

I THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
CASE NO. 27 HON. CHARLES S. HENNING, Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
-vs-
LESLIE B. HENRY, Defendant.

No. 27

TESTIMONY OF W. JOSEPH CHOATE, Esq.,
DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY,
REPORT, JULY 20, 1933.

VOL. I

APPEARANCES:

For the People, - - - W. Joseph Choate, Esq.,
Deputy District Attorney
of Los Angeles County.

For the defendant, - - - Harold W. Judson, Esq.

July 20, 1933

Lucile H. Hulse,
Official Reporter.

LESLIE B. HENRY,
Called as a witness in his own behalf, being first duly sworn testified as follows:

THE CLERK: State your name, please.
A Leslie B. Henry.

DIRECT EXAMINATION

BY MR. JUDSON:

Q Mr. Henry, you are a defendant in this case?

A I am.

Q You met Mrs. Charlotte Shelby, I believe, as has been stated from the probation report, during the Liberty Loan campaign in 1917?

A Either late in 1917 or early in 1918.

Q Your first business relations with her, I believe, were in February 1920?

A Yes.

Q At that time you were employed by Plyth, Witter & Company?

A Yes.

Q The report also showed, I believe, that at the beginning of the business relationship between you and Mrs. Shelby, she insisted that you should be personally responsible for any securities you might sell her?

A She did.

Q What was your answer to any such request by her?

A I told Mrs. Shelby that the house I represented nor myself could guarantee the securities that were sold, by reason of the quantity of them and the number of investors to whom they would be sold, and that for me to assure her that she would be personally guaranteed in her investments would be an injustice to others who might not assert a requirement of that kind, and on the other hand that for me or the house to make any such guarantee to her was unfair, for the simple reason that it would be a physical impossibility for any house, with millions of dollars of securities outstanding, to make them all good in the event of loss.

Q Were you later called upon to make good any securities which had defaulted in any way?

A I was, yes.

Q When was the first time, Mr. Henry?

A I made good in the winter of 1922, or early in 1923.

Q BY THE COURT: Is that the \$1100.00 item of interest, Mr. Henry?

A Yes, sir.

Q That is referred to in the report?

A Yes, sir.

Q BY MR. JUDSON: What is the Portland Flouring Mills bond, and also approximately \$5000.00 on the Kirkman Nursery bond?

A Yes, sir.

Q What did you state to Mrs. Shelby on those occasions as to her request to pay that back?

A I told Mrs. Shelby I could not pay the interest on the Portland Flouring Mills; that I did not think in the first place it would be necessary and that is she would wait until the adjustment was made between dividends and interest on those defaulted bonds, through an exchange for the Sperry Flour Mills Company preferred stock, that she would probably be taken care of. Mrs. Shelby said, "I haven't anything to wait for, I have my money now," and I told her that the adjustment I was satisfied would take care of it. She said, "You understood very well when I first dealt with you the circumstances under which I dealt with Mr. Stoddard Jess, who was president of the First National Bank.

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He had always been in the position where if anything went wrong with my securities, he would take care of me personally." I told her the situation was an impossible situation, and that I thought it would have been an injustice to Mr. Jess to have imposed it on him. She said, "It would not have been any imposition on him, for the simple reason that he was himself the head of the bank, and would see that the First National Bank took care of anything she had." She came back and drove at me on the point that I did understand that any obligations I sold her became my personal obligation, if I could not get it out of the house, and as a result, in the winter of 1922 or the spring of 1923 I paid her the interest.

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I believe she went to the firm of Elyth & Company and demanded that they take back the Kirkman bond?

A Yes.

BY THE COURT: What I was particularly interested in, in reading the portion of the report that dealt with the matter you are now discussing was why it was necessary for you to make good to Mrs. Shelby on the interest of bonds she had bought, when there was a default in those bonds, to make good her losses; that isn't the usual custom of brokerage houses, is it?

A No, sir.

Q When you sell customers securities, you do not guarantee that those securities will continue to pay interest, do you?

A No, you don't; you maintain quite the contrary position, and the only answer, Your Honor, that I can give is this: Mrs. Shelby is a hard trading woman in the first place, as far as business is concerned, in my personal situation I was confronted by a woman who so far as any other person I knew of with whom she had done business--well, she pressed down on them, not only pressed down, but after breaking with them, abused them or passed criticism on them throughout the business community, and put them in a position of where, as in my particular case, had developed out of the income tax situation, put them in a position of, or rather put me in a position of where, even if I had broken with the account -- it was a good account and I want that thoroughly understood -- but had I broken with her, I would not only have lost the business, but I would have been subject to abuse, and certainly I would never have been free of the liability that approached a criminal nature, so far as the income tax return of 1920 was concerned by reason of one thing I had done in connection with the return.

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BY THE COURT: Then, your position is, in effect, that Mrs. Shelby was in a position to blackmail you, and you felt she would use that power? I would not say blackmail me, but had any investigation developed out of the income tax situation, which was certain to come if she went into litigation with her daughter, the complete onus for what she had done and been the beneficiary of, with regard to the 1920, 1921 and 1922 tax returns would have been thrown on me, on the basis of complete ignorance of what was involved in her income tax picture.

Q Did you make any inquiry when you were first approached on the subject of responsibility, to find out whether the statement was true that Stoddard Jess had also guaranteed her against loss?

