

Shortton, Pa. May 3/01

Dear Frank =

At long last your letter posted
May 28th came to me -

What you send me enclosed to
the effect that May 6th you sent me
a letter to Shirley Savay - The one I
received seems to be the May 6th
letter - You enclosure an envelope
addressed to Shirley but I don't know
what to do with it, unless the copy
of letter you enclosed that seems to
Israell Sherman, our taking the chance
and sending it in to ~~Shirley~~.

Two weeks hence June 14th will
be sentenced to the Penitentiary - by
the Judge whose teeth will bite off
the hands down his throat.

There will be a lot of talk about
Probation and the safest will seek
to have me pay the State's expense
of \$2800 and pay to their company
Centers' stock \$5000 in cash and
\$5000 in payment. This they
will retention - of over two million
to head of Probation, who is going
to restore the Sutton Creek property
worth \$12,000 a year income,
whose plan is to replace all the
equipment there see that this
does under him fare stormy to
say judgments against Hader.
Hold him facing to restore the Weston
Cet Company to normal business
life? "I got no answer -
I replied to give the investigator

(2)

Shawans address as he said he wanted
so talk to him - He reported to his
Chief Deillor that I wanted most
cooperative - 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 no
condition to be harassed any further -
He agreed that Haller was a liar
and that Mrs Bauer had lied to him
where the truth would have been
kitter - He said I should not have
been tried with Mrs Bauer - I dodged
every way of causing any indication
of my intent -

I have seen Mr. J. W. Cooper
Foster that Connellville & High Water
Co. going to appeal to the Court
Court at the law of 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 offered with an attorney
and will add him to the case
as soon as the verdict is announced.
Shawans is a good man on appeal -
No good we shall but he is ~~for~~ Shawans
atty and I dont think him at all -
My City of Union in N.Y. has a man -
of who have some friends who
have helped me in my new cause
of color - all will take about a

appear to get the case cleared there
 the next court in Colorado -
 If Bauer is taking his vacation of less
 time it to him - That the opinion
 of systematic and theurbation head of
 defense to talk to him. He has
 mentioned reason, and while he may
 have been a mental case before his
 small pasture 3 days before the trial
 he is certainly no more. I suggest
 that do him tell me. He is not
 in any way the same person -
 We discussed 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 4
 the last day as the judge must go
 on his vacation June 20th
 and had decided that my life story
 had killed man off and I did not
 send the last \$10,000 bonds, which
 of may say one letter than told
 you had to date - in everyone
 understood that as quickly part did
 worse and the article that put in
 my own first draft - Not having
 what I said you there may be
 some reflection - I agree the whole
 thing should be wiped and as you
 tell me what all this last dec
 send the money by return mail -
 and if you are likely to suffer
 the pursuit just as I do here do
 send it along - I have some ideas
 as to how we might collaborate

of the whole thing is worth while -
 Reasons = skin about to know the
 more as it costs so my money effect
 and associate will start shipping
 before June 1st will around - and
 if its as good as he thinks - will
 ship to Thompson where they about
 \$200 books want class - the
 titanium strike has no favoring us
 hardly in fact of our column - and
 my only concern is the percentage
 of titanium and aluminum - of its
 no good to lost this market but I think
 have been in bad - but I think
 we are in our way - so of make
 this titanium strike - that will
 help - see the book idea - and then
 with the appeal suddenly there
 may be some value there - There
 a lot of want to discuss with
 you -
 I drove down to Phoenix last
 week end the 23rd and spent two
 days with my family - things went
 exceedingly well - Bill Sharon
 writes that Howard tells everyone
 about his father's coming to teach -
 Strange - he wants me to come
 again soon - I found besides Sharon
 Howard and Bob - a little Bob
 with 4 week old baby Pros - a
 Massape Bulldog, that had just
 to kill pros after two months of
 precepting - and his night

dogs - The place was reeking - of burnt
Howard & brothering holes & lime and
the meat barely forming, fishing -
We got a muddle out ~~of~~ almost
blotted with excitement - Bouglit
gave a rubber queen pool and
the two playmates flew 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 mysterious
similar to what Dr Majorin
had sent into my nose &
Charlton helped her immensely. So
I think she's safe now =

The minute, long ago, noted Alamo
showing signs of delusions of grandeur
& talk than he was out - I am
not going to comment on the whole
united thing - It has tended to work
my life and if there to be a
reconversion from the crass they hung
me on, I'm ready for it - The only
reason she been able to survive
is my knowledge of my innocence
in all the most ardent of changes
and the faith in me held by a select
few of Gods servants -

See Glad old Forrest is in the
Mowens house - I'm afraid of these big
hands as they seldom go beyond the
surface - Since his reading the book
twice, he may be an expert -
It's a shame the film can't be handled

along the lines we settled on - I can
leave to Jefferson if he would take
the time the executive of the Westies
up by Marshallwood drive.

