Thompson Utah - May 31st 21

Dear Frank -

At long last your letter posted May 16th came to me -

Mute evidence was enclosed to the effect that May 6th you sent me a letter to Burley Savage - The one I recieved seemd to be the May 6th letter - You enclose an envelope addressed to Skip but I dont know what to do with it, unless the copy of letter you enclosed that went to Harold Sherman, I am taking the chance and sending it on to Skip.

Two weeks hence June 14th I will be sentenced to the Penitentiary - by the Judge whose teeth will rattle as he hands down his dictum -

There will be a lot of talk about Probation and the court will seek to have me pay the States expense of $2800, and pay to their complaining witness's about $5000 in cash and $10000 in payments. This they call restitution - I said to Dillon the head of Probation, "Who is going to restore the Dutton Creek property with its $25,000 a year income? Whose going to replace all the equipment there on that was sold under lien foreclosures to pay judgements against Flader? Whose going to restore the Newton Oil Company to normal business life?" I got no answer -

I refused to give the investigator

(2)

Sharons address as he said he wanted to talk to her - He reported to his Chief Dillon that I would not cooperate - The Chief took over and for 3 hours last Friday we went over things - I told him I had a right to protect my wife as she had had enough and was in no condition to be harrassed any further - He agreed, and said he would not permit anyone to talk to her -

He agreed Asst Flader was a liar and that Bauer had lied to them when the truth would have been better - He said I should not have been tried with DeBauer - I dodged every way I could any indication of my intent -

I have hired my Jew lawyer Epstein that some hill billy high Water is going to appeal to the last Court in the land if need be - He is as much of a lawyer for this case as my boy Howard would be - I have already arranged to get the best brief appeal atty in Denver and will add him to the case as soon as the verdict is announced Mellman is a good man on appeal - no good on trial, but he is DeBauers atty and I dont want him at all - My Atty Epstein is N.G. both ways -

I will have some friends who have helped me in my next course of action - It will take about a

year to get the case cleared from the next court in Colorado—

DeBauer is taking probation if they give it to him— Blunts the opinion of Epstein and the probation head I refuse to talk to him He lies without reason, and while he may have been a mental case before his skull fracture 3 days before the trial he is certainly one now, and people close to him tell me he is not in any way the same person.—

Lee buried here— I arranged in Denver last Friday, so I don't have to be present at the hearing June 1st which is to be continued to June 14 the last day as the Judge must go on his vacation June 20 1

I had decided that my life story had killed you off and I did not send the last 40,000 words, which I may say are better than what you've had to date— Lee are you understand that I simply sat and wrote and the whole shit pot is my own first draft— Not having what I sent you there may be some repetition— I agree the whole thing should be typed and if you'll tell me what it will cost Lee send the money by return mail— and if you are ready to suffer the present output I have here Lee send it along— I have some ideas as to how we might collaborate

if the whole thing is worth while-
Reasons - I'm about to know the
answer to this Uranium - If its
there as it looks to my mine expert
and associate, we'll start shipping
before June 14th rolls around - and
if its as good as the tests - we'll
ship to Thompson where I'll get about
$5000 to $6000 worth a day - The
Uranium station here is giving us
priority on account of our Volume - and
my only concern is the percentage
of Uranium and Vanadium - If its
no good the last five months will
have been in vain - but I think
we are on our way - So if I make
this Uranium strike - that will
help - on the book idea - and then
with the appeal underway there
may be some value there - There's
a lot I want to discuss with
you -

I drove down to Phoenix last
week end the 23rd and spent two
days with my family - Jenny's been
exceedingly sweet - And Sharon
writes that Howard tells everyone
about his father's coming to see him -
Strange - she wants me to come
again soon - I found besides Sharon
Howard and Poo - a bitch Poo
with 4 week old baby Pois - a
massive Bulldog that had tried
to kill Poo after two months of
friendship - and two neighbor

coop - The place was reeking - I bought Howard a fishing pole & line and we went early Morning fishing - He got a nibble and almost choked with excitement - Bought him a rubber swim pool and he and his playmates lived in it - Sharon said I didn't bring her a surprise, so I left a big bunch of flowers just as I was to leave -

Her arm was bad - Some injections similar to what Dr Magoun in Denver shot into my knee & shoulder helped her immensely. So I think she's safe now =

