the Heslin case we drew a subpoena, we turned the subpoena over to the sheriff and he got Furman Reed here and it was our understanding that Mr. Claypoole had no difficulty in serving him—

The Sheriff: He is here.

Mr. Dolan: I would like the privilege of withdrawing the plea of not guilty to make a motion. The motion is, this is an indictment against one person and such indictment is not a valid charge

of conspiracy. It must involve at least two defendants and this indictment purports to charge only one and under the authorities, I understand it cannot stand.

The Court: Doesn't it charge this defendant and two other persons?

Mr. Dolan: It makes mention, sir, but I assume it's an allegation against one defendant and only one defendant is brought in here to plead. If there are two others, I have another motion to make.

The Court: I don't like to have these motions come up when the case is on for trial. It is a simple matter to make them long before that time.

Mr. Dolan: I confess the language of the indictment would indicate that three persons are intended to be charged but, if your Honor will notice, the endorsement upon the part of the State says, State against George Claypoole, and only one defendant is brought in.

The Court: I don't think that the endorsement is binding. The Prosecutor would have a severance.

Mr. Holland: I expect to move for a severance.

The Court: That motion of yours the Court will have to overrule.

Mr. Dolan: I ask an exception. I would like to re-enter the plea of not guilty to the indictment.

The Court: Very well.

Exception sealed accordingly,
C. W. Parker, Judge (L. S.)

Mr. Holland: I desire to move a severance as against George Claypoole so his trial may go on the morning.

Mr. Dolan: I understand in conspiracy charges there cannot be a severance.

The Court: We tried Mr. Reidler just that way. Have you got any law on that subject? I don't think the point was even raised in the Reidler case.

(Argument.)

Mr. Holland: The others have been convicted on substantially the same thing but not on this particular indictment.

Mr. Dolan: I served the Prosecutor with a demand for a bill of particulars and I have the Prosecutor's reply or what he designates as a bill of particulars and I would like to file with the Clerk both of these papers at this time. I would like to ask also that the Prosecutor answer my third request, which is this: state the particulars of the charge to be pressed by the State or what evidence they intend to rely on. I ask them for this answer. (Argument.) I called for the evidence to be relied upon and it is manifestly void of that. I followed almost the exact language of Wharton in that respect. He says whenever an indictment is so general as to give the defendant no adequate notice of the charge he is unable to meet, the Court will upon application to the Prosecutor find a bill of particulars.

The Court: I don't know where Wharton got that. That is not a law in this State.

(Further argument.)

The Court: That motion is overruled. Of course, you are entitled to have the papers put on file. If there is nothing else, the Sheriff will return the panel.

A jury having been found satisfactory were duly sworn.

Thereupon Mr. Holland opened to the jury on behalf of the State.

Mr. Holland: I suppose, if your Honor please, there can be an admission on the record that George Claypoole was a sheriff's operative and worked as such during the time in question.

Mr. Dolan: I don't know exactly what that term "operative" means. I am perfectly willing to admit Mr. Claypoole was a constable of this County and was at the time doing special work for the County.

Mr. Holland: Called himself Deputy Sheriff, special officer.

Mr. Dolan: Yes, we admit that.

Mr. Holland: Let it appear on the record that during the time in question Mr. Claypoole was a constable working as a special officer for the sheriff on prohibition enforcement.

Mr. Dolan: I would prefer to have the time designated.

The Court: Yes, I think so myself.

Mr. Holland: Perhaps I better call Sheriff Estler.

The Court: The time is charged in the indictment the 7th day of May, 1925, and at divers other times and from thence hitherto.

Mr. Dolan: Mr. Claypoole informs me he left the sheriff's employ on May 14th, 1925.

CHARLES ESTLER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. You are the sheriff of Morris County? A. Yes, sir.

Q. And did you engage George Claypoole? A. I did.

Q. When? A. I think in around the 1st of February, if I remember right, 1923, or 4—1924, I think.

Q. How long did he continue in your employ? A. If my recollection is right, I think before the middle of May, 1925.

Q. And what do you mean by the middle of May? A. I think somwhere around the 14th, something in that vicinity. I am not positive. The records will show for themselves, of course.

Q. Was he a constable? A. I believe he was.

Q. And in what capacity did you engage him? A. As special officer.

Q. For what purpose? A. For investigation.

Q. Of the prohibition act? A. Yes.

Q. What were his duties as such? A. To go out and get evidence and bring the violator to trial.

Q. And who was in charge of the records of these various raids? A. Mr. Claypoole.

Q. You had nothing to do with it except as your supervisory capacity as sheriff, but you took no direct action in that—

Mr. Dolan: I think the Prosecutor ought not testify for the sheriff.

The Court: I think that is rather leading.

Q. Did you have anything to do with keeping of the records, Sheriff? A. Not the written records, no.

Q. Did you have anything to do with the keeping of the liquor evidence? A. I did, yes.

Q. Well, to what extent? A. Why, I got the proper place, vault, and, of course, I didn't go and tabulate any of the stuff.

Q. No; who did tabulate it? A. Mr. Claypoole.

Q. It was in his direct charge? A. Yes.

Q. The only thing you did was to hold—

Mr. Dolan: I object to that.

The Court: Yes, Mr. Holland, that is

rather going too far. Objection is well taken.

Q. The men that he hired, did you tell him to hire them? A. Whatever was necessary.

Q. What do you mean by that? A. Well, his judgment, relied in his judgment.

Q. You relied on his judgment? A. He did whatever was necessary.

Q. Whatever he thought was necessary to do? A. Yes.

Q. And you approved the bills that he O K'd? A. Yes, sir.

Q. Now, he worked with you after May 14th, didn't he? A. Not on enforcement as I know of.

The Court: Does that mean he did work for you but not on enforcement?

A. (Continued.) He might have been a constable serving some papers from the office. Then there was some other work on orders coming through from Mr. Jayne or the detectives and they asked me to get Mr. Claypoole to do it.

Q. And was this after the Everman occurrence or before? A. I don't know when the Everman occurrence was; that is, the date; I know about the time.

Q. May 24th? A. I can't recall any work or any work that Mr. Claypoole did or any of his men after I think about the 7th of May. I won't be sure of the date, I can't remember the date.

Q. And did he quit working before the 14th? A. Why, somewhere in that vicinity.

Q. What happened to the records, did you get them? A. No.

Q. Who kept them? A. Mr. Claypoole.

Q. For how long a period of time? A. All the time.

Cross examination by Mr. Dolan:

Q. You were the sheriff that kept the records, what records did you refer to? A. Why, I imagine the records of the case.

Mr. Holland: On cross examination he says he imagines. On direct examination he stated he had nothing to do about the records.

The Court: You say he kept records and that raised the question.

Mr. Dolan: The sheriff has just testified that Claypoole kept records.

Q. Now the work he was doing covered what, the amount and place, and the liquor and such stuff? A. You mean the records of the places that were raided?

Q. Yes. A. And the liquor that was seized in those raids?

Q. Well, those records were returned to you? A. I seen them.

Q. They were not kept secret by Mr. Claypoole? A. No.

Q. You knew the raids that he conducted? A. Yes.

Q. You knew about the liquor that he seized at these raids? A. Yes.

Q. And he promptly reported to you the results of these raids? A. He did.

Q. And the liquor was kept in the place that you provided? A. Yes.

Q. As a matter of fact that was your building in the town of Boonton? A. No.

Q. Or adjacent to it? A. No, it belongs to my sister.

Q. And you have the key to that cellar or whatever you may call it? A. Yes.

Q. Now, it appears from your testimony that on the 14th day of May or about that time, 1925, Mr. Claypoole ceased to act as special operative on that prohibition enforcement? A. Under my direction.

Q. I mean from the sheriff's office? A. No, as I stated, Mr. Jayne and Mr. Burdge would come to me and ask me to do some certain work and have Mr. Claypoole do it, which I did.

Q. But about that time you took Mr. Claypoole off the prohibition enforcement? A. Yes.

Q. Now, in order that there may be no misunderstanding with the jury, what was the reason for that? A. They had no money, they said, to go ahead with that work.

Q. The Freeholders, do you mean they had no money to go ahead with the work? A. Yes.

Q. And for that reason you took him off? A. Yes.

Q. That was not because you were dissatisfied with his work? A. No.

Q. Or anything in the work of his associates? A. No.

Q. And you found his work satisfactory? A. Yes.

Q. In all particulars? A. Yes.

Q. Now, after the 14th of May Mr. Jayne, the special prosecutor and Mr. Burdge, you say, requested you to have Mr. Claypoole do certain work for him? A. Getting evidence and such things as that.

Q. And do you know whether he did carry out your instructions in that respect? A. Yes.

Q. And did he make the reports to you? A. He told me about that, yes, sir.

Q. Promptly? A. Yes.

Q. Were these reports in writing? A. I had them in writing, yes.

Q. Where are these reports or records now? A. Mr. Claypoole—I never kept them.

Q. They were submitted to you at that time? A. Yes.

Q. And the liquor given to you? A. Yes.

Q. To put in this cellar or store room? A. Yes.

Q. Of which you retained the keys? A. Yes.

Redirect examination by Mr. Holland:

Q. The key was in Mr. Claypoole's possession? A. No, sir.

Q. He also had a key, didn't he? A. No, sir.

Q. When he wanted to go in, how did he get there? A. He always notified me and I would let him have the key.

Q. You let him have the key? A. Yes.

Q. You did not go with him? A. No, sir.

Q. These records you speak of, they were kept in his home? A. No, I think the other place.

Q. What place? A. At the store.

Q. In the vault? A. I would find them there occasionally, that's where I saw them.

Q. Now you say his work was very satisfactory? A. As far as I know.

Q. Was the work of Tillotson and Reed very satisfactory? A. There was some question of the others.

Q. What question do you mean? A. Why, reports would come in—

Q. The only way you had knowledge of the satisfactoriness of their work is from the reports? A. Yes.

Q. You did not know yourself? A. Well, not going out personally, no.

Q. And you did not go out personally with Claypoole, did you? A. Well, I may have once or twice.

Q. Well, did you? A. I think I did, especially when we were out doing some raiding in Boonton, I was there.

Q. Were you there at the raid of Joe Migdoff at Boonton? A. No, that's below Boonton.

Q. Were you at the raid of George Knipper? A. No.

Q. John Vincent? A. No, sir.

Q. Henry Marino? A. No.

Q. William Everman? A. No, sir.

Q. Mike McCormick, in Woodport? A. No, sir.

(Witness Excused.)

RAYMOND TILLOTSON, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. How old are you? A. Twenty-four.

Q. What is your full name? A. Raymond Tillotson.

Q. Where were you born? A. Tebo, Minnesota.

Q. Where do you live now? A. Landing.

Q. How long have you lived there? A. About five years.

Q. Married? A. Yes.

Q. Children? A. Yes.

Q. How many? A. Two.

Q. What is your business? A. Fireman now.

Q. During May, 1925, what were you working at? A. Working for George Claypoole.

Q. In what line of work? A. Prohibition enforcement.

Q. When did you first go to work for him? A. June 10th, 1924.

Q. And you continued to work from then until when? A. May 24th, 1925.

Q. Who else worked with you on Claypoole's staff? A. Well, there were a good many different men.

Q. Well, name some of them. A. Sam Gould, McDonough, Smith, Hendershot, Salvi, Phillips, Dobson, Richard, that's all that I can remember.

Q. And do you remember a report from the elisor Grand Jury coming in that you were through, were not going to continue working? A. Yes.

Q. What was that? A. Well, later on quite a few of the sheriff's operators were discharged.

Q. What did you do after that? A. Mr. Brown, the jail keeper, showed me in the newspaper at first and then Chief Quirk of Wharton showed me and McDonough.

Q. Where were you at the time you were shown the paper? A. In Brown's office.

Q. In jail here, was it? A. He just took us in to show us the paper.

Q. Were you here in jail that time? A. No, I was here before the Grand Jury that day.

Q. What if anything did you do? A. I went to Mr. Claypoole and told him I was going to turn the subpoenas in and collect five dollars and he said you were not, you are fired.

Q. And did you continue to work? A. Yes, I did.

Q. What did you do the morning of the—Thursday morning? A. Thursday morning I worked around the house.

Q. Where? A. At Powerville and Rockaway Valley, both.

Q. Where was that house located? A. Powerville Road.

Q. And did he have another house? A. He had a house which he was going to construct too.

Q. Where was that house located? A. Rockaway Valley.

Q. And what did you do at Powerville Road House on Thursday? A. Thursday, I was at both houses.

Q. At both houses? A. Yes, in the morning.

Q. What were you doing at the Powerville house on Thursday? A. He came back there at noontime and he sent us for lunch.

Q. Now, just describe the office. A. Oh, it's a little bit of a place about four or five feet wide and about seven or eight feet long.

Q. And who did he have in his office, what did he have in his office? A. He had a desk in there and a couple or three chairs.

Q. What records, if any, did he have? A. Records of all the raids in there and also of his men.

Q. When you came back from lunch, what did you do? A. We sat there awhile and—

Q. Who sat there awhile? A. McDonough and I.

Q. Where did you sit? A. In the office.

Q. Who was with you? A. McDonough.

Q. And who else? A. Claypoole.

Q. Where was Claypoole sitting? A. At the desk.

Q. What was he doing? A. Oh, just sitting there, he said he had some work for us and he ordered us down to the Berkshire Valley Hotel to collect some money for him, from Mr. Knipper, he said Mr. Knipper ought to give us fifty dollars in each case to have the records torn up.

Q. How many cases were there? A. He said three cases.

Q. What were you supposed to do? A. Supposed to go and collect money from him.

Q. Who was supposed to go with you? A. Andrew McDonough.

Q. What was said by you and McDonough, if anything, in regards to that? A. I didn't say anything, I sat there and he said what the hell is the matter with you, when I give you an order I want you to go, so we went out, we left the place.

Q. Where did you go to? A. Berkshire Hotel.

Q. Who went with you? A. McDonough.

Q. What did you go in? A. My car.

Q. What did you do when you got there? A. There were a lot of cars outside and we was afraid to go in.

Q. What did you go up for? A. Up to collect money.

Q. When you were afraid to go in, what did you do? A. Turned around and came back to the office.

Q. When did you get back? A. That same afternoon, toward night.

Q. What time was it? A. Oh, I imagine seven or eight o'clock, somewhere around that time.

Q. Did you see Claypoole? A. Yes.

Q. Where? A. At his office.

Q. In his office again? A. Yes.

Q. Did you go in? A. Yes, we did.

Q. Did McDonough go in with you? A. Yes.

Q. What took place? A. Why, he said how did you make out? I told him we were afraid to go in, there were so many cars there. He said, well, when I give you an order I want you to carry it out regardless of who is in there.

Q. What else did he say? A. So then we just chewed the rag a little bit there and he told us to go to supper.

Q. What did he say to McDonough and you? A. He said that I looked like a big country school boy and McDonough like an old woman.

Q. He told you to go to supper? A. Yes.

Q. Were you to report back? A. Yes.

Q. Did you? A. Yes.

Q. What happened then? A. He told us to go home and report in the morning.

Q. What was the next day? A. Friday.

Q. Did you report? A. Yes.

Q. Friday, what date, do you recall? A. The 22nd of May.

Q. 1925? A. Yes, sir.

Q. What did you do when you came back the next morning? A. Went up to his office or house in Rockaway Valley and stayed around there awhile and came back to his office and had dinner; had dinner at the lunch car and in the afternoon he called us in the office again.

Q. Now then, this office you speak of, that's the same office at the house in Powerville Road? A. Yes.

Q. What happened—who went in the office with you? A. McDonough.

Q. Claypoole in there? A. Yes.

Q. What happened? A. He wanted us to go down to Joe Migdoff's and collect money on two cases down there. I said, sure, and he wanted to know what I was grouchy about. He also told me if I did not do what he wanted me to I would have to look for a new job and then he went around to his desk and then wrote out a paper. Then he handed the paper to me and told me to go ahead and collect the money from all these names and tell them he sent me there.

Q. Did he tell you what to collect money for? A. Yes, he did.

Q. What? A. He said for to destroy the papers, and he was the only man in the County that had the papers or the records.

Q. Did he say how much money? A. No, sir. Well, he did say—I asked him, suppose they give me five dollars. And he said, they ought to be willing to give you fifty dollars apiece to have their case destroyed.

Q. Where was McDonough? A. In the office.

Q. What did he do with the paper? A. He handed the paper to me.

Q. What was on the paper?

The Court: No.

Q. Was there a list of names? A. Yes.

Q. Is that the paper he handed you? A. Yes, sir, it is. (Showing witness paper.)

Q. That in his handwriting? A. Yes, sir.

Mr. Holland: I offer it.

(Paper received in evidence and marked Exhibit S-1.)

Q. Whose names are on that paper?

The Court: You better read them yourself.

Q. Now, the names on this paper, George Knipper, Berkshire Valley; Joe Migdoff, Boonton; Leonard Ringenback, Budd Lake; Frank Lansing, Dover; William Ramski, Hurdtown; John Vincent, Hurdtown; Henry Marino, Two Bridges; William Everman, Woodport. What happened as you sat there in the house? A. Why, he told us to come to the farm house at Rockaway Valley. He got in his car with McDonough and I followed him to the Valley.

Q. Where he had a new house? A. Yes.

Q. Who was at the new house when you got there? A. Mr. Reed, Furman Reed.

Q. He was another operator upon the staff? A. He was on the staff but he never done any work.

Q. What was he doing? A. Working for Mr. Claypoole on the house and clearing the place off. Digging clothes poles and so forth.

Q. What did you go to the house for? A. I oftentimes went there for orders, general instructions and anything he should need around the house.

Q. What did you go to the house for? A. To see whether he had any work to do.

Q. Did you go in the house with Claypoole? A. Yes.

Q. Did he say anything to you in the house about anybody else? A. No, sir, I didn't.

Q. When did he speak to you about McCormick? A. When he got out at the car.

Q. What did he say when he got out at the car? A. He said, I forgot McCormick, and he put it on the paper.

Q. And you had a charge pending against McCormick; what day were you going to see him? A. The same time we went to Everman's.

Q. Why the same time as Everman's? A. Because he lived right near the same place.

Q. You mean the same section of the County? A. Yes.

Q. Were there any orders or anything for you at the new Claypoole house? A. No, sir.

Q. Did you go back to the house again with Claypoole? A. Yes.

Q. What did he say? A. He just said go ahead and it was satisfactory.

Q. Where was McDonough? A. He was in talking to Furman Reed.

Q. Where did you and McDonough then go? A. To Woodport.

Q. Where at Woodport? A. Everman and McCormick.

Q. What did you do then? A. Told him the boss sent us there for some money to squash the case.

Q. Who did you tell that to? A. Mr. Everman and a girl by the name of Mamie Peabo.

Q. What time was that? A. Somewheres around evening, seven or eight o'clock.

Q. Friday night? A. Yes.

Q. Where was Mr. Everman? A. Laying on the bed.

Q. Did you go and see him there on the bed? A. Yes.

Q. Where was Mamie Peabo? A. Right in the same room, right near the bed.

Q. Was she taking care of him? A. Yes, sir.

Q. And what did Everman tell you? A. He told me he was willing to give a hundred dollars but he says he didn't have a hundred dollars at that time.

Q. Didn't have it? A. No.

Q. What did he tell you to do? A. He said come back Sunday night and he will have the hundred dollars for me.

Q. That was Sunday night, two days later than Friday? A. Yes.

Q. What did you tell him? A. I said I will tell the boss that and if he is satisfied, all right.

Q. Where was McDonough when you said all this? A. Right there in the same room, it's only a small room big enough for a bed and a little chair.

Q. Then what did you do? A. We left there and went to McCormick's.

Q. What time was it when you got to McCormick's, what time of night was it? A. I could not tell the exact time.

Q. What did you do there? A. We told him the boss sent us over for some money.

Q. Who did you meet there? A. McCormick and somebody—

Q. Do you know his name? A. We heard his name is Burchell.

Q. What happened? A. Why, McCormick said—

Mr. Dolan: Object to what McCormick said.

The Court: Well, I suppose they said something to him, didn't they.

Mr. Dolan: Certainly, but we cannot be bound by what McCormick said. (Argument)

The Court: I think we will have to allow that in.

(Exception allowed and sealed.)

C. W. PARKER J. (L.S.)

Q. What hapened with you and McCormick and Burchell and McDonough? A. There was an argument about paying the money; and Burchell said, if you are to pay more money to him you better pay it in Court.

The Court: You asked him for money for who?

The Witness: I asked him for money for the boss.

Mr. Dolan: I might explain, if your Honor please, he means comments made by Burchell to McCormick.

The Court: Suppose we strike this all out

and let Mr. Tillotson begin with the point of conversation.

Q. All right, what time did you and McDonough get to McCormick's place? A. I can't tell the exact time but I know it was getting late.

Q. Did you go in? A. Yes.

Q. Front door or back door? A. I don't know what you would call the front door or back door, it's right there along the lake.

Q. When you got in, who did you see? A. Mr. McCormick and Burchell.

Q. What did you or McDonough say? A. I told him that Mr. Claypoole had sent us there for some money to squash the case.

Q. Who did you say that to? A. Mr. McCormick.

Q. And who replied to you? A. I think Mr. Burchell started saying something.

Q. What did Mr. Burchell say?

Mr. Dolan: Object to what Mr. Burchell said.

The Court: Was Burchell one of these you collected from?

The Witness: He was there with McCormick.

Mr. Dolan: The name is not mentioned in the indictment.

Mr. Holland: This man, Burchell, while he was no partner in the enterprise, yet was a man living there who was protesting about paying, whether for himself or McCormick.

The Court: Burchell is not mentioned in the indictment; I don't think we have anything to do with him. (Argument.) The only aspect I can see how this can come in

is from the fact that Burchell was speaking for McCormick in some way.

Mr. Holland: I will probably prove that by Mr. Burchell himself, that he did speak for McCormick.

The Court: We may be able to create a situation in which you would say whatever Burchell said in McCormick's presence and Tillotson and to McDonough can be chargeable against McCormick in response to the demand of Tillotson. Burchell was not mentioned in this case and so far as I know he was a rank outsider and made a voluntary statement on his own account.

Q. Who was Burchell? A. He was a man around there.

Q. Living there at McCormick's house when you got there? A. Yes.

Mr. Dolan: I object to the Prosecutor testifying what he was doing at McCormick's house.

Q. And what did McCormick do or say? A. Why, he said he paid a hundred dollars to somebody else and he might just as well pay the Court the money as somebody else.

Q. Who said that, McCormick or Burchell or both? A. I don't just remember. There's a question about that.

Q. Four of you altogether? A. Yes.

Q. Did you get your money? A. No.

Q. What happened? A. McCormick told us to come back Sunday and he would give us fifty dollars.

Q. When he said that, did he say it in the presence of Burchell? A. I am not sure if Burchell

might be there, the three of us were sitting at the table, McDonough, McCormick and myself.

Q. After leaving here, did you go to anybody else's place? A. No, sir, we did not.

Q. Why? A. Well, it was too late.

Q. What was the next thing that occurred? A. Why, I took McDonough home and went home myself and Saturday morning I got a wire between four-thirty and five o'clock.

Q. Now, just a moment, that same Friday night, did you afterwards hear that Harry Flanger had been cut up? A. Not that night.

Q. Did you afterwards learn that he had been cut that Friday night? A. Yes.

Q. Now, what happened Saturday morning? A. Saturday morning I got a phone call at my mother-in-law's house.

Q. What time? A. Four-thirty, five o'clock.

Q. From who? A. Claypoole.

Q. What was the conversation? A. Telling me, she came over an dtold me Mr. Claypoole wanted me to come to the office at once, stop for nothing.

Q. Did you report? A. Yes, sir, I did.

Q. Where to? A. His office.

Q. Was he there? A. No, sir, he was not there. she came over and told me Mr. Claypoole wanted

Q. Was there word there for you? A. Yes.

Q. Where was McDonough? A. Home in bed.

Q. Did you get McDonough? A. Yes.

Q. What time did you get there? A. Oh, six o'clock, somewhere around that time, the real time I don't remember, it might have been eight o'clock.

Q. Did Claypoole wait there? A. No, he did not wait there.

Q. Was he there when you got there? A. No, sir.

Q. Did you afterwards see him? A. Yes.

Q. Where? A. On Blackwell Street.

Q. How near the Dodge Service Station Garage? A. Oh, a block away.

Q. Was he in a car? A. Yes.

Q. And you were in your car? A. Yes.

Q. Did you talk with him? A. Yes.

Q. Just tell what happened between you and Claypoole. A. We went over to his car and he had the doors open talking to us and he said get in the car, don't be standing in the street and he began telling us we did not meet him at the garage and he said when I leave orders to my men I want them to stay where I tell them to stay. After he got over his madness he asked how we made out last night. I said he made a holler and he said come back on Sunday. He said don't bother him if he made a holler. I told him about Everman and he said go ahead back Sunday night.

Q. What did you do after that? A. Then I went to Harry Flanger's house.

Q. Where were you seated in the car? A. In the back seat.

Q. Who? A. McDonough and myself.

Q. You and McDonough were in back? A. Yes.

Q. What did he tell you then, at the time he took you to Harry Flanger's house? A. We was over to see Harry's wife before and he said that we had no business there. We went to see Harry's wife at his mother-in-law's.

The Court: When was this?
The Witness: Saturday morning.

Q. After telling you about Harry Flanger's wife, what was done? A. Went to Flanger's house and from there to the Dover Police Station.

Q. Did he tell you that he had any other work for you? A. Yes.

Q. When? A. Saturday night. He said from there we should go up to Port Morris and see Mr. Fanchant, who was a gateman, and we was to go up there Saturday night. When he sent us to supper he told us to come back.

Q. What were you to go up there for? A. To help the Port Morris Police on two crap games.

Q. Did you go? A. Yes.

Q. Where did you go to? A. To Fanchant's house.

Q. Who were the two officers? A. Harry Fanchant and James H. Fanchant.

Q. Did you raid the crap games? A. No, I was looking on, waiting, but no crowd came there.

Q. Now what date was that? A. Sunday, May 24th, the same day we was arrested, that is we were discharged.

Q. And you were doing work in which who were interested? A. McDonough and myself.

Q. Just you three? A. Yes.

Q. After Sunday, when you came back from Port Morris, where did you go to? A. Went to my house.

Q. First where you did get to? A. Stayed and had our dinner and went to Woodport.

Q. To Everman's? A. Yes.

Q. Did you know Mr. Everman? A. Yes.

Q. Have you any idea what time this was? A. I imagine between eight and nine o'clock at night.

Q. When you went in, who went with you? A. McDonough.

Q. Who did you find there? A. Mr. Everman and Mamie Peabo.

Q. Where were they? A. In the kitchen, I guess they call it.

Q. And what, if anything, did you say to them?

A. Mr. Everman said, how is everything? Did the boss say everything was all right? I said, yes, sir.

Q. What boss were you talking about? A. Mr. Claypoole.

Q. Did Everman know that? A. Yes.

Q. How did he know it? A. I told him so.

Q. You said everything was all right, then what? A. He said, I am sorry I only got twenty-five dollars tonight. I will get the rest as soon as I can get it; will that be all right? It's all right as far as I am concerned, I will take it up with the boss and see what he says. Then he handed the money out to me on the table.

Q. Where was McDonough all this time? A. Right in the same room and also Miss Peabo.

Q. He counted the money out; now what did the money consist of? A. Mostly one dollar bills and a couple of two dollar bills.

Q. What happened to the money, after he counted it out? A. He laid it on the table.

Q. What did you do? A. I picked it up and held it in my hand.

Q. Then what happened? A. The troopers jumped out.

Q. Where had the troopers been? A. Right close by.

Q. Did you know it? A. No, sir, not until they jumped out, which is true.

Q. Then what happened? A. Put us under arrest and took the money.

Q. Where did you get to? A. Morristown Police Station.

Q. Did you tell the troopers why you were up there? A. Yes.

Q. What did you tell them?

Mr. Dolan: Object to that.

Mr. Holland: I suppose the troopers can tell that, I don't press it.

The Court: If it is admissible from the troopers it would be admissible from this witness also.

Mr. Dolan: There must be a termination some time.

Mr. Holland: If he is objecting, I won't press this question.

Q. You were placed under arrest? A. Yes.

Q. Went down to Morristown Police Station? A. Yes.

Q. Did you go up to the County jail? A. Yes.

Q. Do you know what happened to the money? A. The State Troopers got it.

Q. When you were in the County jail, did you get any word from anybody? A. Yes.

Q. You got word from who? A. My wife and mother-in-law and brother and father-in-law.

Q. You got word by them or through them? A. They came down to bail me out.

Q. Did you get any word from Claypoole? A. Yes.

Q. Now what?

The Court: Word through somebody else?

Mr. Holland: Just simply the word he got, I am not asking what was said. I withdraw the question.

Q. In pursuant to the word you got, what did you do after you got out of jail? A. Went to Claypoole's office.

Q. Which Claypoole's office are you talking about? A. The house in Powerville; that's the only office he had at that time.

Q. Who did you find there? A. Mr. Claypoole.

Q. Who else? A. I guess Mrs. Smith was there.

Q. Who is Mrs. Smith? A. That's his mother-in-law.

Q. Who else? A. Mr. Smith.

Q. His father-in-law? A. Yes.

Q. And his wife? A. Yes, that is, his wife now.

Q. Was he married at that time? A. I don't believe he was.

Q. What did he say to you? A. The first thing he said, he patted Mac on the shoulders and said, he hadn't seen me, he said, that's once I put one over on the troopers.

Q. What did he say? A. He said they expected—that's why he would not let us telephone—they expected they would get him, they were after him, they wanted him and not us. They would not let us telephone at all.

Q. In other words, from the time you were arrested on Sunday night until three o'clock on Monday afternoon you never sent any communication at all? A. No, sir.

Q. What did Claypoole say to you when you left the house? A. He said that's one I put over on the troopers.

Q. Did he tell you how he put it over? A. Yes, he said they wanted me, they expected me to come over and they would grab me.

Q. But he didn't come? A. No.

Q. What else was said? A. Then he said, Mac, what did they do, trick you, Mac? I don't just remember what Mac said to him.

Q. You mean McDonough? A. Yes, sir.

Q. And what else was said or done? A. Why, he went out and signed a paper that time.

Q. Paper to what? A. Statement that he saw

the money there before us, that he was in counting the money out there before us.

Q. Then what after that? A. Then I saw Mr. Reed writing a paper out.

Q. Just tell us what happened. A. The only thing he said was, don't forget, I didn't send you, and he said what's the matter, he asked me what did they do, trick you?

Q. He told you he put one over the troopers? A. Yes, and then he had me make a statement out.

The Court: Who is Reed?

The Witness: The man working on his farm at the time.

The Court: Furman Reed?

The Witness: Yes.

Q. Furman Reed was writing a paper? A. Yes.

Q. Who was dictating it? A. Mr. Claypoole dictated it.

Q. Reed wrote it? A. Yes.

Q. What happened to the paper? A. I believe McDonough took the paper and tore it up.

Q. Did you sign it? A. I don't believe I did.

Q. After that what happened; did you leave? A. Yes, sir.

Q. Did you go home? A. Yes.

Q. Now, did I ask you whether you ever saw this paper marked S-1? A. Yes, he handed me that paper.

Q. When? A. The first I came out.

Q. What do you mean by that? A. As soon as I went to his office.

Mr. Dolan: Object to that paper.

Q. What did he do with it? A. He tore it up in the Police Station Friday and the police got it.

Q. Then what did you say, what did you tell him? A. I told him to tear it up.

Q. Did you know at that time he was involved when you handed the paper back? A. Not at that time.

Q. Afterwards had he anything to say to you? A. Yes, he came to the house when I was working one day.

Q. How long after you got out of jail? A. Sometime in June, I could not tell the exact date.

Q. What did he want, what did he say? A. Was talking to my wife and mother-in-law.

Q. Were you there? A. No, sir.

Q. Did he see you at any time? A. No, sir, he said he wanted to see me; I was working half a mile off, he didn't want to see me at all.

Q. Have you talked to him since? A. No, sir.

Q. Were you subpoenaed by the Grand Jury sometime in June or July, the May term of the Grand Jury? A. Yes.

Q. On liquor indictments which Mr. Jayne was presenting? A. Yes.

Q. Were you a witness before the Grand Jury? A. I had twenty-three subpoenas.

Q. Twenty-three cases you participated in? A. Yes.

Q. Did you have any conversation with Mr. Burdge? A. Yes.

Q. As the result of Mr. Burdge's conversation with you, what did you do?

Mr. Dolan: Object, if the Court please; is the matter of this alleged conspiracy dealing with some conversation he is supposed to have with Mr. Burdge and as the result of it to do something?

The Court: Well, didn't the Prosecutor's opening deal with this?

Mr. Holland: Yes, I think it did. He told him to take this paper and take it to Mr. Burdge and my opening to the jury was that Mr. Burdge told him, you had better take it to Prosecutor Holland and tell him the true story.

Mr. Dolan: Are we going into everything the Prosecutor might say in his opening?

The Court: I am wondering how far we should go in this matter of the paper. The paper is put in evidence. (Argument.) Mr. Holland, you might bring that out on redirect. It is now 12:30 and a good place to stop.

The Court: As this case is a case of considerable importance, it is advisable that we follow the precaution as in a case of homicide and keep the jury together, at least during the day, and the Court will ask the sheriff to make arrangement for the jury to eat their luncheon all together and under a sentry. When the day's session is over, you will all be allowed to go to your homes, but at all times, whether you are all together at luncheon or whether you are going home or at home or going from home, be very careful not to converse with any person at all outside of your own party about the case. Shall we swear an officer to attend to this jury?

Mr. Holland: I think it would be advisable.

The Court: Mr. Beddow, you with two officers swear to attend the jury.

The Court will now take a recess until one-thirty.

AFTER RECESS.

RAYMOND TILLOTSON resumes the stand.

Further direct examination by Mr. Holland:

Q. After all these occurrences, were you indicted for the incident at Everman's? A. Yes, I was.

Q. Did you enter a plea of non vult? A. Yes, I did.

Q. Now, have you a record—what were your duties as an officer on the Claypoole staff? A. Go get evidence, make raids.

Q. Did you keep a record of that? A. Yes, I did.

Q. In the form of a diary? A. We kept a little note book.

Q. Did you make such records in that note book? A. Yes.

Q. What did you put in the record? A. Just what we done every day.

Q. When did you put that in? A. Every day.

Q. Where? A. Well, at the place or wherever I might be.

Q. And did you keep a record, such a record of the days you worked? A. Yes.

Q. Were you ever notified by Claypoole or by anyone else that you were no longer employed on the staff? A. No, sir, I was not.

Q. Did you make—does your record show up until what date you worked? A. Up until the day I was arrested.

Q. Have you got that record with you? A. Yes.

Q. Produce it. A. Yes, sir. We didn't start to keep these books until October 17th, that was the October term of the Grand Jury, Mr. Claypoole made us keep a record.

Q. Did you keep the record thereafter? A. Yes.

Q. In whose handwriting are these records kept? A. My own.

Mr. Holland: I offer this, especially the one which shows the work in May, 1925. Which is that?

The Witness: This one.

Mr. Holland: I offer especially this last one. I offer it for the purpose of showing his employment.

Mr. Dolan: If that is the purpose, there is no question but what he was employed. The sheriff has testified to that. I object to this record because it is a self serving declaration in one place and that contains memoranda of other notes than those involved in this case.

Mr. Holland: I offer it for the purpose of showing he was on the staff employed on May 14th and until May 23rd.

The Court: So far as the entries in that record goes it's very probable that I am inclined to hold that up to the time when the conspiracy was either complete or prostrated, entries in that record as to the subject-matter of the alleged conspiracy are competent evidence and declarations of one of the three conspirators. Beyond that point, they are not. Then there is the question, does the book extend beyond that date; probably it does.

Mr. Holland: It extends up until the 23rd.

The Court: Does it extend prior thereto?

Mr. Dolan: There are entries April 7th, April 8th and April 3rd?

The Court: I don't think the book in its entirety is competent. It might be that we can pick out certain entries in it, but as a book I don't think it ought to go in.

Mr. Holland: I would be willing for the witness, I would consent that the witness use the book down to the 23rd merely that the jury might see.

The Court: Mr. Dolan is entitled to look at the whole book.

Cross examination by Mr. Dolan:

Q. Mr. Tillotson, as I understand, you were indicted for this business of taking money or attempting to take money from Everman? A. Yes, sir.

Q. And that you pleaded non vult to that? A. Yes.

Q. When did you plead non vult? A. I could not tell you the exact date.

Q. Well, have you any recollection as to when that was? A. No, I haven't.

Q. You know it was before the first of the year, don't you? A. I can't even tell you that.

Q. Don't you know it was before the holidays? A. No.

Q. As a matter of fact don't you know it was December 13th? A. I can't tell you.

Q. You know it is over two months ago. Haven't you any idea when it was? A. No.

Q. Can't tell whether two weeks or two months? A. I know it's quite a while, a month or six or ten weeks.

Q. Or twelve weeks? A. No, sir.

Q. Since you entered that plea has there ever any penalty been imposed on you? A. No, sir.

Q. And since you made that plea of non vult, you have told this story? A. I told it before.

Q. Well, this statement you made was the one you made in writing before Furman Reed, was that the first? A. I did not make any statement.

Q. You signed that paper before Furman Reed? A. No, sir.

Q. Didn't you testify this morning just when you got out of jail you went to George Claypoole's house? A. Yes, sir.

Q. He said, I have nothing to do with this? A. Yes.

Q. And then he proceeded to make a statement, you proceeded to make a statement before Furman Reed? A. Mr. Claypoole started himself.

Q. It was reduced to writing? A. Yes.

Q. By Furman Reed? A. Yes.

Q. And it was signed by you? A. Was not signed by me.

Q. Was it signed by McDonough? A. I don't know.

Q. Do you recall what was in it? A. No.

Q. Have you any recollection about that ? A. No.

Q. Do you know when McDonough took the statement and put it in his pocket? A. Only what he said; I did not see it.

The Court: Is that the paper which he destroyed?

Mr. Dolan: The paper which he claims he destroyed.

Q. Then about a week later you made another statement in writing? A. No, sir.

Q. You know Judge Martin in Dover? A. Yes.

Q. Do you remember going before him? A. Yes, sir.

Q. Did you sign a statement before him? A. I don't remember signing a statement.

Q. Did you sign a complaint? A. I guess I did, yes, sir.

Q. I show you a paper marked D-1 for identification and ask you if that is your signature? A. Yes.

Q. And that is the paper to which you swore before Judge Martin the 2nd day of June, 1925? A. Yes.

Q. Did you read that paper before you signed it? A. I don't know whether I did or not.

Q. You swore to it? A. Yes, sir.

Q. You can't say whether you read it over? A. Can't say that, no, sir.

Q. Have you any idea whether it states the truth or not? A. Mr. Ely made this paper out for me.

Q. Who is Mr. Ely? A. A lawyer.

Q. He was your lawyer? A. Yes, sir, he was.

The Court: Seth Ely?
The Witness: Yes.
The Court: Of Dover?
The Witness: Yes.

Q. Did you go with this statement to Mr. Martin? A. Yes.

Q. Tell him you wanted to make it? A. I told him I wanted to have a man arrested.

Q. Did you tell Mr. Martin that you called to make a complaint against this man? A. Yes.

Q. Did you know what was in this paper? A. I don't believe I read it over.

Q. Well, would you read it over now? A. Yes, sir.

Q. Does that refresh your recollection now of

what happened? A. Yes, I read the paper over and Mr. Claypoole told me what to do.

Q. Mr. Claypoole? A. Yes, it was on his orders after Mr. Everman was arrested.

Q. You said that Mr. Ely— A. Mr. Ely made the paper.

Q. Who told you to go to Mr. Ely and have the paper made out? When did Mr. Ely make that out? A. After I was arrested.

Q. When? A. I can't tell the exact date.

Q. Do you remember whether you were in jail or not? A. Right at his office.

Q. Was that the same day you were down there to see him the day you got out of jail? A. I don't think the same day.

Q. You did not remember to tell us that this morning? A. I was not asked about it.

Q. Did you remember that then? A. Yes, I did.

Q. Just when was it that Claypoole told you to go to Ely? A. He told me but I don't know whether—he told me to go to Mr. Ely, an attorney in Dover.

Q. Mr. Ely was the first man, was he, who advised you? A. Yes, sir.

Q. And you went to Mr. Ely? A. Yes, sir.

Q. Mr. Ely was not in? A. No, sir.

Q. You told Mr. Ely the story on which this statement is based? A. Yes.

Q. And Mr. Ely prepared this paper from the statement you made to him that day? A. Yes, sir.

Q. And in this paper you say —

Mr. Holland: I don't object to him using it—no objection.

Q. You say that on the 22nd or 24th of May, William Everman wickedly and corruptly offered

to give you the sum of one hundred dollars if you would agree to stop the prosecution of a certain liquor charge made against him? A. I did not agree to stop anything.