Here I am in a little village
just beside a rail road track. We
travel about & live in raffles as
the trains roar by night and day.
It's 24 miles to Crossings so far
here - Not better than Wheeling 200
miles away from Grand Junction and
back.

All mail newspaper I need come
to me. T. W. Thompson Mch -
These is 61 mails including the dogs
in this spot. A Greek, maybe a
descendant of the Indians -
Magnesian owls the glade and
the town - He agrees with me this
village gets or an oil structure -
I certainly hope you and your
brood are in good health for a
change - I'm hunting mustn't - live
about 4800 miles east of here and
I shall be up at 5 am to go west
Grand Junction to find the mutton all
my good mutton, but far something
else don't want to go along next time
Send it where still you and
me to yours truly

Guy
Thompson Mch

That's all no
true, no more
Just Thompson Mch -

Moab Utah-July 2,

My dear double barrelled Wednesday June 21-22
Grand father Sully -

Not long certainly put his mind
on his work, and showed the rest
man had to make good right from
the start. His earliest book you and
Alice are troubled at the prospect of
a couple of boys learning the Sully
name - my good name is Master
of Bees - that mass of all went
over six to the land of Moab - and
they buried him there, age 120, an
end up to the last hour he was
in full possession of all his faculties
his major whatever that meant and
his hands. These no longer
to have written his own obit -
because the good book says such of
you, "and they buried him in
the land of Moab" and no man
knoweth his burial place even unto
this day "the interred enduree
of these works" indicate that Moses
was not writing, and that it was
written long afterwards - I think due
found the place, because these old
Bellairs tree'd location in those
days and this is the place, just
beyond the building waters of the
Colorado, up beside my new
Brancum property - see fact he
was buried in Mountain Valley
so here the Moab people have buried

big canyons, and see a small hill
overlooking the river, a lonely grave
is marked by a marble slab, and
an iron picket fence - Atoms where
old masses lie a moulderling in
his grave - So be it.

I shall lie here at last and shall
follow in Masses' footsteps because
my birth day was last Monday the
15th and I decided I had reached
to half way mark - then now
starting to last half of the time
when I get to Philadelphia after
Masses lay down for the long sleep.
Please will have things so
magnetically balanced that I can
probably take off for another run
down the sandy shores of fishes
~~water~~ great place life -

The cold big gypsum in my cake
room at Memphis is a square and a
hexagon, and the old Greek who owns
the place won't give it, so I went
out to night - so don't give
degrees in the day time it doesn't
help. My mail will still get me at
Thompson until further notice -
I have framed out in his diagram
business, and have offer a most
of negotiation brought the world famous
"Red Head" Davis, from which the
Arches of Tennessee took its name
are running 10% and better terms
They shipped it to France for their
Radium research - So my friend

It would have cut out the wood pile
soon passed as "The Tennessee Queen
Mining Company" and mine plant
shipping are very much - less of
uses rare being at Mellen's Cut
across the river 4 miles air line
away but we have to go 70
miles to get there - so 250-300
miles added - we had no rails,
and I can see day by day - of many
true you a story in 60 days that
will make the bones of yours
ever shipping heart and mind
it heat to a ~~delightful~~ ^{delightful} running
engine again -
Planned to leave for City this Friday
but looks like I don't move yet -
will give you and Mrs 2 or 3
days notice of my take off - if
hope it will be inside ten days -
things are better at the Union
Fleet of S. and Howard -

Yours

Al

cr

Doodlebug Defendants Claim 72 Trial Errors

Denver Post

JAN 28 1957

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 father-son 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)
City and County of Denver) ss.

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 pre-dated 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 Al, Bl, Cl and Dl, each being checks to Newton Oil Co.

- (g) People's Exhibit E1 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 G1, a letter from Newton Oil Co. to the witness, Flader.
- (c) People's Exhibit H1, J1, K1, L1, M1 and N1, 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 Fl, a check to the Newton Oil Co. dated November 29, 1949.
- (e) People's Exhibit Ol.

19.

That the Court erred in admitting into evidence over the objection and exception of this defendant People's Exhibit Rl, 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 W1 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 antennae 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