The minute, long ago, I noted Adamski showing signs of delusions of grandeur I told you he was out - I am not going to comment on the whole weird thing - It has tended to wreck my life and if there is to be a resurrection from the cross they hung me on, I'm ready for it - The only reason I've been able to survive is my knowledge of my innocence in all the vast array of charges and the faith in me held by a select few of Gods immortals -

I'm glad old Detroit is on the mourners bench - I'm afraid of these F.F. hands as they seldom go beyond the surface - Since he's reading the book twice he may be an exception -

It's a shame the film can't be handled

along the lines we talked of - I am
prone to DeForest if he would take
the time the existence of the varices
up by Mullholland drive -

Here I am in a little village
just beside a railroad track. The
Motel cabin I live in rattles as
the trains roar by night and days -
It's 24 miles to my diggings from
here - Hints better than Wheeling 200
miles a day from Grand Junction and
back -

All mail henceforth should come
to me S.W.N. Thompson Utah -
There's 61 souls including the dogs
in this spot - A Greek, maybe a
descendant of the Fathers of
Magnetism owns the place and
the town - He agrees with me this
village sits on an oil structure -

I certainly hope you and your
brood are in good health for a
change - I'm hunting uranium - Live
driven 4800 miles past 16 days and
shall be up at 5 am to go into
Grand Junction to mail this, write all
my good wishes, but for somebodys
sake don't wait so long next time
beyond it where I'll tell you and
Hints to yours truly

Jerry
Thompson Utah

Thats all no
street no motel
just Thompson Utah -

Moab Utah- July 2,

My dear double barrelled, Wednesday July 21st
Grand father Scully=

That boy certainly put his mind on his work, and showed the old man how to make good right from the start. I'm certain both you and Alice are thrilled at the prospect of a couple of boys bearing the Scully name- My good wishes to Mother and father when you write them

It seems that Moses of old went over in to the land of Moab- and they buried him there, age 120, and even up to the last hour he was in full possession of all his faculties his vigor (whatever that meant) and his manhood. Moses is supposed to have written his own obit- because the good book says and I quote, "and they buried him in the land of Moab, and no man knoweth his burial place even unto this day." The internal evidence of these "works indicate that Moses was not writing, and that it was written long afterwards- I think I've found the place, because those old fellains knew location in those days and this is the place, just beside the swirling waters of the Colorado, up beside my new Uranium property- In fact he was buried in Monument Valley where the movie people have sendra

big camps, and on a small hill overlooking the river, a lonely grave is marked by a marble slab, and an iron picket fence - that's where old Moses lies a mouldering in his grave - so be it -
I'll die here at last and I shall follow in Moses' footsteps because my birthday was last Monday the 19th and I decided I had reached the half way mark - but now starting the last half of the run, when I get to the Milepost where Moses lay down for the long sleep, Science will have things so magnetically balanced that I can probably take off for another run down the sandy shores of Times ~~Eternity~~ great Sea of Life -
The cooling system in my cabin room at Thompson is a snare and a delusion, and the old Greek who owns the place won't fix it, so with 110-1- degrees in the day time it doesn't get below 90 at night - so I'm giving up. My mail will still get me at Thompson, until further notice -.
I have branched out in the Uranium business, and have after a month of negotiation bought the world famed "Red Head" claims, from which the Curies of France took 40 tons of ore running 10% and better Uranium They shipped it to France for their Radium research - so my friend

I must have told what the ward mine soon knew as "The Tennessee Queen Mining Company" and mill start shipping ore next week - Two of owners are busy at Mellard Cat across the river 4 miles air line away, but we have to go 70 miles to get there - I do 250-300 miles a day - Am hard as nails, brown as a Indian, up at 5:30 am and I can see day light - I may give you a story in 60 days that will warm the cockles of your ever skipping heart, and smooth its beat to a ~~[illegible]~~ sweet running engine again -

Wanted to leave for Calif Nov Friday but looks like I can't move yet - will give you and Gene 2 or 3 days notice of my take off - I hope it will be inside ten days -

Things are better at the Arizona retreat of E. and Howard -

Love

Pa

cc

# Doodlebug Defendants Claim 72 Trial Errors

Denver Post
JAN 28 1954

Defense attorneys for Leo A. GeBauer and Silas M. Newton, Denver oil promoters found guilty last Dec. 29 of confidence game and conspiracy to commit confidence game, filed a 14-page motion asking for a new trial in Denver district court Thursday.