Q. Is this statement true or not true? A. No, it's not true; Mr. Ely made that statement according to his own words.

Q. This statement is not true? A. It's not true.

Q. As far as you made it out? A. I did not make it out.

Q. Did you tell Mr. Ely? A. I did not tell him the words to put in it.

Q. Did you tell Ely to say that Everman offered you one hundred dollars if you would stop the prosecution of the liquor charge against him? A. I did not say anything about prosecution at all.

Q. But you swore to it? A. Yes, I did, because Ely advised me to.

Q. Claypoole was not there? A. He sent me there.

Q. You went to consult your own lawyer and tell him what to put in the statement, didn't you? A. No, sir, I did not.

Q. Who did you go to and say that the said William Everman then and there attempted to bribe you? A. I didn't say any such thing as that.

Q. You didn't say that? A. No.

Q. And this is absolutely false? A. I signed that just because Mr. Claypoole wanted me to sign it.

Q. Claypoole never saw that paper? A. Yes.

Q. When? A. Right at his office.

Q. When? A. Right after I was arrested.

Q. And where? A. I told you.

Q. How soon? A. It was right afterward.

Q. Well, the same day? A. It might have been, I would not say that.

Q. Well, can you answer? A. No, sir.

Q. You refer to what happened that day after you got out of jail, don't you? A. Yes, sir.

Q. And the day you got out of jail was the day you went right down to Claypoole's house? A. Yes.

Q. And that was the day that Furman Reed made the statement? A. Yes.

Q. Now, when was this statement made, before or after? A. Afterward.

Q. How long afterwards? A. I can't tell you, may have been a day or two or may have been three days or maybe more.

Mr. Holland: When was it?

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

Q. Whether the next day or a week after or two weeks? A. May have been.

Q. And after Mr. Ely prepared it then you took it down to Claypoole? A. Yes.

Q. And what did Claypoole say? A. Claypoole said that's just what he wanted.

Q. Just when did you take it over to Judge Martin? A. (No answer).

Q. Did you know then everything was false? A. I knew everything was false.

Q. You knew everything was false? A. Yes.

Q. All because Claypoole said that's just what he wanted? A. Yes.

Q. Then you went to Martin, and Claypoole did not go with you? A. No.

Q. And you swore to that? A. Yes.

Q. You took your solemn oath that everything in that statement was true? A. Yes.

The Court: Is that paper in such shape now that it is proper for me to look at it?

Mr. Dolan: Pardon me.

The Court: All right, Mr. Dolan.

Mr. Holland: I have no objection to having that as an Exhibit on part of the State.

Mr. Dolan: I expect to offer it on the part of the defense.

Mr. Holland: May it be understood that if it is not offered on part of the defense that it will be offered on part of the State.

Q. Now, Mr. Tillotson, we find out two or three weeks go by and there have been two statements prepared in writing by you or at least the one at Claypoole's house was prepared in writing in your presence and you made no objection to it, did you? A. Yes, I did.

Q. What did you object to in that statement? A. I wouldn't sign it.

Q. Why did you object to sign it? A. Because I knew I was signing something wrong. I said—

Q. Just a moment. You knew if you signed it you were signing something wrong? A. Yes.

Q. What was in there that was wrong? A. I could not tell you that.

Q. You knew there was something in there wrong? A. Yes.

Q. And because there was something wrong you were not willing to sign it? A. Yes.

Q. Wasn't anybody there asking you to swear to it? A. Not that I know of.

Q. And a week later or less than a week later you go before Judge Martin and sign and swear to another statement that you knew was wrong, is that right, absolutely wrong? A. Yes, sir, I did.

Q. And you made another statement of what happened? A. I did not make any more statements.

Q. You did not make any statements, any further statements? A. No.

Q. Of course you made one after you plead guilty to this charge or plead non vult? That means you are guilty. A. Yes.

Q. Guilty of taking the money from Everman? A. Yes.

Q. Then you made another statement, did you? A. No, sir.

Q. Wasn't that the first time you made a statement which involved George Claypoole? A. Wasn't what the first time?

Q. After you were arrested and pleaded guilty but no sentence imposed on you? A. No, I showed Mr. Burdge that first.

Q. Mr. Burdge was the man who was investigating this matter for the Prosecutor's office?

Mr. Holland: That is not correct.

Mr. Dolan: For the special Prosecutor.

Mr. Holland: Mr. Burdge was Mr. Jayne's detective and is not connected with my office.

Mr. Dolan: I don't want any misstatement —

The Court: There has not been any misstatement.

Q. Who was Mr. Burdge? A. Detective of Mr. Jayne.

Q. And after you plead guilty to this charge or non vult, which you understand to mean the same thing, then you made a statement to Mr. Burdge? A. No, it was way before.

Q. How long before? A. It was one day the Grand Jury was sitting there.

Q. That was after you were arrested? A. Yes.

Q. And your statement was then practically as it is here in Court today? A. I just told him that I wanted to give him a written receipt for the paper.

Q. What paper? A. That paper I got in Court here.

Q. You wanted to give him a written receipt for this paper? A. Yes.

Q. And is the story that is given here, that you told here, the story that you have repeated here on the stand this morning? A. Yes.

Q. And did you tell him the story all the way through? A. Yes, sir.

The Court: Is this Mr. Burdge you are talking about?

The Witness: Yes, sir.

Q. Was that after you had plead guilty or before? A. Before.

Q. And the Grand Jury was then in session? A. I was here on a bootlegger charge at that time.

Q. You went before the Grand Jury? A. On the bootlegger charge.

Q. Wasn't that on this other charge? A. No, sir.

Q. All right; that's the written statement marked S-1; that's the one you wish to have corrected? A. Yes.

Q. Isn't that the date when you say you had a talk with Mr. Claypoole at his house? A. Which house was it—

Q. The one he lived in at Powerville? A. That one he moved into.

Q. Well, this was on Thursday, May 20th— A. That was on Friday he gave me that paper.

Q. That was the date that you and he planned with McDonough to collect money from these dif-

ferent parties? A. I did not plan anything with him. He just gave me orders to go out and get it.

Q. You did not agree with him at all? A. No, sir, he gave me orders to go out and get it or look for a new job.

Q. As a matter of fact your job was gone then? A. Not that I know.

Q. Don't you know you were discharged from the sheriff's office two or three days before that? A. No, sir.

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

Q. Do you actually remember when this list was prepared? A. Yes.

Q. Do you remember some of the men in the sheriff's office, that had been in the sheriff's office, were let go after the Freeholders passed that resolution? A. I don't know anything about the Freeholders at all. That was the 19th day of May, that was.

Q. Now then, a few days before that or after that were any amount of men let go and you and Smith and McDonough retained by Claypoole? A. Yes.

Q. And all the rest let go? A. Yes, some were to go the 7th of May.

Q. Yes, only seven days before; but you three men were retained? A. Yes.

Q. Now, do you remember what you did? A. (No response.)

Q. You know that there was a lot of liquor that had been seized in these various raids stored in Boonton? A. Yes.

Q. And don't you know that through Mr. Jayne or Mr. Burdge you men were to go there and arrange that liquor for evidence? A. I don't know anything about Mr. Jayne; I never talked with Mr. Jayne.

Q. Well, Mr. Claypoole directed you; you and Smith did this work? A. Yes, with Claypoole—

Mr. Holland: I object to this at this point until Mr. Dolan fixes the time that he is speaking of; there were two sessions before that Grand Jury; in fact, three. One was this and the others were somewhere around May 12th. I have no objection if he fixes it.

The Court: We are talking about the month of May.

Mr. Dolan: Yes, when this conspiracy took place.

The Court: All right, go on.

Q. Do you recall that you and Smith were directed by Claypoole to go in this cellar and arrange the evidence there? A. Yes, I was. Claypoole was there also.

Q. And was this the time that there was liquor in barrels and bottles and boxes? A. Yes, sir.

Q. And wasn't it arranged that you and Smith were to go down in the cellar and draw off a bottle from each barrel and mark it in evidence? A. Yes.

Q. And wasn't it a fact that when you got instructions from Claypoole you wrote out a list like this? A. No, sir, Smith was in charge of me.

Q. And isn't that what this list was prepared for? A. No, sir.

Q. Well, you remember going down and arranging these bottles? A. On Sunday night.

Q. And do you remember you were given a list to prepare the evidence from? A. No, sir; I don't know anything about a list at all.

Q. Was Smith given a list? A. Mr. Claypoole was in charge of the list himself.

Q. Were you two given a list? A. No, sir, I wasn't.

Q. There were forty or fifty different ones in there? A. Yes.

Q. And were you not directed to select some of them and draw off a bottle of the liquor of each barrel? A. Yes, I was to help do that.

Q. When you were told to do that, were you not given a list of ten or twelve lots of liquor to get the samples from? A. No, sir, I was not.

Q. Well, was Smith? A. I don't know about Smith; they was on the place when I got there.

Q. How did you know which barrel to go to? A. He was right there and pointed them out.

The Court: Who was there?
The Witness: Mr. Claypoole.

Q. Did you see him give any list of this kind to Smith? A. No, sir, I did not.

Q. Don't you know as a matter of fact that he prepared one list of this kind and you given another list? A. No, sir.

Q. And was that ten or twelve bottles you got taken and put in a box by themselves and a paper like that put in the box with them? A. No, sir, each bottle was labeled the man's name right on it.

Q. And don't you know that is one of the lists you were given to get the evidence from? A. No, sir, that list was given to me Saturday afternoon by McDonough.

Q. You saw Claypoole write this? He told you to go and showed you this one paper? A. Yes.

Q. And you selected somebody in Berkshire Valley, one in Dover, one in Two Bridges and one in Hurdtown and one in Boonton? A. The names are right there.

Q. Scattered all over the County in fact. Did you expect to see them that afternoon? A. Oh, no, that was a physical impossibility to make that trip.

Q. And you did go and see McCormick? A. Yes.

Q. And his name is on the list? A. He told us to see McCormick going to his new house.

Q. When did he tell you that? A. The same afternoon.

Q. And McCormick was in that locality, you say? A. Yes, and he also had to write to McCormick.

Q. You know as a matter of fact that these people had been raided? A. Yes.

Q. You know that there were written reports as to these raids? A. Yes.

Q. You know that these written reports had gone into the sheriff, recall that? A. No, not the sheriff.

Q. You knew they went to Mr. Jayne? A. No, sir, they stayed right in the office.

Q. Never got anywhere outside of his office? A. Not that I know.

Q. Do you know that they did or not? A. No, I don't know. They were there every time I seen them.

Q. You don't know they went to Mr. Jayne? A. No.

Q. You did know they kept this liquor in some storehouse and were there a few days before you went out on this trip? A. In a storehouse in Boonton. I was only there one Sunday.

Q. That was just a few days before you started out on this collection trip? A. I can't tell the exact date; I was there—if you will let me look over the book.

Q. You did not refer to your book this morning? A. Sunday, but I can't tell accurately the date.

Q. You told us what happened in the morning

and in the afternoon; can you tell us what Sunday it was? A. It was along around the finish of the job.

Q. That was before you started out on this collection trip, wasn't it? A. I don't remember that.

Q. You knew of that cellar and that there were barrels of liquor and bottles of liquor from everyone of these people? A. Yes.

Q. And you knew the sheriff had the key? A. No, the sheriff never had the key. The key was always left in the baker's and Claypoole can tell you the same thing.

Q. Now, I want to take you back to the day when you planned this matter. You told us this morning just what day that was. Can you tell us again? A. Yes, on Friday. That's the day he gave us the paper.

Q. What happened on Thursday? A. Went to Berkshire Hotel.

Q. Was that Everman's? A. No, that's a different place.

Q. Is that Knipper's A. That's Knipper's.

Q. Well, that was before you had this paper? A. Yes.

Q. What do you suppose he put Knipper's name on this list for? A. He wanted us to go back to Knipper's.

Q. On Thursday you had orders to go to Knipper's? A. Yes.

Q. What time did you get to Claypoole's Friday? A. Friday morning about nine o'clock.

Q. Where did you have this talk with Claypoole on Thursday? A. At his office.

Q. Do you remember what time? A. No, I can't tell the exact time; sometime in the afternoon.

Q. Well, was it immediately after lunch or in the afternoon? A. Sometime later than that.

Q. Do you recall who else was at the house? A. McDonough, Claypoole and myself.

Q. Wasn't Reed there? A. No, sir.

Q. Don't you know you didn't go over Thursday at all; didn't you go just to get the checks?—First, what was the hour you left Claypoole's? A. Not before two o'clock, three o'clock, maybe a little later than that.

Q. You are sure it wasn't earlier than that? A. No, sir.

Q. Then you went from the Grand Jury? A. Yes.

Q. Did you come back to Claypoole's that night? A. Yes.

Q. What time did you see him that night? A. Probably seven or eight o'clock.

Q. That is at his home? A. Yes.

Q. Who else did you see there with him that night? A. The whole family was in the house; he was in the office himself when he talked to us.

Q. You told him what happened at Knipper's? A. Yes, he asked us.

Q. You came back on Friday? A. Yes.

Q. And spent the morning there? A. Yes.

Q. What were you doing that morning? A. Up at the new house, doing different jobs around the place.

Q. Which was the house that burned down? A. The house in Rockaway Valley.

Q. You never saw the house? A. Not after it had burned down.

Q. Don't know anything about that of course? A. No.

Q. You spent the morning there, Friday morning? A. Yes, between both places.

Q. What were you doing there that morning? A. Didn't do much of anything.

Q. You did not get the list in the morning? A. No, after dinner.

Q. What did you do in the afternoon outside of getting this list? A. That's all I done.

Q. How long did it take you to make this list out? A. Just a few minutes, sit down and write it out.

Q. Then you started out? A. Yes.

Q. And went to Everman's? A. No, we went first to Claypool's house, to the other, the new house. That's where he told us about McCormick.

Q. Then from there you went up to Everman's? A. Yes.

Q. And there you say Everman promised he would give you a hundred dollars? A. Yes.

Q. Then he did not bribe you? A. No, he said, I will give you one hundred dollars, of his own free will.

Q. Of his own free will? A. I told him what the boss said and he said I will give you a hundred dollars.

Q. Then he actually made no attempt to bribe you? A. Made no attempt, he offered.

Q. He said that after you had asked him for it? A. Yes.

Q. You started from there and went where? A. McCormick's.

Q. And saw some automobiles outside? A. We did not, I did not see any automobiles; at Knipper's I saw automobiles.

Q. That was where you got scared, you and McDonough both? A. Yes, people there.

Q. You saw an automobile and that frightened you away, was that it? A. Yes, that did not frighten us away, we did not stop, we just drove right on by.

Q. Then you came back and reported to Claypoole again? A. Yes, that's on Thursday.

Q. Friday, what happeend? A. I just told you what happened, went to Everman's and McCormick's.

Q. Did you see Claypoole at all between that time and Sunday, between Friday and Sunday? A. Yes.

Q. When? A. Saturday morning met him in Dover.

Q. And there it was that Claypoole called you down? A. Yes, sir, because I had gone to this party's house, because we did not wait at the garage.

Q. And for seeing Flanger's wife? A. Went to Flanger's house.

Q. You told him that before—all these things? A. Yes.

Q. And then turned around and asked you for money? A. Yes, he asked me how we made out.

Q. And you told him you were going back for money the next day? A. I told him no such thing. I told him Mr. Everman said come back Sunday night and he would have one hundred dollars.

Q. He said, you go back Sunday night; which you did? A. Yes.

Q. How long were you in jail? A. Just from Sunday night until Monday afternoon.

Q. You did not telephone to anybody? A. They would not let us.

Q. Did not send any word to Claypoole's? A.

I wanted to telephone to Claypoole's and they would not let us.

Q. You did not send any word? A. How could I, I was locked up.

Q. Then as soon as you got out of jail, didn't you say, when you got down there, "George, we want you to say that we worked for you?" A. No, sir.

Q. You know Furman Reed? A. Yes.

Q. Well, didn't he say I will not have anything to do with you or it? A. No, sir.

Q. And didn't you say you had to have some statement for Mr. Jayne? A. No, sir.

Q. Or Mr. McDonough? A. No, sir.

Q. And didn't he say, go ahead and write it, I will have nothing to do with it? A. He dictated the writing.

Q. Don't you know he wasn't even in the room? A. I know he was in the room.

Q. You saw McDonough take that statement? A. Yes, he said he took it but I did not see him.

Q. You don't know where it is now? A. No, sir.

Mr. Dolan: That is all.

Redirect examination by Mr. Holland:

Q. Now, some time afterwards, in talking to the sheriff, did you say to the sheriff that you had a story to tell him? A. Yes, sir.

Q. And you told him, the sheriff? A. Yes.

Q. And did you tell the same story to the sheriff? A. I tried to tell the sheriff but the sheriff did not want to listen at all; he said he had nothing to do with it.

Q. When was that? A. A day or two after I was arrested.

Recross examination by Mr. Dolan:

Q. You did tell the story to Mr. Burdge, you say? A. I did not tell him all the story.

Q. What part did you keep back from Mr. Burdge? A. I told him that was the paper and was sent out by Mr. Claypoole to collect money.

Q. Did you see Mr. Jayne? A. I did not see Mr. Jayne.

Q. What did he tell you to do? A. Told me to see Mr. Holland about it.

Q. And did you? A. Yes, I did.

(Witness Excused.)

Mr. Holland: I renew my offer of the book.

The Court: The offer may be reserved until tomorrow morning. Are you willing to let Mr. Dolan have the book over night to look at it?

Mr. Holland: Yes.

HARRY FLANGER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. What is your full name? A. Harry Flanger.

Q. You live in Dover? A. I do.

Q. You are now assisting Warden Brown in the keeping of the jail? A. Yes.

Q. And in May, 1925, you were on Claypoole's staff? A. I was.

Q. Were you cut? A. Yes.

Q. What's the day and date? A. Friday, May 22nd, 1925.

Q. Now, when did you first go to work for Claypoole? A. Around the first of July, 1924.

Q. At any time prior to your cutting, were you let off and told to quit? A. No, sir.

Cross examination by Mr. Dolan:

Q. Well, you hadn't signed a bill for services in this Prohibition Enforcement after May 14th? A. I did.

Q. And the work you did was paid for by the County especially? A. Yes.

Mr. Holland: But you were never told by anybody you were through after the 14th up until the time you were cut?

The Witness: No, sir.

Q. How did you understand there was a change between the 14th and the time that you were cut? Why did you make one bill Prohibition Enforcement up until the 14th and after that— A. In the same month—

Q. Yes? A. Why, it was through the sheriff's office I was paid the last half of May.

Q. But you made out your bill up till May 14th? A. Yes.

Q. And for services after that you were paid by the Freeholders out of an entirely different account? A. Yes.

Redirect examination by Mr. Holland:

Q. When were you informed as to that? A. Which?

The Court: As to the difference between the 14th and the date after that?

The Witness: I was never informed by anybody as to that; if I remember right, Mr. Griffen asked me how many days I used

the car that month. I told him about that and he said I should put it up to the 14th for the use of the car and pay you for the time on until the last of May without listing the use of the car as I did not use it.

The Court: Did you send in both bills at once?

The Witness: Put in one bill.

The Court: Put in one bill to the Freeholders and charged for yourself and car up to the 14th and for yourself without the car after that?

The Witness: Yes.

The Court: I suppose the bill is the thing to show?

Mr. Dolan: I can't see that it is important.

Recross examination by Mr. Dolan:

Q. You did not use your car for Prohibition after the 14th? A. As a matter of fact I did not put my bill in after the 14th.

Mr. Holland: I am trying to establish by this witness that up at least to the time he was cut, on the 22nd, he was not laid off. What he was paid for is entirely different from the service he actually performed.

The Court: The evidence now stands he billed for himself and car up to the 14th and billed for himself after.

Mr. Holland: After the 14th did you use your car?

The Witness: I did.

Mr. Holland: Did you get paid for it?

The Witness: I did not put in a bill.

Mr. Holland: Why?

The Witness: For the simple reason I was given to understand we was laid off the 14th or 15th of the month and Mr. Griffin asked me how many days I used my car and to give him a check on the dates.

Mr. Holland: But you used your car after that?

The Witness: Yes.

Mr. Dolan: In other words you put your bill in for just as much as you could?

The Witness: Exactly.

(Witness Excused.)

ANDREW McDONOUGH, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. What is your full name? A. Andrew McDonough.

Q. How old are you? A. Thirty-two.

Q. Where do you live? A. I live with Luther Van Orden.

Q. Where? A. Denville.

Q. Are you married? A. Yes.

Q. Any children? A. Three.

Q. Where were you engaged or what were you engaged in during May, 1925? A. In Prohibition Enforcement.

Q. Who hired you? A. George P. Claypoole.

Q. When did you start working for him? A. Commenced February 24th, 1924.

Q. And you continued to work until when? A. Until May 24th, 1925.

Q. Were you told that you were through? A. No, sir.

Q. Did you continue on the work up until the time you were arrested on May 24th? A. I did.

Q. What did you do on Thursday, May 21st? A. Why, George Claypoole gave Ray Tillotson and I orders to go up to Berkshire Valley Hotel and told Ray Tillotson that he had three complaints or three liquor charges against him, and he says, you go up and see what you can get out of him. So we went up —

Q. What do you mean, what you can get out of him; what information you could get out of him? A. No, what money we could get out of him.

Q. For what? A. For to have the complaint so they would not go in Court.

Q. Yes, now where were you at the time? A. I was in Claypoole's office.

Q. Just describe Claypoole's office; how big is it? A. It is about five feet wide and about seven feet long.

Q. Where is his office? A. Between the parlor and the dining room.

Q. In what house? A. In the Powerville house.

Q. It was Claypoole's home in Powerville? A. Yes.

Q. At what time in the afternoon was this? A. I judge around between two and four.

Q. Where was Claypoole? A. In his office.

Q. What was he doing in his office? A. Sitting there looking over accounts.

Q. Where were you two? A. Sitting in the office.

Q. Anybody else there? A. No, sir.

Q. What did he say to you first? A. He said that he had three charges against the Berkshire Valley—I forget the name—and he told Raymond to go up and see what money he could get on these charges if they were squashed.

Q. Well, did you say you would go? A. Well,

Ray and I didn't like the idea of it and he told Ray that he was looking down-hearted —

Q. What did he say? Tell the jury what he said. A. He said go ahead; so Ray says, well, what will we take of him? Anything they offer me? He said no, he says they ought to be willing to give you fifty or a hundred dollars to fix each case or fifty or a hundred bucks for the three cases.

Q. What did you do after he said that? A. We went out.

Q. Where to? A. Up to the Berkshire Valley Hotel.

Q. Who went? A. Ray and I.

Q. What happened as soon as you got up there? A. There were a lot of cars outside and we were scared to go in.

Q. What did you do? A. Went up the road a piece and turned around and came back to the office.

Q. Was Claypoole there? A. He was.

Q. What did you say to him and what did he say to you? A. We told him that there was a great many people around there and he got up in the air and started to come at us, raised hell with us.

The Court: No, be more careful of your language.

Q. What did he say? A. He gave us the devil, he said to Tillotson, you are like a big school boy, you are like an old woman.

Q. Why? A. Because we did not bring back the money.

Q. Then what did he say, if anything? A. Didn't say anything but go to supper.

Q. Did you come back on Friday? A. Yes, sir.

Q. What were you doing Friday afternoon? A. Friday afternoon, why, we were working on the country house, the farm house, that is Rockaway Valley.

Q. Whose house? A. Claypoole's house.

Q. What do you mean, work? A. Did a little painting.

Q. Who? A. I and Reed and Tillotson.

Q. Was this the day you were supposed to be working? A. Yes, sir.

Q. How long did you stay at the Rockaway Valley house? A. All afternoon.

Q. When did you show up at the office again? A. After dinner.

Q. What happened? A. Well, when we walked in the office, he turned around and wrote out a slip and gave it to Ray Tillotson.

Q. Did you see him write it? A. Yes.

Q. Where was he when he wrote it? A. At the desk.

Q. What was on the list? A. Why, Knipper's —

Q. Did you see the list? A. Yes, sir.

Q. I show you Exhibit S-1 and ask you if that is the list you mean? A. Yes.

Q. He gave it to Ray Tillotson? A. Yes.

Q. Then what? A. And told him to go to Docherson or some stand down by the hosiery; he says I got two charges against him.

Q. Docherson or Migdoff?

Mr. Dolan: I feel the Prosecutor ought not tell this witness.

Mr. Holland: That name does not appear on the list.

The Court: If it doesn't, the other side is entitled to find out where they went to.

Q. Well, where did he tell you to go? A. Down to Migdoff or something like that.

Q. Where were you at the time he told you? A. In the office.

Q. What did he say? A. He says, I got two cases against Migdoff. Go down and see what you can do down there. I said, well suppose they only offer me five bucks, will I take it? He said, I tell you that they ought to be willing to give fifty or a hundred bucks.

Q. What else did he say? A. Well then, he says, come on up to the house; that's the farm house; I got in the car and —

Q. Just a minute. What did Tillotson do with the list? A. Stuck it in his pocket.

Q. All right, the nyou got in your car? A. I got in Claypoole's car.

Q. Where did you go? A. We went on up to the new house.

Q. What, if anything, did he say to you on the ride over? A. He said, come on up to the house, I might need some paint or something before you go. So while we were riding up he told me, he says, gee, Mac, I forgot McCormick, and he didn't say any more until we got to the house. We got out at the house and walked into the house; got out of the car and walked in the house.

Q. Who was McCormick? A. McCormick was another bootlegger.

Q. Where was that? A. Up in Woodport.

Q. Now near to Everman? A. About a stone's throw.

Q. Then you got up to the house and then what? A. And I walked in the house with Tillotson and he stood talking with Furman Reed; and we came out of the house and I got in Tillotson's car and

started off for Woodport. Claypoole says, so-long.

Q. Did you get up to Everman's? A. Yes, sir.

Q. What did you do when you got up there? A. Went into Everman's and Ray talked to Everman about the case, and Everman said that he was willing to give one hundred dollars and —

Q. What did you talk with Everman about the case; what did he say? A. Ray told him that the boss had a case down there that had not been up and what do you think it's worth—

Mr. Dolan: One minute; I would make an objection again to any statement made by Everman during the course of this conversation. The same objection I made this morning when the other witness was on.

The Court: The same ruling and exception allowed.

Exception sealed accordingly. — C. W. Parker, J. (L. S.)

Q. Just go on. A. So Everman told him that he didn't have any money then but he would give him a hundred dollars if he came around Sunday. So Ray says, all right. So we went from there to McCormick's and when we went into McCormick's, McCormick was in bed. There was another man in there. So we went from the bedroom down around in back of the house which faces the lake and we was talking to McCormick and there was a man down there that came in looking for clothes. I don't know the man's name, and McCormick—

Mr. Dolan: Just a minute, I would like to object to the statement of McCormick or this other man.

The Court: You may sit down and take your exception.

Exception sealed accordingly. — C. W. Parker, J. (L. S.)

A. (Continued.) McCormick kind of faced up and he says to him, gee Mac, if you are going to keep up giving fifty or a hundred bucks every time somebody comes up here, you might just as well go down to Court and pay your fine; so Mac got on the other side and told us to come back Sunday and he would give us fifty bucks.

Q. You did not get anything that time? A. No.

Q. Did you leave? A. Yes.

Q. When did you next see Claypoole? A. I saw Claypoole in Dover.

Q. When? A. Early Saturday morning.

Q. What had happened in the meantime, do you know? A. Yes, sir.

Q. What had happened? A. Why, Ray Tillotson came to my house and woke me up and told us Claypoole wanted us to go to Dover right away and meet him at the Dodge Service Station in Dover. We went to the Dodge Service Station and Claypoole was not there. So we heard about the cutting up and Harry Flanger lives a short ways across the railroad tracks, so we went in there and knocked at the door and asked for Harry and Mrs. Flanger says Harry Flanger was up to his mother-in-law's. We turned around and came back to the garage and Claypoole had been there and gone. So we started down Blackwell Street toward the Dover Police Station and met Claypoole within about a block from there. We got out of my car and walked over to Claypoole and Claypoole says, why don't you guys do as you are told and he says get in the car. So we got in the car

in the back seat and he says, after this if you don't mind what you are told, I will get somebody else after this; words to that effect. Then Ray told him—he says, how did you make out last night, and Ray told him that he was at Everman's house and Everman told him that he would give him a hundred dollars Sunday. I says, I was at McCormick's house and McCormick raised a rumpus and he told Ray that night to go back to McCormick's and if he raised a holler to go back to Everman's house.

Q. Did you go back to Everman's? A. We did.

Q. When? A. Sunday night.

Q. Now what did you do Sunday morning? A. Saturday night we went back to Claypoole's office and we went up to Port Morris to see Mr. Fancher, up at the railroad crossing there to see whether any car or any person went across that crossing at the hour that this cutting up was.

Q. That was in reference to the Flanger assault? A. Yes.

Q. That's what you did Saturday night? A. We came back to the office and he told us to go up, he says the Port Morris Police knew a couple of crap games were going on every Sunday.

Q. Told you to go when? A. Sunday morning.

Q. Did you go? A. Yes.

Q. Well, what did you find there? A. I met Ray Tillotson first. Went to his house and from there to Mr. Fancher's house.

Q. Which Fancher is that? A. James, and I forget the young fellow's name.

Q. Harry? A. Harry, something like that.

Q. And did you raid any crap game? A. No, sir, it was raining.

Q. What did you do after that? A. We went from there and had supper.

Q. Then what? A. Went over to Everman's.

Q. What time did you get to Everman's? A. I judge around between seven and seven-thirty.

Q. Did you go in? A. Yes.

Q. What was said and done? A. Everman asked Tillotson how the case was and Tillotson told him the boss was satisfied, that's Mr. Claypoole, and he says, well, I didn't get that hundred dollars, but I got twenty-five of it and I will get the rest as soon as I can. So he takes the money and counts it out on the table, one, two, three, four, five, six, to the amount of twenty-five dollars. And Ray picked it up and just then the State Police came out and placed us under arrest.

Q. What happened to you; where were you taken? A. To Morristown.

Q. Money taken away from you? A. Yes.

Q. When did you get out of jail? A. Monday afternoon.

Q. Where did you go to? A. Why, Ray told me that his wife told him that—

Q. I don't care so much about that. Where did you go to when you got out of jail? A. Went to George Claypoole's house.

Q. Did you go direct there? A. Yes, sir.

Q. What time did you get there? A. I don't know just the time; as soon as I got out of jail; we did not stop anywheres.

Q. Was it afternoon or evening? A. Afternoon.

Q. Which house did you go to? A. Powerville.

Q. Who did you find there? A. Why, George Claypoole and Furman Reed.

Q. Anybody else? A. Mrs. Smith and Gladys and Mr. Smith just sitting in the dining room.

Q. Where were you people? A. We went in the parlor.

Q. Just tell the Court and jury what happened. A. We went in the parlor; as soon as we went in he sat in a rocking chair and he said, what's the the matter, Mac, did they trick you? I says, it looks that way. He says, they didn't want you guys, they wanted me. So then he turned around and said, you know I didn't send you. I says, you didn't? He says, I know you were in a few days but this will all be fixed up. So I says, yes, it looks that way. He says it's all right, and he said go down to the sheriff and explain just how it was but don't tell him I sent you. Tell him how you went out on your own hook to get evidence for Mr. Jayne. So then he began to cry around there and create excitement, so then he takes a paper—

Q. Who wrote the paper? A. Reed wrote the paper as Claypoole dictated it.

Q. What happened to it? A. I stuck it in my pocket.

Q. Did you sign it? A. Not as I remember.

Q. Did Tillotson sign it? A. Not as I remember.

Q. What did you do with it then? A. I tore it up.

Q. When? A. About three or four weeks after.

Q. Why did you put it in your pocket? A. Why, because it was a false statement.

Q. What else, if anything, did Claypoole say to you? A. Why, about around when—

Mr. Dolan: Just a minute.

Q. I mean right then? A. Right then, he told me before I was to go down and see the sheriff and talk it over with the sheriff; and after that we went out.

Q. Now, some time after that did Claypoole have a talk with you? A. Yes, sir.

Q. What did he tell you? A. He told me, he says, Mac, all you got to say is that you went to the people, the both of you went to some place, you found him on the list, I don't know just the name of it, but you went up for a job and you tell them that Ray went over and borrowed twenty-five bucks and they can't do anything to you for that. He says, I got a good job for you after everything is settled.

Q. What did you say? A. I told him I would see nobody was there.

Q. What difference did it make whether anybody was there or not? A. He wasn't going to trick me in any false statement.

Q. Well, didn't you realize that was false and object to go up there and accept this hush money or extraction money? A. Yes.

Q. Why did you do that? A. Well, orders was orders; I had to keep my job.

Q. Where was the liquor stored? A. In the bakery on Main Street.

Q. Who had the key? A. The key was always brought there and Mr. Claypoole had control.

Q. Brought where? A. In the bakery.

Q. Did you men go in and out there with Mr. Claypoole during the day? A. Yes.

Q. When the sheriff was in Morristown attending to the sheriff's duties? A. Yes.

Q. Was it ever stated to you that this affair would be taken care of? A. He told me, he said, that he would see that everything was looked after and taken care of.

Mr. Holland: Cross examine.

Cross examination by Mr. Dolan:

Q. When did you find out that your pob as a Prohibition Enforcement officer was over? A. When?

Q. Yes? A. After I got arrested.

Q. Not before that? A. No, sir.

Q. You had never been off on any of these collecting raids before that, had you? A. No, sir.

Q. The first time you ever went on any of this kind of work was when this list was made out, wasn't it? A. No, sir, on the Thursday before that.

Q. That was the day before? A. Yes, sir.

Q. But up to that time you had not done anything at all in the way of attempting to collect money, either on your own behalf or for Claypoole or Tillotson or anybody? A. No, sir.

Q. Collecting the first time then for Claypoole or yourself was agreed to this Thursday? A. Yes.

Q. That was the 12th of May? A. Something around there.

Q. Had it come to your attention that the Board of Freeholders had decided to dispense with the Prohibition Enforcement Agents? A. Yes.

Q. Where did you learn that? A. Mr. Brown.

Q. What Mr. Brown? A. The jail keeper.

Q. He told you that all the Prohibition Enforcement Agents — A. And so did Ray Tillotson and the paper, I seen it with Ray Tillotson.

Q. So you knew your job was over with practically? A. Well, I went to cash in subpoenas, he told us when we cashed them he would pay the subpoenas right now.

The Court: Who told you that?

The Witness: Mr. Claypoole.

Q. But you had this information from Brown

that the job was over with? A. Yes, from the paper.

Q. You and Tillotson together? A. Yes.

Q. Now, you are clear in your recollection it was Thursday the 21st of May that you first talked with Tillotson about this matter? A. About what?

Q. About going out and getting some money? A. I did not talk to him. He talked to us.

Q. Yes, I understand, but that was the first day you talked about it? A. Yes.

Q. Where did this talk take place? A. In Claypoole's office.

Q. And was it after lunch? A. It was.

Q. Do you recall what time, Mr. McDonough? A. I judge from one to three.

Q. You were there about two hours? A. We were there all day.

Q. This was after lunch, that first talk about collecting money? A. Yes.

Q. What did you do in the morning? A. I worked around Claypoole's new house.

Q. You were doing some work for Claypoole? A. Yes.

Q. You and Tillotson, and nothing was said then about this money collection? A. No, sir.

Q. And some time that afternoon he got together you three and then this scheme was devised to collect the money? A. He had the scheme devised as to where it was.

Q. Yes, he called you two men in? A. Yes.

Q. And what was the first thing he said about it? A. He said, I have a little job for you fellows this afternoon. He said, I've got three cases here for the Berkshire Hotel —

Q. You don't recall the man's name? A. I know it if it is mentioned.

Q. Well, that was the Berkshire Hotel? A. Yes, I know where it was.

Q. He said he had three cases; you know there were three different raids there prior to that? A. Yes.

Q. You know he had liquor from all these raids? A. Yes, I was in the cellar and it was with the rest of the liquor.

Q. You remember all about it? A. I was only on two raids.

Q. You knew there were three? A. Yes.

Q. And Claypoole said, I have got three cases against Berkshire? A. Yes.

Q. You knew that was true? A. Yes.

Q. You knew there had been three raids? A. Yes.

Q. And he wanted you to go down and see him? A. Yes, he said I got three cases here and all liquor cases and he says they have not been brought up yet in Court and I am the only one that's got a record of them and he said, go up and see what money you can get off of him and if he gives you enough money I will tear the cases up and they will never be brought to Court.

Q. And that's the first suggestion that had been brought up by him to you or anybody about collecting money? A. Yes.

Q. You had never done this before? A. No, sir.

Q. Have you ever committed any crime before? A. Yes.

Q. You have been convicted of crime before? A. Not crime.

Q. Have you ever been convicted of a crime? A. What would you call a crime?

Q. You can answer the question yes or no? A. No, I have not been convicted of a crime.

Q. You were not convicted in North Carolina? A. I sure was not.

Q. Were you down there? A. Yes, sir.

Q. Were you in a chain gang? A. No, sir.

Q. You have never been convicted of a crime? A. No, sir.

Q. You never had done anything in this line before either; in the line of collecting money? A. No, sir.

Q. You understood the suggestion was to get money improperly from these men, didn't you? A. Well now, where do you mean?

Q. Did you understand you were to get money improperly? A. Yes.

Q. From the proprietor of this hotel? A. Yes.

Q. Why were you willing to do it? A. Why, I wasn't willing to do it.

Q. Did you protest against it? A. We did.

Q. What did you say to him? A. We told him that we did not like that stuff and he said if we don't like it he will get somebody else.

Q. You knew your job was over? A. No, sir, I did not.

Q. You already had this talk with Mr. Brown downstairs? A. After we talked with Mr. Brown we went in and cashed our subpoenas and Mr. Claypoole told us he would do the worrying, not us, he would tell us when we were through.

Q. You knew, as a matter of fact, you were working for the sheriff, Mr. Estler? A. Yes.

Q. And Claypoole was just like yourself? A. Yes, but he made out the orders.

Q. And was in general charge under the sheriff? A. Yes.

Q. And you said to him you did not like to do that? A. Something like that.

Q. And his reply was, well, if you do not do it, I will get somebody else? A. Yes.

Q. And that's all that was said? A. No, we went and done it.

Q. Well, you didn't say anything to him after that; is that so? A. Yes, that's so.

Q. Yes, and you went out to collect it? A. Absolutely, yes.

Q. And when you got up there you saw automobiles around and were scared and came back and didn't collect? A. Yes.

Q. What time did you get back to Claypoole's house that evening? A. Around from six to eight, somewhere around that.

Q. Claypoole was there? A. Yes.

Q. And the rest of the people? A. Yes.

Q. Who were they? A. Why, Mrs. Smith and Gladys and Mr. Smith.

Q. Was Reed there, do you remember? A. Not that I remember, not Thursday.

Q. And you reported to Claypoole that you had not gone in? A. We had seen the automobiles.

Q. That you had seen the automobiles and got scared? A. Yes.

Q. He said to come back the next morning? A. Yes, sir; told us to go get supper.

Q. He told you to go get supper and then come back and then he told you to come back the next morning? A. Yes.

Q. You came back the next morning? A. Yes.

Q. It was then he gave this list to Tillotson? A. That was in the afternoon.

Q. Was anything further said about the Berkshire Valley? A. Yes—why, not as I recall.

Q. Berkshire Valley is not on this list, is it? A. Well, I can't think of that name.

Q. You know the proprietor? A. I do.

Q. Will you look this list over and see if the proprietor is on that list? A. Yes.

Q. Well, he told you to go there again? A. No, when we came back from Dover then he told us to go down to Migdoff or something like that at Boonton Hosiery, and Claypoole said he had two cases against him and go down and see what money we can get from him. So we got in the car and Ray got in his own car and started up to the house and while we was going up to the house he said, gee, I forgot Mac, and that's all he said to me until we got out the car. When we got out the car and walked to the house Tillotson walked to the house with him, I don't know what he said, I was talking to Furman Reed, he came out the house and got in his own car and started off for Woodport.

Q. Then this Boonton place was entirely forgotten that time? A. Yes.

Q. And Berkshire Valley was forgotten? A. Yes.

Q. Then you started for Woodport? A. We went to make up that slip.

Q. How did you make the selection—who else made this list? A. Ray or myself.

Q. Then you went up there and went to Everman's with the result of his telling you to come back the following Sunday and so on? A. Yes.

Q. You never went to Berkshire Valley after that? A. Did not have the chance.

Q. This was on Friday; you had Saturday and Sunday? A. We did not have the chance to go there. We got there to McCormick's and didn't go back that way, so we did not go. We went right straight down—

Q. But you did go to McCormick's who was not on the list? A. Yes.

Q. And when you got to McCormick's there were several people there? A. Yes.

Q. You were not as fortunate as you were the day before at Woodport? A. There were other people upstairs.

Q. They did not scare you? A. No.

Q. But the automobile standing outside of McCormick's did scare you? A. Not automobile, but several automobiles.

Q. And then you came back the next day? A. Yes.

Q. And after your talk with McCormick then you came back to report to Tillotson? A. Not report to Tillotson.

Q. Or to Claypoole? A. Yes.

Q. Then you were arrested when you went back to Everman's the next day? A. Yes.

Q. In jail here you had no chance to send word to anybody? A. They would not let us.

Q. No word was sent to anyone? A. No, sir.

Q. Claypoole or anybody else? A. We wanted to call up Claypoole but the State Police would not let us.

Q. But the minute you got out of jail you and Tillotson went to Claypoole's house immediately? A. We were ordered so.

Q. By whom? A. By him telling Mrs. Tillotson that he wanted us to stop in the place, to go right over to his place.

Q. That is, you say Mrs. Tillotson told you? A. Ray told me and told —

Q. Anyhow, you went immediately to Claypoole's house? A. Yes.

Q. When you got there, didn't you say to Clay-

poole, George, we want you to say you sent us out and we are working for you? A. No, I did not.

Q. Isn't that what you said to him? A. No.

Q. And didn't he say, I will not have anything to do with you, you know I didn't have anything to do with this? A. When I walked in the office—

Q. Did he say that or not? A. No.

Mr. Holland: I submit the witness is entitled to answer.

The Court: He may answer responsively.

A. (Continued) When I walked in the office —

The Court: Wait a minute.

Q. Did he say to you, I won't have anything to do with you at all? A. He did not.

Q. You know I didn't send you up there? A. He did not.

Q. Know you were not working for me? A. When I walked in the office —

Q. Just answer the question? A. Well, that question goes this way. You asked me to say yes or no is that true or not. I can't answer that question yes.

Q. All right, why can't you? A. You asked did he say anything to me about, I didn't send you up there. I can't answer that question because he did say and remarked that, I didn't send you up there and I says, you did send me up there, the both of us, so there's where I could not answer the question yes.

The Court: When he said, I did not send you up there, you said, you did send us up there?

The Witness: Yes.

The Court: Berkshire Valley is right in between Dover and Woodport?

The Witness: Yes, right near it.

Q. Didn't you want Claypoole to say, "we were working for you on this matter," and didn't you say to him you wanted a statement to take back to Mr. Jayne? A. No, sir.

Q. And didn't he say, "I will have nothing whatever to do with it, if you want to make a statement, go ahead and make it and Furman Reed will write it out for you"? A. No.

Q. And didn't Furman Reed sit down and write out a statement? A. He did.

Q. Didn't he write out what you told him? A. He wrote out what Mr. Claypoole told him to write out.

Q. Do you remember what was in that statement? A. Not just the words.

Q. Do you remember any of it? A. Something like that we just told the sheriff that we went out on our own hook and just to collect evidence for Mr. Jayne.

Q. And that's what was in the statement? A. Why, something in that respect.

Q. Did you read the statement over? A. I did not.

Q. You carried it around for three or four hours, you say? A. Yes.

Q. Did you read it any time after you got out of Claypoole's house? A. No, sir.

Q. Now, as a matter of fact, McDonough, isn't this what you did say. That you were out of a job, that you thought if you went out and told Jayne you went out to get this testimony for him you thought you would get your job back again? A. No, sir, I had a job already.

Q. Isn't that the reason you made the statement? A. No, sir. I wasn't out of a job.

Q. You had not been fired on the 14th? A. No, sir.

Q. Never had any money after that, did you? A. Yes, I did.

Q. From the sheriff's office? A. From the sheriff's office, O. K. by Mr. Claypoole and O. K. by the sheriff.

Q. Up to what time? A. To the 8th of May.

Q. Then you were through the 8th of May? A. Well, I argued with Mr. Claypoole in his office about this money and he told me I had to go and see Mr. Burdge about some money that I had coming. I said, well, I have got fourteen days in this month. Well, I says, I will let you know how I make out.

Q. But you actually collected up to the 8th of May? A. Yes.

Q. And that was the last day you ever collected for? A. Yes.

Q. And you have never made any demand to collect the balance? A. I did.

Q. Ever bring any proceeding against the County? A. I saw Mr. Parker and told him about it and when I told him about it he said I don't know anything about it.

Q. He did not know about it? A. Yes, sir.

Q. Since then you have pleaded guilty to this crime of extracting money from Everman? A. Non vult, yes.

Q. You made that plea on the 19th of December last, didn't you? A. I don't just remember the date.

Q. Well, do you remember whether it was in December or January? A. I can't tell that.

Q. Can't tell whether it was December or January? A. No, sir.

Q. Or February? A. No, sir.

Q. Who was sitting in Court, who was holding Court? A. Judge Wilson.

Q. But whenever it was, you have not been sentenced by the Court for that crime, have you? A. No, sir.

Q. Has it been held out to you that if you will come here and tell this story you will receive a lighter sentence? A. No, sir, after I was talking —

Q. That's all, just answer the question. Has anybody made any promises to you if you will tell this story, you will be given immunity by the Court? A. No, sir.

Q. Do you hope that because you have told this story against Claypoole you will receive a lighter sentence than you will otherwise, than you would otherwise for this crime? A. Do I hope it?

Q. Yes. A. I hope to get out of this, sure, I don't hope myself in it.

Redirect examination by Mr. Holland:

Q. You did talk with me about that? A. Yes.

Recross examination by Mr. Dolan:

Q. And you have talked to other people about it, haven't you? A. On some parts I did, yes.

Q. Yes, and consulted counsel, haven't you? Haven't you had a lawyer? A. No, sir.

Q. Who else have you talked to besides the Prosecutor? A. Mr. Burdge.

Q. Is he the only one? A. Well, I might said something about the case to other people.

Q. Talked with Tillotson, haven't you? A. Not very much about the case.

Q. You know Tillotson has an attorney? A. I know, yes.

Mr. Dolan: That's all.

(Witness Excused.)

MINNIE PEABO, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. Where do you live, Miss Peabo? A. Woodport.

Q. Are you living in the Everman home? A. Yes, sir.

Q. And taking care of Mr. Everman? A. Yes.

Q. Where is Mr. Everman today? A. He's home, siting in a wheel chair.

Q. How old is Mr. Everman? A. He's thirty-four.

Q. Is he unable to move except with assistance? A. Yes.

Q. Were you present one night in May when Tillotson and McDonough came to Mr. Everman's place? A. Yes.

Q. What kind of a place did Mr. Everman have? A. Well, he's got a confectionery store and has cigars and candy and chewing gum.

Q. Do you remember the day Tillotson and McDonough first came? A. Yes.

Q. Do you remember what night of the week it was? A. Yes.

Q. What night of the week was it? A. On Friday night.

Q. Do you remember when they came? A. What time, you mean?

Q. Yes. A. About, well, I imagine around eight or eight-thirty, somewhere around there.

Q. And with whom did they talk? A. They talked with Everman.

Q. Were you there? A. Yes.

Q. You heard something that was said by both sides? A. Yes, sir.

Q. Now, what did Tillotson and McDonough have to say? A. Well, when they first came in, why Everman, he lay there in bed and he said, did you hear anything about me in Morristown lately? Tillotson says, that's what we are up here for now. My boss sent me up for to see if you can give him some money to squash that case.

Q. Had there been some raids on Everman before that? A. In July before that.

Q. And where was McDonough when Tillotson said that? A. Right there in the room.

Q. Where were you? A. Right in the room standing at the foot of the bed.

Q. He said squash the case? A. Yes.

Q. What did Everman say? A. Well, Everman said, how much will he want to do it. Well, he says, I don't know, whatever you can give. Everman said I could not give over a hundred dollars at the most but Everman said I haven't it tonight. I will have to get it as soon as I can. So they kept on talking and he said, well, when should I come up for it. He said, I would not have it before Sunday night. So in the meanwhile, why Everman got talking with some friends of his and these friends went and got the State Troopers. They tried to get Jayne or one of his men but they could not get hold of them so they got the State Troopers and they came that Sunday night and they hid and looked through the cracks in the partition.

Q. What is that made of? A. Just rough boards, just rough partitions.

Q. You say there are cracks in the boards? A. Yes.

Q. And the State Troopers hid there? A. Yes, in that room.

Q. Kitchen? A. We have only two rooms at the present time.

Q. Just two-room bungalow? A. Yes.

Q. And they were there the Sunday night that Tillotson and McDonough came back there? A. Yes.

Q. Where did they come in, the kitchen? A. The front door and the kitchen.

Q. Where were the troopers stationed? A. They were in the bedroom.

Q. In the bedroom by you ? A. Yes.

Q. What did Everman and Tillotson and McDonough say? A. Well, Everman said what did your boss say? Tillotson said, the boss said it will be O. K.

Q. Yes? A. And Everman said, I could not get the hundred dollars, I only have twenty-five. So they kept talking there and after awhile I seen Everman start to hand the money to them, count the money, so at twenty-three, counting one and two-dollar bills, and he counted out the money.

Q. What did he do with it? A. He laid it out on the table.

Q. What happened? A. Tillotson picked it up off the table and was holding it in his hand like that when the State Troopers came out the room.

Q. And arrested him? A. Yes.

Q. Did he say who his boss was? A. He just said his boss, I don't know the boss, I don't know anybody.

Q. You did not know the boss at that time? A. No.

Q. Do you know whether there was more than one raid there or don't you? A. One is all I think there was.

Q. What happened when the arrest was made? A. What do you mean, when Tillotson and McDonough was arrested?

Q. Yes? A. They lined them up against the back door and searched them and took their guns from them and Tillotson carried a gun and McDonough did not. He had no permit or nothing to carry a gun. So they searched him and after they searched him, they took him out in the car and took him over to Woodport.

Q. They searched them for weapons? A. Yes, and one of the State Troopers took the money.

Q. Where did the two State Troopers come from? A. From the partition there.

Q. When did they come? A. Sunday night.

Q. Before or after Tillotson— A. Before Tillotson and McDonough came, yes.

Cross examination by Mr. Dolan:

Q. As I understand you to say, they said the boss sent them up there but they did not mention the boss's name? A. No, I heard the boss.

Q. You did not know who they meant? A. I did not know who they meant.

Q. Or did not until today? A. I don't know him today unless they tell me who is there, who he is, and then I might know him.

(Witness Excused.)

JAMES BURCHILL, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. Mr. Burchill, were you at McCormick's on the Friday night, May 22nd? A. Yes.

Q. And what were you doing there? A. Well, we was there for fishing.

Q. Had you been fishing at that place for some time? A. Yes.

Q. How long? A. Oh for years, as far as that goes.

Q. Did you have any interest in that house? A. No, sir.

Q. Did you come there— A. Well, I come there to board. We boarded there three or four days a week, two weeks—

Q. Where were you—were you in the house the Friday night of the 22nd when Tillotson and McDonough first got there? A. Yes.

Q. What was being done, what were you doing? A. We were going to bed.

Q. McCormick was in bed? A. He was just about to go to bed.

Q. What happened? A. Why, Mr. Tillotson came in and McDonough and I was called downstairs.

Q. By whom? A. By McCormick.

Q. What did they want? A. They wanted some money.

Q. Then what? A. Why, they said there is indictment out and I understood McCormick to say that he was innocent of this charge and I said, are these the men that came here and raided you and he said yes. He said, now they are here for more money. I said they are here for more money and

he said yes. Well, I said to one of the gentlemen, I said, who sent you here and he said my boss. I said, who is your boss? He said, Mr. Claypoole. I didn't know Mr. Claypoole so I told him that we would pay it in a fair trial; we were done with him.

Q. Then what happened? A. Well, there was a general argument, there wasn't much of an argument about that; he was a little bit rough. As he was about to leave, he was a little bit rough, I should take it. They said they were all ready to press the evidence. And I said to McCormick, what do you have to have money for every time these men come here? And he said, well, if we had not been the best place they would not have come in here.

Cross examination by Mr. Dolan:

Q. Now, Mr. Burchill, what was that you said to McCormick, have you got to have a hundred dollars every time these men come here and in addition pay your fine? A. Well, I said—

Q. Did you say that? A. Just wait until—you got it wrong what I said about the hundred dollars.

Q. Did you say that? A. I did or something to that effect, I did not use a hundred dollars.

Q. What for? A. Why, there was something probably attached to this case before, this same case.

Q. Some what? A. Some probability that McCormick was not guilty.

Q. You did not think he was guilty? A. McCormick was brought into it and from what I heard—

Q. Not what you heard. What do you know? A. Why, I heard the whole facts.

Q. Don't tell us what you heard. As far as you knew, McCormick was guilty of nothing whatever? A. Yes, sir.

Q. And yet you said you told McCormick, you better pay or—? A. No, sir, I did not say that.

Q. That he better pay these men? A. No, sir, I said nothing of the kind, I said I would not give these men anything.

Q. Did you say you better go down to Court and let the Judge put a fine on you and then pay then rather than pay this money? A. I said you better have a trial and get it over with and then pay it, that's what I said. I didn't know he was guilty or Mr. Claypoole, I didn't know the man.

Q. I am not referring to Claypoole? A. Claypoole was not there.

Q. Claypoole was not there? A. No, I did not know at that time that he had anything to do with it. As I said before, I don't know Claypoole. All I said, I think he is sent by a bootlegger, and he sends them for twenty-five or fifty dollars. I did not blame Mr. Claypoole. I am not here against Mr. Claypoole nor for him, in his favor. I am talking honest.

The Court: You are talking too much.
The Witness: Yes, I believe I am.

Redirect examination by Mr. Holland:

Q. When you asked who their boss was, they told you? A. They said Mr. Claypoole sent them; that's all they said.

(Witness Excused.)

HARRY S. HALL, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. You are a trooper? A. Yes.

Q. And connected with the Morristown Headquarters? A. Yes, sir.

Q. And have been a trooper for how long? A. Three years.

Q. Do you remember being detailed some time the latter part of May— A. I do remember, yes, May 24th.

Q. Remember what night that was? A. Sunday night.

Q. Anybody go with you on that date? A. Trooper Scoul.

Q. Where did you go? A. Went ahead and thought we would round up Thomas Bright, we got there seven-thirty and backed our car behind his car, probably a quarter of a mile beyond Bright's. We did not want to take any car there, we didn't want to take our car there so we had them take us in their car. They explained the whole thing about Tillotson and McDonough being there demanding some money and have the cases squashed or something about that. So we took twenty-three one dollar bills and a two dollar bill and we took four of the one dollar bills and marked them and marked the numbers on a paper, on a piece of paper how these bills were marked and it was witnessed by Mr. Everman, myself, Trooper Scoul and this Thomas Bright. That was about eight or eight-thirty. And then we stayed up there until nine o'clock. We sat around for a half an hour and was talking with Everman, Miss Peabo and of course Mr. Bright left. So when we

heard this car pull in here we went in the bedroom adjoining this kitchen. There's only two rooms in the place. This partition is made of very rough boards, cracks three-quarters of an inch in some places and I said we would go in there without making any noise. When we heard the car come we went in there and closed the door and sat down, and Tillotson and McDonough came in. McDonough sat down in a chair with his back to the partition. Before we went in the room Mr. Everman was sitting in the wheel chair. We placed this wheel chair between this partition and them and the lamp on the table so we could see every move. Tillotson did not sit down, he said, well, have you got that money. He said, I haven't got all of it. He said, I've got twenty-five dollars. He said, if I give you this twenty-five dollars I want to know if you are going to do anything for me, because if you are not, I am not going to give it to you. Tillotson said, well, I tell you, I don't know, he said, I don't know what the boss will say; I don't know whether the boss will be satisfied; he said, I will take it down to him and if he is satisfied, why it's all right with us; it doesn't make any difference with us, it's making him satisfied. Mr. Everman said, well, are you sure this case will be squashed? Well, he said, I will give you my word of honor, if it is not, I will see the money is returned to you. So they got through talking, Mr. Everman talked and tried to find out who the boss was and I myself did not hear the name of the boss mentioned. So Tillotson, he sat down in a chair and started to put the money in his pocket and I stepped out and placed him under arrest.

Mr. Holland: Cross examine.

Mr. Dolan: No questions.

(Witness Excused.)

ERNEST BURDGE, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. Mr. Burdge, you are Chief County Detective of Ocean County? A. I am.

Q. And were Chief Assistant to Mr. Jayne during the elisor investigation, so-called? A. One of them, yes.

Q. Did you or anybody for you ever instruct this man to go out and get evidence against Everman or any of these names on this list, by way of bribe money? A. No, sir.

Q. Did you receive a telephone message from the State Police Troopers in reference to the probability of a bribe taking place on Sunday night, May 24th? A. Sergeant Dunn called me.

Q. Did he ask you whether or not these men were working for you? A. He did.

Q. And your instructions to Sergeant Dunn were what? A. That if they accepted any bribe money, to arrest them.

Q. Now, previous to this time and before the elisor Grand Jury met, did you require of Claypoole a list of cases? A. I did; I asked the sheriff for them and I think Claypoole was present at that time and furnished me with two lists.

Q. Of what did those lists comprise? A. One of the lists were the cases that Claypoole had supervised the raids in and the other one was the list of cases that they had supposed been presented to the October Grand Jury by Bolitho wherein the men working under Claypoole had been called in before the Grand Jury but not the evidence presented, that is the actual evidence of liquor.

Q. Now, the elisor Grand Jury made a return on

the 11th of May, 1925? A. Yes, that was their final presentment.

Q. And they returned some seventy-three indictments, more or less? A. Both times, the 4th of May and the 11th of May.

Q. Now, did they ever during their sitting return indictments against any of the people whose names are on that list? A. It did not.

Q. You know that? A. I do.

Q. Did you appear with Mr. Jayne before the May Term of the Grand Jury sometime in June or July and meet Tillotson? A. I did, handling other matters and presenting them in at the door.

Q. When was that? A. It is my recollection it was in July.

Q. And in July did Tillotson show you this list marked S-1? A. Yes, he offered me some list.

Q. And that is when you came in possession of it? A. I did.

Q. Did you offer to take it? A. I offered to give him a receipt for it.

Q. Did you tell him to come to me? A. Yes.

Q. And tell the true story? A. Yes.

Cross examination by Mr. Dolan:

Q. Do you recall when it was you came to Morris County to assist Mr. Jayne? A. June 11th, 1924.

Q. You had been here almost a year then when this transaction took place? A. Yes.

Q. And during that entire period was Mr. Claypoole in charge of Prohibition Enforcement under the sheriff? A. I think he was.

Q. And several operators were working with him and for him? A. Yes.

Q. And from time to time you knew raids were being made by the sheriff's office? A. I did.

Q. Including Mr. Claypoole and others? A. I did.

Q. Were these raids brought to your attention? A. I had all the cases from the Prosecutor's office.

Q. Well, from the Prosecutor's office; did you also have papers from the sheriff's office? A. No, never, except this list furnished by Mr. Claypoole.

Q. Mr. Claypoole had furnished a list? A. Yes.

Q. Have you these lists? A. I have.

Mr. Dolan: Have you any objection?

Mr. Holland: No.

A. (Continued.) They are out in the envelope.

Q. What did the paper purport to be? A. They were supposed to contain a list of the raids made by Claypoole up until the time they were handed to me, I cannot give the exact date.

Mr. Dolan: I ask that this be marked for identification.

The Court: Was that furnished just that way?

The Witness: Just exactly that way.

(Paper marked D-2 for Identification.)

Q. That was the supposed cases that had been presented to the October Grand Jury by former Prosecutor Bolitho where the men were called but not the evidence? And this list marked Exhibit D-3 for Identification is the one just referred to now?

The Court: What do you mean to say, the men were called but not the evidence?

The Witness: They subpoenaed the men but not the evidence.

The Court: You mean the physical evidence?

The Witness: Yes.
The Court: The liquor itself?
The Witness: Yes.
(Paper marked D-3 for Identification.)

Q. Mr. Burdge, do you recall when these lists were given to you by Mr. Claypoole? A. It was prior to March 10th.

Q. 1925? A. Yes.

Q. Were both lists given to you at the same time? A. They were not.

Q. Do you recall which one came in your possession first? A. The larger one.

Q. The larger list which is marked Exhibit D-2 for Identification? A. Yes.

Q. Sometime prior to March, 1924? A. Yes, before the elisor Grand Jury was sworn in.

Q. Will you examine that list and tell me whether the names of the parties or names appearing on Exhibit S-1 also appear on the list Mr. Claypoole gave you prior to March, 1924? A. The first one, George Knipper is here. I take it is the first one.

The Court: Have you a similarity of names?

A. (Continued.) It is noted on there as George Knipper. This is a list of raids made from February 2nd, 1924, to November 30th, 1924, according to this list.

Q. What other information? A. September 8th, George Knipper, Hotel at Berkshire Valley.

Q. Any statement contained as to what was done at that raid? A. No.

Q. Was there evidence taken? A. No.

Q. Any disposition shown at all? A. Yes, May 8th, another one, George Knipper, doesn't show

any final disposition. Joseph Migdoff, October 24th.

Q. Does the record show whether anything was done? A. No. This simply gives the name of the place, the complaint made by and the raid made by and disposition, nothing carried out.

Q. That information appears on that list as to both these names? A. Yes.

Q. Now, will you check and see whether the other names on S-1 show on that list? A. Here is one, August 9th, Joseph Migdoff; Frank Lansing, July 2nd, July 26th, William Everman.

Q. What year? A. That must be 1924. September 29th Mikey McCormick. I assume that is probably this McCormick. No other identification is there. It says residence, Woodport.

The Court: Does the name of McCormick appear?
Mr. Dolan: That's the one which this man says was left off the list S-1.

A. (Continued) These are the only ones.

The Court: Let us see, Mr. Burdge; I have the name of Leonard Ringenback.
The Witness: I don't see that on there. That I have not found.
The Court: And there is a Mr. William something of Hurdtown.
The Witness: No, I have not found the name here.
The Court: And Henry Marino, you have not found him?
The Witness: The other names I have found, Knipper and Migdoff and Lansing and Everman.
The Court: There are eight altogether?

The Witness: Yes, apparently I see on there.

The Court: And the other four you have not found although they might be there?

The Witness: Yes.

Q. Has that list been in your possession ever since the time Mr. Claypoole gave it to you? A. Yes.

Q. And it is in the same condition? A. Yes.

Q. Now this other list, D-3 for identification, I ask you to look over that and see if you find any of these names on that. William Everman, Woodport? A. Yes, raided by Gould, July 26th and complaint by James Phillip. Nothing given on the inventory of what was confiscated.

Q. Wasn't there a note there in Tillotson's handwriting or in Claypoole's handwriting? A. Yes.

Q. Will you read that please? A. These things had been under investigation, well, more than three months and we have had various complaints of it and the list was signed by Phillip and Tillotson and Hubert.

Q. Was that memorandum there when the report was given to you? A. Yes.

Q. And sometime before March, 1925? A. Yes.

Q. And has been in your possession ever since? A. Yes.

Q. Now, do you find any other names besides Everman? A. Mike McCormick, Woodport, raided by Gould, September 29th.

Q. Any other information on there concerning that? A. Complaint made by Dobson and inventory of liquor confiscated and in Claypoole's handwriting. Dobson and Tillotson made investigation here.

Q. Is there a list of the liquor? A. Yes.

Q. That also was there at the time that report was delivered to you? A. It was.

Q. Now, do you find any other of these names on that list? A. Joseph Migdoff, Myrtle Avenue, Boonton raided by Claypoole, August 9th. Complaint by Dobson same day. Inventory of liquor and in Claypoole's handwriting, Dobson and Tillotson sent from office to get evidence of this place and made complaint. They returned in one half hour with signed complaint and place was raided.

Q. That also was there when the report was given to you? A. Yes.

Q. Do you find any other names? A. Frank Lansing at Dover; raided by McDonough July 6th complaint by Antanacio July 2nd, inventory of liquor and in Claypoole's handwriting, this place the M. of D. asked us and we raided it. We found *bona fide* evidence in the place.

The Court: The M. of D.; that might be the Mayor of Dover?

The Witness: It might be.

Q. I want to call your attention to this Exhibit, D-2; I see the name of Henry Marino; I don't think you read that when you read through the first time? A. That may all be there.

Q. As I understand, both of these reports have been with you ever since the time they were delivered to you by Mr. Claypoole in March, 1925— A. It was prior to March.

Q. So that you had these things from Mr. Claypoole at that time? A. No, it was before that time.

Q. And did you at different times discuss these cases with him? A. When the elisor Grand jury was there, I showed the sheriff and asked him

about these liquor cases. At that time we were undetermined as to who was going to present them. Mr. Holland was Prosecutor at that time.

Q. Will you tell me when you say the elisor Grand Jury finished?

The Court: The 11th of May; the day before the May term opened.

Q. How soon after that was it that you had this talk with Mr. Estler, the sheriff, about these various places that had been raided and not disposed of? A. Very shortly after that.

Q. Within a week? A. That was immediately after the Board of Freeholders had requested him to discharge the men.

Q. Do you know whether the men were discharged that time? A. As soon as I heard that I went and saw the sheriff and he told me the Board had requested him to let the men off and he was going to do it and that was when I asked him for the key to the liquor that was in storage in Boonton.

Q. And then Mr. Claypoole knew of it? A. I told him he ought to keep someone who could identify that liquor on the cases that were not disposed of.

Q. Did you ever talk with Claypoole after that? A. I did after that.

Q. Did you check up the liquor in the storeroom there with Mr. Claypoole? A. No, sir.

Q. You did not? A. No, sir.

Q. Do you recall whether you requested him to? A. Not by person.

Mr. Holland: I object to that unless the time is fixed.

A. (Continued.) Yes, it was about the time of the talk with the sheriff, which was some time in May, 1925. Claypoole was not there when I was talking with the sheriff. At that time I told the sheriff it was necessary, if he did not want to keep all the men, that it was necessary, and I thought it would be O. K. with Mr. Jayne, that it was necessary to have someone there to identify this liquor.

Q. And the sheriff suggested Claypoole? A. Yes, as he had entire charge of it.

Q. Do you recall when you went over this list with Mr. Claypoole? A. I do not. I simply got this list and checked off all the things that were not disposed of by the Prosecutor's office at that time.

Q. Do you know whether they were presented later, or did your work terminate about that time? A. We presented some of these liquor cases in July. My recollection is we presented all the evidence that Claypoole brought over from Boonton. Some of these cases had been disposed of by the October Grand Jury and I could not say whether they were re-presented to that Grand Jury or not.

Q. Do you recall from whom you got the evidence on which you advised or submitted before the Grand Jury?

Mr. Holland: What do you mean by evidence?

Mr. Dolan: I withdraw the question.

Q. Did you get any list of raids or any other evidence of liquor raids except that furnished you by Mr. Claypoole? A. From the sheriff?

Q. Yes. A. No.

The Court: Were you a witness before the Grand Jury?

The Witness: I was not, sir.

The Court: In all of those liquor cases? I mean in this particular group of cases?

The Witness: No, sir.

Mr. Dolan: I think that is all. I would like to have Mr. Burdge look through the list and see if he does not find in the list the names of those he has not stated.

Redirect examination by Mr. Holland:

Q. On May 11th, when the elisor Grand Jury returned, there were no liquor indictments against any of these people? A. No.

Q. And you didn't present liquor indictments to the Grand Jury for consideration until sometime in July? A. That is true.

Q. And in the meantime these two men had been arrested on the 24th of May? A. That is true.

Recross examination by Mr. Dolan:

Q. Then there were no liquor indictments of any kind before the elisor Grand Jury, is that it? A. None of these liquor cases. The reason I checked over these lists was to get a double check of these cases that had not been presented. In other words, we were making an investigation at that time and that was the purpose of checking over these lists.

Q. You had them both from the Prosecutor's office and from the sheriff's office? A. I had all the cases before the Prosecutor's office that had been turned in there.

Q. But the elisor Grand Jury did not return any liquor indictments? A. No, they had more important matters.

Q. So there is no significance in the fact that

none of these were returned as indictments at that time?

The Court: Don't try to argue that.

Redirect examination by Mr. Holland:

Q. Where were the records of these cases that were on the list that Mr. Claypoole handed you? A. Let me explain that. Some of them were in the Prosecutor's office.

Q. Where were the rest of them? A. Well, some of them were never located.

Mr. Holland: That is all.

(Witness Excused.)

LENA ESTELLE TILLOTSON, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. What is your full name? A. Lena Estelle Tillotson.

Q. Are you the wife of Raymond Tillotson, one of the witnesses on the stand before? A. Yes.

Q. How long have you been married? A. Five years.

Q. Are you hard of hearing? A. A little.

Q. Do you remember the date your husband was arrested? A. I certainly do.

Q. Remember what day that was? A. I know it was on Sunday, but I could not say the date.

Q. When your husband did not come home on Sunday, what did you do? A. I called—when he did not come home Monday morning, I called Mr. Claypoole's office.

Q. Why did you call Mr. Claypoole's office? A. Why, to see what was the matter with him.

Q. Where had your husband been working before Sunday? A. Why, he had been going to Mr. Claypoole's office every morning, leaving home around eight, so he would be at the office at nine.

Q. Did you telephone Mr. Claypoole on Monday? A. I telephoned Mr. Claypoole's office Monday. I talked with him again in the afternoon and I asked him if he knew where he was and he told me he had sent Ray out on a little business and he did not get through and he went back to finish. I said I felt worried because it was such a stormy night I thought that maybe he had met with some accident. I asked him if he knew where Ray or McDonough was and he said not to worry and I told him then that I felt worried that he might have met with an accident and he said no, he had sent them both out on a little business and they hadn't got through and he went back to finish; that he would call the sheriff and if he found him in, the sheriff would send out immediately to find out where Ray and McDonough was and he would let me know through Mrs. Smith, that he had to go to Jersey City with a subpoena.

Q. Were you in the corridor of the Court Room when the Grand Jury was in session here just a few days ago? A. Yes, sir.

Q. Did Mr. Claypoole come up and talk to you or your mother? A. Yes.

Q. Where is your mother, by the way? A. Mother is sick in bed with pneumonia.

Q. Cannot come out? A. No, sir.

Q. Did Mr. Claypoole come along? A. What do you mean?

Q. When you and your mother were sitting downstairs? A. Yes, he came from the sheriff's office.

Q. Where were you sitting? A. On the bench besides the sheriff's office.

Q. Did he say anything to you or your mother? A. Yes.

Q. What did he say? A. He wanted to know what we were doing down there and mother told him she didn't know. He said, are you down in front of the Grand Jury? And she said we are very worried and he said you women have got nothing to worry about one bit or nothing to worry over; I am not worrying, he said, I am not worried one bit and you women have got nothing to worry about, Ray will only get a fine. And mother said, I have had sickness, I had pneumonia through the winter and it would be real hard to pay it and he said you got Ray, you got nothing to worry. I don't know that he just spoke it in these words but that's just about what he said.

Q. Now, did you talk with Claypoole—when did you learn your husband was in jail? A. Not until around three or half past three in the afternoon.

Q. The afternoon of what day? A. Monday.

Q. Did you then talk with Mr. Claypoole again? A. Yes, I called him up immediately.

Q. What about? A. I first got a telephone from Mrs. Smith around twelve o'clock and she said that the sheriff had called her and had found Ray and McDonough and they were probably on a raid and they would be home within an hour. And then around three o'clock Ray called me himself and wanted me to bring down a bondsman, that he was in jail. I asked him what he was in jail for and he would not tell me. He said I will tell you when you come down. So my father goes and phones and called Ray's brother—no, I asked Mr. Claypoole first, I said to him, I heard from

Ray and he is in jail. I told him I didn't know what he was there for and he said, have you got a bondsman and I said yes, my father and mother and Ray's brother, we are going down now. We were waiting for Ray's brother to come with my father. He said, well you tell Ray and McDonough as soon as they get out to come to my office and stop for nothing. I said all right to him.

Q. Did you deliver that message? A. I certainly did.

Cross examination by Mr. Dolan:

Q. Mrs. Tillotson, have you told us practically all that was said between you and Claypoole over the telephone as you remember it? A. What do you mean?

Q. Well, the night before this conversation when you called him up, did you ask where they were and he said not to worry about it, that he sent them out on a little business and they would be all right? A. When I first called I got Mrs. Smith on the phone and asked if she would send for George.

Q. Your families were very friendly? A. Yes.

Q. You asked if they would go call George? A. I just said George, she said can anybody take a telephone message for him. I said, yes, you tell him that Ray and Mac went out around seven o'clock last night and I have not heard anything from them and it being such a stormy night I am afraid something might happen and she said, that's all right, I will tell George right away. So that was only a minute before George answered the phone and he says, don't worry, I sent Ray on a little job, and they went back to finish it. I said, Ray never goes unless he calls me, he generally

calls me, he never stays out like this. Well, he said, don't worry. He says, I will call the sheriff and send the sheriff word and the sheriff will send men out to find Ray and Mac and then I will let you know through Mrs. Smith.

Q. And the next day when you had a telephone from Mrs. Smith she— A. Same day Mrs. Smith called me, Monday, twelve o'clock. She told me George had gone to Jersey City with a subpoena. George told me himself.

Q. I thought you said Mrs. Smith told you that? A. No, George told me himself he had to go to Jersey City, I think something like that, I would take care of it myself but I have to go to Jersey City with a subpoena. I know that because something was said about Ray going with him.

Q. You didn't know at that time that Ray was arrested? A. No, not then, when I talked to him I didn't know that he was arrested then, I didn't say anything.

Q. You didn't say anything to him? A. No, because I didn't know where Ray was when I called him.

Q. You said something about when you appeared before the Grand Jury? A. Yes.

Q. When was that? A. I don't know the date, I can't say.

Q. Have you given us practically all the conversation that took place between you and him then? A. All excepting that when Ray was working, I said where was Ray and he said out at Kenvil, that he had to go back, and that he would likely be back at any time, that's everything.

Mr. Dolan: All right, that is all.

(Witness Excused.)

Mr. Holland: I have other witnesses. I would like to recall Mr. Burdge for just a minute.

Ernest Burdge, recalled by the State.

Further direct examination by Mr. Holland:

The Witness: I have one extra of D-2; I have written them out as I have them.

Q. What ones do you find? A. Henry Marino on D-2.

Q. That's the only one you have on the list? A. Yes.

Q. And Henry Marino is not indicted by the elisor term of the Grand Jury? A. No.

Cross examination by Mr. Dolan:

Q. Can you give us the names of those which do not appear on either list that do on S-1? A. Yes. Leonard Ringenback, William Ramonsky, Hurdstown. I have the full list if you refer to D-2.

The Court: Just read them off.

A. (Continued.) George Knipper, Joseph Migdoff, Frank Lansing, John Vincent, William Everman and Henry Marino. And the extra one, McCormick, which does not appear on this list.

The Court: This you find in D-2?
The Witness: Yes.

Q. Have you D-3? A. I have. Frank Lansing, Joseph Migdoff, Mikey McCormick, William Everman and John Vincent.

The Court: Well, so that on one list or the other you have got six out of the eight?
The Witness: Yes.

The Court: And the other two are missing?
The Witness: Yes.

Redirect examination by Mr. Holland:

Q. In these cases, where was the liquor? A. In the office of the sheriff.

Mr. Holland: That is all.

(Witness Excused.)

JAMES H. FANCHER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland:

Q. Mr. Fancher, you are an officer in Port Morris? A. Yes.

Q. And the other officer in Port Morris is Henry Fancher? A. He was at that time.

Q. Is he a son of yours? A. Yes.

Q. And do you remember on May 24th, 1925, Tillotson and McDonough coming up to help you raid a crap game? A. Well, they came up for me, the thing was off.

Q. The game was off? A. Yes.

Q. Did you call for them? A. Yes, I called for them.

Q. Was there any crap game? A. No, there was not. It rained so hard that they didn't have any game so they went back.

Q. But they came up to raid a crap game? A. Yes, they came up to raid a crap game.

Q. That was Sunday, May 24th? A. Yes.

Mr. Holland: Cross examine.
Mr. Dolan: No questions.

The Court: That is all the State cares to present at this time?

Mr. Holland: Yes. Might I say the State's case is substantially finished. If your Honor is going to take an adjournment within the next few minutes, I don't want to close the State's case; there may be something I might have missed in going back over my notes and I would like to have a chance to present it in the morning.

The Court: We will take an adjournment at this time until tomorrow morning at ten o'clock.

(Thereupon the Court cautioned the jury not to discuss the case with anyone.)

Morristown, New Jersey, Wednesday, March 3rd, 1926.

TRIAL RESUMED.

ANDREW McDONOUGH, recalled by the State.

Witness did not appear.

HARRY S. HALL, recalled by the State.

Further direct examination by Mr. Holland:

Q. Mr. Hall, when you and Trooper Scoul arrested the two men, did you search them? A. Yes, sir.

Q. For what? A. Just for guns and money.

Q. Did you search them for any papers? A. No, sir.

Q. Did you get the money? A. Yes.

Q. Have you got the money? A. Yes. (Witness produces money.)

Q. Which are the marked bills? A. The four ones on the top of that.

Q. Four ones on top? A. On top of the two.

Q. And you marked them where? Well, did you mark the bills or did you mark the numbers of the bills down on a piece of paper? A. Marked the bills and also the numbers down on a piece of paper and just the way the bills was marked.

Q. Have you got the number of the bills that were marked down? A. Yes.

Q. Refer to them? A. K52097.

Q. Yes? A. E815.

Q. Yes? A. X484.

Q. Yes? A. K237.

Q. I don't find that X—oh, yes, I see it. You took the first three numbers? A. No, I had the final number I just read.

Mr. Dolan: To save time, I admit this is the money they got there.

Mr. Holland: I desire to offer them.

(Money marked as Exhibit S-2.)

Cross examination by Mr. Dolan:

Q. You made a search of these two men at that time? A. Yes.

Q. And got the money? A. Yes.

Q. And guns? A. Yes.

Q. Made a thorough search? A. Not search for any papers.

Q. Why did you search for money and guns and did not search for papers? A. Well, I told you I saw the money passed, so that was the main object we wanted, the money.

Q. You did not see this paper anywhere then? A. I did not search them that close.

Q. Just what was your search; what did you do? A. Took the money and the gun.

Q. And searched them? A. No, sir.

Q. But did not see that paper anywhere? A. I did not search them anywhere.

Q. Just tell us what you did. A. Searched them for money and guns.

Q. Then you stopped right there? A. Yes.

Q. Did not want any more evidence of any kind? A. That's what I wanted that time.

(Witness Excused.)

ANDREW McDONOUGH, recalled by the State.

Further direct examination by Mr. Holland:

Q. I neglected to ask you two questions. When you left the jail to come to Claypoole's office at the Powerville House, was Claypoole there in the office? A. Yes.

Q. What was—just describe him; how did he appear? A. Well, perspiration was all broke out on his chin.

Q. I didn't ask you that on direct examination, did I? A. No, sir.

Q. Now, was there ever occasion when you went in the office when Mr. Claypoole was going over his files that he made some remark about the money that could be made or some such thing as that? A. He talked on a bunch of occasions—

Q. Was there an occasion? A. Yes.

Q. When was that? A. Two weeks previous.

Q. Two weeks previous to what? A. When I was arrested.

Q. And what happened? A. He took a bunch of cases in his hand and said if I get fifty bucks a case, that will be some jack.

Q. Who was there? A. Mr. Flanger, myself and Claypoole.

Cross examination by Mr. Dolan:

Q. Do you happen to recall whether that was on this Thursday when you first made your plans to collect the money? A. No, sir.

Q. Do you remember what date it was? A. No, sir, I don't just remember the date.

Q. This was before you did any collecting or attempted to collect? A. Yes.

Q. And you picked up this list. Do you know whether that was the list Mr. Burdge produced here? A. No, that was not the list. He had each case in a different little folder.

Q. And this was sometime before you went out on this first trip of yours? A. Two weeks before.

Q. Two weeks before? A. Yes.

Q. That was what got the idea in your head to go out and collect money on these cases? A. No, sir.

Q. And then you and Tillotson started out on your own hook to do this? A. No, sir.

(Witness Excused.)

Mr. Holland: That is our case.

Mr. Holland: I desire to offer this diary of Tillotson's, if your Honor believes it is advisable to cut out everything previous to May 7th—

The Court: I suppose that when there is a book, certain parts of which may be considered material and others not, the ordinary practice is to offer those parts of the book that are relevant. What have you to say about that, Mr. Dolan?

Mr. Dolan: I say that when there are parts of any book that are relevant, the Courts have admitted the entire book but it seems to me this book is objectionable on the ground it is a self-serving declaration produced by a complaining witness in this case and ought not go before the jury. I think, it being a criminal case, there ought to be as much circumspection as possible as it contains other things irrelevant to the issue and I think ought to be excluded on that ground as well.

The Court: It ought to be considered with a great deal of circumspection. The only theory I would admit it—if it were admissible—for example, if Tillotson were here on trial you could not get it in for himself; his own memorandum of what he did, in his defense.

Mr. Dolan: I think Mr. Claypoole's book is admissible. (Argument)

The Court: I think I will withhold it for the present. I will think about the matter. I suppose it will not make much difference to the defense provided you know it is liable to come in. With that understanding, the State rests?

Mr. Holland: There is one other thing I want to make a statement about. I don't want to put Mr. Burdge back on the stand but Mr. Burdge explained to me in conference yesterday with Mr. Dolan there were two cases he could not find. Since, he has found one more, so there is only one he cannot find on the list. The other case he found was the Ramonsky case.

The Court: That will take care of itself because there are the papers. Well, you are now stating that on examination of that bunch of cases of Claypoole's, one more has been found?

Mr. Holland: Yes.

Mr. Dolan: You have found all now except the Leonard Ringenback, the bootlegger?