Newton and GeBauer face prison terms of up to 30 years from their conviction of bilking Herman A. Flader out of $250,000 through the purchase of part interest in three "doodlebug" machines which were alleged to be able to locate oil beneath the surface of the earth.

The motion filed by the fatherson defense team of Isaac and Gerald Mellman and Theodore Epstein charges Judge Frank E. Hickey with 72 points of error during the nearly two-month-long trial late last year.

**OTHER ERRORS CHARGED**

Defense attorneys charge Judge Hickey erred in allowing 34 exhibits of checks, agreements and letters to be admitted into evidence.

An error was also charged for the judge's refusal to dismiss the information by reason that it was filed more than three years after the commission of the alleged offenses and that the statute of limitations had expired.

An error was charged in denying the defense a bill of particulars and in overruling a defense motion to dismiss the charges on grounds that two terms of court had elapsed from the date of filing the information before the defendants were brought to trial.

The defense charged Judge Hickey should not have allowed District Attorney Bert M. Keating and Edward Lehman, one of his deputies who prosecuted the case, to amend the information after the trial got under way. The motion charges the court allowed the district attorney to ask leading questions during Flader's testimony, over the objections of the defense lawyers.

Ben Garcia, Denver handwriting expert, was endorsed as a state witness midway through the trial to testify regarding a contract which bore Flader's signature. The state had charged the signature was forged. The motion charges Garcia's endorsement as a witness was in error on grounds that his testimony was immaterial, incompetent and irrelevant.

The defense attorneys charged the court erred in allowing Thor Severson, Denver Post staff writer, to testify during rebuttal as to a picture showing Newton holding a doodlebug machine, partially hidden behind a magazine. They charged Severson's testimony was an attempt to impeach Newton and that the impeachment was immaterial and highly prejudicial to the jury.

**INSTRUCTIONS CHALLENGED**

Midway through the trial, the court was recessed for one week when GeBauer was hospitalized for hemorrhaging ulcers.

The motion charges Judge Hickey erred when he instructed the jury for the recess and suggested they had already read about GeBauer's illness in newspapers. This instruction, the defense charged, was directly opposite the court's earlier instruction at the opening of the trial not to discuss the case or read about it in the newspapers.

The Mellmans and Epstein charge the court erred in not granting a motion for a directed verdict at the conclusion of the state's case on the grounds the people's evidence had not disclosed the commission of the offenses charged in the information.

**JUDGE'S ACTION HIT**

Other points of error contained in the motion allege Judge Hickey should not have given the jury of 13 instructions presented by the district attorney before they started their deliberations, and should have included eight instructions suggested by the defense.

After GeBauer was released from the hospital and the trial resumed, he again became ill and was confined for several days to his hotel room. At this time he signed a waiver of his constitutional right to face his accuser so that the trial could continue in his absence.

The final point of error brought out in the motion alleges that the court should not have permitted the trial to proceed without GeBauer's presence and the accepting of the waiver was improper and unconstitutional. GeBauer signed the waiver on advice of the Mellmans.

Judge Hickey said he would rule on the motion within a month, after he has had time to study it.

STATE OF COLORADO )
) ss.
City and County of Denver )

IN THE DISTRICT COURT
Second Judicial District
No. 40891 Div. 7

THE PEOPLE OF THE STATE OF COLORADO,
vs.
LEO A. GeBAUER and S. M. NEWTON,
Defendants.

MOTION FOR A NEW TRIAL.

Comes now the defendant, S. M. Newton, above named, by his attorney, Theodore Epstein, and respectfully petitions this Honorable Court for an order vacating the verdict of the jury heretofore returned on, to-wit: the 29th day of December, 1953, and to grant him a new trial herein.

AND AS GROUNDS AND REASONS THEREFORE, states and shows unto the Court:

1.

That the verdict of the jury is contrary to the evidence.

2.

That the verdict of the jury is contrary to the law.

3.

That the verdict of the jury is contrary to the law and the evidence.

4.

That the Court erred in not granting and sustaining the motion of the defendant to quash the Information herein and each Count thereof for the reason that each Count of said Information was duplicitous in that each Count contained allegations charging more than one substantive offense.