The Court: Yes, and that may be there for all we know.

Mr. Holland: The State rests.

Thereupon Mr. Dolan opened to the jury in behalf of the defense.

GEORGE P. CLAYPOOLE, sworn on his own behalf as Defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Mr. Claypoole, you are the defendant in this case? A. Yes.

Q. How old are you? A. Thirty-two.

Q. Live at Boonton? A. I do, sir.

Q. What are you doing now? A. I am working with Mr. Sheridan in the Newark Private Detective Agency.

Q. When you finished school, what did you do? A. I worked with Joe Bailey and Davis as Assistant Buyer and then enlisted in the Service shortly after that.

Q. Did you complete your term of enlistment there? A. Yes.

Q. And then did you re-enlist? A. Yes.

Q. Were you in Service. A. I enlisted in the New Jersey National Guards six months before the war broke out.

Q. That was six months before the war broke out or at least the United States entered in it? A. Yes.

Q. Near that time did you marry? A. I married after I re-enlisted.

Q. You came back here and married who? A. Elmira Middleton of Woodbury.

Q. And shortly after that you went abroad with the army? A. Yes.

Q. Served your time there? A. I did.

Q. And do you remember when you came back to the United States? A. I don't remember offhand, no.

Q. Were you honorably discharged? A. Yes.

Q. And then did you join your wife? A. I rejoined her before I was discharged.

Q. Where? A. Woodbury.

Q. Woodbury, New Jersey? A. Yes.

Q. How long did you live with her after you came back? A. She and I went to Washington; I was on duty in Washington at the time.

Q. Washington, D. C.? A. Yes.

Q. What happened? A. Well, I got a week's leave and came home and she started going out a couple of evenings and I asked where she was going —

Q. Don't tell us the details of that. A. She started going out and one evening I got it out of her that she was going out with some other men.

Q. What did you do? A. When I saw we could not live together, I picked up and left.

Q. Did you ever go back to live with her after that? A. I did not.

Q. Later you were arrested? A. I was.

Q. On what charge? A. Desertion and non-support.

Q. Was it true? A. It was.

Q. You did desert her and did not support her? A. I did not.

Q. Plead guilty to that? A. Yes.

Q. And was sentenced for it? A. Yes.

Q. Did you stay in the army any length of time after that? A. I stayed in the army for possibly a year, until I found out that she was going to cause some trouble and I asked for an immediate discharge.

Q. And were discharged from service? A. I was.

Q. What did you do after that? A. Why then I stayed home with my mother for about four or five months, did not do much of anything and then I enlisted in the New Jersey State Police.

Q. And you got out of that later? A. Yes.

Q. Why? A. I had some trouble with the captain, was sick and he told me to go on duty and I told him I would not and he preferred charges against me and then I resigned.

Q. And when did you come to the service of Morris County? A. I lived in the County six or seven months when the sheriff asked me if I would conduct two raids for him.

Q. When was that? A. February 2nd, 1924.

Q. And did you remain in the service of the County from that time continuously? A. Well, I am employed continuously but not every day. I was here from day to day.

Q. Were you an officer of the County? A. A constable.

Q. What was your work you were engaged to do? A. Prohibition enforcement.

Q. How were conditions in this County about that time? A. Why, there was quite a lot of bootlegging.

Q. I refer particularly to the difficulty between your office and the Prosecutor's office. A. Well, there seemed to be certain hard feelings among certain members of the Prosecutor's office; I don't include the whole office.

Mr. Holland: Just make that clear, that is not my Prosecutor's office.

Mr. Dolan: No, Prosecutor Bolitho.

Q. And you conducted raids? A. I started on these two.

Q. At the suggestion of the sheriff? A. And under the sheriff, and used to report to him before I made these raids and collected up the evidence and got this different stuff together.

Q. You were the first officer in this Prohibition Enforcement crew under the sheriff? A. Yes.

Q. And you made raids from time to time? A. Yes.

Q. With the result that you obtained some liquor and made arrests for him? A. Yes.

Q. Did anything follow these arrests so far as you were concerned or your men? A. They were arrested and committed to jail.

Q. What followed these arrests as far as you were concerned? A. Why, some of the men were arrested.

Q. And held under bail? A. Yes, sir.

Q. Remember what the charges were? A. Some of them were breaking and entering and some were illegal arrests and false complaints, cases of that kind.

Q. Did anything ever develop out of those charges? A. No, sir.

Q. And they were made from time to time during what period? A. During the year 1924.

Q. Mostly during the year 1924? A. Yes.

Q. Well now, as an officer of the sheriff, did you employ certain men? A. I did, sir.

Q. And among them Tillotson and McDonough? A. Yes, both employed by me.

Q. Did they assist you in these various raids? A. They did.

Q. After you made a raid did you keep any record of it in anyway? A. I wrote a report of every raid I made.

Q. What was done with the report? A. The report was filed in a folder under the town in which the place raided belonged.

Q. After that was filed, did you call that to anybody's attention? A. No, I took another copy off from that.

Q. What was done with that copy? A. The sheriff would get a copy of it himself.

Q. So the sheriff had a copy of every raid you made? A. Yes.

Q. How soon after a raid was made? A. The next morning.

Q. Where was the liquor stored that was seized in these raids? A. Why, first off it was turned over to the Prosecutor's office and there was a lot of trouble about it.

Q. You refer to Prosecutor Bolitho? A. Yes.

Q. You never had any dealings with the present Prosecutor? A. I have had dealings.

Q. When these raids were conducted Mr. Bolitho was Prosecutor? A. Yes.

Q. Mr. Holland had not taken office at that time? A. No, sir.

The Court: I suppose when the word Prosecutor is mentioned it means Mr. Bolitho.

Mr. Dolan: I suppose that is so since he had no dealings with Mr. Holland about the raids, except the witnesses in this case.

The Court: I understand that.

Mr. Dolan: When you refer to anybody except Bolitho please specify Mr. Holland.

The Court: Has he any record anywhere when Mr. Bolitho ceased to be Prosecutor?

Mr. Dolan: I do not think he has.

Mr. Holland: I think it was some time the very early part of May that he ceased entirely and it was some time during April that he ceased voluntarily.

The Court: Mr. Bolitho resigned, if I might state my own recollection; he resigned early in May.

Mr. Holland: I think earlier than that. My appointment was made May 19th.

Mr. Dolan: It must be some time prior to that.

The Court: You are talking of a period prior to that time?

Mr. Dolan: Prior to May, 1925.

The Court: When Mr. Bolitho was Prosecutor?

Mr. Dolan: Yes.

Q. You say in your early raids the liquor was delivered to Prosecutor Bolitho's office? A. Yes.

Q. And you had some difficulty in having it located when you wanted to present the evidence? A. Yes.

Q. Then what arrangement was made for storing this liquor? A. The Sheriff made arrangements to use a building the corner of Main and Division Street, Boonton. He made arrangements to keep it in the cellar.

Q. Has that been used continuously ever since that time? A. Yes.

Q. Where were the keys to that cellar? A. The Sheriff's office.

Q. Were they available to you? A. I had to take him over there at the time I wanted to use them.

Q. Now, you recall the time when the order was made by the Board of Freeholders that the Sheriff dispense with his force? A. Yes.

Q. That he had on this enforcement? A. Yes.

Q. When was that, Mr. Claypoole? A. Sometime the early part of May; I don't know the exact date.

Q. Of 1925? A. 1925.

Q. And as the result of that order that was communicated to you by the Sheriff? A. Yes.

Q. As the result of that what did you do? A. I believe the first order was given us to retain three or four men. I laid off all but three or four of the seven or eight.

Q. Why were they retained? A. At that time we had two or three other cases that we wanted to look up and then on the 14th he gave me final orders to get rid of everybody.

Q. Did you have any special instructions to do anything with the liquor that was there? A. After he gave me the orders of the 14th telling me to discharge everybody, then he gave me another order.

Q. What was that? A. He told me to get out some liquor for Mr. Burdge and prepare it for the Grand Jury.

Q. At that time Mr. Burdge was acting under Mr. Jayne's instructions here in this county? A. He was.

Q. And as the result of that order, what did you do? A. I retained Tillotson and Smith.

Q. Tillotson and Smith; who was Smith? A. My brother-in-law at the present time. I married his sister.

Q. He was one of the men with others working with you in that enforcement matter? A. Yes.

Q. Now, what did you and Tillotson and Smith do in carrying out that order? A. I had a couple of lists given me by the Sheriff of cases they wanted prepared and I took the names from those lists and gave them to the men that were working with me and told them to go down and prepare that then while I was preparing the papers.

Q. In what form did you prepare this list? A. Oh, ordinary typewriter paper. Some I put down in typewriter and some in handwriting.

Q. I want to show you this list marked as Exhibit S-1 and ask you if you ever seen that? A. That's my handwriting.

Q. You wrote that list? A. Yes, I wrote that.

Q. What have you to say about that? A. Similar to the list I was making at that time. I can't remember exactly—

Q. Did you have any difficulty regarding these lists? A. These lists, not particularly. I know all these cases were sent down cellar to be fixed up.

Q. For what purpose was the list prepared? A. As the evidence was taken from the storage where it was and placed in boxes ready to be transferred to the Court House why we had the list that we had got it. Either took one bottle from each raid or when there wasn't any bottles, we took a bottle and labeled it and put it in the box so there

was a bottle from each raid; some were cans and barrels.

Q. And did you prepare many of these lists? How many of them did you prepare, if you can recall? A. Around two hundred cases I prepared and I did not put over ten or twelve on the biggest list I made.

Q. And is this one of those lists? A. So far as I know, it looks like one of them. I would say it was; I would not say the names are in identical order.

Q. You did prepare lists of this kind? A. I did.

Q. Is it your belief that this is one of those lists? A. It is.

Q. You heard Tillotson and McDonough swear here? A. Yes.

Q. When they stated that this is the list you gave them to use for the purpose of collecting money from men who had been charged with crime? A. Yes.

Q. Is that true? A. It is not.

Q. Did you ever prepare any list of that kind? A. I did not.

Q. Either this list or any other? A. I did not.

Q. Do you remember when Tillotson and McDonough were discharged from service as a Prohibition Officer? A. I do.

Q. When? A. McDonough the 8th and Tillotson was released by the sheriff on the 4th.

Q. 8th of what? A. 8th of May.

Q. What year? A. 1925. That is, McDonough and Tillotson were released the 4th of May, 1925, and later used for four or five days for the other work in the cellar.

Q. And that was this work which involved the preparation of these various lists? A. Yes, sir.

Q. What was done with these lists? After you wrote them out, do you remember where you laid them? A. No, some of them I wrote in the bakery and some of them up in the office, wherever they told me they had finished what I had given them to do. I took them up and put them in the office with the rest of the liquor.

The Court: You mean the sheriff's office? You mean the little office you had at Powerville?

The Witness: Yes.

Q. You prepared those lists and gave them to these men? A. Yes.

Q. And their instructions were to leave the list in the box with the liquor they got out? A. Yes.

Q. Who were the men these lists were given to? A. Tillotson and Smith.

Q. Now, what were you doing at that time? A. Most of the time I was preparing the papers of these cases. At other times I was serving papers for the sheriff.

Q. What records did you have in your office of these raids or these different people against whom charges had been preferred? A. I had a report, copy of which I gave the sheriff, and made a raid report.

Q. Have you got them? A. I have the raid report.

Q. Are they the same lists that Mr. Burdge produced here yesterday or copy of the same list? A. I have got the same list and a copy of the raid report of those different places.

Q. Were those lists used in getting out these three lists like the one you gave McDonough and Tillotson? What records did you use in the office

for getting out the list marked S-1? A. I used a yellow sheet given me by the sheriff with these names on. I did not use any records at all.

Q. Do you remember about when that was? A. Around the 20th day of May; the 20th was Wednesday.

Q. Wednesday was the 20th. Do you know what you were doing that day? A. On the 20th I worked around Boonton.

Q. You heard Tillotson and McDonough testify in detail as to Thursday, May 21st? A. Yes, sir.

Q. Heard them say they were there all day and that you gave them instructions to go out and collect fifty or a hundred dollars from each of these men, something to that effect? A. Yes.

Q. And report back—

Mr. Holland: Thursday was only Knipper's.

The Court: According to my notes it was on the 21st—

Mr. Dolan: Yes, I was endeavoring to get when their first instructions were to collect money.

The Court: That is, he told Tillotson?

Mr. Dolan: Yes, this defendant said he looked like a schoolboy.

Mr. Holland: Yes.

The Court: Isn't that the 22nd. There seems to have been a further interview and this paper was produced.

Q. Do you know where you were May 21st? A. Yes.

Q. Where? A. I was in Boonton to about eleven; after that I left.

Q. Do you remember whether Tillotson and Mc-

Donough were there that morning? A. I could not say. I was not working that morning at all.

Q. You say you left Boonton eleven o'clock? A. Yes.

Q. Where did you go? A. Down along the shore and so on to Philadelphia.

Q. Where did you go? A. Why, I went down to Lakewood; I wanted to see a certain party there, so finding out that he was busy so I could not see him, I went down to see my mother. I went down to speak to Mr. Jayne about something personal and found out he was unable that time to see me, at least the girl said he was busy.

Q. Where did you go then? A. Went to Collinswood.

Q. Where is that? A. Just outside of Camden on the road to Haddonfield.

Q. Any idea what time you got there? A. I should say around three o'clock.

Q. Around three that afternoon? A. Yes.

Q. Was your mother at home when you got there? A. She was not.

Q. What does your mother do? A. She is a teacher in the school down at Barrington.

Q. Do you recall when she got home that afternoon? A. About quarter after four.

Q. And were you there with her for some time? A. I left about ten o'clock that night to come up here.

Q. Did anything occur that helps you fix that date? A. Yes, when I got home my brother was packing up to go on a camping trip of some kind.

Q. When you were home, you mean, met him in Collinswood? A. Yes.

Q. Have you any other way of fixing the date?

A. Yes, I made a memorandum of the date that I was not working and that I went down home.

Q. Have you that memorandum? A. I have.

Q. Will you produce it please?

Mr. Dolan: We have a record here similar to the other; if one goes in I think the other should.

The Court: I don't know about that; we have not admitted the other yet for that matter.

Mr. Dolan: I would like to formally offer the record and let your Honor consider that with the other.

Q. When did you make this memorandum? A. On that day. I keep a record whether I work or not.

The Court: He is entitled to refresh his memory by any memorandum but that does not make it admissible in evidence.

Q. Now, do you recall what happened—you say you left your mother's home at ten o'clock? A. Yes.

The Court: I supposed you travelled in an automobile?

The Witness: Yes.

Q. Did you see Tillotson and McDonough that day and have any talk with them about any raid or any trip to Woodport? A. I did not.

Q. Or about collecting any money? A. I did not.

Q. Do you remember what happened that day, the 22nd? A. I don't remember what I did during the day, I did see Tillotson and McDonough.

Q. You did see them? A. Yes.

Q. You heard them swear you gave them this

list and told them to go out and get what they could from these parties? A. Yes.

Q. Is that true? A. It is not.

Q. Did you tell them then to go out and collect any money from them? A. I did not.

Q. That day? A. No, sir.

Q. Or any other? A. Not that time or any other.

Q. At any time did you ever tell them to go out and collect any money? A. I did not.

Q. Did you ever have anything to do with them in anywise in the way of conspiring or agreeing to collect money from men charged with crime or with the violation of the liquor law? A. I did not.

Q. And returning it to you? A. I had nothing to do with that work.

Q. Did you ever say to them that if they could get fifty dollars or fifty bucks or a hundred bucks out of each one, we would never have to work any more? A. No, sir.

Q. Never made any such statement to either of them? A. I did not.

Q. Now, they spoke of your telephoning to them on Saturday morning, May 23rd? A. Yes.

Q. Early in the morning? A. Yes, sir.

Q. Did you do that? A. I believe he stated that correctly, that I called Mrs. Smith from Dover and asked her to get in touch with Tillotson that evening.

Q. Who is Mrs. Smith? A. My mother-in-law.

Q. Then you did send word to them to have them meet you in Dover? A. Yes.

Q. Were you then in Dover? A. I was in Dover at the time.

Q. On what? A. Working on the Flanger case. I was called Friday night that Flanger was cut up on Friday night, seriously cut up, very seriously cut up.

Q. He is the young man who was on the stand yesterday? A. Yes.

Q. Is that scar he has on his face the one he received that time? A. Yes.

Q. Did he have other injuries? A. He had two or three besides that. At the time we did not think his eye was going to be any good.

Q. You say you sent to have them meet you in Dover; for what purpose? A. To go on the Flanger case.

Q. Did they meet you? A. They did.

Q. They say you bawled them out because they were late or had gone to the Flanger house? A. I left word for them to meet me in front of the Dodge place. I was in a hurry looking around, looking up different evidence and had three men waiting over in jail and they talked about having me arrested for false complaint if I did not make some complaint.

Q. And you did bawl them out? A. Yes.

Q. Then they say after you got through that you asked them what had happened last night. A. I did not.

Q. And that they reported to you something about Everman saying he would give you a hundred dollars? A. Had nothing to say like that at all.

Q. Did you mention it at all? A. No, sir.

Q. Did you have any idea they had been to Everman's? A. No, sir.

Q. Or at Knipper's the day before? A. No, sir.

Q. Or at McCormick's? A. No, sir.

Q. What was the next you heard of or from these men? A. I didn't hear from them any more until the day that they were arrested except through Tillotson's wife.

Q. You heard Mrs. Tillotson here yesterday? A. Yes.

Q. You agree practically with what she says? A. Absolutely, except some of the wording; it was practically the same thing.

Q. The words were practically the same? A. Yes.

Q. And did you say to her that Ray was all right; that you sent him out on some work? A. She called me that morning when I was getting ready for a trip to Jersey City and I was a little bit upset about Flanger and I did not want her to worry about it and I said practically the words she used. Told her her husband was all right and not to worry, we would take care of him; I had them working and she should not worry about them.

Q. She said you told her to have them come and see you as soon as they were released? A. I did.

Q. Why did you do that? A. At that time I did not know what they had been arrested for. I did not know it until about a half an hour before they came to my office. The sheriff called me up and told me.

Q. Had your men been arrested at different times before that? A. They had.

Q. What was your idea in having them to come to your home? A. I felt there was some kind of performance up right on top of Flanger being cut up; I did not know what for and I wanted their story from their own mouth.

Q. They came to your house? A. They did.

Q. Arrived there shortly after you returned from Jersey City? A. Just while I was eating supper.

Q. Who was there when you got there? A. My father-in-law, mother-in-law and my fiancee at that time and Mr. Reed.

Q. Furman Reed? A. Yes.

Q. This gentleman who has been mentioned here? A. Yes.

Q. Now, tell us what happened when they came to your house. A. They came in and I said hello to them. They spoke to me; they tried to say something and I said I was busy eating supper and told them to go in the parlor and sit down and they sat there until I finished eating supper. The first thing Tillotson said to me; you sent us there, we were working for you. I said, were you working for me? He said, no. I said, well, then, I am not going to say so. I walked on out of the room. When they got out, they had quite a long talk with Mr. Reed in there, possibly fifteen or twenty minutes. I went in the office to prepare some other papers in a case I was working on in Jersey City before Judge—I don't remember his name; he lives in Morristown, Supreme Court Judge.

Q. Judge Cutler, you mean? A. Yes. And they called me after I had been in the office about ten minutes. They told me they wanted to tell Mr. Jayne all about it. I told them to go ahead and tell him. They said they thought they better make a statement. I told them if they wanted to make a statement to go ahead, I was not interested in it. McDonough told me he could not write so well and Tillotson made some excuse and I said let Mr. Reed write it for you and I went back in the office again. Mr. Reed took their statement.

Q. They said you sat there and dictated statement. A. I was not in the room until they were finished making the statement.

Q. Did you see the statement? A. I saw a paper laying on the table.

Q. Did you read it? A. I did not.

Q. Do you know what was in it? A. I have an idea from —

Q. Did you hear it read? A. I heard some of the words. The office is right next to the partition and I could hear everything that went on in there, that was mentioned in an ordinary tone of voice.

Q. What was the statement? A. The statement purported to say that they had gone up there to get money themselves. They finished their employment, it was only temporary and they went up there to use their ability and went up there to get the goods on Everman and some other people.

Q. Do you know whether they signed that statement or not? A. I believe they did, I am not sure.

Q. Did you have anything to do with the preparation of the statement? A. I did not.

Q. Tillotson said that you gave him this list, marked S-1, and after that then you asked him for the list or for the paper; did you ask him for any paper? A. I spoke to them a couple of times about the affidavits they made out.

Q. What affidavits?

The Court: Have you got it marked? The testimony as I understood it was that this defendant after this statement was made up in his office wanted to get that right from him?

Mr. Holland: I think your Honor understood the witness as I understood him; he witnessed the affidavit.

The Court: The general claim was this statement had been written out by Furman Reed at the dictation of Claypoole and that then it had been given to either Tillotson or McDonough, I forgot which, to sign. Wheth-

er they signed it or not is a question, but it remained in the possession of Tillotson and McDonough and then Claypoole wanted to get it and whoever had it said he would think about it and then afterwards said that they had destroyed it.

Mr. Dolan: That is where I am trying to differ with your Honor. I think he had destroyed this list.

The Court: I cannot control the matter; I am giving you my idea of the testimony; if you want to go ahead on this other line, go on.

Mr. Dolan: I would like to have him explain which paper he is talking about.

Q. You did ask Tillotson for a paper? A. No, I did not ask him for it, I asked him about it.

Q. What did you ask him? A. I asked him why he did not use it.

Q. What paper are you talking about? A. The statement he made before Reed. Mr. McDonough got in some kind of trouble about that time and Tillotson did not seem to want to go ahead and do anything.

Q. Now, about a week after that, June 2nd, Tillotson did make a sworn statement before Judge Martin.

The Court: Hold on, Mr. Dolan. I have here that the paper was written out ready for them to sign and McDonough took it and tore it up. I asked him about S-1.

Mr. Dolan: That's what I thought, the statement he made to Claypoole, he had torn it up.

Mr. Holland: Mr. Claypoole could not answer that part of the question at all. He

said there was a written statement made by Reed. He has not said anything yet about S-1 statement.

The Court: Very well, as long as we understand each other.

Q. I started to say to you, Mr. Claypoole on the theory of this: Tillotson made a sworn statement before John H. Martin in which he complained against William Everman.

Mr. Dolan: May I offer this in evidence?
Mr. Holland: Yes.
The Court: There seems to be no objection.
(Paper marked D-1)

Q. The paper which I now show you, marked Exhibit D-1, is the paper which Tillotson swore to before Mr. Martin. He says that this paper was submitted to you before it went to Judge Martin. Is that true? A. That is not.

Q. Did you ever see that before? A. Not before yesterday. I saw it on your table yesterday.

Q. That was the first time you had ever seen this paper? A. Yes.

Q. Did you ever have anything to do with its preparation? A. I did not, sir.

Q. Mrs. Tillotson has made some statement about a conversation which she says you had with her mother and herself in the corridor of the Court House, when she was here as a witness. You agree with that statement, do you, or not? A. Well, with the general subject matter of it, yes. I am not agreeing with the exact words. I don't remember her exact words.

Q. You were in Court during the entire time

that Tillotson and McDonough were sworn yesterday? A. Yes, sir.

Q. You heard them make several statements that you had talked with them about collecting money from men who had been charged with crime? A. Yes.

Q. You heard them say that you had these records and that you would destroy them if they would come through. You heard the men say that you would destroy these records, heard them say that? A. Yes.

Q. And during their testimony they made several statements about a conversation they had with you looking toward the collection of money from men charged with crime? A. Yes.

Q. Are any of these statements true? A. They are not.

Mr. Dolan: Cross examine.

Cross examination by Mr. Holland:

Q. When did you say you pleaded guilty to desertion? A. I did not say; I don't remember the exact date.

Q. Did you tell us that you had married Marjorie Kent of Louisiana? A. I did not.

Q. You were charged with marrying her? A. I am not.

Mr. Dolan: I object to that. I withdraw the objection.

Q. Who is Marjorie Kent? A. I don't know the lady.

Q. Gretna, Louisiana? A. Gretna is right across from New Orleans.

Q. Were you ever in Gretna? A. I have been in Gretna hundreds of times.

Q. And you don't know Marjorie Kent? A. I do not.

Q. Were you arrested in Louisiana?

Mr. Dolan: Object, if the Court please. We are not charged with anything in Louisiana, only charged in New Jersey.

Mr. Holland: My purpose is this. I did not open the door of his conviction; you opened the door and asked him had you been convicted of a crime and his answer would be yes or no, but as I remember their defense, they only point to it and attempt to explain it in the nicest possible way. Since they have opened the door, it seems to me I ought to be permitted to show the jury everything and I have the record here to demonstrate that fact.

Mr. Dolan: We are perfectly willing to disclose to the Court what there was about that. The question was: Were you arrested in Louisiana?

Mr. Holland: On desertion.

Mr. Dolan: We admit that.

The Court: He said yes.

The Witness: Yes, I was.

Q. Didn't you marry Miss Kent on September 29th, 1919? A. I did not.

Q. Was there a picture taken of you at Rahway? A. It says it is, it don't look much like me.

Q. Well, it's the same person? A. Yes.

Q. Were you convicted of any other charge besides that? A. I was not.

Mr. Holland: Any objections to offering the picture?

Mr. Dolan: No.

(Picture marked Exhibit S-3)

Q. Did you say you had the key to the wine cellar two or three days at a time? A. Yes, I said I could have it if I wanted it two or three days at a time.

Q. Where did you get it from? A. The sheriff.

Q. Where did you return it? A. To the sheriff.

Q. Didn't you return it to the baker? A. When he was there.

Q. Didn't you return it to the baker when he was not there? A. I did not.

Q. So when he wasn't there, who kept it? A. I either gave it to him here or at his house.

Q. So when you did not return it to the sheriff you kept it two or three days at a time? A. No, I returned it to the sheriff after I was through with it. I would use it two or three days sorting the stuff out and kept it.

Q. Was there ever a time when you turned the key over to the men? A. No, sir, I went and opened the cellar for them and was there with one or two men and I would leave several men alone in there.

Q. This wine cellar or storeroom was nowhere near your Powerville house office? A. No.

Q. A difference of approximately a mile or two between? A. Between a mile and two.

Q. Did you also use the office as a wine cellar? A. I did not.

Q. What records were you working on while these men were putting up samples? A. The records of the cases on the list that Mr. Burdge had given the sheriff for me.

Q. What records were they? A. I have to write a report of every raid I made.

Q. What did you have to work on the raid re-

port? A. I got them out and put them in the order Mr. Burdge wanted them.

Q. They had already been made up by you, they were already made up? A. Yes.

Q. There wasn't any further work to be done on them after you had made them up? A. We had a lot of attachments there that we wrote down on the main sheet.

Q. Didn't you do that in your Powerville office? A. I could not keep up with it, I was the only one doing any clerical work except Mr. Raymond and Filey once in a while. I did not have any clerks there.

Q. So you did all the work on these papers where? A. In my Powerville office.

Q. Now, did you ever do any of that work in the wine cellar? A. I did not.

Q. Never did? A. No.

Q. Well, you said in answer to a question on direct examination that you sent Tillotson and Smith down to get some samples from the cases and barrels? A. Yes.

Q. While you were working on the records, where were you working on the records? A. In my Powerville office.

Q. You went back to the Powerville office? A. Yes.

Q. And left them there alone? A. Yes.

Q. The door open? A. The door was open while we was there.

Q. You took the precaution of returning the key to the sheriff; the sheriff did not let you keep the key but you left the men down there alone? A. Certain men; Mr. Raymond, Mr. Flanger and Mr. Smith; Mr. Smith was there.

Q. You left Smith? A. Yes.

Q. You left Tillotson? A. He was with Smith.

Q. And you went back to your Powerville office? A. I did.

Q. What did you do with the key? A. Kept it in my pocket.

Q. And did you come back? A. A couple of times during the day.

Q. What was the necessity of your going back a couple of times during the day? A. To see how they were progressing with the work.

Q. When did you come back first? A. Just before dinner.

Q. What day are you speaking of now? A. Different days we was working there.

Q. Just what days are you speaking of? A. Of four different days they were working down there.

Q. Who was working there the four days? A. Smith and Tillotson.

Q. Which four days? A. Four days after the 14th.

Q. That counts for each day? A. Possibly the 14th, possibly the 15th, I don't remember exactly.

Q. Four days that they were working down there? A. Yes; some were working four days; they may have been working longer.

Q. Well, give us the days. A. I think it was the 14th when they started.

Q. Do you think they did it that day? A. I don't remember.

Q. Think they did it the 15th? A. I do.

Q. 16th? A. Yes.

Q. 17th? A. I do.

Q. 18th? A. I do.

Q. Do you remember what day the 17th fell on? A. I can tell you by looking at the book here.

Q. I asked if you remembered. A. Not offhand, no, sir.

Q. Now, just tell us how you came to make up these slips. A. What slips is that?

Q. S-1; how did you come to make that?

The Court: This paper here?

Mr. Holland: Yes, sir.

Q. In the first place, what day did you make that on? A. I can't tell you.

Q. How did you come to make it? A. I had a sheet with about two hundred names on it that I had to have prepared for the Grand Jury.

Q. Who made up that sheet? A. I don't know whether Mr. Burdge or the sheriff made it up.

Q. Don't you know the sheriff did not make up any list? A. I don't know anything of the kind. I know he gave me various lists when I was working for him.

Q. Of cases which you had? A. Yes.

Q. Have you got them? A. Yes.

Q. Will you produce them? A. Yes.

Q. Have you got this yellow sheet you spoke of? A. I have.

Q. Will you produce it? A. (Witness produces sheet).

Q. Will you show me the list please from which you say you made up S-1? A. I made it up from both of these.

Q. Made it up from both of these? Now, whose handwriting are these lists? A. I don't know.

Q. Are they in the handwriting of the sheriff? A. It looks similar to the sheriff's handwriting.

Q. Which would you say are the sheriff's handwriting? A. That one over here (indicating).

Mr. Dolan: I would like it marked so it can be identified.

Mr. Holland: You say this one, this list on top, was given to Claypoole by the sheriff?

Mr. Dolan: Yes.

Mr. Holland: May I have that marked?

(List marked S-4 for Identification.)

Q. And who is that list made up by; that's the other list? A. I think Mr. Burdge wrote that.

Q. Marked on top, list given to Claypoole by Burdge? A. Yes, sir.

(List marked S-5 for Identification.)

Q. Now, you say you came back at noon; when did you come back again? A. I don't remember whether I came back or not; I may have come back a couple of times in the afternoon.

Q. Well, on the 17th? A. I would not say.

Q. What did you do with the list, S-1, when you made it? A. I gave it to either Tillotson or Smith.

Q. Gave it to either one? A. Either one or the other, I don't remember which.

Q. Now, as a matter of fact, just as soon as Tillotson came out of jail, you asked him to return that list to you, didn't you? A. I did not.

Q. Are you sure you didn't? A. Absolutely.

Q. Didn't you make any effort to recover the list? A. I did not.

Q. When was the first you knew about the list? A. They called me up the other afternoon.

Q. What afternoon?

Mr. Dolan: Who called you up?

The Witness: Tillotson called me up.

Q. What afternoon? A. I don't remember the exact date. I made a notation of it. He called me up and said, I was subpoenaed before the

Grand Jury, and he told me he wanted to see me about a list he had.

Q. About when? A. Two or three weeks ago.

Q. Refer to date, will you, please? A. Have you got that list there, Mr. Dolan?

Mr. Dolan: I did not bring all the other records.

Q. When was that day, Mr. Claypoole? A. That was on January 25th.

Q. 1926? A. Yes, sir.

Q. January 25th, 1926, was the first time that Tillotson apprised you of a list? A. The only time he ever mentioned any list to me.

Q. The only time? A. Yes.

Q. Well, did you ever mention it? A. I did not.

Q. Didn't you mention it to Sam Gould in July, 1925? A. I did not.

Q. Didn't you say to Sam Gould in July, 1925, that he took your memorandum to the Grand Jury, that is Tillotson, and you said that Tillotson had the list but that don't mean anything to me, but I would like to get it? A. I did not.

Q. Was Sam Gould one of the men working for you? A. He was.

Q. When did you get that list from Mr. Burdge? A. I don't remember the exact date; around the 14th of May, 1925.

Q. How do you fix the 14th of May? A. I don't fix it. It was the day that we were told to stop working for the sheriff; and sometime around that Mr. Burdge gave me that list.

Q. What had happened to the papers and all the official papers in these cases? A. I don't quite follow you.

Q. What did your records—you speak of your

records—what did your records consist of? A. My records consisted of a raid report under the places that we had had such a raid and if the case was not worked up, we worked it up preparatory to bringing the case to the Grand Jury.

Q. And you had a report of your men? A. I did.

Q. Well, Mr. Claypoole, do you recall on Friday, the 22nd, that you left your Powerville house and went over to the new house that you were finishing up? A. Yes, I remember that.

Q. Who rode with you? A. I don't remember which one.

Q. McDonough rode with you? A. McDonough or Tillotson, both were there.

Q. Did Tillotson have his own car? A. He may have taken it with him and he might not. Sometimes he leaves it.

Q. What kind of a car did you have? A. I believe I had the Dodge at that time.

Q. That was a Dodge coupe or touring car? A. Dodge sedan.

Q. But you don't know whether both of them rode with you or not? A. Not that afternoon.

Q. Well, why do you say afternoon? Have you got any notes of that? A. I might have taken him over with me—I could not say whether they both rode with me or only one.

Q. Well, you heard their testimony on it yesterday? A. Yes.

Q. Don't that serve to refresh your recollection? A. No, I did not pay much attention to the trip.

Q. Did you pay any attention to what they testified? A. Yes, I heard what they said. They said McDonough rode with me and Tillotson in his own car and on the way over I said to McDonough, I

forgot to put McCormick's name on that list. I heard him say that yesterday.

Q. Don't you recall saying that on your drive over? A. I do not.

Q. Don't recall it? A. No, sir.

Q. Don't you recall making a statement in your office, if we only had fifty dollars apiece on these cases we would have a lot of jack or words to that effect? A. I don't remember that at all.

Q. Might you have made it? A. No, sir.

Q. Now, that could have been said by you— A. No, I could not have said that.

Q. Now, that could have been said by you which served as a basis for the interest in this list? A. No, I could not have said that.

Q. You did not tell Mr. Dolan in preparing this case that what you might have said might have served as a basis for them to act upon? A. No, I don't believe I ever mentioned them to Mr. Dolan.

The Court: What is this, something he told Mr. Dolan? Absolutely incompetent, what he told Mr. Dolan.

Q. When did you say you discharged these men? A. I discharged McDonough the 8th of May, 1925.

Q. Well, how did you discharge him? A. I told him the sheriff said he was through.

Q. That was on the 8th? A. Yes.

Q. When was he to make up his bill? A. He didn't make up his bill until the following July 3rd.

Q. He made up a bill and sent it in on July 3rd. Now when were the rest of the bills sent in? A. When the rest of them were sent in, I don't remember; I think four or five days or a week after this.

Q. That wasn't until July 3rd? A. I don't remember.

Q. Well, none of the bills were presented until July 3rd? A. I don't remember that; I think I got my money before that.

Q. How many times a month were you paid? A. Once.

Q. So that you would not be paid for what you served in May until the July meeting, would you? A. Usually in June.

Q. Well, June; I did not mean July; in June; that right? A. Yes.

Q. But it wasn't until June 3rd that these bills were made; isn't that so? A. I don't know when they made them out.

Q. Well, you made out all the bills for them? A. Some I did and some I didn't.

Q. What about Harry Flanger? A. Some I might and Mr. Flanger made out some.

Q. None of the bills went through until you first saw them? A. I looked them over.

Q. Didn't any of them go through until after you approved them? A. No, sir.

Q. So you had to see them? A. Yes.

Q. Either you made them out or Harry Flanger made them out for you? A. Somebody from the office made them out.

Q. That wasn't done until June 3rd, was it? A. I think we had a special account when we quit before the 15th; I think we made it out.

Q. Was McDonough working a day after May 8th? A. I don't know. He helped me a few days at the place, or did work for me up there.

Q. That was after May 8th? A. Yes.

Q. How many days? A. I could not say; possibly two or three, no more than that.

Q. Well, do you remember what you paid him? A. Not off-hand.

Q. Paid him by cash or check? A. Cash.

Q. He was not paid by check? A. I usually did.

Q. But you did not pay him by check? A. Not that time.

Q. Any idea how much you did pay him? A. Three or four dollars.

Q. You don't even know that? A. Three or four dollars; not any more than that.

Q. Don't you know whether it was three or four? A. No, I could have given him a dollar now or a dollar then, something like that.

The Court: Who is this?

The Witness: McDonough.

Q. You don't know of your own knowledge how he was supporting himself and family in the meantime? A. I know he was looking for a job.

Q. On the morning of Saturday, the 23rd, the night after Harry Flanger was cut, you sent for McDonough right away? A. I sent for Tillotson first and told him to get McDonough and bring him to Dover.

Q. Was he working for you then? A. No, sir.

Q. Did you bawl him out or them out for their not being there? A. Sure, I was busy.

Q. Never struck you that if they were not working for you that you had no right to bawl them out? A. They did not have to come if they didn't want to; they did not have to take the bawling out.

Q. But they did come? A. Yes, after taking the bawling out too.

Q. They acquiesced it? A. Yes.

Q. Even though they were not working for you? A. Yes, sir.

Q. Didn't you send them up to Port Morris to assist in raiding a crap game up there? A. I don't remember the exact day.

Q. Didn't you say to Harry Fancher then or afterwards that they were still working for you and you would tell them when to quit? A. I might have told Harry Fancher I would have somebody help him around Port Morris.

Q. Did you tell — A. I don't know whether I told Tillotson.

Q. Didn't you say to Jamison, the Jerseyman reporter in Police Headquarters, you and your newspaper are the ones that got us or tried to get us out of a job? A. I could not say it because I was not working. I referred to the report he put in the paper about the sheriff's men being there as the cause of Flanger being cut up. I told him I was not there when Flanger was cut up that way. The conversation was misconstrued. I was referring to the fact that Flanger was cut up on account of these newspaper reports; if they had not known about their not carrying a gun he would not have been cut up. As a matter of fact, I did not get paid for the work I did on the Flanger case when I was there.

Q. You got paid these days? A. I did not.

Q. Were you working for the sheriff? A. I was not when I was working on the Flanger case. The only thing he had authority to employ me for was for Prohibition Enforcement.

Q. Did you get paid for the 22nd? A. I did.

Q. Did you get paid for the 23rd? A. I did not.

Q. What day did the 23rd come on? A. I don't remember off-hand, I think it was Saturday.

Q. Did you get paid for the 17th? A. That was Sunday; I might have.

Q. Don't you know? A. I don't know off-hand, no.

Q. Well, isn't that the day that Smith and Tillotson were working in the wine cellar? A. Now, that you bring it to my mind, I believe I worked straight through that week, but I missed one day.

Q. You mean you missed Sunday? A. I missed the 15th.

Q. Well, did you get paid for working on Monday the 18th? A. I believe so.

Q. Did you get paid for working Tuesday the 19th? A. I did.

Q. Did you get paid for working Wednesday the 20th? A. I did.

Q. Did you get paid for working Thursday the 21st? A. I did not.

Q. Where were you? A. I was away.

Q. Where? A. Collinswood.

Q. Who went with you? A. I went by myself.

Q. Who did you see? A. A lot of fellows down in town; saw my mother and sister.

Q. All that day? A. I did.

Q. What time? A. I imagine I got down around three o'clock; somewhere around there.

Q. How long did you stay? A. I stayed there until ten o'clock that night.

Q. You say you went to Lakewood? A. I did.

Q. Did you stop in Lakewood? A. I stopped there to get something to eat.

Q. Is that all you did? A. Yes.

Q. Make any other stops? A. Tried to ring up Mr. Jayne's office several times but I did not get any satisfaction and kept on going.

Q. Didn't you testify on direct examination that you went to his office? A. I did not. I said I tried to see him and found that he was busy or out. I

think that's my exact words. I called him from the cigar store on the corner.

Q. Why didn't you go to his office? A. I didn't want to go up in there until I found out whether he wanted to see me or not; it wasn't anything important; it was just a personal matter.

Q. If he was there he didn't answer the telephone? A. I believe the operator told me the line was busy at the time I called. I called two or three times; but instead of going up I kept on going to south Jersey.

Q. If you got a busy answer, how do you know he was out? A. I said busy, not out.

Q. Did you get through to the office? A. Could get nothing.

Q. To him? A. No.

Q. So you don't know whether he was out or not? A. I don't know whether he was out or busy. I just surmised. I did not want to wait around there all day; that was just a personal matter.

Q. Have any of your other answers been a surmise?

The Court: No, no.

Mr. Holland: If the question is improper I withdraw it.

Q. Where did you get lunch? A. A little lunchroom right around the corner from Mr. Jayne's office. It's about four doors where you go in his office, around the corner.

Q. About four doors from his office door. How often have you been down to Lakewood to see Mr. Jayne? A. I would not say. Went down there often enough to know where it is.

Q. Did you ever afterwards see him on this personal matter of yours? A. I did.

Q. When was that? A. I don't remember offhand.

Q. How long did you stay at your mother's? A. Until around ten o'clock at night.

Q. That is there in town? A. I was around, yes.

Q. When did you come back? A. I left there ten o'clock; took me about four and a half hours to come back.

Q. How do you fix that as Thursday the 21st? A. My records here show that I left home from there on the 21st. I didn't work on the 21st and when I went down there I found my brother leaving for a camping trip.

Q. Is your brother here? A. No.

Q. Well, what significance has your meeting your brother on the 21st? A. That's the day he left.

Q. Is this your book—or—where is that book? A. The Judge told me to refer to it but not present it in evidence.

Q. Well, it was offered?

The Court: I don't know whether it was offered, but if it was, it was excluded. If you want it in, that's another matter. Mr. Dolan offered it and the Court excluded it.

Mr. Holland: I would like to have it in. I don't want to keep it out if he is entitled to have it in.

(Book marked Exhibit D-4.)

Q. Now, when did you make this book up? A. I made the entries in there the dates they are dated. Some days I didn't make entries, I might be out and didn't make any entries.

Q. Well, how near after the days you worked,

did you make the entry? A. Some I made out the same time and some the evening after I worked, after I got back.

Q. Where did you make these entries? A. Wherever I happened to be at the time; some made in the automobile and some made after I got back to the house.

Q. And did you make them with fountain pen or ordinary pen? A. I have two pens here, sometimes I use and sometimes the other.

Q. Both fountain pens? A. One is a fountain pen and one is a stylus.

Q. Now, after you left Lakewood, where did you go? A. Right on down to Collinswood.

Q. Where is Collinswood? A. Just outside of Camden, between Haddonfield and Camden.

Q. How near Philadelphia is that? A. About three miles.

Q. Now, you sent word with Mrs. Tillotson that you wanted to see these two men, didn't you? A. I told her, yes, that I wanted to see them.

Q. When did you first learn that they were arrested? A. When she called me and told me; told me she was going down with a bond.

Q. You had not heard before that? A. No, I just came back from Jersey City when she called.

Q. What time was that? A. I want to correct one statement. She said three o'clock; I did not get back from Jersey City until quarter of four. She just phoned when I came in.

Q. What day was that? A. That was Monday.

Q. The 25th? A. Was it the 25th? Monday afternoon anyway; if Monday was the 25th, that's the day. I haven't got my book here with me.

The Court: Well, Wednesday was the 20th.

The Witness: That is right.

Q. And you thought perhaps they might have been arrested by the Prosecutor's men? A. I don't know what they had been arrested for.

Q. What did you want to see them for? A. To find out.

Q. Find out what? A. What they had been arrested for; what the trouble was.

Mr. Holland: That is all.

Redirect examination by Mr. Dolan:

Mr. Dolan: I would like to offer in evidence these two lists of names on yellow sheet which were produced by Mr. Claypoole at the request of the Prosecutor.

The Court: If there is no objection they will be marked.

(Lists marked S-4 and S-5.)

Q. I call your attention, Mr. Claypoole, to this list marked S-4, headed, list given to Claypoole by sheriff. You have testified this was given to you by the sheriff somewhere around the 14th of May? A. Yes.

Q. And from that list you prepared this list that was spoken of as similar to S-1? A. Yes.

Q. Are the names of the persons or names appearing on S-1 on this list? A. I believe they are, they should be.

Q. Do you know in whose handwriting that list is? A. I believe the sheriff's handwriting.

Q. What significance has that list that you made? A. That was the list we used to get the stuff out of the cellar and went down and rechecked it from the yellow sheet.

Q. To find out whether that evidence was there? A. Yes.

Q. And on the right-hand side I notice after

many of the names is the mark "O. K." Who put these marks on? A. I did.

Q. What did that mean? A. Why, that was a check put on at the storehouse on whatever Mr. Burdge wanted. I don't know who put them in the cellar.

Q. I want to call your attention to the other list, marked S-5 and headed, given to Claypoole by Burdge. Do you remember when that list was given to you? A. About the same time as the one I got from the sheriff.

Q. Prior to S-1 this other list was prepared? A. Yes.

Q. Do you know in whose handwriting that is? A. I would say that it is Mr. Burdge's. I have only seen his handwriting a couple of times. It is not the sheriff's handwriting.

Q. And what are these crossmarks on the side? A. The crossmarks show that it is ready to present.

Q. Do you know whether any of the names on this list compare with that list? A. I think there was two or three of them, I am not sure. I have another list besides those two.

Mr. Dolan: That is all.

Recross examination by Mr. Holland:

Just one other question. Now, about this question of borrowing money. Didn't you borrow money from bootleggers? A. No, I don't think I did.

Q. Didn't you borrow money from Bozzi? A. No. Which Bozzi?

Q. Which Bozzi are you talking about? A. You said Bozzi.

Q. You said no. A. Emil Bozzi, the contractor, I had business with him.

Q. Didn't you borrow some money from Michael Bozzi? A. No.

Q. Didn't you borrow some money from Phlipso? A. No.

Q. At Stirling? A. No.

Q. You did not borrow money from them? A. No.

Q. You did not borrow any money from anybody?

Mr. Dolan: Object to that, I cannot see —

Mr. Holland: I withdraw that.

Q. You did not borrow money from anybody who was — A. Yes, from —

Q. Wait until the question is finished. From anybody who was in the business of the illegal selling of liquor? A. No, not that I know of.

Q. Well, you may have borrowed some from them without knowing? A. There could have been some people I did business with I did not know about.

The Court: Well, if you borrowed money from anybody, were they men or associated with men in the business of the illegal selling of liquor?

The Witness: No, sir.

Q. Did you send any of your men to borrow any for you? A. No.

Q. Did you send Valero to Bozzi to borrow money for you? A. No.

Q. Did Valero work for you? A. Yes.

Q. When did he quit? A. I don't know offhand, somewhere around the 7th.

Q. Did you return that money from Valero to Bozzi? A. I didn't borrow any for me to return.

The Court: Anything further?

Mr. Holland: That is all.

(Witness Excused.)

WILFRED H. JAYNE, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Mr. Jayne, you are a lawyer? A. Yes, sir.

Q. And Prosecutor of the County of Ocean in this State? A. Yes.

Q. You were the special representative of the Governor sent to Morris County in 1924 and 5? A. I was.

Q. And you met George Claypoole? A. Yes, in the course of that work.

Q. I want to call your attention to these Exhibits, D-2 and D-3 for identification.

Mr. Dolan: Right now, I would like to ask that they be admitted in evidence.

(Admitted in evidence and marked Exhibit D-2 and D-3.)

Q. And ask if you ever saw these documents? A. Yes.

Q. Do you recall when? A. They came under my observation through Mr. Burdge sometime prior to the organization of the elisor Grand Jury.

Q. And when was that? A. Prior to the second Tuesday of July, 1925.

Q. And these lists have been with either you or Mr. Burdge ever since that time? A. Have been with Mr. Burdge, I think.

Q. Did you investigate the various charges re-

ferred to in those lists? A. Well, not any further than to present to the Grand Jury sometime subsequently the names of the complaint to which reference is made in those lists.

Q. During the course of your duties in Morris County your attention was called to the fact that Mr. Claypoole and several others of the sheriff's operators were arrested? A. Yes.

Q. On various charges? A. Yes.

Q. On such as breaking and entering and so on? A. Yes.

Q. Recall many of those charges? A. Yes.

Q. Did you investigate those? A. I did.

Q. With what result? A. Well, I presented them; these complaints or as many as possible, submitted them to the Grand Jury for consideration.

Q. And what action was taken, if any, by the Grand Jury. A. No bills of indictment were found.

Q. They were dismissed. And your attention was also called to this charge by Tillotson and McDonough, was it not? A. Yes.

Q. And was that also presented? A. It was.

The Court: What is this?

Mr. Dolan: I presume that is practically no part of this case.

The Court: I am trying to find out what you are talking about.

Mr. Dolan: Charges which these men made against Mr. Claypoole which were brought to Mr. Jayne's attention when he was acting in this County.

Mr. Holland: He has not answered that question yet.

A. (Cont.) I understood that the question referred to a complaint made against Tillotson and McDonough for soliciting money from Everman. That complaint I did present to the Grand Jury.

Q. And that involved Mr. Claypoole at the time? A. No, not to my knowledge.

Q. And from what time to what time were you engaged—in other words, in this County, Mr. Jayne — A. I came in the County as Deputy Attorney General in June, about the middle of June, 1924, and I continued up until after the trial of the indictment against Bolitho and the disposition of other indictments, which I think was in October or November, 1925.

Q. And during the time you were here you had general charge and supervision of the criminal matters, did you not? A. No.

Q. Were you Acting Prosecutor of the Pleas in the County? A. Well, only such following the resignation of former Prosecutor Bolitho and until the qualification of present Prosecutor Holland.

Mr. Dolan: Cross examine.

Cross examination by Mr. Holland:

Q. Mr. Jayne, the charges by Tillotson and McDonough against Claypoole were not brought to your attention until sometime after July, isn't that so? A. That's true.

Q. And at that time you were not then handling the ordinary business of the County, that was being handled by me? A. That is right.

Q. And isn't it true too that the elisor Grand Jury did not consider cases against the ordinary liquor violators, such as are on this list, S-1? A. That is true.

Q. And the elisor Grand Jury returned no in-

dictment against the people on this list, S-1, so far as you recall? A. That's true.

Q. And as a matter of fact, it was at my request and solicitation that you submitted the list of cases to the Grand Jury, the May term of the Grand Jury in July sometime for their consideration? A. Yes.

Q. And as the result of that presentation the Grand Jury returned the fifty-nine indictments against liquor violators? A. That's true.

Q. And prior to that time you had not presented any liquor cases to the Grand Jury at all with reference to the names on this list? A. I am quite certain I presented none but what might be called the Sheriff's cases.

Q. Until July? A. Until July.

Mr. Holland: That is all.

Redirect examination by Mr. Dolan:

Q. Well, Mr. Claypoole also urged you to present these matters, didn't he? Don't you remember you conversed with Mr. Claypoole concerning these cases that had been presented by Bolitho on which no indictments were found? A. What's the question, whether Mr. Claypoole also urged me what?

Q. Whether Mr. Claypoole also urged you to represent these cases, including these on S-1? A. Yes, he did.

Recross examination by Mr. Holland:

Q. And when was that? A. Well, that was during the course of the investigation.

Q. The elisor Grand Jury? A. The elisor Grand Jury.

Q. And he told you when? A. Prior to that date.

Q. And you told him no? A. Well, I don't know that I can say I told him no. I was interested in the conduct, the official conduct of former Prosecutor Bolitho and in connection with my investigation of the conduct of Prosecutor Bolitho I learned from Mr. Claypoole that he was dissatisfied, Claypoole was dissatisfied with the Prosecutor in his cases, in the presentation of former Prosecutor Bolitho, of the cases that resulted in no indictment on account of not being properly presented and should be in the interest of justice presented again.

Q. But as a matter of fact, the elisor Grand Jury found no indictment in any of these cases? A. They did not consider them.

The Court: There were two groups of cases, as I understand it, Mr. Jayne. One was a group which we might call the Bolitho group and the other which we call the sheriff's group?

The Witness: Yes.

The Court: Now, did you present any of the sheriff's group and if so, when, and to which Grand Jury?

The Witness: The cases of the sheriff's group were presented to the regular ordinary Grand Jury at the May term.

The Court: In July?

The Witness: In July.

The Court: Then what about the Bolitho cases? Did you present any of these at any time?

The Witness: As many of those as could be presented were likewise presented at the May term in July.

Mr. Dolan: And some of the Sheriff's

as well as the Prosecutor's were submitted with them?

The Witness: Oh, yes.

Mr. Holland: And that was after the arrest of Tillotson and McDonough?

The Witness: Yes.

(Witness Excused.)

FURMAN H. REED, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Where do you live now, Mr. Reed? A. Pennsylvania.

Q. You were one of the men engaged to assist the sheriff in the Prohibition Enforcement? A. I was.

Q. During what period? A. I started working the first part of January, 19— before 1924, and continued until some time in August, I believe the same year. I also did some work this spring.

Q. Of what year? A. Or rather 1925.

Q. That's last spring? A. A year ago now.

Q. You did some work the spring of 1925? A. Yes.

Q. Do you remember what period? A. Between March 14th and the middle of April.

Q. You know Tillotson and McDonough? A. Yes.

Q. And Claypoole? A. Yes.

Q. Do you remember the time that Tillotson and McDonough were arrested? A. Yes.

Q. Do you recall their coming to Claypoole's house Monday, the 25th of May, 1925? A. Yes.

Q. About what time of day did they come there? A. Evening, we were eating supper.

Q. And who was there? A. Mr. Smith, Mrs. Smith and Miss Smith.

Q. That's the present Mrs. Claypoole? A. Yes.

Q. And her mother and father? A. Yes, sir, and Mr. Claypoole.

Q. Will you relate what happened as you recall it on that occasion? A. Well, they came in and went in the parlor. They spoke first to Mr. Claypoole and he told them to go on in the parlor and they went in and sat down. So I don't know if he preceded me when he had finished eating or whether I went in, but both of us went to come in and when we went in I remember one of them, I think Mr. Tillotson, said we have got in some trouble and wanted him to say that they were working for him.

Q. Wanted who to say? A. Mr. Claypoole. Well, Claypoole asked them, he said, well, were you working for me? And they said no. So they said it would help them out of their scrape if he said they were working for him.

Q. What was his reply? A. He asked them again, well, were you working for me? No. They cannot deny that we were working, and after some discussion of it, he had a case he was working on in Jersey City and I was preparing that and went on in the office and they talked over the thing a little bit and they called me in and wanted me to write a statement to Mr. Jayne if I remember correctly that they went to collect this money, went to get this money for themselves or get money for themselves until work started up again for the sheriff. When they—

Mr. Holland: I object to any further voluntary statement unless there is a question.

The Court: They wanted some sort of a

statement and he was to make it for them, as I understand it.

A. (Continued.) What I wanted to say is when they were laid off, they did not know then whether it was permanent or not; they were laid off, they did not know whether it was temporary or permanent.

The Court: Never mind that; what did they say to Claypoole?

A. Well, they surmised—

Mr. Dolan: Don't tell what they surmised. Tell what he said to each of them.

A. (Continued.) They wanted a statement so it would clear them and saying they had got this money as evidence. That they were paying graft, so they could be prosecuted on charges of graft, that they could be prosecuted. I believe Everman was one of them, McCormick is the other—

Q. Well, that don't make any difference. Go ahead. A. So they started discussing what I was going to write out. They wanted Mr. Claypoole to write it and they called me in again and they asked me to write it and I wrote the statement at McDonough's dictation. Then they wanted—Mr. Tillotson rather insisted that Mr. Claypoole put in there they were working for him. He asked him himself, were you working for me and they said no. Well then he said why put it in there? So Mr. McDonough signed it first and he signed it afterward or Mr. Tillotson signed it and then I signed it as witness to their signatures.

Q. Now, what was that statement, as near as you can recall? A. They went to get this money as evidence of paying graft and was going to turn it over to Mr. Jayne; that they were working under

Mr. Claypoole. That's the contents of the statement.

Q. And what was done with the statement after they signed it? A. Both of them had it but I believe Mr. McDonough was the one that put it in his pocket.

Cross examination by Mr. Holland:

Q. Where were you when these two men first came in? A. At the supper table eating supper.

Q. Were you living there? A. Yes.

Q. And how long have you been living with Claypoole? A. From the 14th of March.

Q. To the 24th of May you had been living there with him? A. Yes.

Q. Were you on his staff as well? A. Not at that time.

Q. What time was it that they came in? A. Well, I should say it was around six o'clock, I don't know. I would not say exactly.

Q. And you were still eating supper? A. Yes.

Q. And so was Claypoole? A. Yes.

Q. And you don't know whether Claypoole came out first or you did? A. I don't know.

Q. Did you both get out there pretty nearly the same time? A. Just about.

Q. What did Claypoole say? A. They said first —well, Mr. Claypoole asked them, he said, what's the trouble; and Tillotson said they got in a scrape and wanted him to say that they were working for him.

Q. Well, what did Mr. Claypoole say? A. He said, were you working for me?

Q. And what did they say? A. They said no. Then afterwards he repeated it and said were you working for Claypoole.

Q. That was when? A. After I had written down what Mr. McDonough had dictated, this statement.

Q. Well, who told him what statement to write? A. Mr. McDonough dictated it himself.

Q. Dictated what? A. He made this statement.

Q. Had there been any discussion as to what the excuse would be? A. They claimed when they came in it was a frame-up.

Q. Frame-up on who? A. On them.

Q. By whom? A. By Everman and whoever it was that had them arrested.

Q. Who did they claim that to? A. Myself and Mr. Claypoole.

Q. How long did Claypoole stay there before he went back to the office? A. He was there perhaps a minute or two.

Q. What happened during that minute or two? Tell us all that was said during that minute or two. A. Well, I believe, as I stated, it's my recollection I have.

Q. You have stated everything that happened during that minute or two? A. Yes.

Q. Whose suggestion was it that they were working for Jayne or that they would make believe they were working for Mr. Jayne? What was the claim, that they were working for Jayne? A. They were getting this material for Jayne, waiting for the sheriff to start operation again, in case he did and they thought they would collect some money themselves and get a good job again.

Q. Yes, but how did Jayne's name come in it? A. Well, Mr. Jayne at that time, we know what he was.

Q. How did Jayne's name come in the conversation? A. Well, they were sure the case would come before him and they wanted to demonstrate

to Mr. Jayne their ability, their innocence of the crime by showing their detective ability and that they got this material or this money as evidence of graft.

Q. And who were they going to show that, to the sheriff or Mr. Jayne? A. Mr. Jayne, I believe.

Q. Who told them about that; did Mr. Claypoole tell them that? A. I don't believe so; I don't recall it.

Q. What do you mean when you say I don't recall; do you mean you don't remember it or that he didn't say that? A. I don't believe he said it; I don't remember it.

Q. As a matter of fact, he had gone back in his office? A. Yes, it was only a partition between.

Q. What was he doing in his office? A. He was on an accident case of some kind in Jersey City.

Q. I see, he was a witness? A. Yes.

Q. And did he prepare an accident case in which he was a witness?

Mr. Dolan: I object.

The Court: I don't know as this witness knows.

Q. Well, do you know? A. I don't know.

Q. But you do know he was preparing an accident case? A. I heard him speak about it.

Q. Speak about it, when, here at the trial? A. No, sir.

Q. Didn't you hear him here at the trial? A. When he was here?

Q. Yes. A. I knew of it that time.

Q. When, that night? A. Yes, before that night.

Q. Do you know what he went in his office for? A. I knew before supper he had already started that and he was going to finish it after supper.

Q. Well, the statement as it was finally prepared absolved Mr. Claypoole entirely, didn't it? In other words, Claypoole was not mentioned in the statement at all? A. Wasn't mentioned. It stated they were not working under his orders. I won't say they stated it in these exact words but that's what the contents was that they went there of their own free will.

Q. Who put that in? A. That was in there at Mr. McDonough's dictation.

Q. So what was the occasion for saying that Mr. Claypoole did not have a hand in this? A. I don't know as I was particularly interested, I wrote it as the truth.

Q. Who suggested that you write it? A. Mr. McDonough and Mr. Tillotson both.

Q. Where was Mr. Claypoole when the suggestion was made that you write it? A. I believe he was in his office.

Q. He didn't say anything about your going to write it? A. He may have.

Q. He may have suggested it that you write it or something? A. When he asked me to write it, I don't just recall if they asked him to write it. I believe they asked him to write a statement that they could present to Mr. Jayne. I believe first there was some kind of a frame-up, in fact, I believed it all along.

The Court: I don't think what he believed is competent here.

Q. How long did it take you to write the statement? A. Why, it was only one sheet of paper about that size (indicating); to actually write, only required a minute or two.

Q. Only took a minute or two? A. Probably it took a little longer.

Q. Probably took a little longer? A. Why, probably ten or fifteen minutes.

Q. After that was written out, was it read to Claypoole? A. I don't believe so.

Q. How did he come to know what was in it? A. I don't know as to that.

Q. Didn't you tell him? A. I might have said something about it.

Q. Have you discussed this case with him? A. This case? Not materially.

Q. What do you mean, not materially? A. Well, not as I can say with any real interest. I was supposed to be or expected to be a State's witness. I knew I would not have anything to say about it.

Q. Well, didn't you tell Mr. Claypoole what was in the statement? A. I might have said something about it.

Q. Didn't you come back out of the office again before McDonough put the paper in his pocket? A. They called me out once or twice with regard to something at different times while they were there. He said he didn't have anything to do with it.

Q. Yes, he said he didn't have anything to do with it? A. Yes.

Mr. Holland: That's all.

Redirect examination by Mr. Dolan:

Q. Did he have anything to do with the dictation of this statement? A. He did not.

Recross examination by Mr. Holland:

Q. Just one other question. You remember on Friday, the 22nd, when Claypoole and McDonough came over in McDonough's car and Tillotson came

in his own car that you and McDonough sat outside talking? A. Yes, sir.

Mr. Holland: That is all.

(Witness Excused.)

The Court: We will take an adjournment at this time until one-thirty.

After Recess.

CHARLES E. ESTLER, called by the defense, testifies as follows:

Direct examination by Mr. Dolan:

Q. Sheriff, do you recall the fact that Mr. Tillotson came to your office shortly after—sometime in May? A. I do.

Q. And did he talk with you about a recommendation for some job in Sussex County? A. He did. That wasn't Sussex County; it was Lake Hopatcong.

Q. When was it you had this conversation with him? A. It was right at the time he got laid off.

Q. And when was it? A. Well, I judge it might be along the middle of the month; it was before any of this thing—

Q. It was before he was arrested? A. Yes, I certainly would not give it to him then.

Q. And did you have any talk with him about his continuing to work for you? A. He spoke about it, he was laid off.

Q. Did he mention anything about it being temporary? A. I told him that I had my orders from the Board of Freeholders that they get laid off.

Cross examination by Mr. Holland:

Q. Well, did you give him a recommendation? A. I did.

Q. Keep a copy? A. I told him I thought he could fill the bill there; he wanted a police job there.

Q. So you gave him a recommendation for a police job; and when was that? A. That was, well, it was along the middle of the month.

Q. What do you call the middle of the month? A. The 15th.

Q. It wasn't any later than the 15th? A. I don't think so; I know it was before this arrest took place; I certainly would not do it then.

Q. Well, suppose I were to tell you it was the 22nd of the month? A. I say this, I am absolutely sure it was before this arrest was.

Q. But you don't know whether it was the 22nd or not? A. I won't say the date, the record will show, I might not be right about the middle of the month. It seems it was right at that time when they were laid off; that's what I recall.

Mr. Dolan: I ask the prosecutor to produce that paper.

Mr. Holland: I will produce it.

Q. You knew he was still working for Claypoole? A. I don't just recall that.

Q. You didn't know it? A. No. It was my understanding he was getting out some of this stuff, preparing it for a few days, and then he was supposed to be laid off.

Q. And on the 22nd of May you had a very good opinion of him? A. Oh, an average, no question about that. He was doing that kind of work which you could not get everybody to do.

Mr. Holland: That is all.

(Witness Excused.)

WILLIAM N. SMITH, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Mr. Smith, you are a brother-in-law of Mr. Claypoole's? A. Yes, sir.

Q. And he married your sister recently? A. He did.

Q. And while Mr. Claypoole was working for the sheriff you were also in the employ of the sheriff? A. I was.

Q. And employed in the work of investigating these liquor violations? A. Yes, sir.

Q. You are the Mr. Smith referred to this morning who was retained when other men were laid off? A. Yes.

Q. For the purpose of arranging the liquor evidence? A. Yes.

Q. Now, will you tell the Court and jury what was done by you and who did it? A. Well, I was given a list from the office of maybe anywheres from eight to twelve names—

Q. What office are you speaking of? A. Given a list from Mr. Claypoole to go to the storehouse and take out—

Q. List prepared by whom? A. Prepared by Mr. Claypoole.

Q. Was there more than one of these lists? A. Several; as soon as we got finished with one list I took it back and he would give me a new one.

Q. What would you do with these lists? A. Go out in each case and take out a bottle of stuff and put it in a paper box or wooden box and put the list on top of it.

Q. I call your attention to this paper marked

S-1 and ask you if you ever seen that paper before? A. I have.

Q. What is that paper? A. It's a typewritten paper and it's a list of names such as I had.

Q. Is that one of these lists? A. That's one of the lists I had, yes.

Q. Used by you in connection with the preparation of this evidence? A. Yes, sir.

Cross examination by Mr. Holland:

Q. You are Mr. Claypoole's brother-in-law? A. I am.

Q. How old are you? A. Twenty-seven.

Q. Have you discussed this case with anybody? A. I have not.

Mr. Holland: That is all.

The Court: Mr. Smith, you spoke of having had that paper. Do you recognize the paper?

The Witness: I do.

The Court: Well, where did that sheet of paper come from? I mean the paper itself?

The Witness: The paper was bought in Boonton.

The Court: Who bought it?

The Witness: Mr. Claypoole, sometimes I bought it.

The Court: Did he have a typewriter?

The Witness: He did.

The Court: Where?

The Witness: At the office at the house.

The Court: You mean that little office he had in the house at Powerville?

The Witness: Yes.

(Witness Excused.)

GLADYS M. CLAYPOOLE, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Miss Claypoole, you are a sister to George Claypoole, the defendant? A. I am.

Q. Where do you live? A. I live in Collinswood, New Jersey.

Q. That is just across the river from Philadelphia? A. Yes.

Q. Live with your mother there? A. I lived there, I am employed at the children's home in Camden. I am mostly there. My residence is in my mother's home but I am there more than I am home.

Q. Do you recall the 21st of May, Thursday, 1925? A. Yes, I recall it due to the fact that my brother was preparing to leave, my younger brother was preparing to leave for camp.

Q. You don't mean George? A. No, Albert, younger brother. We were also excited due to the fact that he was in a contest and I thought perhaps I would go home.

Q. And did you go home that day? A. I went home that evening, got there about seven o'clock. I was surprised to see my brother George there.

Q. He was there at that time? A. Yes.

Q. During what time did you see him at your mother's home? A. I saw him in the evening between seven and half past nine.

Cross examination by Mr. Holland:

Q. What was this affair your brother Albert was to leave for? A. The Boy Scouts' contest at Poughkeepsie?

Q. At Poughkeepsie? A. Yes.

Q. Did you see your brother Albert? A. No, he had left when I got home.

Mr. Holland: That is all.

(Witness Excused.)

EDWIN W. ORR, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Mr. Orr, you are Deputy County Clerk of Morris County? A. I am.

Q. And as such have charge of the Criminal Court of this County? A. I have.

Q. Have you record of the conviction or pleading non vult entered by Raymond Tillotson and McDonough? A. I have.

Mr. Holland: They are both admitted?

Mr. Dolan: I want the entering date.

Q. When were they entered? A. December 17th, 1925.

Q. Have you the indictments? A. I have not the indictments.

Q. Do you know what charge it was they pleaded non vult to? A. Charge of conspiracy.

Mr. Dolan: That is not the indictment here?

Mr. Holland: No.

The Court: Can you get the indictment?

The Witness: I can; that was one of the elisor; indictment 113, May term, 1925.

Q. What do your records show about sentence of these men on that charge? A. Sentence was deferred until a later date. Sentence was moved for by the Prosecutor, was moved for at that time and was deferred until a later date.

Q. And has not been imposed as yet? A. It has not.

Q. Will you produce the indictment? A. Yes.

Cross examination by Mr. Holland:

Q. When did the Prosecutor move for sentence? A. When? December 17th.

(Witness Excused.)

HELEN MUNSON, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Miss Munson, you hold an official position here in the County? A. Yes.

Q. What is that? A. Clerk in the Freeholders' office.

Q. And as such, you have charge of the records of bills and so forth presented to the Board of Freeholders? A. Yes.

Q. Have you in your possession a record or bill of George Claypoole during the period between May 15th and May 25th? A. Yes.

Q. Have you that record with you? A. Yes.

Q. Will you produce it please? A. Yes.

Q. This is a record as has been paid by the Board of Freeholders? A. Yes.

Q. Is that the only record of any payment to Mr. Claypoole during that period? A. During that period, yes.

Mr. Dolan: I offer this in evidence.

Mr. Holland: No objections.

(Marked as Exhibit D-5.)

Cross examination by Mr. Holland:

Q. Do you know when this bill came in? A. No, I could not tell that, I could not tell you when it came in; the only record I have would be the date of payment.

Q. Now, Miss Munson, did my detective make a request of you to turn over all the Claypoole bills? A. Yes, sir.

Q. And did you at that time? A. I turned over all they asked for.

Q. And was that one asked for? A. No, sir.

Q. Did you have it in your possession at that time? A. Yes.

Q. Did it ever leave your possession? A. No, sir.

Q. Always been on record available for everybody to see? A. Yes.

The Court: I suppose, Miss Munson, that the bill wasn't finally received in your office until it was sworn to, was it?

The Witness: No.

The Court: You don't recognize them?

The Witness: We don't recognize them until after the affidavit is taken.

Redirect examination by Mr. Dolan:

Q. Then the affidavit would indicate about the time when it was filed with you? A. No, not necessarily.

The Court: The affidavit seems to be dated the 18th of June and the voucher proof seems to have a mark in September.

The Witness: That's when it was presented.

The Court: I suppose it could have come in any time between those two dates?

The Witness: Yes, it might have, but not very long before the date the Board met and it's not very long after the meeting before they are paid.

Q. Miss Munson, I want to call your attention to the endorsement on the back of this bill, September 9th, 1925; was that put on by your office? A. Yes.

Q. Was the bill in your office then any later than September 9th, 1925? A. From then on.

Q. From that time on; that was the first time

that was presented to the Board? A. That was the first time it was presented to the Board and then in the fall it left our office for approval. I don't know who had it at that time.

Q. It was presented on September 9th at least? A. That's the date I believe is indicated on that.

(Witness Excused.)

The Court: Mr. Orr produces the paper which he states is the indictment he was asked for by Mr. Dolan.

Mr. Dolan: May I have it marked?

(Paper marked as Exhibit D-6.)

ARIANNA T. CLAYPOOLE, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Dolan:

Q. Mrs. Claypoole, you are the mother of George Claypoole, the defendant? A. Yes, I am.

Q. Where do you live? A. In Collinswood, New Jersey.

Q. That as I understand is practically a suburb of Philadelphia? A. Yes, really outside of Camden; just across the river from Philadelphia.

Q. Are you employed in any capacity? A. Yes, I am.

Q. In what? A. I am a teacher.

Q. And were you in May of last year, 1925? A. Yes.

Q. Do you recall May 21st, 1925? A. Yes, I do, fortunately.

Q. Where were you that day? A. In school until half-past three.

Q. And from then? A. Then I left for home and generally arrive home somewhere around four, quarter past.

Q. Did you see your son George on that day? A. Yes, I did. I was very much surprised to see him.

Q. Where did you see him? A. At home.

Q. In Collinswood? A. Yes.

Q. At what time? A. I should think it was quarter after four or half-past four.

The Court: Did he get there before you did?

The Witness: He got there before I did.

Q. And did you continue to see him, or during what hours? A. He was there to dinner and left in the evening.

The Court: You mean late dinner?

The Witness: In the evening.

Q. How do you fix the date? A. I fix the date because my younger son, Albert, was leaving for a trip.

Q. And you have checked that date? A. Yes.

Q. Because of that? A. Yes.

Q. Have you checked it any other way? A. Yes, I have checked that because my oldest son, he was to start to work the following Monday morning.

Cross examination by Mr. Holland:

Q. How old is Albert? A. Albert is twenty-six.

(Witness Excused.)

Mr. Dolan: That is the defendant's case.

Mr. Dolan: I offer the demand for the bill of particulars and the bill.

(The demand for the bill of particulars is admitted in evidence and marked D-7.)

(Bill of particulars received in evidence and marked D-8.)

IN REBUTTAL.

WILFRED H. JAYNE, recalled by the State:

Direct examination by Mr. Holland:

Q. Mr. Jayne, did you ever personally represent Mr. Claypoole? A. No, sir.

Q. And how long does it take to go from Lakewood to Collinswood or Philadelphia? A. Well—

Mr. Dolan: Mr. Jayne is no expert.

Q. Well, have you been to Philadelphia? A. Yes.

Q. And you live in Lakewood? A. Yes.

Mr. Dolan: I withdraw the objection.

A. Well, I think the distance is about fifty-five miles and ought to be able to drive it in not less than two hours and a half.

Mr. Holland: That's all.

(Witness Excused.)

HARRY K. FANCHER, sworn on behalf of the State in rebuttal, testifies as follows:

Direct examination by Mr. Holland:

Q. Mr. Fancher, you are an officer in Port Morris and were an officer in Port Morris on May 25th? A. Yes.

Q. The son of James Fancher who was on the stand yesterday? A. Yes.

Q. Were you over in Claypoole's office sometime in May? A. Yes.

Q. Have any conversation with him? A. Several.

Q. What conversation did you have with him in

regard to employing men? A. Well, I went to Newark on some business and came back and heard that the sheriff had laid off his men, so the following day I went down to George and showed him this paper. Well, he says, that don't mean anything, that paper, you are still in my employ.

Q. And on Sunday, the 17th, I think, Sunday—the 24th of May, did two officers come up to Port Morris to assist in raiding a crap game? A. I don't know the exact date but it was on Sunday that they arrived, they were to our house.

Q. Who was it? A. Tillotson, McDonough and my father and myself.

Q. With whom did you make arrangements? A. With Claypoole, I believe.

Cross examination by Mr. Dolan:

Q. Now, you say you believe. Do you know when these arrangements were made? A. The arrangements were made by Mr. Tillotson to my knowledge.

Mr. Dolan: That's all.

(Witness Excused.)

G. BECKER JAMISON, sworn on behalf of the State in rebuttal, testifies as follows:

Direct examination by Mr. Holland:

Q. Mr. Jamison, you are a newspaper reporter for the Jerseyman? A. Yes.

Q. Do you remember the night of May 24th when Tillotson and McDonough were arrested and sent to headquarters? A. Not Tillotson and McDonough; it was the night that Harry Flanger—

Q. Or the night of the day that Harry Flanger was cut? A. Yes, that was on Friday the 22nd.

Q. Where did you see Claypoole? A. Well, I was in there—

Q. In where? A. In Police Headquarters before Claypoole came in and I think a policeman by the name of Al McGuire was working on the Flanger case and I said to him, "Halloa, George, what are you doing here or where did you come from"; he said, "I came from Boonton," and he said, "You are responsible for all this; he said the newspapers are responsible for all this," I said, "What do you mean"; "Well," he said, "you published the sheriff's men were laid off and these bootleggers know that we cannot carry guns now" and he said that was the reason that Flanger got cut. I said, "Well, it was true, wasn't it?" He said, "Well, you see we are working yet."

Mr. Holland: That's all.

Mr. Dolan: No questions.

(Witness Excused.)

SAMUEL GOULD, sworn on behalf of the State in rebuttal, testifies as follows:

Direct examination by Mr. Holland:

Q. Mr. Gould, in May, 1925, you were one of the sheriff's operators? A. Yes.

Q. Employed by George Claypoole? A. Yes.

Q. And you were arrested and indicted and pleaded *non vult* to an assault? A. Yes, sir.

Q. And the Prosecutor moved sentence and the Court has still deferred it? A. Yes.

Q. Did you appear before the May Term of the Grand Jury sometime in July, 1925? A. Yes.

Q. Were subpoenaed as a witness? A. On liquor cases.

Q. And did you return home that afternoon? A. I did.

Q. With whom? A. With Claypoole.

Q. In whose car? A. Mr. Claypoole's.

Q. Have any conversation with him? A. Yes, sir.

Q. What was it?

Mr. Dolan: I object, if the Court please.

Mr. Holland: I laid the foundation for this.

Q. Did he speak to you about the list in the possession of Tillotson? A. Well, he talked to me about the list, he didn't say whether it was in the possession of Tillotson or McDonough.

Q. What did he say about the list? A. He claimed the list did not mean anything to him but he would like to have the list just the same.

Cross examination by Mr. Dolan:

Q. Did he speak of a list or a paper? A. A list.

Mr. Dolan: That is all.

(Witness Excused.)

EUGENE VALERIO, sworn on behalf of the State in rebuttal, testifies as follows.

Direct examination by Mr. Holland:

Q. You live in Morristown? A. I do.

Q. And in May, 1925, were you one of the operators with Claypoole? A. I was.

Q. Hired by him? A. Yes, sir.

Q. When did you first go to work? A. June 1st, 1924.

Q. You continued on until when? A. Why, right until May 7th, 1925.

Q. When did you know you were laid off? A. The Jerseyman Newspaper.

Q. Didn't hear of it until then? A. That's when I was convinced I was laid off.

Q. Was that the issue of the 19th that's been spoken of? A. I believe it was.

Q. That is the date you appeared before the Grand Jury, the 19th? A. Never was before the Grand Jury.

Q. Was there money borrowed by Claypoole from Bozzi through you?

Mr. Dolan: Object to that, if the Court please. That is not rebuttal. It is not part of the case.

(Argument between counsel and the Court.)

The Court: I think that will be excluded.

Mr. Dolan: I think the jury ought to be instructed to disregard any statements by the Prosecutor in this argument.

The Court: The jury will be instructed that statements made by the Prosecutor is not evidence in this case.

Mr. Holland: I have other witnesses along this same line with the idea that I laid the foundation for it, and of course, I have no other way of introducing it except based on that denial. If your Honor is ruling out that testimony, I don't want to produce any more witnesses. (Argument.)

The Court: Then your case is closed?

Mr. Holland: That is our case.

The Court: Then I understand both sides rest.

(Thereupon Mr. Dolan summed up to the jury in behalf of the defendant.)

(Thereupon Mr. Holland summed up to the jury in behalf of the State.)

(Thereupon the Court charged the jury as follows:)

Charge.

PARKER, J.:

Ladies and Gentlemen: This defendant, Claypoole, stands before you indicted and has been tried under an indictment charging the crime of conspiracy. Descriptively, both the forms of conspiracy involved in this case are the obstruction or perversion of justice and conduct which, in the vernacular, may ordinarily be characterized as a form of grafting. The State's case, generally, as I take it, is about this: that in May of last year, the Elisor Grand Jury had finished or was about to finish its work; had been discharged or was about to be discharged, and that this man, the defendant, Claypoole, and perhaps others, but certainly he, as claimed by the State, thought there was an opportunity to make a little something out of it, because the Elisor Grand Jury had done nothing with the various bootlegging cases directly and that it was practicable to make some money, by promising immunity to certain of those who were accused of having been bootleggers and illicit sellers of liquor, under the idea that if they paid, they would be in some way or other protected against indictment or against prosecution. And with that idea in mind, according to the State's claim (and I am merely indicating the State's claim here without expressing my own view in the matter), Claypoole had a meeting with these two men, McDonough and Tillotson and gave them a sheet of typewriter paper with a half dozen or

more names on it, marked S-1, and said, "go out now and collect from these men fifty or a hundred dollars apiece or whatever they can pay, and let them know that if they pay, we will see to it that no further proceedings against them will be had and the evidence 'squashed.'" And if they were willing to do it and they did not perfect the arrangements they entered into, that doesn't make them any less guilty of the crime of conspiracy, and as a matter of fact, they even undertook to make one or more of these collections. They tried one man, I think it was McCormick they went to first, up at some place beyond Dover; and there were so many automobiles standing in front of the place that they were timid and did not go in. Then they went over to Everman's You have heard the testimony, and that Everman said, he could not do anything that night, but if they would come back on Sunday, he would see what he could do, and that they did come back, after having reported to Claypoole, and that Everman counted out twenty-five dollars and when Tillotson and McDonough, whoever it was, picked up the money, the State Trooper, who was in concealment in the next room while they were there, suddenly appeared and arrested both of these men and, of course, whatever plans there may have been stopped right there. They were arrested, put in jail and finally bailed out, and then certain conversations took place, as they say and as the State claims, between them and Claypoole afterwards, but I am not going through all of this testimony because the hour is getting late. You have heard the evidence and the comments from both Counsel.

Now, a conspiracy, as the common law regards it, in the absence of statute, is a confederation of

persons to effect an unlawful object by either lawful or unlawful means, or it may even be conspiracy if the combination is to effect a lawful object by unlawful means. That is the general rule. If there was such a conspiracy as claimed by the State in this case, it would, of course, be in the first class, because it would be a combination to effect an unlawful object by unlawful means. For, of course, it would be an unlawful object to prevent a proper indictment and, of course, it would be unlawful means to prevent a proper indictment by bribery and then afterwards obstruct the indictment or prevent it from being tried, and the Statute says that if they combined together or confederated or conspired between themselves to commit any crime or falsely or maliciously indict another, and so on; or to permit any act, and this is the important part of the Statute: "any two or more persons who shall combine, unite, confederate, conspire or bind themselves by agreement or other alliance to commit any crime or falsely or maliciously to indict another for a crime," and so on, stating several other kinds of actions, but that is the important part of the Statute, "or to commit any act for the prevention or obstruction of justice or the due administration of the laws, shall, on conviction, be deemed guilty of a conspiracy," and shall be liable to certain penalties. There is the definition of the crime of conspiracy, and if the State has sustained its side of the case upon the evidence under the rules that are to be given you for your consideration on the burden of proof, why, you ought to have no other conception than that there was a conspiracy formed.