5.

That the Court erred in not requiring the District Attorney to separately state the various charges contained in each Count of said Information.

6.

That the Court erred in not quashing and dismissing the Information and each Count thereof for the reason that it appeared on the face thereof

that the said Information was filed more than three years after the commission of the alleged offenses therein charged and after the running of the Statute of Limitations as to each of the charges therein referred to.

7.

That the Court erred in denying this defendant's Motion for a Bill of Particulars.

8.

That the Court erred in overruling and denying defendant's Motion to Dismiss the Information and each Count thereof for the reason that more than two terms of Court had elapsed from the date of the filing of the Information, not including the term of Court during which said Information was filed and before said defendant was brought to trial.

9.

That the Court erred in not sustaining the challenge for cause interposed by the defendant as to the juror, Mrs. Florence Hansen.

10.

That the Court erred in permitting the District Attorney to amend the Information and each Count thereof by inserting the words "Flader Industries, Inc., a Colorado corporation, also doing business as the Flader Land Company" in place of "Flader Land Company, a Colorado corporation", during the testimony of the witness, Flader, over the objection and exception of the defendant.

11.

That the Court erred in permitting the witness, Flader, to testify over the objection and exception of the defendant, as to matters that occurred more than three years prior to November 25, 1952, the date of the filing of the Information herein, for the reason that such testimony predated the beginning of the Statute of Limitations and was immaterial and had no bearing on the issues herein.

12.

That the Court erred in permitting the witness, Flader, to testify over the objection and exception of the defendant as to conversations that

the witness had with the defendant, GeBauer, which conversations were not had in the presence of this defendant.

13.

That the Court erred in permitting the District Attorney to propound leading questions to the witness, Flader, over the objection and exception of this defendant, which leading questions were in part as follows:

(a) "Did GeBauer ever tell you the value of the machine at any time?" which question was leading and in effect was the substance and essence of the charge herein.

(b) A leading question relative to defendant GeBauer's statement as to the use of the Exhibits A and F.

14.

That the Court erred in sustaining the objection of the District Attorney to the question propounded to the witness, Flader, on cross-examination relative to the treatments that were given to men and women by use of the machine invented by the said Flader for health purposes.

15.

That the Court erred in admitting into evidence over the objection and exception of the defendant each of the exhibits set forth in this paragraph for the reason that each of said exhibits had no bearing upon the issues herein and were not material as to this defendant and each was dated and was delivered more than three years prior to the filing of the Information herein,

(a) People's Exhibit 2, a check dated July 21, 1949 to the Newton Oil Co.

(b) People's Exhibit U, a check dated August 19, 1949 to the Newton Oil Co.

(c) People's Exhibit Y, a check dated October 27, 1949 to the Newton Oil Co.

(d) People's Exhibit X, a check dated October 26, 1949 to the Newton Oil Co.

(e) People's Exhibit Z, dated October 27, 1949.

(f) People's Exhibits A1, B1, C1 and D1, each being checks to Newton Oil Co.

(g) People's Exhibit El dated November 17, 1949.

(h) People's Exhibits S and T, purporting to be agreements signed July 22, 1949 and October 27, 1949 respectively.

(i) People's Exhibit W, an agreement dated August 20, 1949.

16.

That the Court erred in admitting into evidence over the objection and exception of this defendant, People's Exhibit R, a letter of the Newton Oil Co. which was accepted and witnessed by the defendant GeBauer and the witness, Flader, and which was dated July 19, 1949, more than three years prior to the date of the filing of the Information herein.

17.

The Court erred in admitting into evidence over the objection and exception of the defendant each of the exhibits set forth in this paragraph for the reason that each of said exhibits had no bearing on the issues herein and were not material or competent and each was dated and involved matters that occurred more than three years prior to the date of the filing of the Information herein:

(a) People's Exhibit H, an agreement dated July 14, 1949.

(b) People's Exhibit J, a check dated July 27, 1949.

(c) People's Exhibit K, a check dated August 29, 1949.

(d) People's Exhibit L, a check dated November 2, 1949.

(e) People's Exhibit M, a check dated November 23, 1949.

18.

The Court erred in admitting into evidence over the objection and exception of the defendant each of the exhibits set forth in this paragraph for the reason that each of said exhibits had no bearing on the issues herein and were not related in any way to the charge in the Information or either of the Counts thereof and further were not material in any way as to this defendant.