There is another thing and that is what is known

to lawyers as the rule of overt act. This statute says that no agreement to commit any crime, other than certain crimes which are not material here to us, shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to the agreement. And, consequently, in order to complete proof of the crime of conspiracy in this case, it is necessary for the jury to say, first, that there was this agreement as charged in the indictment to give protection, under the common phrase, to one or more of these persons named in consideration of money to be paid for the same, and that the agreement between Claypoole and Tillotson and McDonough, was to go out and induce these men to pay and to save themselves from prosecution if they paid, and some overt act done in pursuance of that agreement, and that the State claims was done, in that Tillotson and McDonough did go and did actually see one of these men and did make arrangements with him for the payment of money. And if such is present, it would be sufficient to constitute an overt act.

Of course, if the defendant is to be found guilty, he must be proven to be guilty, and there we have what is known as the rule of burden of proof. The burden of proving the defendant's guilt is upon the State. The defendant comes here to trial with the presumption of innocence, notwithstanding the indictment. That presumption remains throughout the trial and the burden is on the State at the end of the trial to have proven the defendant guilty of the indictment beyond a reasonable doubt. And that leaves the question always, what is reasonable doubt? And on that

we have the pronouncement of our Court of Errors and Appeals which I have not had time to send for, but I think I can give you from memory. It says, reasonable doubt is not a mere possible doubt. It is that state of mind which, after fairly considering all the evidence, leaves the minds of the jury in such a condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. Now, that is the kind of reasonable doubt that would call for an acquittal; and you have to be satisfied beyond a reasonable doubt of guilt before you can convict.

There has been a certain amount of comment in the summing up in this case with regard to the value the jury ought to place upon the testimony of some of the witnesses; and, of course it is undenied that Tillotson and McDonough were both indicted for some crime alleged in an indictment which has been produced and which has been put in evidence and which you have not read. I understand that charges them with conspiracy also. You will see it, however, and that they pleaded *non vult* to that indictment but have not yet been sentenced. And it is said, and properly said, that you ought to consider that fact and that you ought to make allowances for their testimony because of the natural tendency of one who has admitted his guilt in open court and is awaiting sentence of the law, to do what he can to aid the prosecution in this case with the idea that later on when his turn comes the law will be more disposed to be lenient with his case. And that, as I said, is something which you are entitled to consider and if you find you ought to make allowance with regard to the testimony of

these men on that subject and if you do not believe it, that is your right. You are the sole judges of the evidence and the Court has no right to tell you what the facts are in this case and it makes no pretense of doing so. There is also this other rule which is laid down in our statute, that while no one is disqualified by reason of having been convicted of crime from testifying as a witness, yet his conviction of crime may be shown on his cross examination or by the production of the record for the purpose of affecting his credit, the underlying theory being that someone who has been convicted of crime is less worthy of credit on that account. You should give such scrutiny to that testimony as you feel is proper. So far as that matter is concerned, it is really up to you as to what effect it has on Tillotson and McDonough, although they have not been sentenced for their crime as yet. It certainly would affect the defendant, Claypoole, who has told you that he was indicted for a misdemeanor and desertion of his wife and that he pleaded *non vult* or guilty, or whatever that was, and that sentence was a term of imprisonment and he served that term.

Mr. Dolan: He waived indictment.

The Court (to the jury): It was still a form of allegation from the Prosecutor which, I take it, means the same thing. It is, however, not a material point in the matter.

Then there is another rule, not a controlling one, in regard to the evidence and weight of evidence, and that is the rule bearing on the weight and value that ought to be given by the jury to the testimony of accomplices or co-conspirators, where all are guilty and one or more of them undertake

to testify against another, how far should the jury credit their testimony? The rule, as I understand it, in that class of cases is, that the jury are not absolutely controlled by the fact that these other men are accomplices anymore than they are controlled by the fact that they have been convicted of crime. That is a circumstance that the jury are entitled to consider and should consider in dealing with other evidence, and it is probable that where accomplices or co-conspirators are witnesses for the prosecution, their testimony ought to be considered with great care and caution by the jury. While it is always better, if practicable, that such testimony should be corroborated by some outside evidence that would help it, that is not absolutely necessary, and that is about all that I think is really required on that phase of the case.

And so I tell you, in considering the testimony of these men McDonough and Tillotson, you are to consider it with care; you are to subject it to the closest scrutiny and you are to receive it with more or less caution, but you are not debarred from believing it if you think it bears a semblance of truth.

I think, Ladies and Gentlemen of the jury, that is all that needs be said in the matter of instructing you upon the law. I have already said I am refraining from going at length into the facts as they are fresh in your mind and the hour is growing late. This case has been conducted throughout in what might be characterized as a more or less friendly way, so far as a contest of this kind can be friendly, as between the State and one who has been indicted for a crime. The fact that Counsel have been polite to each other and have been

polite to the Court and the Court tried to be polite to Counsel, is not a fact that should affect you at all from treating the case as one of great importance and seriousness; because the crime of which this man has been indicted is one, as you will see, that strikes at the very foundation of justice, and where the processes of justice are to be corrupted by the acts of venal agents, you can see that the whole combination of our law and order breaks down. And so I am sure that you, as members of the jury of this County, will give this case the careful consideration that its importance demands, and I know you will bring in a verdict that is in accordance with the evidence.

Let the officers be sworn.

Before the jury retires, Mr. Dolan, perhaps the Court ought to say to the jury that the Court did not give the jury its views of the case but merely undertook to state the State's case and it is for you to find out what the facts are.

The Tillotson book is excluded.

The requests to charge are refused except as charged.

(Thereupon the jury retired.)

Exceptions.

Mr. Dolan: I desire to take an exception to your Honor's refusal to charge the requests as requested. I also desire to take a general exception to your Honor's charge.

The Court: Exceptions are allowed.

C. W. PACKER, J. (L. S.).

THE STATE
v.
GEORGE C. CLAYPOOLE.
} On Indictment for Conspiracy.

FIRST.—The jury in considering the evidence must start with the legal presumption of the defendant's innocence, which presumption must continue throughout all their deliberations, unless the evidence establishes the defendant's guilt beyond all reasonable doubt.

SECOND.—The law presumes the defendant to be innocent until that presumption of innocence is overthrown beyond all reasonable doubt, by evidence in the case.

THIRD.—The presumption of innocence attaches to the defendant from the very beginning, and such presumption of innocence must be carried by the jury into their final deliberations.

FOURTH.—A reasonable doubt in law, is that state of mind which, after fairly considering all the evidence, leaves the mind of a juror in such a condition that he cannot say that he feels an abiding conviction of the defendant's guilt as charged.

FIFTH.—The defendant is not required to satisfy the jury of his innocence, but the burden is always upon the State, and the State must prove beyond all reasonable doubt, that the defendant is guilty of the crime charged.

SIXTH.—The burden of proof never shifts from the State in a criminal trial, but throughout the entire trial, the burden of proof is always upon the

State to prove the defendant's guilt of the crime charged, beyond a reasonable doubt.

SEVENTH.—If there is in the mind of any juror a reasonable doubt of the defendant's guilt, fairly arising from the evidence in the case, the juror has no right to consent to a verdict of guilty in deference to or from respect to the other jurors' belief or opinion. Such juror must stand by and abide by his own belief formed in his own mind from the whole of the evidence in the case in which he believes, including the testimony of the defendant.

EIGHTH.—Each juror must reach a conclusion. Eleven jurors are not competent to reach a verdict in the case. All must reach that conclusion. No juror is relieved from responsibility by letting any member of that body agree upon a verdict and then by consenting to it, because it is the judgment of the others. Each juror must reach his own judgment after discussion of the facts with his brother jurors.

NINTH.—If there is in the mind of the jury one or any number of theories consistent with the defendant's guilt, fairly springing from the evidence in the case, which the jury believe, and but one theory consistent with the defendant's innocence, fairly arising from the evidence in the case, including the defendant's testimony, which the jury also believe, the jury must disregard and put aside all those theories of his guilt and adopt that one theory of his innocence, and render a verdict of not guilty. For, in such condition of the case there would be a reasonable doubt of the defendant's guilt, and the defendant should be acquitted.

TENTH.—If there is in the mind of the jury a

reasonable doubt as to the truth of any testimony on the part of the State, such doubt must be resolved in favor of the defendant by the rejection of such testimony. If there is a reasonable doubt as to the truth or untruth of any testimony on the part of the defendant, such doubt must be resolved in favor of the defendant, by treating such testimony in his favor, as though unquestionably true and correct.

ELEVENTH.—Tillotson and McDonough are self-confessed accomplices to the offense charged. Their testimony should therefore be regarded with suspicion and the defendant should not be convicted on their uncorroborated testimony.

TWELFTH.—In considering the testimony of Tillotson and McDonough, the jury should weigh carefully the strong motive of hope of favor or pardon actuating them in testifying.

The jury return to the court room, having reported they had agreed on their verdict.

The Clerk: Members of the jury, have you agreed on your verdict?

The Jury: We have.

The Clerk: Who shall say for you?

The Jury: The Foreman.

The Clerk: What say ye, Mr. Foreman, do you find the defendant guilty or not guilty?

The Foreman: We find the defendant guilty.

The Clerk: Hearken to your verdict, you say you find the defendant guilty as charged in the indictment and so say you all.

The jury: Yes, we do.

Thereupon the Court dismissed the jury.

OYER AND TERMINER.

MORRIS COUNTY.

Before—Hon. CHARLES W. PARKER, Justice of the Supreme Court.

THE STATE

v.

GEORGE CLAYPOOLE,
Defendant.

Morristown, N. J., March 13, 1926.

APPEARANCES:

For the State, Hon. ALBERT H. HOLLAND, Prosecutor of the Pleas.

For the Defendant, WILLIAM A. DOLAN, Esq.

The Court: In State *v.* Claypoole, Mr. Dolan moves for a continuance of the sentence, in order what? In order to gather newly discovered evidence?

Mr. Dolan: Evidence that I can present to your Honor which I believe would justify the granting of a new trial.

The Court: Well, that is one application.

Mr. Dolan: Yes.

The Court: Now, the other one is what?

Mr. Dolan: A motion in arrest of judgment on the ground that this is a charge of conspiracy, and you see, it appears that the others indicted with this defendant are not absent, they are known to the State, that they are not dead, nor have they been previously convicted, and that, therefore, judgment cannot be imposed at this time.

The Court: All right.

Mr. Dolan: Now, I would like to call your Honor's attention again to this section in Wharton's Criminal Law, which I brought to your attention during the trial, where he says that a charge of conspiracy cannot be sustained against two defendants, one of whom was at the time of the offense insane. That is not the section I want. One defendant may be tried alone when his co-conspirators are alleged to be unknown, or when such conspirators are dead or absent or previously convicted.

The Court: Professor Wharton is not stating the law of New Jersey on the point, Mr. Dolan.

The Prosecutor: May I say to your Honor on that point, that that may be correct, but it does not reflect the situation in this case.

The Court: Well, never mind about that. I do not think it is the law of New Jersey.

The Prosecutor: If the other two were unknown, if the other two had been previously convicted, then the indictment might be against Claypoole alone; but that is not the case here. The indictment is against these co-conspirators against whom a severance was requested in favor of one.

The Court: Well, go on, Mr. Dolan.

Mr. Dolan: I have examined with some care what authorities have been available to me, and my conclusion is that in any conspiracy case there must be a conviction of two, or some indication of a *nolle prosse* or a plea as to the other defendants; but of necessity no one man can be convicted of conspiracy, and I am quoting now from the article on conspiracy which appears in Corpus Juris, where it says it is not necessary that all of the defendants charged with conspiracy be shown

to be guilty; it will be sufficient if the guilt of at least two is shown. In these circumstances, the charge against the others will be treated as surplusage. And then the rest of that paragraph, that two must be convicted. Speaking of the action afterward, the author says, there is impropriety in proceeding to judgment against one defendant that has been convicted before the trial of his co-defendants, and the judgment should be suspended until the number necessary to the crime are convicted, those found guilty being meanwhile held in custody or under recognizance. And that seems to be the same rule recognized and applied by Mr. Hochheimer in his work on Criminal Law.

The Court: You are not urging the 64th section of the Criminal Procedure Act this morning?

Mr. Dolan: Well, that is the one which provides for severance where there has been a removal to the Supreme Court.

The Court: Yes.

Mr. Dolan: I did speak to your Honor about that, and I think by way of inference that would clearly indicate that there should not be a severance in a conspiracy case, recognizing what seems to me is the common law rule that there should not be a severance. On my motion for a new trial, I wanted to urge that again before your Honor, that my impression was that this might dispose of the matter this morning and until some action was taken with reference to the other defendants, because, if they are acquitted, as your Honor suggested, it seems to me then, of necessity, this conviction must be set aside.

The Court: No, no, no; I did not say that. I said just the opposite. I said just the opposite. And that is the case I have been trying to find

and cannot. I think I wrote the opinion myself, and that is the reason I remember the case; but it was something like this: Three were indicted, one of them died, another was acquitted, and then the third was convicted. Now, whether the two early ones were tried together or not, I do not know, but the case presented was that of one man being convicted of conspiracy and the other two not,—I am trying to find it—and it will interest you to note that that was about the way it worked out.

Mr. Dolan: I have been trying to find just that situation. About the only available authority I have had is this work on Corpus Juris, which is simply a combination of cases and excerpts from them and not entirely reliable as I recognize them, and most of the cases seem to be English cases.

The Court: Now, about this Section 64, you made some point of it the other day, but not so much today, and I took the trouble to look at it with care, and that is the section in which a defendant, not the prosecutor, but the defendant, is by law entitled to a severance when he wants it. The section says, in effect, this: That if a defendant jointly indicted in a case that has gotten up into the Supreme Court, no matter how, says to the Court by affidavits and other proper proof that the others who are jointly indicted with him are material witnesses for the defense and he wants to use their testimony, that then, upon that matter being properly brought to the attention of the Court, that defendant is entitled to be severed on an application for the purpose of having those witnesses. Then, in the Bosschieter case over in Paterson, State *v.* Kerr, I think, was the name, a severance was asked for before Judge

Dixon in the Oyer, and in the opinion you will find reported in the New Jersey Law Journal, Judge Dixon said, "It is true that this statute by its terms is restricted to cases of this nature that have been removed to the Supreme Court," or, perhaps, originated there. "But it is inconceivable," he said, "that if that is the rule in the Supreme Court there should be any different rule in the Oyer; therefore, the defendant Kerr," or whoever it was, "having asked for a severance and stated his grounds in a legal way, I am bound to grant it." The Prosecutor did not ask for any severance, and I have always understood the law in this State to be that in a joint indictment where a severance is asked, while the matter is discretionary with the Court, it is customary and always proper for the Court in its discretion to permit the severance, and that the conspiracy cases are no exception is shown by a long line of decisions that you cannot perhaps readily dig out in the Digest unless you take the title "Conspiracy" and look at every case reported under that title. And then you will find it mentioned as a purely incidental, commonplace and every-day proposition, no point being made of it, that A, B and C were indicted and there was a severance, and that A was tried alone. You will find it so in these special cases I have marked. Sometimes there was a severance, and sometimes there was not. But here, for example, is way back in 32 Law, 3rd Vroom, Brien *v.* Smith, I do not just know how that happens to be the name of the case, indictment for conspiracy and a severance, and on the trial it was objected that a joint defendant not on trial and who had not pleaded was an incompetent witness for the State; the propriety of

the severance was, apparently, not questioned. Chief Justice Beasley reviewed the authorities and held that a co-conspirator was a competent witness. He does not differentiate joint defendants on a charge of conspiracy from those under any other charge.

And in Noyes *v.* The State, which is in 41 Law, there was a severance in a conspiracy proceeding, and one Stedwell, a joint defendant, was held competent to testify against Noyes on the separate trial of Noyes.

Now, coming down to later days, State *v.* Sabato, 91 Law, 370, three were indicted and two were tried; that, perhaps, is not so much in point, except as to the severance. The third was severed.

State *v.* Herbert, 92 Law, nine were indicted, three were severed over the objection of four others, two of the other five were convicted, and three acquitted.

State *v.* Gregory, 93 Law, 205, three were indicted, severance of two was ordered, and the third was tried. Now, that is this case. The propriety of the severance was not raised.

State *v.* Faure, 98 Law, 18, three were indicted by name, other unknown parties being mentioned, one fled the State, another was severed and four were tried alone.

In the case of State *v.* Reidler, right here in this Court, one of the Bolitho cases, Mr. Jayne, an exerienced prosecutor, asked for a severance of Reidler; the indictment was against Bolitho, Reidler and Canty, and the severance was ordered as a matter of course, and Mr. Matthews, who I think we all agree is an able and experienced criminal lawyer, I do not recollect raised any objection whatever to the severance. If he did,

he did not press it, and Reidler was tried alone, while neither Bolitho nor Canty had ever been arraigned. The Reidler case is now before the Supreme Court on writ of error, and you can find out, if you want to, whether that point is raised. But so far as my researches go, I cannot see anything in it, I have to tell you plainly.

Mr. Dolan: Well, it was more a matter of inference in that section of the statute which seemed to except conspiracy cases specially, and this suggestion by Professor Wharton that there could not be a severance, which I felt justified me in making the application, and it certainly seems to me that in any conspiracy case no one man can be convicted and the others allowed to go, that there must either be some explanation for their not being convicted, or something done with them. If, as your Honor suggested, the two other men mentioned in this indictment are acquitted, then it seems to me it would be impossible to sustain this conviction.

The Court: Suppose there were three, and the other two were dead?

Mr. Dolan: Well, Professor Wharton seems to recognize that as an exception.

The Court: Well, suppose there were three, and the other two were in Ceylon, we cannot get them, or Venezuela?

Mr. Dolan: In that case he seems to recognize that as an exception, if they are dead or if they are absent or if they have been previously convicted, but if those facts do not appear, then it would seem that the judgment should be arrested until some disposition is made of them; and it seems to me if, as your Honor suggested, these two

men should be tried and acquitted, certainly George Claypoole could not be guilty.

The Court: Then your idea would seem to be, while the Court may proceed to a verdict as against one, it cannot proceed to sentence him on that verdict until the other two have been disposed of, or on of the others?

Mr. Dolan: Yes. That is exactly what is laid down as the rule here. Of course, this is not a New Jersey citation. It is an English decision, apparently; it says, "It has been held, however, that, although this practice may be proper where one alone is indicted for a conspiracy with others unknown, or where he is indicted with others who cannot be taken or brought to trial, yet where several are prosecuted together, and may be brought to trial for conspiracy, and on severance only one has been tried and found guilty, there is impropriety in proceeding to judgment against him before the trial of his codefendants, and the judgment should be suspended until the number necessary to the crime are convicted, those found guilty being meanwhile held in custody or under recognizance." And that particular citation is of a Wisconsin case, and several English cases and a federal case.

The Court: You have not got even a case of a decision in New Jersey on that point?

Mr. Dolan: I am sorry to say I have not. It seems to me logical and reasonable, however, that in the absence of some explanation for the fact that the others have not even been tried, there should not be an imposition of sentence, because, of course, one man could not be guilty unless someone conspired with him. I have some statements with reference to the application, but I would

prefer to present them all at the same time, and I am in this unfortunate position just now; one of the parties on whom I hoped to rely is at present in Florida and expected back within the next two weeks, and inasmuch as this defendant is now on bail and it is satisfactory, I assume, to the Court, I can see no grave injustice, or that justice will suffer any by its being continued, and I really felt I was justified in moving for an arrest of judgment on account of the fact that no disposition had been made in the case of the other two.

The Court: Well, I am glad to hear you, and my task is not to argue it, of course, but to decide it, and you have to take my remarks in that vein.

Mr. Dolan: If your Honor would lay the matter over for two weeks, in consideration of that proposition, I could then get further statements. I have some, all I can present now, but I assume your Honor would rather dispose of the whole matter at one time, probably.

The Court: No, I would not. If you have anything to say on this question of newly discovered evidence, you better put it up now, because I am not disposed to defer sentence in this case. When was this verdict?

The Prosecutor: March the 3rd.

The Court: The 3rd of March, yes, all right. You have had ten days in which to work this up.

Mr. Dolan: But this party who I feel will make a very material statement is just at present in Florida.

The Court: Well, if you are waiting for these Florida exploiters to get back, we would not do any business at all. I do not think I have heard of a single case in the last few days where somebody is not in Florida. I am not doubting for a

moment that your man is in Florida, and that he is of consequence, but I would say we cannot wait for these people in Florida to get back very well, it will stop the entire business of the court.

Mr. Dolan: I have two statements here which, if your Honor feels it should be made at this time, I will present these statements.

The Court: Affidavit?

Mr. Dolan: They are in the form of written statements signed by the parties.

The Court: Well, we will regard them as affidavits for the present.

Mr. Dolan: One is a statement by Bernard MacMenamee, and shall I read it to your Honor?

The Court: Yes. Go ahead.

Mr. Dolan: Dated Morristown, March 11, 1926. (Reads statement referred to.)

There is a similar statement by John O. Van Keuren, who was present at that time, and makes the same statement.

I have a statement by Arthur O. Hamilton of Boonton, who runs a garage at Mountain Lakes. (Reads statement referred to.)

The Court: What do you think your Florida man would say if he were here?

Mr. Dolan: I am informed and believe that he will say that he was in Collingswood in New Jersey, just outside of Philadelphia, and that George Claypoole was there that day and made purchases at his store at a time when George Claypoole could not have been at Boonton, or wherever this house was where the other two co-conspirators allege this conspiracy took place.

The Court: Well, that is merely cumulative evidence on the alibi.

Mr. Dolan: That would be cumulative, but I

feel a matter of fairness to this defendant almost demands it be taken under very serious consideration, because your Honor will recall before the trial I made application to the Prosecutor for a bill of particulars, asking him to indicate what charges we would have to meet. His reply was, the charge in the indictment. Now, the charge in the indictment is that on the 7th day of May, 1925, these men conspired. There was no possible way, either from the indictment or from the bill of particulars which I received from the Prosecutor, for me to know that I would have to meet any situation on the 21st day of May, and I had no knowledge whatever, nor did this defendant, so far as I know, that that date would be a material date, until it was sworn to by the two men mentioned in the indictment. As soon as we discovered that on the day of the trial Mr. Claypoole produced his diary showing that he was in Philadelphia that day. That evening, immediately after the trial, I had him go to Philadelphia and endeavor to get witnesses who could assist in establishing his alibi. As your Honor will recall, we were able to produce only his mother and sister, and while I was very much impressed by their testimony, I realized it was subject to the criticism always, it is a member of the family and hence vitally interested, and might not be accepted with any such degree of sincerity as that of an outside witness who would have no interest except to tell the truth. And I believe if we had an opportunity to present not only this man who is in Florida, but others who were outside the family and who saw George Claypoole in Collingswood or Philadelphia on the 21st of May, and if your Honor will recall, they fixed that date very specifically and definitely,

that that would aid another jury materially in determining whether or not their statements could be accepted. While that, as you have suggested, is in a sense cumulative, yet we had no way to know that that date would be material, nor that evidence of what occurred that day might be of value, and I feel that a sense of fairness alone to this defendant would demand that he be given an opportunity to present that testimony so that a jury might take that into consideration.

The Prosecutor: When these statements were drawn on the typewriter, it was never intended that they be sworn to; there is not even the subscription of an affidavit on the bottom. As a matter of fact, Bernard MacMenamee was here in Court under the defendant's subpoena, and told me the same story which Mr. Dolan is now urging as newly discovered evidence, and they took their chance on not putting him on the stand, because they thought that would even then weaken the defendant's case.

So far as Hamilton's bill, the garageman, is concerned, your Honor will recollect the testimony of everybody concerned that Tillotson was the man who owned the car, and that Claypoole was the man who drove the car, and that McDonough did not have a car; that McDonough rode on Claypoole's car, and that Claypoole gave him a ride and, consequently, at that time, he could not have and did not have a car nor a bill.

The Court: What do you want to do about this Florida witness?

Mr. Holland: Well, if your Honor please, I suppose any defendant can walk the streets and come in and tell your Honor that a Florida man—if they had some such defense, as to the Florida business,

they could at any time during the progress of the trial tell your Honor that story; but it seems to me they have taken their chance; they have come in on their defense; now that the jury has returned a verdict against them, they think they can build up a better case. That is my notion of it.

The Court: Anything further, Mr. Dolan?

Mr. Dolan: Well, I would like to put this in the form of a definite motion for a new trial on the ground that these statements set forth newly discovered evidence which I believe, as a matter of fairness, would justify the granting of a new trial. I would also like it to appear that my motion is based on the fact that the verdict is against the weight of the evidence. I feel that I will be imposing on your Honor to go into that, probably, but I do feel that this verdict, in view of the fact that it is based almost solely on the testimony of two defendants who made at least three statements, one of them was sworn to, and which the man on the stand said was false when he swore to it, cannot be sustained on the ground of justice, but must of necessity be the result of mistake, passion or prejudice. I also want to incorporate in this motion the fact that the only one indicted,—if your Honor takes the reverse attitude,—that the indictment has not been moved as to the other co-defendants, that they have not been convicted, that there has been no *nolle prosse* as to the others, nor does it appear that they have plead.

The Court: All that appears on the record, doesn't it?

Mr. Dolan: Yes.

The Court: It must; otherwise you could not move it in arrest of judgment.

Mr. Dolan: Yes, sir. That depends on the record.

The Court: Well, you have that entered on the record and you have your error.

Mr. Dolan: Yes. On the ground that the State practically refused a bill of particulars, and that the defendant was prejudiced in the trial of his cause because the only exact charge the State gave to the defendant was that the charge in the indictment was the one which would be pressed, and that said that this conspiracy occurred on May 7, 1925, when, as a matter of fact, the proof was May 21st, and that variance was very material, as has been stated here before the Court, and I would like to have a general exception that the conviction, or that the defendant was illegally tried, and that he was illegally convicted, that he had had no fair opportunity to present or obtain witnesses who could establish the fact that he was not present at the time at which the co-conspirators allege this conspiracy took place.

The Court: Well, these motions will all be denied. The Court may as well proceed to sentence and get this case disposed of. If there is any error on the record or in the refusal of the bill of particulars, why, that will be corrected above.

Mr. Dolan: I make a similar motion in arrest of judgment on the same grounds.

The Court: Yes. The motion will be denied. The Court will proceed to sentence. The defendant may stand. George Claypoole, you were convicted by a jury of this County of the crime of conspiracy under very similar circumstances, speaking in a general way, to those that obtained in the matter of Reidler, and the Court feels obliged to impose the same sentence.

The sentence of the law is that you be imprisoned in the State Prison for the term of not less than two nor more than three years, and from thence until the costs of prosecution are paid.

Now Mr. Dolan, have you any writ of error ready?

Mr. Dolan: I would like to move—

The Court: You ought to have your writ of error so we can get this man bailed. I suppose he will have to be committed now until your writ of error is taken out.

Mr. Dolan: Well, will it be possible to arrange to continue this bail, pending the obtaining of the writ of error?

The Court: I am not very thoroughly versed in these intricacies of the law of bail, but I do not think so.

Mr. Dolan: Before your Honor disposes of that, I want to call your attention to the statute of 1921 which says that a motion for a new trial in criminal cases can be made at any time after sentence, after conviction and sentence. I would just like to have it appear on the record that after the sentence was imposed I made a motion for a new trial on the same grounds as were advanced on the motion before the sentence was imposed.

The Court: You are entitled to any benefit that the statute gives you in that regard. The motion will be denied, consistently with what has already been done.

Now, the defendant is supposed to be in custody of the Sheriff at this time. Is the Sheriff here to take charge of him? Here is the Undersheriff, Mr. Beach. Mr. Dolan, I do not know how the practice runs, but I think you better get your writ of error right away if you want to get your man bailed.

Mr. Dolan: Why, I have arrangements to get his bail.

The Prosecutor: It has been my impression there is nothing upon which you can take bail until a writ of error has been allowed. There is no basis for bail. It may be that after bail has been granted, no writ of error will ever be issued; I do not say that would be done; it might be, and then the Court would be in the peculiar position of having permitted a man on bail in whose behalf no writ of error has been issued. I have no objection to anything the Court desires to do in the matter. I merely point out I do not think there is any basis.

Mr. Dolan: Will your Honor be available?

The Court: Yes. But, of course, I am afraid under the rule you have got to have your writ of error sealed by the Clerk, which means Monday morning.

Mr. Dolan: I know our practice has been, and I have seen cases, where the bail was continued even after sentence pending the execution of the writ.

The Court: If you can fix that up with Mr. Holland, I will be very glad to attend to the matter for you.

Mr. Dolan: The practice may have been improper, but I know that has been followed.

The Court: I haven't any personal feeling that this man ought to go to jail or to give bail, but I have got to carry out the law the way it is, so if you can confer with Mr. Holland on that point, I will be glad to hear you.

Certificate of Stenographer.

MORRIS COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY
v.
GEORGE P. CLAYPOOLE.

Indictment No. , January T., 1926, for Conspiracy.

I, GEO. B. WHEATON, an official stenographer of the Morris County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey *v.* George P. Claypoole, which trial was held before the Honorable Charles W. Parker, presiding Judge of the Morris County Court of Oyer and Terminer, in and for the County of Morris, and a jury, on Monday, March 1, 1926, Tuesday, March 2, 1926, and Wednesday, March 3, 1926, at Morristown, New Jersey.

GEO. B. WHEATON.

Certificate of Judge.

MORRIS COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY
v.
GEORGE P. CLAYPOOLE.

Indictment No. , January T., 1926, for Conspiracy.

I, Charles W. Parker, Judge of the Court of Oyer and Terminer of the County of Morris, and the Judge who presided over the aforesaid cause, certify that the above-printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

CHARLES W. PARKER,
Judge of the Court of Oyer and
Terminer of the County of Morris.

Exhibits S-1, S-2 and S-3.

(See photograph opposite.)





Geo. Knipper = Berkshire Valley.
Joseph. Mizdoff = Boonton.
Leonard. Ringenbach = Budds Lake =
Frank. Lansing — Dover —
[illegible]nitski — Hurdtown —
John Vincent — " —
Henry Marino — Two Bridges —
Wm. Everman — Woodport —

Exhibit S-4 and D-3.

List given to Claypoole by Sheriff.

Wm. Steinka (Stinkie) Montville — O K
Falco Chicoverie Montville
David Ginsberg Wharton O K
Ted Jones Montville — O K
John Logivits Montville Turned over to Bolitho O K
Augustus H. Mutchler Raymond Dalrymple Mt. Freedon
Joseph Logan Netcong
Agostino Nicholas Kenville O K
Louis Stack Hanover
Stanley Sliva Hanover
Mike Landie Kenville
Joseph Zulla Netcong — O K
Mike Chipoletti Roxbury — O K
Martin Hardman Montville — O K
Alfred Shaw Montville — O K
Carmini Foldato Montville — O K
John Boyan Whippany
Charles Champi Roxbury — O K
Mike Urban Hopatcong — O K
" " " O K
J. G. De Filippis Sterling 1 case—1 Bot — O K
Ray Romanie Michael Keeler Wharton — O K
J. Navock Whippany
Patsy Mutarello Mrs. Kenny's House — O K
" " Two turned back to Judge Wilson in Safe
Wm. Misko Whippany √
Mary Novak Montville
Ridino Giliberto Joseph Minissale Benny Rotelli at Wharton
Peter Savachie Mine Hill — O K

Walter Stevens Port Morris — O K
Pietro Tribelli Roxbury — O K

Aug 16—

Wm. Hubbart Jefferson 2 cans—1 pt — O K
Wm. Everman Jefferson — O K
Mary Sposie Dover — O K
Spencer Huik Morristown Pequannak twp—O K
John Caruso Dover — O K
Oscar Danielson Wharton Apr 24 — O K
John Vincent Jefferson
Henry Decker Netcong O K
Peter Dolinfrio Dover — In Safe
Mike Lane Roxbury — O K
Ernest Emken Montville — O K
Antonio Bostone Netcong — O K
Jame Francomareo Mine Hill
Dominick Francomareo Netcong — O K
Constantino Riccardelli Netcong — O K
Stanley Golba Hanover — O K
Thomas Bolier Whippany — O K
Paul Kaynock Wharton O K
Gaetano Guarnieri Hanover — O K
Frank Lansing Dover — O K
Dominick Mazzani Dover

Work done by Smith for Jayne—Assisted for 4 days by Tillotson—

List given to Claypoole by Sheriff. Orders to Prepare cases for Grand Jury and—Permission Granted by E. Burdge to use two Men.

Newt Smith
& Tilson.

Exhibit S-5 and D-2.

List Given to Claypoole by Burdge—When He Wanted Evidence Prepared for Grand Jury.

		Raids		
1396	J Puick	√ bottles √	In Safe in Court House	10
~~1808~~	~~John Satterre~~	~~bottle was~~		
1473	Andrew Mayder	2 qt bottle 1√ +		
1713	Frank Kenny	1 bottle 1√ +		
1879	Lloyd Schonip	1 bottle +	Schornip	
1848	Wm Gonlisky	1 bottle 1√ +		
1656	Frank Mateo	1 bottle short	1.	
~~1693~~	~~Leo Chamberlain~~	~~1 bot~~tle		
1062	Angelo Creatura	1 bottle 1√ +	1 can broken—	20
1308	John Audinsky	1 bottle 1√ +		
813	J Feldman	1 bottle—Sent to Prosecutors Office—		
966	John Rich	1 bottle 1√ +		
1602	John Vincent	1 bottle	2.	
1607	Charlie Bernowski	1 bottle	3.	
1657	Frank Nazzaro	1 bottle 1√ +		
958	I Strot	1 bottle 1√ +		
1048	Henry McCaules	1 bottle 1√ +		
1580	John McElgreum	1 bottle 1√ +		30

BUYS SHORT

Arthur D McCormick	Oct 9-1924—Bottle—×	
Jacob Fisher	May 10-1924—Wharton +	
"	Mar 24-1925—Drinks	
Joseph Feldman	May 29-1924—Bottle&Case××	
Geo. Knipper	Apr 26-1924—Drinks&Bottle×	
"	Aug 30-1924—Drinks—×	
Angelo Creatura	May 5-1924—Bottle—×	
Wm Knipper	Apr 27-1924—Drinks—×	
L Rich	Feb 16-1924—Drinks—×	40
J Bendette	Apr 13-1924—Drinks—×	

	J Borinsky	Dec 26-1924—Bottle ×
	J Vincent	Oct 22-1924—Bottle ××
	C Bernwoski	Dec 21-1924
	S Sapio	Dec 20-1924—Drinks—×
	"	Feb 26-1925—Drinks—×
10	Annie Kudelka (Coolock)	Aug 24-1924
	D Darcey	
	Chas Show	June 21-1924
	S Casio	Mar 29-1925
	Raymond Hockenburg	June 1-1924—Bottle—×
	Peter Kelly	Oct 1-1924—Bottle—× & Bottle
	John McElgreum	Oct 25-1924—Drinks—××
20		√
	Frank McPeak	2 √
	F Bonaventura	1 √
	Leonard Ringbocker	1 √
	Ted Jones	1
	John Arondriski	1 √
	A Armenciato	1—1—
	Thomas Bright	1
	Joseph Togna	1
	Al Spodock	1
30	Mr. Stock	1
	Mike Chippoliti	1

BUYS SHORT

	Gambelli Bosseina	Apr 18-1925—2 Bottles ×
	Ralph Fusco	no date —Drinks ×
	John Sullivan	Feb 28 1925—Drinks ×
	~~Sam Sapio~~	~~Feb 26 1925~~
	Martin Lane	Oct 30-1924 Drinks&Bottle×
	Frank Valgenti	Jan 21-1925
	Stanley Norvise	Dec 24-1924—Bottle&Drinks×
40	Anna Seilsa	Oct 25-1924—Bottles ×
	Mike Urban	Oct 27-1924—Bottle ×

	Leo Chamberlain	Apr 17-1925
	"	Sept 15-1924
	Joseph Siegel	Apr 21-1925
	N. Mazocolla	Mar. 28-1925
	W Gonlisky	Apr 13-1925
	John Lavis	Dec 19-1924
	Dan William	May 1-1925—Drinks ×
	Buys. J. Baransky	
	M. Sposhi	
	Gabrielle Bessanesa (2)	
	Mike Lane	
	Mrs Secelsa	
	J. Fisher	
	J. Lieberman	
	R. Hockenburg	
	Mike Urban—	
	Blue & Gray	
	H Marino	
	Leo Chamberlain sale	Sept 15
	" Raid	Jan 22 √
	John Vincent sale	Oct 22
	Chas. Bernowski sale	Dec 21
	" raid	Dec 21
	Frank McPeak raid	Apr 14-25 √
	Wm Gonlisky sale	Apr 13-25 —
	John Lewis raid	Dec 19 √
	Frank Mateo raid	Dec 29—√

List Made by Burdge Before Grand Jury

SHERIF RAIDS

~~Bill 1107~~	~~M Gourshoski~~
	Steve Kenick
	John Seymonski
	Andrew Riseo

Presented— Scharip
Wm Patton
Thomas Dempsey
John Churscharka
Mary Sposhie
1248 John Cruno
1253–2 D Mezzine
Mike Berniski
Bill 1245 Max Schroder
Tom McCligni
1193 Frank Lansing
John Lewis
1058–2 Paul Koynoch
Geo Pierson
John Matezeki
John Tokey
R Gilberto
Joe Lorotto
Dis Chas Champi
Dis August Champi
1328 John Leinki
Dave Liberman
Bill 1256 Joe Migdoff
Bill) Joe Kazar
Ted Jones
Oscar Danielson
John Heslin
Louis Fiator
R C Romane
~~Paul Kaynach~~
1129—Dominick Frankonaro
Jos Mitchie
Mike McCormick
1291) Wm Everman
1108 J De Fillippi
Joe Ramesky
Wm Ransky

Dis—John Boiystok
John Aronduski
1172—Augusta Nicolo
Fred Jackson
Wm Kamachiski
Bill 1197 K Kayhart
1263 Pete Trihelli
L Del Signor
1258 Wm Hubert
Peter Sarochia
P Miterella
R Ciffrosso
Dis—Thos Bolsor
1093 C. Guarierni
1348 Stanley Goffa
Alex Bougor
J Kashinsky
Mike Skchanck
1301 Faleo Chevararie
Andrew Madyor
Philip Tubbrine
1316 Alfred Show
Ernest Einkin
1315 Connie Falchoti
1302 Wm Stinky
1250
1109 Mary Novak
Martin Hardman
Jos Zailis
1128 Antoni Bestore
1134 Costantino Ricerto
1238 Henry Decker
1268 Walter Stevens

Exhibit D-1—Complaint.

State of New Jersey, } SS.:
County of Morris, }

RAYMOND TILLOTSON,

of the Township of Roxbury, in said County, being duly sworn, on his oath complains and says, (that he is informed and verily believes) that on the 22nd & 24th days of May, A. D. Nineteen hundred and Twenty-five and from thence hitherto,) at the Township of Jefferson, in the County of Morris, he then being a duly appointed and qualified constable in and for said County, one WILLIAM EVERMAN of the Township of Jefferson, well knowing the premises, but contriving and unlawfully intending to prevent the due course of law and justice, did unlawfully, wickedly and corruptly offer and give and caused and procured to be given to the said deponent the sum of one hundred ($100) dollars if deponent would agree to stop prosecution of a certain liquor charge made against the said WILLIAM EVERMAN and the said WILLIAM EVERMAN then and there attempted and endeavored to bribe the said deponent, contrary to the law in such case made and provided.

Wherefore he prays that the said WILLIAM EVERMAN may be apprehended and held to answer to said complaint, and dealt with as law and justice may require.

RAYMOND TILLOTSON.

Subscribed and sworn to before me this second day of June, A. D. 1925.

JOHN H. MARTIN
Justice of the Peace.

John H. Martin, Justice of the peace. Morris Co. N. J.

State of New Jersey, } SS.:
County of Morris, }
(L. S.)

THE STATE OF NEW JERSEY, to the Sheriff or any Constable of said County:

Whereas, complaint hath this day been made to me, one of the Justices of the Peace, in and for the County of Morris on oath by RAYMOND TILLOTSON, he then being a duly appointed and qualified constable in and for said County, one WILLIAM EVERMAN, of the Township of Jefferson, well knowing the premises but contriving and unlawfully intending to prevent the due course of law and justice, did unlawfully, wickedly and corruptly offer and give and caused and procured to be given to the said deponent the sum of One Hundred ($100) Dollars if deponent would agree to stop prosecution of a certain liquor charge made against the said WILLIAM EVERMAN and the said WILLIAM EVERMAN then and there attempted and endeavored to bribe the said deponent, contrary to the law in such cases made and provided.

These are, therefore in the name of the State of New Jersey, to command you to apprehend the said WILLIAM EVERMAN if in your County he may be found, and bring him forthwith before me, or some other Justice of the Peace, or Judge of the Common Pleas in and for said County, to answer the said complaint, and be further dealt with as the law directs. Hereof you are not to fail, and for so doing, this shall be your warrant.

Given under my hand and seal, at my office, in the Town of Dover, in said County, this 27th day of May, 1925.

JOHN H. MARTIN,
Justice of the Peace.

John H. Martin
Justice of the
Peace
Morris Co. N. J.

(Endorsed):

THE STATE OF NEW JERSEY

vs.

WILLIAM EVERMAN,

Woodport.
Jefferson, Township

CRIMINAL WARRANT

Dated May 27th, 1925.

Charge Bribery

I return the within Warrant, with defendant into Court this Third day of June 1925.

ISADORE LESS. Constable.

Being 24 Miles.

Exhibit D-4.

EXTRACT FROM CLAYPOOLE'S DIARY.

May 6—Went with 2 men to Hanover & Floram Pk. Was also in Boonton and reported to Sheriff at night.

May 7—Bought bottle & drinks from Woman where Frank's friend boards ($4.00).

May 8—Bought bottle at Station place paid for drinks in Pool Room ($5.00). Man from Port Morris.

May 9—Saw Sheriff at 7.30 A. M. Madison bought quart at American House ($4.50).

May 10—Worked on Reports.

May 11—Gave $10.00 to two men from Port Morris who bought Bottles & drinks in Port Morris & Boonton. Will sign complaints.

May 12—Went to Montvill bought bottle from man at R. R. Camp ($5.00). Went to Netcong no dope? This was on complaint.

May 13—Went to Woodport. Sent man in Brights who will sign complaint. Got bottle from Vincent ($5.00).

May 14—Notified by Sheriff that I was to lay off for a while after finishing my work.
Told me to lay off all the men that I still had working.

May 15—Notified by Sheriff that Mr. Jayne wanted evidence prepared for Grand Jury. Took 2 men and started preparing same. 1 bottle from each raid.

May 16—Worked in Warehouse on liquor. By order Mr. Jayne.

May 17—Worked in Warehouse on liquor. Orders Mr. Jayne.
Went to Court House. Was not wanted.

May 18.—Worked in Warehouse on liquor. Orders Mr. Jayne.
Went to Court House was not wanted.

May 19—Worked in Warehouse and Office preparing record and arranging names of witnesses. Orders of Mr. Jayne.

May 20—Preparing evidence for transportation —and getting records ready. Order of Mr. Jayne.
Told Tillotson he was through.

May 21—Did not work—took day off. Went to Philadelphia in afternoon.

May 22—Had evidence moved out of warehouse to elevator ready to transport and waited subj. to orders Mr. Jayne.
Got call at 10 o'clock from Dover. Harry Flanger attacked by Wops. Went at once.
Arrested Frank Bonaventure. Questioned him. Took Dolingio Bros. into custody Questioned them. Called Jim Billingham at 12.45 P. M.

Exhibit D-5.

Date May 30 1925

P. O. Address Boonton N. J.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MORRIS

To George P. Claypoole Dr.

By Order of Mr. Jayne & Sheriff—

May 15—Preparing and assembling evidence on liquor cases held at warehouse & witnesses				$6.00
16	"	"	"	6.00
17	"	"	"	6.00
18	"	"	"	6.00
19	"	"	"	6.00
20	"	"	"	6.00
22	"	"	"	6.00
28	"	"	"	6.00
29	"	"	"	6.00
30	"	"	"	6.00
				$60.00

Received payment in full settlement of above account.

GEORGE P. CLAYPOOLE

Examined and approved for payment by committee
F. L. FRITTS
Chairman
STEPHEN C. GRIFFITH, JR.

Exhibit D-6.

IN THE COURT OF OYER AND TERMINER OF MORRIS COUNTY, MAY TERM, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND TWENTY-FIVE.

MORRIS COUNTY, to-wit:

THE GRAND INQUEST of the State of New Jersey, in and for the body of the County of Morris, upon their respective oaths,

PRESENT that

RAYMOND TILLOTSON and
ANDREW MCDONOUGH

late of the Township of Jefferson, in the County of Morris aforesaid, on the Twenty-fourth day of May, in the year of our Lord one thousand nine hundred and twenty-five, were duly and legally appointed and qualified Special Deputy Sheriffs of the said County of Morris, duly and legally deputized by the then Sheriff of the County of Morris aforesaid and were then and there officers acting for and in behalf of the Sheriff of the County of Morris aforesaid in the detention and apprehension of all persons who should violate the criminal laws of the State of New Jersey within said County of Morris;

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further

PRESENT that the said

RAYMOND TILLOTSON and
ANDREW MCDONOUGH

on the Twenty-fourth day of May, in the year of our Lord one thousand nine hundred and twenty-

five, in the Township of Jefferson aforesaid and elsewhere, in the County of Morris aforesaid and within the jurisdiction of this Court, being persons of evil minds and dispositions, together with divers evil disposed persons whose names are to this Grand Inquest unknown, wickedly, corruptly, falsely, knowingly and unlawfully did combine, unite, confederate, conspire and bind themselves by agreement to pervert and obstruct justice and the due administration of the laws of the State of New Jersey, to-wit, the "Prohibition Enforcement Act" of this State, pretending to one William Everman that they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH were officers as aforesaid acting for and in behalf of the Sheriff of the County of Morris aforesaid and charged with the duty of enforcing the "Prohibition Enforcement Act" of this State within the County of Morris aforesaid, and that they could protect and keep immune from arrest, prosecution and punishment the said William Everman to which he, the said William Everman might become liable by reason of any violation of the said "Prohibition Enforcement Act," and that for a money consideration and bribe, to-wit, the sum of Twenty-five Dollars to be paid by the said William Everman to the said RAYMOND TILLOTSON and ANDREW MCDONOUGH, they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH would refrain from complaining against, apprehending and prosecuting the said William Everman for any violation of the said "Prohibition Enforcement Act" theretofore or thereafter committed within the County of Morris by the said William Everman;

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further PRESENT

that in execution of said agreement and conspiracy, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH did on the Twenty-fourth day of May, in the year of our Lord one thousand nine hundred and twenty-five go to the premises of the said William Everman in the Township of Jefferson aforesaid, in the County of Morris aforesaid, and then and there did inform the said William Everman that they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH were officers as aforesaid, acting for and in behalf of the Sheriff of the County of Morris aforesaid and charged with the duty of enforcing the "Prohibition Enforcement Act" of this State within the County of Morris aforesaid, and that they could protect and keep immune from arrest, prosecution and punishment the said William Everman to which he, the said William Everman might become liable by reason of any violation of the said "Prohibition Enforcement Act," and did solicit money of and from the said William Everman and did then and there take and receive from the said William Everman the sum of Twenty-five Dollars, lawful money of the United States of America, then and there informing the said William Everman that in consideration of the payment of the said sum of Twenty-five dollars, they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH would refrain from complaining against, apprehending and prosecuting the said William Everman for any violation of the said "Prohibition Enforcement Act" theretofore or thereafter committed within the County of Morris by the said William Everman, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further

PRESENT that

RAYMOND TILLOTSON and
ANDREW MCDONOUGH

late of the Township of Jefferson, in the County of Morris aforesaid, on the Twenty-fourth day of May, in the year of our Lord one thousand nine hundred and twenty-five in the Township of Jefferson aforesaid, in the County of Morris aforesaid and within the jurisdiction of this Court, being persons of evil minds and dispositions, together with divers evil disposed persons whose names are to this Grand Inquest unknown, wickedly, corruptly, falsely, knowingly and unlawfully, did combine, unite, confederate, conspire and bind themselves by agreement to obtain money by false pretenses by falsely pretending to one William Everman that they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH were duly and legally appointed and qualified Special Deputy Sheriffs of the County of Morris, duly and legally deputized by the then Sheriff of the County of Morris aforesaid and were then and there the officers acting for and in behalf of the Sheriff of the County of Morris aforesaid in the detection and apprehension of all persons violating the criminal laws of the State of New Jersey within said County of Morris, and by further pretending that they had secured evidence of violation of the "Prohibition Enforcement Act" of this State by the said William Everman in the County of Morris aforesaid, and that they had the power and authority to protect the said William Everman and keep him immune from arrest, prosecution

and punishment for violations of the said "Prohibition Enforcement Act" committed by the said William Everman in the County of Morris aforesaid and thereby to obtain from the said William Everman a money consideration in consideration whereof they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH would refrain from complaining against, apprehending and prosecuting the said William Everman for any violation of the said "Prohibition Enforcement Act" theretofore or thereafter committed within the County of Morris by the said William Everman.

AND THE GRAND INQUEST aforesaid, upon their respective oaths aforesaid, do further PRESENT that in execution of said agreement and conspiracy, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH on the Twenty-fourth day of May, in the year of our Lord one thousand nine hundred and twenty-five, did go to the premises of the said William Everman, in the Township of Jefferson aforesaid, in the County of Morris aforesaid, and did then and there falsely pretend to the said William Everman that they were duly and legally appointed and qualified Special Deputy Sheriffs of the County of Morris duly and legally deputized by the then Sheriff of the County of Morris aforesaid, and that they were then and there officers acting for and in behalf of the Sheriff of the County of Morris aforesaid in the detection and apprehension of persons violating the criminal laws of the State of New Jersey within said County of Morris and that they had secured evidence of the violation of the "Prohibition Enforcement Act" of this State by the said William Everman in the County of Morris aforesaid, and that they had the power and authority

to protect the said William Everman and keep him immune from arrest, prosecution and punishment for violation of the said "Prohibition Enforcement Act" committed by the said William Everman in the County of Morris aforesaid and by means of the false pretense aforesaid, and under color thereof, and in pursuance of and in execution of the agreement and conspiracy aforesaid, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH did solicit from the said William Everman a money consideration, to-wit, the sum of Twenty-five Dollars, lawful money of the United States of America, in consideration whereof they, the said RAYMOND TILLOTSON and ANDREW MCDONOUGH did pretend that they would refrain from complaining against, apprehending and prosecuting the said William Everman for any violation of the said "Prohibition Enforcement Act" theretofore or thereafter committed within the County of Morris by the said William Everman, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

WILFRED H. JAYNE, JR.,
Assistant Attorney General of New Jersey.

Exhibits.

#113

MORRIS OYER AND TERMINER
May Term, A. D. 1925.

THE STATE
vs.
RAYMOND TILLOTSON and ANDREW McDONOUGH

INDICTMENT FOR CONSPIRACY

WILFRED H. JAYNE, JR.,
Assistant Attorney-General.

A TRUE BILL
Wm. G. Hurtzig,
Foreman.

Filed
Arraigned
Plea
Bail
Trial day
Verdict
Sentence

Received in the Court of Oyer and Terminer and filed in the Court of Quarter Sessions October 9, 1925.
E. Bertram Mott,
Clerk.

Exhibit D-7.

Demand for bill of particulars which appears as part of the return to the writ of error.

Exhibit D-8.

Bill of particulars which appears as part of the return to the writ of error.

New Jersey Supreme Court

State of New Jersey, Defendant-in-Error, vs. George P. Claypoole Plaintiff-in-Error. | On Indictment for Conspiracy. On Writ of Error. SUPPLEMENT TO THE STATE OF THE CASE.

NEW JERSEY SUPREME COURT

State of New Jersey Defendant-in-Error vs. George P. Claypoole, Plaintiff-in-Error. | On Indictment for Conspiracy. On Writ of Error. ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the return day of said writ of error, before our Supreme Court of the State of New Jersey, comes the said George P. Claypoole, by his attorney, William A. Dolan, and says that in the record and proceedings aforesaid, and also in the matter recited and contained in the said bill of exceptions and also in the giving of the verdict and judgment as aforesaid, there is manifest error in this, to wit:

1. Because the Trial Court erred in refusing motion to quash on the ground that but one defendant is charged on an allegation for conspiracy.
2. Because the Trial Court erred in granting a severance in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend.
3. Because the Trial Court improperly admitted

evidence of statements made by others than co-conspirators.

4. Because the Trial Court erred in refusing to charge specifically the defendant's seventh request to charge.

5. Because the Trial Court erred in refusing to charge specifically the defendant's eighth request to charge.

6. Because the Trial Court erred in refusing to charge specifically the defendant's ninth request to charge.

7. Because the Trial Court erred in refusing to charge specifically the defendant's tenth request to charge.

8. Because the Trial Court, in charging the jury, improperly stated to the jury that defendant said to alleged co-conspirators:

> "go out now and collect from these men fifty or a hundred dollars a piece or whatever they can pay, and let them know that if they pay, we will see to it that no further proceedings against them will be had and the evidence 'squashed' ."

9. Because the Trial Court charged that the jury are not debarred from believing the testimony of McDonough and Tillotson if it bears a semblance of truth.

10. Because the defendant was illegally convicted in that the State refused to furnish any adequate bill of particulars and the defendant had no fair opportunity to prepare for trial.

Wherefore, the said plaintiff-in-error, George P. Claypoole, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and in giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that the said George P. Claypoole

may be restored to all things he has lost on occasion thereof.

WILLIAM A. DOLAN.
Attorney for and of Counsel with
Plaintiff-in-Error.

Service of the within assignment of errors is hereby acknowledged.

ALBERT H. HOLLAND.
Attorney of Defendant-in-Error.

NEW JERSEY SUPREME COURT

The State of New Jersey, Defendant-in-Error,	On Indictment for Conspiracy.
vs.	On Writ of Error.
George P. Claypoole, Plaintiff-in-Error.	SPECIFICATION OF CAUSES.

And the said plaintiff-in-error, George P. Claypoole, by William A. Dolan, his attorney, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause, as follows:

1. Because the Trial Court erred in refusing motion to quash on the ground that but one defendant is charged on an allegation for conspiracy.

2. Because the Trial Court erred in granting a severance in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend.

3. Because the Trial Court improperly admitted evidence of statements made by others than co-conspirators.

4. Because the Trial Court erred in refusing to charge specifically the defendant's seventh request to charge.

5. Because the Trial Court erred in refusing to charge specifically the defendant's eighth request to charge.

6. Because the Trial Court erred in refusing to charge specifically the defendant's ninth request to charge

7. Because the Trial Court erred in refusing to charge specifically the defendant's tenth request to charge.

8. Because the Trial Court, in charging the jury, improperly stated to the jury that defendant said to alleged co-conspirators:

> "go out now and collect from these men fifty or a hundred dollars a piece or whatever they can pay, and let them know that if they pay, we will see to it that no further proceedings against them will be had and the evidence 'squashed'."

9. Because the Trial Court charged that the jury are not debarred from believing the testimony of McDonough and Tillotson if it bears a semblance of truth.

10. Because the defendant was illegally convicted in that the State refused to furnish any adequate bill of particulars and the defendant had no fair opportunity to prepare for trial.

11. Because the verdict was against the weight of the evidence, this cause being assigned under and pursuant to the statute in such case made and provided, being Chapter 349 of the Laws of 1921.

WILLIAM A. DOLAN
Attorney for and of Counsel with
Plaintiff-in-Error.

Service of the within specification of causes is hereby acknowledged.

ALBERT H. HOLLAND.
Attorney of Defendant-in-Error.

Per Curiam.

NEW JERSEY SUPREME COURT

No. 118, October Term, 1926

STATE OF NEW JERSEY
Defendant-in-Error
v.
GEORGE CLAYPOOLE
Plaintiff-in-Error

In Error to Morris County Court of Oyer and Terminer.

Before Justices Kalisch, Katzenbach and Lloyd.

For the plaintiff in error, William A. Dolan.

For the defendant in error, Albert H. Holland, Prosecutor of the Pleas.

Per Curiam: The plaintiff in error was convicted in the Court of Oyer and Terminer of Morris County on an indictment charging that he with Raymond Tillotson and Andrew McDonough, together with divers other persons of evil minds, whose names are as yet unknown to the Grand Inquest, wilfully, maliciously, knowing, corruptly and unlawfully did combine, unite, confederate, conspire and bind themselves together by agreement to pervert and obstruct justice and the due administration of the law of the State of New Jersey.

The record of the case shows that there was a motion made on behalf of the plaintiff in error, George Claypoole, to quash the indictment, which motion was subsequently, after the conviction of the plaintiff in error, supplemented by a motion in arrest of judgment, both of which motions were denied by the trial judge and we think properly so.

Per Curiam.

The ground of the motions was that but one defendant is charged on the allegation of conspiracy. But this statement is contrary to the fact, for the indictment expressly charges a conspiracy between the three persons mentioned in the indictment and with other persons unknown to the Grand Jury, to pervert and obstruct justice and the due administration of the law of the State of New Jersey. From the record it further appears that on motion of the Prosecutor of the Pleas, on behalf of the State of New Jersey, for a severance, the motion was granted, resulting in putting the plaintiff in error on trial alone.

This action of the trial judge is assigned as a ground for reversal, in that in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend, there could not legally be a severance. To sustain this contention it is argued, that the return to the indictment shows only the defendant, Claypoole, was tried and the two other defendants, Tillotson and McDonough appeared as witnesses in the case, and as they were not convicted, therefore the plaintiff in error could not be properly tried and convicted. This contention, manifestly, overlooks the fact that the indictment as above indicted not only charged conspiracy between the persons mentioned therein by name, but also with persons unknown to the Grand Jury, and hence it is obvious that the objection advanced by counsel is without legal force.

But it is further urged by counsel that a severance in a conspiracy case is not lawfully permissible since it is expressly forbidden by section 64 of the Criminal Procedure Act (Revision of 1898). Compiled Statutes, 1910, page 1841.

Per Curiam.

This section provides that where two or more persons are or shall be jointly indicted for the same offense, except for conspiracy, and such indictment before the trial thereof has been or shall be removed into the Supreme Court of this State, by certiorari or otherwise, any one of said persons on application to Supreme Court, upon affidavit that some one or more of said persons so jointly indicted with him * * * is, or are * * * a material witness or witnesses for him on the trial of said indictment * * * shall by order of said Supreme Court, be allowed a trial separate from the person or persons whom he shall so name as such material witness or witnesses.

It is quite evident, from the language of the statute, that it does not apply to a situation which confronted the trial judge. The statute is only applicable to indictments, which by writ of certiorari have been removed into the Supreme Court by an indicted individual or individuals for the purpose of making a motion before that tribunal for a severance.

The provision of the statute neither expressly or impliedly applies to a situation where a motion for a severance is sought in the court of first instance, on behalf of the State. The unquestioned practice in this State for more than fifty years has been for a severance to be granted in the court of first instance on application of the State. The exercise of this power has always been regarded as a matter resting in the sound discretion of the court. The following reported cases in which severances were granted on application of the State, the right not being questioned are: *Brien, et al.* v. *State*, 32 N. J. L., 414; *Noyes* v. *State*, 41, Id., 418, 429; affirmed 43 Id., 672. Both of these cases were conspiracy

cases. *State* v. *Sabato,* 91 N. J. L., 379; *State* v. *Taylor,* 92 Id., 135; *State* v. *Herbert,* 92 Id., 341, 343; *State* v. *Gregory,* 93 Id., 205; *State* v. *Faure,* 98 Id., 18.

Under the third point, on the brief of counsel of plaintiff in error it is argued that the court improperly admitted in evidence statements made by other than the co-conspirators. The third assignment as well as the third specification of cause for reversal does not give the name of the witness and does not set forth the testimony asserted to be improperly admitted, and therefore cannot be properly considered. It has been repeatedly decided by this court and the Court of Errors and Appeals that an assignment of error, or specification of cause for reversal in order to be valid in law must set out the subject matter of the objection with such distinctness and particularity so that the court may be informed of the error relied on without being compelled to search through the entire record for the name of the witness and the testimony objected to. It is true that in the brief of counsel he has set forth with particularity the name of the witness and the testimony objected to, but we find upon reference thereto, in the written record that it was subsequently struck out by the trial judge. We have not examined other parts of the testimony given by this or any other witness, to which testimony the brief says: "objection was made" for the reason that the testimony objected to has not been specifically assigned as error or specified as a cause for reversal.

Under points four, five, six and seven of the brief on behalf of the plaintiff in error, counsel argues that requests seven, eight, nine and ten, as submitted by the defendant, state concisely and correctly the rule of law which govern the duty of a juryman in arriving at a verdict, etc. Referring to assignments four, five, six and seven, we find that they are couched in the most general language. Assignment four will serve as a specimen of the other requests: "Four, Because the trial court erred in refusing to charge specifically the defendant's seventh request to charge." What that request was, does not appear, nor is the specific error pointed out in the refusal to charge the request, and this blemish is present in five, six and seven of the assignments.

Under the eighth assignment of error, counsel on behalf of plaintiff in error, assigns as a ground for reversal, that the court improperly stated to the jury that the defendant said to alleged conspirators: "Go out now and collect from these men fifty or a hundred dollars apiece or whatever they can pay and let them know that if they pay we will see to it that no further proceeding against them will be had and the evidence quashed."

It is clear from the statements preceding and following the criticized statement contained in the charge of the trial judge that the latter statement was not intended and could not convey to the jury that it was testimony in these words employed by the trial judge proceeding from the lips of the plaintiff in error, but was rather in the nature of a paraphrase of all the testimony adduced in the case on behalf of the State, relating to the conduct of the plaintiff in error and to his conversations with his alleged co-conspirators and their conduct of the latter in carrying out the former's instructions to them.

The trial judge said in the beginning of his charge: " * * * and with that idea in mind, according to the State's claim, (and I am merely indicating the State's claim here without expressing my own view in the matter) Claypoole had a meeting with these two men, McDonough and Tillotson, and gave them a sheet of typewriter paper, with a half a dozen or more names, one marked S-I" and said: (here follows the language used by the trial judge, and objected to, as not being accurate.)

It is also to be observed that, at the close of the court's charge the court said to the jury "that the court did not give the jury its view of the case, but merely undertook to state the State's case and it is for you to find out what the facts are."

Under point eight of his brief, counsel of plaintiff in error urges, that other statements contained in the court's charge were erroneous. We find no assignment of error nor specification of cause for reversal based upon such alleged errors, and therefore, we cannot properly deal with the matter.

The ninth assignment of error is too indefinite and uncertain to receive consideration by the court. It fails to set out what the court said on the subject relating to the testimony of McDonough and Tillotson, so that if there was error in the charge of the trial judge, the specific error is not disclosed.

Under the tenth assignment of error it is argued, that the State refused to furnish an adequate bill of particulars and the defendant had no fair opportunity to prepare for trial.

The bill of particulars printed in the record *inter alia,* contains in substance, a demand on the State to furnish the plaintiff in error with the evidence intended to be relied on in the trial of the indictment against him. Of course, this was palpably an improper demand. The other matters contained in the bill were answered. Furthermore, if the State had refused upon a proper demand to furnish the plaintiff in error with a bill of particulars the proper course upon such refusal was to apply promptly to the Court in which the cause was pending for a further bill. It appears that nothing was done by counsel of plaintiff in error until the case was moved for trial and then a demand was made for a further bill, and it appearing that the bill of particulars asked for related to the furnishing by the state of the evidence to be relied on by it, on the trial of the cause, the demand was properly refused. We think also, that the demand for a further bill of particulars came too late, and might well have been refused on that ground alone.

Lastly it is argued under the eleventh specification of cause for reversal, that the verdict is against the weight of the evidence. A careful reading and consideration of the testimony leads us to the conclusion that there was ample evidence to warrant a fair-minded jury to reach the conclusion that the plaintiff in error was guilty, as charged in the indictment.

Judgment is affirmed.

Writ of Error.

COURT OF ERRORS AND APPEALS OF NEW JERSEY

NEW JERSEY, to wit:

THE STATE OF NEW JERSEY to
L. S. WILLIAM S. GUMMERE, Chief Justice, and other Justices of our Supreme

Court of Judicature, GREETING:

Because in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, upon certain indictment in the name of the State of New Jersey against George P. Claypoole, for conspiracy found in our Court of Oyer and Terminer and General Jail Delivery, in and for the County of Morris, which said indictment and record thereof was removed to the said Supreme Court, manifest error hath intervened, to the great damage of the said defendant, George P. Claypoole, as from his complaint we are informed. We being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to him, the said George P. Claypoole, in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the 2nd day of July next, together with this writ, that the record and proceedings being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to law and custom of the State of New Jersey, ought to be done.

Notice of Appeal and Assignment of Errors.

WITNESS, Edwin Robert Walker, our Chancellor, and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, the 14th day of June, 1927.

JOSEPH F. S. FITZPATRICK,
Clerk.

WILLIAM A. DOLAN,
Attorney for Plaintiff in Error.

Notice of Appeal and Assignment of Errors.

NEW JERSEY SUPREME COURT
MORRIS COUNTY

THE STATE *Defendant-in-Error* v. GEORGE CLAYPOOLE *Plaintiff-in-Error*	*On Indictment for Conspiracy.* *Notice of Appeal and Assignment of Errors.*

To Albert H. Holland, Esq., Attorney for defendant-in-error, or to whom it may concern:

Sir:

Please take notice that George Claypoole, the plaintiff-in-error in the above-entitled cause, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following ground, to wit:

I. Because the Supreme Court erred in giving judgment to the defendant-in-error instead of the plaintiff-in-error in that:

1. The Trial Court erred in refusing motion to quash on the ground that but one defendant is charged on an allegation for conspiracy.

2. The Trial Court erred in granting a severance in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend.

3. The Trial Court improperly admitted evidence of statements made by others than co-conspirators.

4. The Trial Court erred in refusing to charge specifically the defendant's seventh request to charge.

5. The Trial Court erred in refusing to charge specifically the defendant's eighth request to charge.

6. The Trial Court erred in refusing to charge specifically the defendant's ninth request to charge.

7. The Trial Court erred in refusing to charge specifically the defendant's tenth request to charge.

8. The Trial Court, in charging the jury, improperly stated to the jury that defendant said to alleged co-conspirators:

> "go out now and collect from these men fifty or a hundred dollars apiece or whatever they can pay, and let them know that if they pay, we will see to it that no further proceedings against them will be had and the evidence 'squashed'."

9. The Trial Court charged that the jury are not debarred from believing the testimony of McDonough and Tillotson if it bears a semblance of truth.

10. The defendant was illegally convicted in that the State refused to furnish an adequate bill

of particulars and the defendant had no fair opportunity to prepare for trial.

11. The verdict was against the weight of the evidence, this cause being assigned under and pursuant to the statute in such case made and provided, being Chapter 349 of the Laws of 1921.

12. The Trial Court refused to grant defendant's motion in arrest of judgment in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend.

13. The Trial Court erred in refusing to grant defendant's motion in arrest of judgment, although it appeared that the defendant Claypoole was the only defendant charged in the indictment was was tried and convicted, and it further appeared that the other defendants were available, had not been convicted, and might be apprehended.

14. The Trial Court in charging the jury on the effect of a former conviction on the witness's testimony, improperly charged the following:

> "So far as that matter is concerned, it is really up to you as to what effect it has on Tillotson and McDonough, although they have not been sentenced for their crime, as yet. It certainly would affect the defendant, Claypoole, who has told you that he was indicted for a misdemeanor and desertion of his wife and that he pleaded non vult or guilty, or whatever that was, and that sentence was a term of imprisonment and he served that term."

Respectfully yours,

WILLIAM A. DOLAN,
Attorney of Plaintiff-in-Error.

Joinder in Error.

Service of a copy of the within notice of appeal and assignment of errors is hereby acknowledged this 28th day of July, 1927.

ALBERT H. HOLLAND,
Attorney of Defendant-in-Error.

Joinder in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY *Defendant-in-Error* v. GEORGE CLAYPOOLE *Plaintiff-in-Error*	*In Error.* *Joinder-in-Error.*

And thereupon, afterwards the said State of New Jersey, by Albert H. Holland, Prosecutor of the Pleas of the County of Morris, comes into Court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays that the Court may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

ALBERT H. HOLLAND,
Prosecutor of the Pleas for the County of Morris.

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, Defendant-in-Error. vs. GEORGE P. CLAYPOOLE, Plaintiff-in-Error.	On Indictment for Conspiracy. On Writ of Error to New Jersey Supreme Court. BRIEF ON BEHALF OF PLAINTIFF-IN-ERROR.

The defendant, George P. Claypoole, was tried and convicted in the Morris County Oyer & Teminer on a charge of conspiracy. The verdict was rendered March 3, 1926. The writ of error in this case was sued out to review the proceedings resulting in that conviction. Defendant specifies eleven causes in the record relied upon for relief or reversal. To this plaintiff in error has added three causes for reversal which appear in the addendum to State of the Case submitted herewith.

I

The first assignment is that the trial court erred in refusing defendant's motion to quash on the ground that but one defendant is charged in an allegation for conspiracy.

It is, of course, elementary that the crime of conspiracy must involve at least two defendants who, in the language of the act, must combine or confederate to commit a crime. The indictment in this (Case pp. 4, 5, 6, 7, & 8) throughout appears to be a charge against George Claypoole alone. That in

drafting the indictment the state so intended is apparent from the endorsement thereon which appears in the case p. 8. The procedure on the part of the state confirms this view of its attitude. When the indictment was moved (Case p. 23). There after discussion (Case p. 23 lines 25-40) the court suggested he would allow a severance. Thereupon the court stated (Case p. 23 lines 25-26) that the prosecutor would have a severance, and shortly thereafter (Case p. 23 lines 36-38) the prosecutor moved a severance. No action was taken by the Court on that motion, although the attorney for the defendant at that time stated to the Court (Case p. 23 lines 38-40) that as he understood the law in conspiracy charges, there could be no severance.

The Court, however, proceeded to try Claypoole alone, and defendant contends that such course was improper and erroneous. For that reason, defendant insists that his motion in arrest of judgment (Case pp. 206, lines 30-40, and case p. 219, lines 10-35), should have been granted.

II

In this connection, defendant urges his second cause for reversal; that the Court erred in granting a severance in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend.

The return of the indictment shows that only the defendant Claypoole was tried. The two other defendants (Tillotson and McDonough) appeared as witnesses in the case, (Case p. 31-71; Case p. 74-96). They were never convicted as the record shows. Professor Wharton has an interesting discussion on this subject in his work on Criminal Pleading and Practice (ninth edition) Sec. 305, at p. 210. There he lays down the rule of law applicable to cases of this character in the following language:

> "A charge of conspiracy cannot be sustained against two defendants, one of whom was at the time insane. One defendant may be tried alone, when his co-conspirators are alleged to be unknown, or when such conspirators are dead, or absent or previously convicted."

Our legislature apparently recognized the rule of law that a severance was improper in conspiracy cases. In the Criminal Procedure Act (Revision of 1898) Compiled Statutes 1910, p. 1841, Sec. 64, it is provided:

> "Where two or more persons are or shall be jointly indicted for the same offense, except for conspiracy, and such indictment, before the trial thereof, hath been or shall be removed into the Supreme Court of this State, by certiorari or otherwise, any one of said persons, on application to said Supreme Court, upon affidavit that some one or more of said persons so jointly indicted with him .... ..is or are ..... a material witness or witnesses for him on the trial of said indictment ..... shall, by order of said Supreme Court, be allowed a trial separate from the person or persons whom he shall so name as such material witness or witnesses."

Again, in Corpus Juris, the author off the article on Conspiracy (Vol. 12 C. J. p. 643, Sec. 245) says:

> "It is not necessary that all the defendants charged with conspiracy be shown to be guilty. It will be sufficient if the guilt of at least two is shown. And inasmuch as it is sufficient if the guilt of at least two is shown, it is not improper to nol pros as to any number of defendants, leaving two. If only three of four defendants, indicted for conspir-

acy are on trial, the jury may acquit two of such defendants, and convict the other of conspiracy with the absent one. If one of several defendants pleads guilty, the jury may find one of the defendants on trial guilty of conspirary with him and acquit the others. ..... But inasmuch as two persons are necessary to a conspiracy, if two are tried and one is acquitted, the other must also be acquitted..... So, if more than three are tried and all but one are acquitted, such one cannot be convicted, where there is no evidence that any person other than the one named in the indictment had joined in the conspiracy."

Attention is directed to the opinion by the Supreme Court in its review of this conviction, wherein the Court urges that because the indictment alleges that defendant conspired not only with persons named in the indictment, but also **with persons unknown to the Grand Jury,** the conviction should be sustained even in the absence of proof that the persons other than defendant named in the indictment were guilty, or were dead, convicted or impossible to apprehend. (See Case, p. 250, lines 19-35.)

A very complete answer to this suggestion is ably set forth in the case of State v. Faure, 98 N. J. L., 18, 119 Atl. R. 4. In that case Chief Justice Gummere, speaking for the Supreme Court, said: "It has never been doubted that if the name of a person which was necessary for a description of the crime was known it must be inserted in the indictment, the reason being that the defendant is entitled to know as fully as possible the precise charge made against him, so that he may properly prepare his defence. Where the name of the particeps criminis is in fact known to the grand jury, that body is justified by the necessity of the situation in stating that the name of such person is unknown to it,

but a false recital of such a fact is absolutely without legal justification. The cases cited in the opinion referred to fully support this proposition. The question to be determined, therefore, is whether the grand jury in fact was ignorant of Vogel's participation in this conspiracy, or, if they were ignorant, whether they could have ascertained it with reasonable diligence. For, as was said in Flanagan v. Plainfield, 44 Id. 118, and reiterated in State v. Smith, supra, "To justify an averment that third persons are unknown, the case must be one in which they cannot be ascertained, not one where the grand jury willfully closes its eyes." It may be conceded for the purposes of the present case that the assertion contained in the indictment raises a presumption that at the time of its finding and presentation the fact that Vogel was a principal party to the conspiracy was unknown to that body; but this presumption is not a conclusive one, and where the whole theory of the state's case submitted in support of the charge contained in the indictment is that the originators of and the prime movers in the conspiracy charged therein were the defendants and Vogel, and that Brex and Villani were merely tools used by them for the purpose of executing the conspiracy, the presumption in favor of the truth of the averment is overcome to the extent at least that the state is called upon to support it by independent proof. This not having been done, we think that, under the doctrine of the cases referred to, the request to charge which was submitted should have been granted and that the instruction to the jury was erroneous. This conclusion necessarily leads to a reversal. The principle declared is not a mere abstraction, and the result of its application is that a defendant charged with a criminal conspiracy, entered into by himself and other persons named in the indictment, cannot be convicted on proofs which fail to show that any of the other named persons were parties to the corrupt agreement, even

though it appears from the undisputed evidence that the defendant had conspired to perpetrate the identical criminal act specified in the indictment with a third person, known to the grand jury, but not named by it as a party defendant."

There was no evidence in this case of any co-conspirators who answered to the designation of "divers persons unknown to the grand jury;" so, as the case stood at its close, there was no evidence of conspiracy with any person unknown. Inasmuch as two persons are necessary to a conspiracy, if two are tried and one is acquitted, the other must also be acquitted; and the same is the case where a nolle prosequi is entered as to one. State v. Jackson, 7S. C. 283; 24 Am. Rep. 476; State v. Tom. 13 N. C. 569; U. S. v. Morris, 26 Fed. Cas. No. 15, 812, 1 Balt. L. Trans. 117; U. S. v. Hamilton, 26 Fed. Cas. No. 15, 288, 11 Chic. Leg. N. 211, 8 Cinc. L. Bul. 27, 22 Int. Rev. Rec. 106; Reg. v. Cooke, 5 B. & C. 538, 7 D. & R. 673, 11 E. C. L. 574; Reg. v. Burch, 4 F. & F. 407; Rex v. Thode 3 Keb. 111, 117, 1 Vent. 234; Reg. v. Manning, 51 L. T. Rep. N. S. 121. It is true that a conviction would be sustained, under the authority of Com. v. Zuern, 16 Pa. Super. Ct. 588, Com. v. Tack, 1 Brewst. (Pa.) 511, and Duprey's case, 4 City Hall Rec. (N. Y.) 121, where one is indicted for conspiring with G. and other persons to the jurors unknown, and is tried separately, if there is some evidence of the conspiracy with the persons unknown, or one of them, even though the jury is not satisfied that the defendant and G. conspired. But the point there was that there was some evidence of conspiracy with persons unknown. In a case in 1851, before the Queen's bench, the defendants, A, B, and C, were charged with conspiring "with divers persons unknown." The evidence applied only to A, B, and C, none being given as to the "persons unknown." The jury found that A. had conspired with either B or C, but that they could not say which, Lord Campbell, Ch. J. said:

"I think that under these circumstances the verdict against A cannot be supported. It is conceded, that if there be an indictment against two persons for a conspiracy, the acquittal of one must invalidate the conviction of the other. Then, I cannot draw a distinction between the cases of two and of three persons, if one only is found guilty. If three are indicted, and two found not guilty, the third must also be acquitted. But then it is argued that B and C may be included in the words, "persons to the jurors unknown;" but I cannot say that they can come under the category of persons who were not known to the jury." Reg. v. Thompson, 4 Eng. L. & Eq. Rep. 287, 16 Q. B. 832, 5 Cox, C. C. 166, Dears. C. C. 3, 20L. J. Mag. Cas. N. S. 183, 17 Jur. 453; Reg. v. Denton, Dears. C. C 3, 18 Q. B. 761, 21 L. J. Mag. Cas. N. S. 207, 17 Jr. 453. The point in this case is that the conviction could not stand as regards A, because the jury could not convict a second conspirator; it could not find that A conspired either with C or B, and there was no evidence given as to the "persons unknown" In Isaacs v. State, 48 Miss 234, where defendants were jointly indicted and convicted of conspiracy, an appeal was taken, and it was found that there was no evidence against one, and it was held that the judgment must be reversed as to all; so where more than three were tried and all but one acquitted, it was held that he was also entitled to acquittal. State v. Buchanan, 5 Harr. & J. (Md.) 500 note; O'Connell v. Reg. 11 Cl. & F. 155, 1 Cox C. C. 413, 9 Jr. 25, 8 Eng. Reprint 1061.

There must be at least two guilty of the one conspiracy. If there had been evidence of the "persons unknown" conspiring with Claypool, the severance and conviction would be legal, because the the jury has the right to give such weight as it desires to the evidence, and because the other conspirators being unknown they could not be brought to trial. But as the case stands there is no evidence of such. The severance so far as such are concerned

is a nullity. They do not affect the proposition one way or the other—besides there is no evidence of such. But there was a severance of the two conspirators who were named, and to whom the evidence related. It was not shown that they had been convicted—or that they could not be tried. The fact remains that only one of the alleged conspirators is convicted. This is not possible under the law, Suppose the others are never convicted? The general rule in this country is that where several are prosecuted together, taken, and may be brought to trial for conspiracy, and upon severance one only has been tried and found guilty, there is impropriety in proceeding to judgment against him before the trial of his codefendants, and the judgment should be suspended, at least, until the number necessary to the crime are convicted. 8 Cyc. 690, Para. 6 (b); Casper v. State, 47 Wis. 535, 2N. W. 1117. Evidence which merely establishes separate causes of action does not establish a conspiracy. Underhill's Criminal Evidence (3rd Ed.) sec 717 p. 957, cases cited in note 19. If two defendants are jointly indicted for conspiracy, proof of the guilt of one is not sufficient to sustain the indictment. Cumnock v. State, 112 S. W. 147.

Proof of actual participation rather than mere cognizance, acquiescense or approval of an unlawful act is required to sustain a conviction for conspiracy. Underhill's Criminal Evidence (3rd Ed.) sec. 717, p. 956, cases cited in note 16.

In view of these authorities, and the self-evident fact that at least two must be guilty in any charge of conspiracy, the defendant insists that his motion in arrest of judgment should have been granted.

III

The third assignment of error is that the Court improperly admitted evidence of statements made by others than co-conspirators.

At p. 39 of the case, in answer to the following question by the Prosecutor, Mr. Holland, "What happened?" the witness, Raymond Tillotson, started to answer by saying, "Why Mr. McCormick said" —when objection was made as to what McCormick said. There was some discussion after which the Court ruled that he would allow the witness to testify as to what McCormick said. There was an exception allowed and sealed on this ruling (Case p. 39, lines 25-26). On p. 41, line 28, after some discussion, the question was asked:

"And what did McCormick do or say?"

This was answered as follows:

"Why, he said he paid a hundred dollars to somebody else and he might just as well pay the Court the money as somebody else."

Again, on p. 79, exceptions were allowed and sealed, as follows:

"Q. What did you do when you got up there?"

A. Went into Everman's and Ray talked to Everman about the case, and Everman said that he was willing to give one hundred dollars and—

"Q. What did you talk with Everman about the case; what did he say?"

"A. Ray told him that the boss had a case down there that had not been up and what do you think it's worth—

"Mr. Dolan: One minute; I would make an objection again to any statement made by Everman during the course of this conversation. The same objection I made this morning when the other witness was on.

"The Court: The same ruling and exception allowed.

"Exception sealed accordingly.—C. W. Parker, J. (S)

"Q. Just go on.

"A. So Everman told him that he didn't have any money then but he would give him a hundred dollars if he came around Sunday. So Ray says, all

right. So we went from there to McCormick's and when we went in McCormick's, McCormick was in bed. There was another man in there. So we went from the bedroom down around in back of the house which faces the lake and we was talking to McCormick and there was a man down there that came in looking for clothes. I don't know the man's name, and McCormick—

"Mr. Dolan; Just a minute, I would like to object to the statement of McCormick or this other man."