(a) People's Exhibits N, O and P.

(b) People's Exhibit Gl, a letter from Newton Oil Co. to the witness, Flader.

(c) People's Exhibit Hl, Jl, Kl, Ll, Ml and Nl, each being a check to

the Newton Oil Co. and represented dealings between the said Newton Oil Co. and the witness, Flader.

(d) People's Exhibit F1, a check to the Newton Oil Co. dated November 29, 1949.

(e) People's Exhibit O1.

19.

That the Court erred in admitting into evidence over the objection and exception of this defendant People's Exhibit R1, a group of checks, which checks were paid out by the witness, Flader, and were an outgrowth of the result of his attempt to drill oil wells, and included among other things checks paid for the payroll of the said witness, Flader.

20.

That the Court erred in sustaining the objection of the District Attorney to the question directed to the witness, Huey, on cross-examination regarding a conversation that the said witness had with one, West, said objection being that testimony of said conversation was hear-say.

21.

That the Court erred in permitting the District Attorney to question the witness, Meredith, on re-direct examination regarding a machine known to find oil in place, which examination was over the objection and exception of this defendant and if material should have been part of the direct examination.

22.

That the Court erred in refusing to order the witness, Huey, to present and submit for consideration to the defendant's counsel, papers examined by the witness, Huey, during the course of his testimony.

23.

That the Court erred in admitting into evidence over the objection and exception of defendant, People's Exhibit P-1, a letter addressed to the Newton Oil Co. for the reason that said exhibit was not material, or relevant to the issues and was not competent, relevant or material as to this defendant.

24.

That the Court erred in admitting into evidence People's Exhibit U1 over the objection and exception of this defendant, being an accounting to the witness, Huey, for the reason that said Exhibit was immaterial to the issues herein and constituted matters that occurred in the years 1947 and 1948 and had no bearing on the issues herein and was immaterial, incompetent and irrelevant as to this defendant.

25.

That the Court erred in permitting the People to endorse during the course of the trial the name of the witness, Ben Garcia, and to call the said Garcia as a witness on behalf of the People and to question said witness as to People's Exhibit H and defendant's Exhibit 6 for the reason that said testimony was immaterial and incompetent and irrelevant as to the issues in the case and that said testimony was improper at the time it was presented, and the Court erred in permitting the District Attorney to question the witness, Garcia, as to People's Exhibit W1, all of which was done over the objection and exception of this defendant.

26.

That the Court erred in sustaining the objection of the People to the defendant's offer of proof relative to defendant's Exhibit 39, being the machine allegedly used by Flader for health purposes, which offer was made in chambers and out of the presence of the jury and which offer was renewed from time to time by this defendant.

27.

That the Court erred in sustaining an objection of the People to a question directed to the witness, Osborn, regarding what defendant GeBauer said to him regarding the machine used by said defendant, GeBauer.

28.

That the Court erred in sustaining the objection of the People to a question directed to the witness, Bryce Morris, on re-direct examination as to what Flader had said to the witness regarding his (Flader's) machine, as to whether or not said machine worked on electrical current.

29.

That the Court erred in sustaining the objection of the People to questions directed to the witness, Jacobson, relating to conversations he had with defendant GeBauer regarding the use of his (GeBauer's) machine.

30.

That the Court erred in sustaining the objection of the People to a question directed to the witness, Jacobson, as to whether or not defendant, Newton, had made any suggestions for improvements to the defendant, GeBauer, relative to the machine which was being used for the witness, Flader.

31.

That the Court erred in permitting the People over the objection and exception of the defendant to question the witness, Jacobson, on cross-examination as to whether or not Northern Petroleum Co. used the defendant, GeBauer's survey for the reason that this was not part of the direct examination and was not material to the issues herein and was not relevant, competent or material as to the defendant.

32.

That the Court erred in permitting the People to question the witness, Jacobson, on cross-examination over the objection and exception of this defendant, as to the principle or the operation of the seismograph for the reason that this was not gone into on direct examination and was not material to the issues herein and not relevant, competent or material as to this defendant.

33.

That the Court erred in permitting the People to question the witness, Jacobson, over the objection and exception of this defendant as to what was done with his $1,500.00 deposit for the Newhall project for the reason that it was not gone into on direct examination and was not proper cross-examination, was not relevant, competent or material to the issues herein and not relevant, competent or material as to this defendant.