"The Court: You may sit down and take your exception.

"Exception sealed accordingly.—C. W. Parker, J. (L. S).

"A. (Continued.) McCormick kind of faced up and he says to him, gee Mac, if you are going to keep up giving fifty or a hundred bucks every time somebody comes up here, you might just as well go down to Court and pay your fine; so Mac got on the other side and told us to come back Sunday and he would give us fifty bucks."

Unquestionably, these statements are hearsay and can be admissible only in case, they come within one of the exceptions of the rule excluding hearsay evidence.

Neither the Court nor the Prosecutor advanced any reason why this hearsay testimony should be considered an exception to the general rule. They do not come within the rule which permits evidence of statements made by co-conspirators. Neither can these statements be considered as part of the res gestae.

In this connection, the defendant feels justified in suggestion that the Court, in admitting the statement of Burchel, (Case p. 80, lines 5-18) knew that Burchell was in no wise interested in the case. This is demonstrated by reference to the comment by the Court when this same testimony was offered earlier in the case (See Case p. 41, lines 10-20). It also appears that the Court's attention was especially directed to this fact (See Case p. 79 lines 15-20).

As has been said, certain exceptions to the hearsay rule are recognized. Professor Wharton in his work on Criminal Evidence (tenth edition) Vol. 1, in speaking of the exception which admits res gestae although hearsay, lays down the following interesting guide:

> "The distinguishing question is, is the evidence offered that of the event speaking through the participants? If so, what was thus said can be introduced without calling those who said it. Is the evidence offered that of observers speaking about the event? If so, such observers must be called to testify."

In this case, Burchell and McCormick were observers speaking about the event. The admission of statements by them was clearly erroneous and undoubtedly prejudicial to the defendant. The comment credited to McCormick that he (Everman) might as well pay the Court as these men, would certainly have a serious effect on the minds of the jurors and could readily be the turning point in the case.

Profess Wharton in the same work (Criminal Evidence, tenth edition, Vol 1, p. 510, Sec. 270), says:

> "The opinions of a bystander, if admissible, must be proved by calling him as a witness."

And again, at p. 506:

> "But the comments and criticisms of the observers cannot be introduced as res gestae; such persons must be called and examined in court as to what they saw. Their statements made at the time are hearsay."

Defendant insists that the opinions of Burchell and McCormick, (who certainly were by-standers and observers) were not admissible under any circumstances: but assuming they were, they could be proved only by calling them as witnesses.

It cannot be urged that this evidence was admissible because made by a co-conspirator. As appears in the case, neither Burchell nor McCormick were co-conspirators. Speaking of the rule which allows such evidence, Professor Wharton, in his work on Criminal Evidence, supra, at p. 1432 Vol. 2, Sec. 698, says:

> "The general rule is that admissions are only admissible against the party who makes them. But where several persons are proved to have combined for the same unlawful purposes, any act done by one of the party, in pursuance of the concerted plan, with reference to the crime charged, is the act of all, and proof of such act is evidence against any and all of the others who were engaged in the same conspiracy."

The man Burchell charged with making the statement was a by-stander or observer: he was not a co-conspirator and in no sence connected with the concerted plan. Statements made by him, therefore, were clearly hearsay:

In disposing of this point the Supreme suggests (Case p. 252, lines 9-37) that the assignment of error is not set forth with such distinctness and particularly as is required. It is respectfully urged that the legal principle involved is set forth in the assignment, (Case p. 245, line 40, p. 246, lines 1-2). The particulars of the objection are set forth in detail above. Counsel trusts that the defendant will not be permitted to suffer from what he believes is at worst a failure to present this objection in as convenient a form as the Court might desire.

The objection defendant believes is sound, He also feels the tesimony admitted could and very probably did have a material effect on the jury in considering the case. The Supreme Court, in its opinion, suggests that this testimony was subsequently struck out by the trial Judge. A careful examination of the book by the defendant fails to disclose where the Court struck out this testimony. Assuming, however, that the trial Court may have later striken this out as improperly admitted (and we do not find where that was done) yet defendant urges that because it was allowed to come before the jury so forcibly and repeatedly it would be impossible for the jurors, even though so instructed, to erase that testimony from their minds; and they would undoubtedly be influenced by its consideration. Statements of the kind admitted and objected to were of the type that would, in defendants opinion, inevitably have an adverse reaction against defendant which could not be erased by any subsequent effort on the part of the Court to eliminate; and, as stated above, defendant is unable to find in the case where the trial Judge made any effort to eliminate it.

IV, V, VI, & VII

The fourth, fifth, sixth and seventh assignments of error cover the court's refusal to charge the requests to charge submitted by the defendant.

These requests (Case p. 203-204 requests No. 7, 8, 9 and 10) as submitted by the defendant state concisely and correctly the rules of law which govern the duties of a juryman in arriving at a verdict. The Trial Court in its charge failed to instruct the jury on these points, and the defendant was entitled to have these rules of conduct placed before the jury. It was a manifest error, under the decisions of this State, for the Court to refuse to so instruct the jurors, because the defendant did not have the

benefit of a reasonable doubt which might have existed in the minds of the individual juror.

It was of vital importance to the defendant that the verdict of the jury be arrived at with due regard to the opinion of each juror on the evidence produced.

The decisions of this State are unanimous in expressing the duties of the Trial Court:

> "One of the most important duties of the Court is to declare the law applicable to a case to the jury when requested so to do."

Roe against State, 45 N. J. L., 49. As stated by the Supreme Court in that case:

> "Each of the requests to charge embodied a correct statement of the law; each was applicable to the case, and each afforded a presumption in the prisoner's favor. The defendant was entitled to have the court charge on these requests."

See also State v. DeGeralino, 83 N. J. L., 135; and State v. Frank Tranzarello, 1 N. J. Miscellaneous Reports, 375.

The rules of law, expressed in the requests to charge are clearly established and are fundamental principles to govern a jury in forming a verdict. A careful examination of the court's charge discloses that they were not explained to the jury, fundamental as they may have appeared to the Court. The defendant was entitled to have the jury instructed in such a manner that their verdict would be properly reached.

The defendant was entitled to have the duties of the jurors distinctly charged, and by reasons of the court's refusal to do so the defendant suffered a manifest wrong and injury.

In considering points four, five, six and seven the

Supreme Court states that it does not appear what the requests to charge were. These requests are set forth in the Case at p. 203, lines 25 to 40 and p. 204, lines 1-18; and again may we urge that dedendant be not permitted to suffer because counsel inadvertently may have failed to present the matter in as convenient form as the Court has suggested advisable in its consideration of other cases.

VIII

The eighth assignment of error is because the Court improperly stated to the jury that defendant said to alleged co-conspirators:

> "Go out now and collect from these men fifty or a hundred dollars apiece or whatever they can pay, and let them know that if they pay, will see to it that no further proceedings against them will be had and the evidence 'squashed.' "

First, this is not a correct statement of anything in the testimony. No where in the case does it appear that Clapoole made such a statement as the Court has credited to him, and while the Court later advised the jury that he did not give the jury his views but merely undertook to state the State's case, yet such comment by the Court will inevitably make its imprint on the minds of the jury to the prejudice of the defendant and defendant insists it was clearly improper.

The same comment applies to the statement set forth as error in the ninth assignment of error: See case, page 201, lines 22 to 30; and is very forcefully illustrated in the thirteenth assignment of error. The comment objected to in this assignment of error (thirteenth) is one made by the Court after stating the law with reference to credibility of witnesses convicted of crime.

At page 200 of the case, lines 15 to 30, after stat-

ing the rule, the Court said:

> "So far as that matter is concerned it is really up to you as to what effect it has on Tillotson and McDonough, although they have not been sentenced for their crime as yet. It certainly would affect the defendant, Claypoole, who has told you that he was indicted for a misdemeanor and desertion of his wife and that he pleaded non vult or guilty, or whatever that was, and that sentence was a term of imprisonment and he served that term."

All three men referred to (McDonough, Tillotson and Claypoole) have been previously convicted of crime (See case on page 53, lines 15 to 25; case, page 94, lines 33 to 40; case, page 123, line 1 to 10). And of course, the rule as to the effect of a previous conviction on their testimony must apply with equal force to all. Yet the Court in charging the jury makes it appear that the rule applies entirely differently as to Claypoole. (See case, page 200, lines 20 to 30). He says to the jury:

> "It is really up to you as to what effect it has on Tillotson and McDonough.—It certainly would affect the defendant, Claypoole."

Undoubtedly the impression on the minds of the jury would be that it was doubtful as to the effect this previous convicion would have on Tillotson and McDonough; but that there was no question but that the previous conviction would affect the defendant, Claypoole and the testimony given by him. Such a charge could not be otherwise than prejudicial against the defendant and was clearly erroneous.

In considering the eighth, nineth and thirteenth assignment of error the Court will find comments by Justice Kalisch, in State v. Herbert, 92 N. J. L.,

341, at page 360, very interesting. He states in that case:

> "And in another portion of the charge the court said: "There are some facts which seem to have been established by the evidence—I do not state that they are—it is for you to determine whether or not they are." Of course, this can only refer to disputed questions of fact. Immediately preceding the statement that "defendants on trial and Helen Knittel all testified before the master," &c., the learned trial judge was dealing with Weinberg's activities in connection with the divorce proceedings, and was apparently reading from copies of the stenographer's notes, or from his own, as is manifested by lengthy quotations from the testimony, and, therefore, it seems to us that such a statement of fact made by the court, with material before him to refresh his memory, carried with it great force and conviction, and would naturally have impressed the minds of the jury of the existence of a fact (Which on account of the great length of the trial the jury might have forgotten) to such an extent as to overrule any recollection that the jury might have had of that very important and material circumstance. The statement made by the court had no foundation, in fact, and was harmful, being a material factor in the case to be weighed by the jury, as to Weinberg's connection with the unlawful agreement and hence, bearing materially on his guilt or innocence. And for this reason the plaintiffs in error are also entitled to a reversal of the judgment."

The tenth assignment of error deals with a discretionary power of the Court which defendant insists were improperly exercised. It is, that the state refused to furnish any adequate bill of particulars and the defendant had no fair opportunity to pre-

pare for trial.

The only intimation defendant had of any illegal agreement or conspiracy was the allegation in the indictment that Tillotson, McDonough and Claypoole had conspired together on May 7, 1925. The defendant asked for particulars as to the charge to be met (See case, page 12 and 13.)

To this, the only reply of the State was that all charges would be pressed. That this was extremely prejudicial to the defendant is apparent from a consideration of the case. The evidence produced on the part of the State was that the alleged conspiracy took place on May 21, 1923, and not on May 7, 1923, as charged in the indictment. While this variance would probably not be sufficient to warrant a retrial, yet, from the developments of the case, it worked a great injustice to the defendant. It so happened that the defendant on the day charged, was in Philadelphia. This appears from his diary, an extract from which appears in the case at D. 4p. 235, 236. Even though defendant had no previous intimation that May 21 would be important, he endeavored to establish an alibi by a hurried trip to Philadelphia, after the testimony was introduced on the first day of the trial. Due to the inadequate time, the only witnesses he could produce were his sister and his mother, both of whom, of course, were interested. In the motion in arrest of judgment defendant called this to the Court's attention, indicating that, if a proper bill of particulars had been given, it would have been possible to produce many substantial witnesses to establish the impossibility of the defendant's having entered into the alleged conspiracy on the date proved by the State. The failure of the State to give the defendant this bill of particulars worked a great injustice and clearly prejudiced his rights. Defendant insists that this was error.

The eleventh specification of cause for reversal is that the verdict is against the weight of the evi-

dence. An analysis of the testimony shows that the only evidence that the defendant took any part in the conspiracy alleged in the indictment was that of the co-conpirators, Tillotson and McDonough. Both these co-conspirators admit having made contrary statements, and McDonough at the trial admitted signing a sworn statement contrary to his testimony in this case, which at this trial, he says was false (See Case p. 56, 57, 58).

Defendant insists that a consideration of all the testimony in the case clearly shows that the verdict was against the weight of evidence and the result of passion or prejudice; and should, therefore, be set aside.

The twelfth, thirteenth, and fourteenth assignments of error have been argued heretofore under the second point raised.

Respectfully submitted,

WILLIAM A. DOLAN,

Attorney for Plaintiff-in-Error.

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant-in-Error, VS. GEORGE P. CLAYPOOLE, Plaintiff-in-Error.	On Writ of Error. Brief of Defendant-in-Error.

The following brief was submitted to the New Jersey Supreme Court at the October Term of Court, 1926, and is herewith submitted to the Court of Errors and Appeals.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

GEORGE P. CLAYPOOLE,
Plaintiff-in-Error.

On Writ of Error.

Brief of Defendant-in-Error.

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

Facts.

The Plaintiff-in-Error was indicted by the January, 1926, Term of the Grand Jury of Morris County for conspiracy. The facts are, briefly, as follows:

George Claypoole was a special officer of the County of Morris, having been engaged by the Sheriff of Morris County on February 2nd, 1924, to take charge of investigations of violations of the Prohibition Enforcement Act and to bring violators thereof to trial, under the direction of the Sheriff, and had been given the authority to hire such other special officers to assist him in this work as were necessary, in his judgment. In this connection he kept records concerning his activities and the activities of his men and kept a record of the liquors seized in the various raids and stored such liquor in a vault rented for the purpose. Claypoole, during this time, also maintained an office in a house on the Powerville Road in Boonton, Morris County, in which he kept records of all raids made by his force. As such officer, he employed among others, Raymond Tillotson and Andrew McDonough to assist him in this work.

They continued with this work until May, 1925, during which time there had been made an investigation of the Prohibition Enforcement activities in the County of Morris, and word came to them by some source that the Elisor Grand Jury had recommended their dismissal. These three men, however, continued to work for some days after receiving that word.

After this word of their proposed dismissal had been received and while Tillotson and McDonough were in his office, he directed the two men to go to the Hotel of one George Knipper at Berkshire Valley, Morris County, and collect Fifty Dollars in each of three cases pending against Knipper, in return for which the records in these three cases were to be destroyed (Printed Case, p. 33, lines 34 to 40). They went to the hotel of Knipper and there being so many cars around the hotel, they were afraid to go in, so returned and so reported to Claypoole.

Claypoole berated Tillotson and McDonough for their temerity and their failure to obey orders and told them to report again the next day. The following morning (May 22, 1925) they reported to Claypoole for duty and after some conversation he wrote out a list of several persons (S-1) who had been raided and evidence obtained against, and handed this paper to Tillotson and told him "To go ahead and collect the money from all these names and tell them he sent me there" (Printed Case, p. 35, lines 36-38), and told them that the papers in these cases would be destroyed and that he was the only man in the County that had the papers or the records (Printed Case, p. 36, lines 1-3) and that each defendant ought to be willing to give Fifty Dollars apiece to have their case destroyed. On the list above referred to (S-1), among other names was the name of William Everman, Woodport, and the name of McCormick was afterwards added by Claypoole.

Tillotson and McDonough then proceeded on to

Woodport and went first to Everman's house, and stated their mission and were told by Everman that he would pay One Hundred Dollars, but that he did not have the money that night, but to return on the following Sunday night when the money would be forthcoming. This they assented to and left. Then they proceeded to McCormick's house, where, after some discussion, they were promised Fifty Dollars if they returned at the same time they were to return to Everman's, the following Sunday night.

They reported back to Claypoole and he instructed them to return to Everman's and McCormick's on Sunday night and get the money.

On the evening of May 24th, 1925, Tillotson and McDonough returned to Everman's house, at which time Everman turned over to them Twenty-five Dollars, saying that he was sorry but it was all that he had at that time and that he would pay the balance as soon as he could get it. After the paying of the money, Tillotson and McDonough were arrested by the State Police and brought to the Morris County jail, where they remained until the next afternoon, when they were admitted to bail. As soon as they had been admitted to bail they proceeded directly to Claypoole's office, under directions from him, where he had a statement prepared by one Furman Reed, who was also in his employ, to the effect that they had gone out on their own account to obtain evidence for Wilfred H. Jayne, who was then conducting the investigation of the affairs of Morris County above referred to. This they refused to do.

The defendant entered a plea of not guilty and was admitted to bail to await trial. At the trial in the Morris Oyer and Terminer, he was found guilty, as charged in the indictment and sentenced to be confined in State's Prison for a maximum term of three years and a minimum term of two years and to stand committed until the costs of prosecution were paid.

ARGUMENT.

POINT I.

Plaintiff-in-Error's first assignment of error is as follows: "Because the trial court erred in refusing to quash on the ground that but one defendant is charged on the allegation for conspiracy."

The Defendant-in-Error admits that it is an elementary principle of law that the crime of conspiracy must involve at least two persons who combine or confederate to commit a crime. This is just the allegation in the indictment in the case *sub judici*, reference to the entire contents of which is hereunto respectfully made (Printed Case, pp. 4, 5, 6 and 7), portions of which are as follows:

> "The said George P. Claypoole, Constable and Special Officer as aforesaid, Raymond Tillotson and Andrew McDonough, Special Officers, being persons of evil minds and dispositions, together with divers other persons of evil minds whose names are as yet to this Grand Inquest unknown, wilfully, maliciously, knowingly, corruptly and unlawfully did combine, unite, confederate, conspire and bind themselves together by agreement to pervert and obstruct justice, and the due administration of the law of the State of New Jersey, to-wit, 'The Prohibition Enforcement Act,' by aiding, abetting, counselling, encouraging and procuring the unlawful sale, barter, transportation, import, delivery, furnishing and possession of intoxicating liquor in, into and within the said County of Morris, in violation of said 'Prohibition Enforcement Act,' and by knowingly and corruptingly soliciting and encouraging divers persons, within said County of Morris, to violate as aforesaid then and thereafter, the said 'Prohibition Enforcement Act,' upon the promise and assurance of immunity and protection from arrest, hindrance and prosecution by the said George P. Claypoole, Constable and Special Officer as aforesaid such promise and assurance of immunity and protection to be made by the said George P. Claypoole, Constable and Special Officer as aforesaid, and conveyed, carried and transmitted by the said Raymond Tillotson and Andrew McDonough, Special Officers as aforesaid, to George Knipper, Joseph Migdoff, Leonard Ringenback, Frank Lansing, William Ramitski, John Vincent, Henry Marino, William Everman and Michael McCormick, and to such other persons as the said George P. Claypoole, Constable and Special Officer as aforesaid, Raymond Tillotson and Andrew McDonough, Special Officers as aforesaid might induce and procure to give and offer and promise to give to the said George P. Claypoole, Raymond Tillotson and Andrew McDonough, a sum of money and other things of value, therefor; said promise and assurance of immunity and protection to consist of the promise and assurance by the Said George P. Claypoole, Constable and Special Officer as aforesaid, to the said George Knipper, Joseph Migdoff, Leonard Ringenback, Frank Lansing, William Ramitski, John Vincent, Henry Marino, William Everman and Michael McCormick, and to such other divers persons as would pay and give such money and other things of value as aforesaid, that he, the said George P. Claypoole, Constable and Special Officer as aforesaid, would refrain from prosecuting, hindering or thwarting violations by such divers persons within the County of Morris of the said 'Prohibition Enforcement Act;' and would permit, suffer and aid such divers persons so to him knowingly violating and guilty of violating said act to go at large unrestrained by arrest and free from examination, prosecution and punishment."

> "That afterwards in execution of said agreement and conspiracy the said Raymond Tillotson and Andrew McDonough did visit, call

upon and communicate with William Everman and Michael McCormick, and with divers other persons whose exact names are to this Grand Inquest as yet unknown within said County of Morris and did solicit and receive from such persons divers sums of money and things of value, and in return therefor and in consideration thereof, did knowingly convey, carry and transmit the promise and assurance of the said George P. Claypoole, Constable and Special Officer as aforesaid of the immunity and protection as aforesaid; and in further execution of said agreement and conspiracy the said George P. Claypoole, Constable and Special Officer as aforesaid, did corruptly and contemptuously make and give such promise and assurance of immunity and protection as aforesaid to the said divers persons so paying the money and other things of value as aforesaid, and did refrain from prosecuting and proceeding against such divers persons so paying the money and other things of value as aforesaid."

A reading of the indictment would, therefore, show that, not only was Claypoole charged with conspiracy, but also Tillotson and McDonough.

POINT II.

Plaintiff-in-Error's second assignment is that the trial court erred in granting a severance in the absence of proof that other defendants charged, were dead, convicted or impossible to apprehend.

Plaintiff-in-Error apparently places reliance in Section 64 of the Criminal Procedure Act. Comp. Stat. p. 1841, which was enacted in 1864 (P. L. 1864, p. 561), Rev. of N. J., p. 283, which is as follows:

> "When two or more persons are or shall be jointly indicted for the same offense, except for conspiracy, and such indictment, before the trial thereof, hath been or shall be removed into the supreme court of this state, by *certiorari* or otherwise, any one of the said persons, on application to said supreme court, upon affidavit that some one or more of said persons so jointly indicted with him, whom he shall name, is or are, as he is advised by his counsel, whom he shall also name, and verily believes, a material witness or witnesses for him on the trial of said indictment, and without whose testimony he cannot safely proceed to trial, shall, by order of said supreme court, be allowed a trial separate from the person or persons whom he shall so name as such material witness or witnesses."

It is respectfully submitted that a careful reading of the above shows that it does not limit the ordinary discretionary power to order a severance for trial except to require a severance if defendant makes affidavit that one or more of the joint defendants is or are, etc., material witnesses for him on the trial. Even this is limited by the language of the statute, to cases where the indictment prior to trial has been removed to the Supreme Court by *certiorari* or otherwise.

The weight of outside authority, according to 12 C. J. 640, is that the question of severance is one which lies in the discretion of the court.

In *State* v. *Sabato,* 91 L. 370, three were indicted and two tried, a severance being had as to the third; its propriety not being challenged.

In *State* v. *Taylor,* 92 L. 135, two were indicted, one pleaded *non vult* and testified as a state witness at the trial of the other.

In *State* v. *Herbert,* 92 L. 341, 343, nine seem to have been indicted, and three were severed over the objection of four others; two of the other five were convicted and three acquitted. The judgment was reversed, but I do not find that the propriety of the severance was even challenged in the Supreme Court.

In *State* v. *Gregory,* 93 L. 205, three were indicted and a severance of two was ordered and the third tried. That is exactly the case at bar; the propriety of the severance was not raised.

In *State* v. *Faure,* 98 L. 18, three were indicted with some other unknown parties being mentioned. One fled the State, another was severed and Faure tried alone. As the severed party was a witness for the State the inference is that the severance was at the instance of the prosecutor.

In *Brien & Smith,* 32 L. 414, in 1868 there was an indictment for conspiracy and a severance, and on the trial it was objected that a joint defendant not on trial and who had not pleaded, was an incompetent witness for the state. The propriety of severance was apparently not questioned. C. J. Beasley reviewed the authorities and held the co-conspirator a competent witness. He does not differentiate joint defendants in a charge of conspiracy from those under any other charge.

In *Noyes* v. *State,* 41 L. 418, 429, affirmed 43 L. 672, there was a severance in a conspiracy proceeding and one Stedwell, a joint defendant, was held competent to testify against Noyes on the separate trial of the latter.

POINT III.

The third assignment of error is that the Court improperly admitted evidence of statements made by others than co-conspirators.

These were conversations all had with the co-conspirators, Tillotson and McDonough, when they went to the houses of McCormick and Everman, by the persons who were at that time at these houses and were in reference to the mission on which they were sent by the plaintiff-in-error, Claypoole; that is, the payment of money to prevent Everman and

McCormick from being prosecuted for a crime which had been committed, and would, therefore, be so closely connected with the crime that they would be admissible as part of the *Res Gestæ.*

The general rule is that statements of third persons are admissible in evidence when they are so closely connected with the crime as to constitute a part of the *Res Gestæ,* 12 C. J., p. 579.

Res Gestæ is defined in the case of the *State* v. *Hunter,* 40 N. J. L., p. 495, at p. 538:

> "The *Res Gestæ* may, therefore, be defined as those circumstances which are the undesigned incidents of a particular litigated act, which are admissible when illustrative of such act. These incidents may be separated from the act by a lapse of time more or less appreciable. They may consist of speeches of any one concerned, whether participant or bystander; they may comprise things left undone as well as things done. Their sole distinguishing feature is that they should be the necessary incidents of the litigated act, necessary, in this sense; that they are proper preparations for, or emanations of such act, and are not produced by the calculated policy of the actors."

This definition and rule is also approved in the case of the *State* v. *Kane,* 77 N. J. L., p. 244.

So far as the Plaintiff-in-Error's contention as to the testimony concerning Tillotson and McDonough's conversation with Burchell, is concerned, the admission of what they testified to in no way could be prejudicial to the defendant, because Burchell was afterwards called by the State and testified to the very same conversations.

It is, therefore, respectfully submitted that all these conversations were had by the co-conspirators, Tillotson and McDonough, in the carrying out of the act of conspiracy with the Plaintiff-in-Error and would be a part of the *Res Gestæ* and were, therefore, admissible in evidence.

POINT IV.

Plaintiff-in-Error's next assignments of error 4, 5, 6 and 7 cover the refusal of the Court to charge certain requests of the defendant.

It is respectfully submitted that an examination of the entire charge in this case will show that the law was fully and completely stated.

The rule is laid down in the case of the *State* v. *Gardner,* 55 N. J. L., p. 17, "A Judge is not required to adopt the form of words or the collocation of phrases in which the request to charge is framed."

"A trial judge is not required to charge requests of counsel in preference to language of his own choosing conveying the same points."

State v. *Rombolo,* 91 N. J. L. 560.

"If a request, in so far as it embodies any pertinent legal principle, has been charged, the court is not bound to repeat it in the language requested."

State v. *Fischer,* 97 N. J. L. 34.

In the case of the *State* v. *Dedge,* 125 Atl. 316, where the trial judge had fully and accurately charged the jury upon the presumption of innocence and the rule requiring proof of guilt beyond a reasonable doubt the Court said, "This is sufficient. The trial judge is not required to charge the jury in the identical language of the request."

The Plaintiff-in-Error in the case at bar raises no question that there was no full and accurate charge as to the proof of guilt beyond a reasonable doubt and the presumption of innocence.

Requests embracing comment plainly intended to influence the jury on an acquittal are often entirely proper to be charged, if the court, in its discretion, thinks it proper to do so; but it is certainly not erroneous to refuse to charge, or fail to charge, in language commenting on the character of the crime and the position of the defendant, calculated to impress the jury with the idea that the court is working for an acquittal.

State v. *Fuer,* 3 N. J. Adv. Rep. 661.

"The refusal of the trial court to charge a request is justified where the request is charged in effect."

State v. *Zekick,* 4 N. J. Misc. 305.

POINT V.

The eighth assignment of error has to do with a portion of the Court's charge in which the court said:

"go out now and collect from these men, fifty or a hundred dollars a piece or whatever they can pay, and let them know that if they pay, we will see to it that no further proceedings against them will be had and the evidence 'squashed.'"

A perusal of Tillotson's testimony shows that this is what Claypoole's instructions to him were:

"Q. What happened? A. He wanted us to go down to Joe Migdoff's and collect money on two cases down there. I said, sure, and he wanted to know what I was grouchy about. He also told me if I did not do what he wanted me to I would have to look for a new job and then he went around to his desk and then wrote out a paper. Then he handed the paper to me and told me to *go ahead and collect the money from all these names and tell them he sent me there.*"

"Q. Did he tell you what to collect money for? A. Yes, he did."

"Q. What? A. *He said for to destroy the*

papers, and he was the only man in the County that had the papers or the records."

"Q. Did he say how much money? A. No, Sir. Well, he did say—I asked him, suppose they give me five dollars. And he said, they ought to be willing to give you *fifty dollars apiece to have their case destroyed."*

This shows that the testimony is in almost the same words as the Court's recital, and there is certainly nothing in such a recital that would mislead the jury. Therefore no harmful error was committed thereby.

"A charge must be read as a whole in the light of a sensible construction and no error is thereby committed by failing to have every sentence contain necessary qualifications if on the whole the jury could not have been misled."

State v. *Tachin,* 92 N. J. L. 269.

Comments on the evidence are within the province of the Court, so long as he does not undertake to control the jury on the facts.

State v. *Lasowski,* 4 N. J. Misc. 489.

The same rule of law is applicable to the Plaintiff-in-Error's ninth and fourteenth assignments of error.

POINT VI.

The Plaintiff-in-Error's tenth assignment of error is that no adequate bill of particulars was furnished and that the defendant had no fair opportunity to prepare for trial.

The first and second particulars were answered and the third and fourth were not answered by the State. The third and fourth questions asked by the defendant are as follows:

"3. State particulars of the charge to be pressed by the State, and the evidence intended to be relied upon."

"4. In the above indictment the State charges that certain promises and assurances were conveyed, carried, and transmitted by Special Officers, Raymond Tillotson and Andrew McDonough, to George Knipper, Joseph Migdoff, Leonard Ringenback, Frank Lansing, William Ramitski, John Vincent, Henry Marino, William Everman and Michael McCormick. When, where and how was this information conveyed, carried and transmitted, and which of the charges alleged will be relied upon by the State at the trial of said indictment?"

The Prosecutor refused to give the particulars asked for above and it is the State's contention that the indictment herein fully appraises the defendant of the charge for which he was charged, and that to give the particulars asked for would prejudice the State's case.

The rule in reference to the granting of a bill of particulars is laid down in the case of the *State* v. *Jancarek,* 47 N. J. L. J., p. 331, in which it quotes from a Massachusetts case—*Com.* v. *Jordan,* 93 N. E. 809:

"The office of a bill of particulars is not to compel the Commonwealth to disclose its evidence, but to give the defendant such information in addition to that contained in the indictment in regard to the crime with which he is charged, as law and justice require, that he should have in order to safeguard his constitutional rights and to enable him fully to understand the crime with which he is charged and to prepare his defense."

And further quotes from a Kentucky case—*Bailey* v. *Commonwealth,* 113 S. W. 140:

"A statement filed by the prosecutor, in which it is (*sic*) indicated the particular circumstances intended to be relied on as constituting the offense, and to which it will be confined in the further progress of the case.

> It need not specify exact dates, nor with absolute precision such other circumstances as might hamper the Commonwealth in presenting its case; nor should it be so loose as to constitute a dragnet, in which forgotten, unsuspected acts might be brought to the surface, surprising the accused, and operating as a practical matter, as unjustly as the most indefinite charge could. The accused should be put fairly upon notice. The Commonwealth should have reasonable latitude. The whole matter rests in the sound judicial discretion of the trial Judge, and he will order it or not as the circumstances of each particular case may seem to warrant."

The Court in that case (*State* v. *Jancarek*) said "We do not think that the defense is entitled to pry into the evidence of the State, any more than the State is entitled to pry into that of the defense."

Since this is a discretionary matter, the State contends that there was no abuse of that discretion and therefore no error committed.

POINT VII.

The Plaintiff-in-Error's eleventh assignment of error is that the verdict was against the weight of evidence.

The State contends that an examination of the evidence shows that the State proved all the elements of the offense. The testimony of Tillotson and McDonough that Claypoole sent them to collect the money from the various defendants, in return for which there would be no prosecution and thus defeat the ends of justice. The fact that Claypoole did have this evidence in his possession and in his charge and that he had daily access to the exhibits, together with the testimony of the witnesses, Burchell and Minnie Peabo, that they visited McCormick and Everman and endeavored to carry out the conspiracy; the arrest by the State Troopers in the house of Everman; the physical evidence of the paper writing by Claypoole, and the money taken from Tillotson, against which was the denial of Claypoole that he entered into any such agreement, together with the testimony of his mother and sister that on the day in question he was in another place.

> "It may very well be that the testimony tending to establish the guilt of the plaintiff-in-error is of such meagre and attenuated character that tested by a strict analysis it is not clearly convincing of the guilt of the plaintiff-in-error; and even though it may appear to us that on a motion for a new trial, in the trial court, such a motion might properly prevail, nevertheless, such a situation affords no legal ground for disturbing the verdict in this case here, so long as there is some testimony, no matter how slight, tending to support the finding of the jury." *State* v. *Young,* 93 New Jersey Law, 397.
>
> *State* v. *Plough,* 88 N. J. L. 425.
>
> *State* v. *Faunce,* 91 N. J. L. 333.

It is, therefore, respectfully submitted, in view of the foregoing, that the conviction should be affirmed and the writ dismissed.

The following is a copy of the Supreme Court opinion rendered by the Supreme Court during the October Term, 1926.

NEW JERSEY SUPREME COURT

No. 118, October Term, 1926

State of New Jersey
Defendant-in-Error

v.

George Claypoole
Plaintiff-in-Error

In Error to Morris County Court of Oyer and Terminer.

Before Justices Kalisch, Katzenbach and Lloyd.

For the plaintiff in error, William A. Dolan.

For the defendant in error, Albert H. Holland, Prosecutor of the Pleas.

Per Curiam: The plaintiff in error was convicted in the Court of Oyer and Terminer of Morris County on an indictment charging that he with Raymond Tillotson and Andrew McDonough, together with divers other persons of evil minds, whose names are as yet unknown to the Grand Inquest, wilfully, maliciously, knowing, corruptly and unlawfully did combine, unite, confederate, conspire and bind themselves together by agreement to pervert and obstruct justice and the due administration of the law of the State of New Jersey.

The record of the case shows that there was a motion made on behalf of the plaintiff in error, George Claypoole, to quash the indictment, which

motion was subsequently, after the conviction of the plaintiff in error, supplemented by a motion in arrest of judgment, both of which motions were denied by the trial judge and we think properly so. The ground of the motions was that but one defendant is charged on the allegation of conspiracy. But this statement is contrary to the fact, for the indictment expressly charges a conspiracy between the three persons mentioned in the indictment and with other persons unknown to the Grand Jury, to pervert and obstruct justice and the due administration of the law of the State of New Jersey. From the record it further appears that on motion of the Prosecutor of the Pleas, on behalf of the State of New Jersey, for a severance, the motion was granted, resulting in putting the plaintiff in error on trial alone.

This action of the trial judge is assigned as a ground for reversal, in that in the absence of proof that other defendants charged were dead, convicted or impossible to apprehend, there could not legally be a severance. To sustain this contention it is argued, that the return to the indictment shows only the defendant, Claypoole, was tried and the two other defendants, Tillotson and McDonough appeared as witnesses in the case, and as they were not convicted, therefore the plaintiff in error could not be properly tried and convicted. This contention, manifestly, overlooks the fact that the indictment as above indicted not only charged conspiracy between the persons mentioned therein by name, but also with persons unknown to the Grand Jury, and hence it is obvious that the objection advanced by counsel is without legal force.

But it is further urged by counsel that a severance in a conspiracy case is not lawfully permissible since it is expressly forbidden by section 64 of the Criminal Procedure Act (Revision of 1898). Compiled Statutes, 1910, page 1841.

This section provides that where two or more persons are or shall be jointly indicted for the same offense, except for conspiracy, and such indictment before the trial thereof has been or shall be removed into the Supreme Court of this State, by certiorari or otherwise, any one of said persons on application to Supreme Court, upon affidavit that some one or more of said persons so jointly indicted with him * * * is, or are * * * a material witness or witnesses for him on the trial of said indictment * * * shall by order of said Supreme Court, be allowed a trial separate from the person or persons whom he shall so name as such material witness or witnesses.

It is quite evident, from the language of the statute, that it does not apply to a situation which confronted the trial judge. The statute is only applicable to indictments, which by writ of certiorari have been removed into the Supreme Court by an indicted individual or individuals for the purpose of making a motion before that tribunal for a severance.

The provision of the statute neither expressly or impliedly applies to a situation where a motion for a severance is sought in the court of first instance, on behalf of the State. The unquestioned practice in this State for more than fifty years has been for a severance to be granted in the court of first instance on application of the State. The exercise of this power has always been regarded as a matter resting in the sound discretion of the court. The following reported cases in which severances were granted on application of the State, the right not being questioned are: *Brien, et al.* v. *State,* 32 N. J. L., 414; *Noyes* v. *State,* 41, Id., 418, 429; affirmed 43 Id., 672. Both of these cases were conspiracy cases. *State* v. *Sabato,* 91 N. J. L., 379; *State* v. *Taylor,* 92 Id., 135; *State* v. *Herbert,* 92 Id., 341, 343; *State* v. *Gregory,* 93 Id., 205; *State* v. *Faure,* 98 Id., 18.

Under the third point, on the brief of counsel of plaintiff-in-error it is argued that the court improperly admitted in evidence statements made by other than the co-conspirators. The third assignment as well as the third specification of cause for reversal does not give the name of the witness and does not set forth the testimony asserted to be improperly admitted, and therefore cannot be properly considered. It has been repeatedly decided by this court and the Court of Errors and Appeals that an assignment of error, or specification of cause for reversal in order to be valid in law must set out the subject matter of the objection with such distinctness and particularity so that the court may be informed of the error relied on without being compelled to search through the entire record for the name of the witness and the testimony objected to. It is true that in the brief of counsel he has set forth with particularity the name of the witness and the testimony objected to, but we find upon reference thereto, in the written record that it was subsequently struck out by the trial judge. We have not examined other parts of the testimony given by this or any other witness, to which testimony the brief says: "objection was made" for the reason that the testimony objected to has not been specifically assigned as error or specified as a cause for reversal.

Under points four, five, six and seven of the brief on behalf of the plaintiff-in-error, counsel argues that requests seven, eight, nine and ten, as submitted by the defendant, state concisely and correctly the rule of law which govern the duty of a juryman in arriving at a verdict, etc. Referring to assignments four, five, six and seven, we find that they are couched in the most general language. Assignment four will serve as a specimen of the other requests: "Four, Because the trial court erred in refusing to charge specifically the defendant's sev-

enth request to charge." What that request was, does not appear, nor is the specific error pointed out in the refusal to charge the request, and this blemish is present in five, six and seven of the assignments.

Under the eighth assignment of error, counsel on behalf of plaintiff in error, assigns as a ground for reversal, that the court improperly stated to the jury that the defendant said to alleged conspirators: "Go out now and collect from these men fifty or a hundred dollars apiece or whatever they can pay and let them know that if they pay we will see to it that no further proceeding against them will be had and the evidence quashed."

It is clear from the statements preceding and following the criticized statement contained in the charge of the trial judge that the latter statement was not intended and could not convey to the jury that it was testimony in these words employed by the trial judge proceeding from the lips of the plaintiff in error, but was rather in the nature of a paraphrase of all the testimony adduced in the case on behalf of the State, relating to the conduct of the plaintiff in error and to his conversations with his alleged co-conspirators and their conduct of the latter in carrying out the former's instructions to them.

The trial judge said in the beginning of his charge: "* * * and with that idea in mind, according to the State's claim, (and I am merely indicating the State's claim here without expressing my own view in the matter) Claypoole had a meeting with these two men, McDonough and Tillotson, and gave them a sheet of typewriter paper, with a half a dozen or more names, one marked S-I" and said: (here follows the language used by the trial judge, and objected to, as not being accurate.)

It is also to be observed that, at the close of the court's charge the court said to the jury "that the

court did not give the jury its view of the case, but merely undertook to state the State's case and it is for you to find out what the facts are."

Under point eight of his brief, counsel of plaintiff in error urges, that other statements contained in the court's charge were erroneous. We find no assignment of error nor specification of cause for reversal based upon such alleged errors, and therefore, we cannot properly deal with the matter.

The ninth assignment of error is too indefinite and uncertain to receive consideration by the court. It fails to set out what the court said on the subject relating to the testimony of McDonough and Tillotson, so that if there was error in the charge of the trial judge, the specific error is not disclosed.

Under the tenth assignment of error it is argued, that the State refused to furnish an adequate bill of particulars and the defendant had no fair opportunity to prepare for trial.

The bill of particulars printed in the record *inter alia*, contains in substance, a demand on the State to furnish the plaintiff in error with the evidence intended to be relied on in the trial of the indictment against him. Of course, this was palpably an improper demand. The other matters contained in the bill were answered. Furthermore, if the State had refused upon a proper demand to furnish the plaintiff in error with a bill of particulars the proper course upon such refusal was to apply promptly to the Court in which the cause was pending for a further bill. It appears that nothing was done by counsel of plaintiff-in-error until the case was moved for trial and then a demand was made for a further bill, and it appearing that the bill of particulars asked for related to the furnishing by the state of the evidence to be relied on by it, on the trial of the cause, the demand was properly refused. We think also, that the demand for a further bill of particulars came too late, and might well have been refused on that ground alone.

Lastly it is argued under the eleventh specification of cause for reversal, that the verdict is against the weight of the evidence. A careful reading and consideration of the testimony leads us to the conclusion that there was ample evidence to warrant a fair-minded jury to reach the conclusion that the plaintiff-in-error was guilty, as charged in the indictment.

Judgment is affirmed.

It is therefore respectfully contended, in view of the foregoing, that the conviction should be affirmed, and the writ dismissed.

Respectfully submitted,

ALBERT H. HOLLAND
Prosecutor of the Pleas, for
the County of Morris.

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