34.

That the Court erred in sustaining the objection of the People to

the question directed to this defendant on direct examination as to whether or not the Newton Oil Co. had performed all that was to be done by them pursuant to the provisions of Exhibit S.

35.

That the Court erred in sustaining the objection of the People to the question directed to this defendant, on direct examination as to what defendant, GeBauer, informed him as to his (GeBauer's) machine.

36.

That the Court erred in permitting the People over the objection and exception of this defendant to question this defendant, on cross-examination regarding a pleading filed in the case of Petco Corporation vs. the Newton Oil Co., a statement allegedly made by this defendant for the reason that the reference to said pleading was not competent nor proper or material herein and was contrary to law.

37.

That the Court erred in permitting the People over the objection and exception of this defendant to question the witness, Severson, on rebuttal as to the picture, Exhibit D2 in an attempt to impeach this defendant, which impeachment was on an immaterial point and highly prejudicial and the Court's remarks as to antennaes appearing on Exhibit D2 was highly prejudicial to this defendant.

38.

That the Court erred in permitting the People over the objection and exception of the defendant to question the witness, George Bannister, on rebuttal as to whether or not defendant GeBauer told the witness that Flader or anyone else owns part of Wreco Company.

39.

That the Court erred in admitting into evidence over the objection and exception of this defendant, People's Exhibit K2 for the reason that it was not material and had nothing to do with the issues of this case and was not material, relevant or competent to this defendant.

40.

That the Court erred in permitting the witness, Bannister, to be questioned on rebuttal over the objection and exception of this defendant as to how much material was sold and how much business was done by the Wreco operation.

41.

That the Court erred in permitting the witness, Flader, to be questioned on rebuttal over the objection and exception of this defendant as to what the $4,000.00 that he paid was for, whether it was for a Mayfield or a Mansfield machine for the reason that such testimony, if material and competent should have been presented on the case in chief by the People and was not proper rebuttal testimony.

42.

That the Court erred in permitting the People to question the witness, Flader, on rebuttal over the objection and exception of defendant as to what interest he had in the first Mojave Desert project and whether or not he had any conversation with this defendant, relative to said project, which testimony if relevant and competent and material should have been presented as part of the case in chief by the People.

43.

That the Court erred in rejecting upon objection by the People the offer of proof made by this defendant as to the antennas in evidence fitting Exhibit 39, the machine identified as that being used by the witness, Flader, for his health cures and which exhibit the Court had refused admittance into evidence.

44.

That the Court erred, when continuing the cause for defendant GeBauer's illness, in suggesting to the jury that they had read about it, (said defendant's illness) thus negativing any instructions the Court gave to the jury not to read about the cause.

45.

That the Court erred in overruling and denying the motion for a

directed verdict as to the Information herein and each Count thereof interposed by this defendant at the close of the People's case for the reason that the evidence did not disclose the commission of the offenses charged in the Information or in either Count thereof.

46.

That the Court erred in denying and overruling the motion of the defendant interposed at the close of the evidence for the People that the People be required to elect which part of each Count they would rely on, whether or not they would rely upon the charge that the defendants did obtain money, etc. by use of the confidence game or that the defendants attempted to obtain money, etc. by means and use of the confidence game.

47.

That the Court erred in overruling and denying the motion for a directed verdict as to the Information herein and each Count thereof interposed at the close of all of the evidence by this defendant for the reason that the evidence did not disclose the commission of the offenses charged in the Information or in either Count thereof.

48.

That the Court erred in denying and overruling the motion of the defendant interposed at the close of all of the evidence that the People be required to elect which part of each Count they would rely on, whether or not they would rely upon the charge that the defendants did obtain money, etc. by use of the confidence game or that the defendants attempted to obtain money, etc. by means and use of the confidence game.

49.

That the Court erred in giving Instruction No. 8 over the objection and exception of this defendant for the reason that it was not a proper definition of the crime of confidence game.

50.

The Court erred in giving over the objection and exception of this defendant Instruction No. 9 for the reason that it did not state a proper rule of law as to the charge of confidence game.

51.

That the Court erred in giving Instruction No. 10 over the objection and exception of this defendant for the reason that it referred to two or more persons involved in a conspiracy, giving an intimation to the jury that more than these two defendants may have been involved in any conspiracy alleged by the People.

52.

That the Court erred in giving Instruction No. 11 over the objection and exception of this defendant for the reason that it does not state a correct rule of law and does not state a proper rule of guidance for the jury under the allegations of the Information herein and each Count thereof.

53.

That the Court erred in giving Instruction No. 12 over the objection and exception of this defendant for the reason that this instruction did not state a proper rule of law under the allegations of the Information herein and each Count thereof.

54.

The Court erred in giving Instruction No. 13 over the objection and exception of this defendant because it allowed the jury to speculate as to the dates involved and permitted the jury to find the defendant guilty of any of the acts done more than three years prior to the filing of the Information herein.

55.

That the Court erred in giving Instruction No. 16 over the objection and exception of this defendant for the reason that it permitted the jury to find the defendants guilty if money was obtained either from H. A. Flader or from the Flader Industries, Inc., a corporation doing business as Flader Land Company and for the further reason that said Instruction does not state a proper rule of law and did not set out a proper guide for the jury and for the further reason that the jury under this instruction could speculate or find that one defendant obtained money from one complainant and the other defendant from the other complainant.

56.

That the Court erred in giving Instruction No. 17 for the reasons set forth in paragraph 55 of this Motion.

57.

That the Court erred in giving Instruction No. 18, over the objection and exception of this defendant, relating to a definition of conspiracy for the reason that it is not a proper definition of conspiracy insofar as it related to the facts herein and for the further reason that it relates to two or more conspiring and gave an improper impression to the jury as to the facts.

58.

That the Court erred in giving Instruction No. 19 over the objection and exception of this defendant for the reason that it could have no application of the facts herein and for the reason that it related to one being guilty of conspiracy who comes into the conspiracy after said conspiracy is commenced and that under the evidence herein if there was any conspiracy whatsoever there was a conspiracy only of the two defendants named in the Information and it could have no application to any of the facts herein.

59.

That the Court erred in giving Instruction No. 20 over the objection and exception of this defendant relating to the crime of conspiracy for the reason that it did not state a proper rule of law under the facts herein.

60.

That the Court erred in giving Instruction No. 21 over the objection and exception of this defendant for the reason that it did not state a proper rule for the guidance of the jury as to conspiracy in relation to the facts herein.

61.

That the Court erred in giving Instruction No. 23 over the objection and exception of this defendant relating to circumstantial evidence for the reason that it was not a proper definition of circumstantial evidence and did not contain a proper rule to govern the jury in

applying any circumstantial evidence to the facts herein.

62.

The Court erred in refusing to give defendant's tendered Instruction No. 1.

63.

The Court erred in refusing to give defendant's tendered Instruction No. 2.

64.

The Court erred in refusing to give defendant's tendered Instruction No. 3.

65.

The Court erred in refusing to give defendant's tendered Instruction No. 4.

66.

The Court erred in refusing to give defendant's tendered Instruction No. 5.

67.

The Court erred in refusing to give defendant's tendered Instruction No. 6.

68.

The Court erred in refusing to give defendant's tendered Instruction No. 7.

69.

The Court erred in refusing to give defendant's tendered Instruction No. 8.

70.

That the Court erred in permitting the District Attorney in his closing rebuttal argument to tell the jury as to what counsel for defendant GeBauer, had stated to the jury what the evidence on behalf of the said defendant would show and to comment on the testimony of the witness, Jacobson, to show that the testimony of the witness, Jacobson, was contrary to the statements of counsel.

71.

That the Court erred in permitting over the objection and exception of this defendant any testimony relating to Exhibit 54 for the reason that said exhibit having been admitted into evidence was considerably damaged thereafter and prior to any examinations made by the witness, Meredith.

72.

That the Court erred in permitting the trial to proceed without the presence of the defendant, GeBauer, over the objection and exception of this defendant for the reason that this was greatly prejudicial to the rights of this defendant.

WHEREFORE, defendant respectfully prays that the verdict of the jury heretofore returned on, to-wit: the 29th day of December, 1953, be vacated and set aside and that he have such other and further relief as to this Court may seem meet and proper.

Respectfully submitted,

Theodore Epstein
828 Symes Building
Denver, Colorado

Attorney for Defendant, S. M. Newton