A I couldn't, Judge, and I wouldn't have done it. As a matter of fact, to me it sounded more like a woman talking at the time and trying to lay the foundation for something that might happen in the future. Stoddard Jess, as a matter of fact, was sick, which sickness turned out fatally, as Your Honor will remember, and it was on his recommendation that she came to me.

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BY MR. JUDSON: Did that bank at that time, the bank of which Mr. Stoddard Jess was president, have a bond department?

A It did not.

Q Do you know who Julia Miles is?

A Yes, sir.

Q Who?

A Mrs. Shelby's mother.

Q Now, state briefly as you possibly can the conversations you had with Mrs. Shelby in the initiation of any relationship with her, and particularly in respect to the names in which securities that were bought were to be purchased.

A Mrs. Shelby told me that she would not wish securities purchased in the name of Miss Winter, and --

Q Now, right there, Mr. Henry; had she told of Miss Winter's contract with the moving picture business?

A She had, yes.

Q In the extent of that?

A It was a contract with the Famous Players Leskey, and in turn Mrs. Shelby had a contract drawn with her daughter under which Mrs. Shelby was to receive 30 per cent and her daughter 70 per cent.

Q Do you know the weekly salary that Miss Winter was to get at that time?

A Approximately about \$6000.00.

Q And that was increased to about \$8500.00 later?

A Yes.

Q Was Mrs. Shelby collecting that salary from the studio?

A Yes.

Q Miss Winter was not then of age?

A She did not come of age, of legal age, I don't believe until April of 1920.

Q Go ahead with the story.

A At the inception -- my very first offer of any securities to Mrs. Shelby in 1920 was in the form of tax exempt securities. It was at that time that Mrs. Shelby explained the terms of this contract, and that all of the money which she had to invest was not Miss Winter's money but that part of it was her own, but at that time she considered all of it her own, because Miss Winter was still a minor. I offered Mrs. Shelby some tax exempt securities, on the basis that municipal bonds and state and county bonds carries no tax with them. The tremendous amount of money which they would have to invest out of what was a million dollar contract at that time would make that a most desirable and convenient type of security that she could own. Mrs. Shelby told me, "I am not investing this money for Miss Winter, and I am not satisfied with the income rate that comes from that type of security." She told me, "I am going to invest this money myself; I will not have to pay the same kind of a tax that Mary does, and consequently a security of a corporation type would meet my requirements." Without going into details, after the first, or at the time of the first investment, she said, "Mr. Henry, I want to buy some of the securities in the name of my mother, Julia Miles," and told me that her mother had advanced thousands of dollars for the education of Mary, and for the assistance of herself in years gone by.

Q At that time did you have any reason to disbelieve those statements that Mrs. Miles had advanced this money?

A No, I had no reason to.

Q Very well; proceed.

A I asked Mrs. Shelby at the time if she had any knowledge of the extent of that obligation, or knew for certain the amount of the obligation, so that she would be able to demonstrate that Julia Miles was entitled to the amount of securities which she intended to purchase.

Q Demonstrate to whom?

A In any investigation, governmental or otherwise. I told her that the source of the money was Mary Miles Winter, and the appearance of securities in the name of Julia Miles, who previously had shown as not owning anything on the tax return, would be subject to question in my estimation, and that she should be in a position to demonstrate how much money had been received, or how much she was obligated to Mrs. Miles. Mrs. Shelby told me that you couldn't put it down in figures, but "if the evidence is necessary, I can establish that." Mrs. Miles was present at the time we were talking, and she said, "If it was one hundred thousand dollars, Mary would not have repaid her for advances which her grandmother had made."

#10 116 Q Did you thereafter, or did Mrs. Shelby thereafter purchase securities in the name of Julia Miles from you?

A Yes, she did.

Q And in whose name were the next securities purchased from you in this year 1920? Do you recall?

A In the name of her daughter, Margaret Shelby.

Q In any of the talks you had about this time, did she give you any directions concerning the purchase of the securities in the name of Mary Miles Winter or Margaret Shelby?

11 A I had asked -- I had told Mrs. Shelby that I felt that Mary Miles Winter showing as the source of this income should be the purchaser, and the report, so far as the government was concerned, as a purchaser of securities, and I urged Mrs. Shelby again to buy tax exempt securities for her daughter, and in the name of Mary Miles Winter. Mrs. Shelby again told me that the rate was too small, the rate of return was too small, the rate of return was too small, and that there was no necessity of purchasing any in Mary's name, because she, as her mother, considered the funds hers. I finally prevailed on Mrs. Shelby to consider a type of tax exempt bond, namely some reclamation district bonds that bore six per cent, and were completely tax free, and which would be equal in return to any seven or eight per cent security she could purchase at that time. She did buy 20,000.00 of these bonds in Mary's name, and I asked her to continue that process. She did purchase again, a total of I think some twenty -- some 45,000.00 more of tax exempt securities of a similar type, and instructed me not to have those billed to Mary; that she wanted those billed strictly to herself, as her own property, and to hold them as such; that she did not wish Mary Miles Winter to appear on our books as a holder of the property.

Q Other than those securities you have mentioned, did Mrs. Shelby at any time, from this time in 1920 up to the present day, buy any other securities in the name of Mary Miles Winter?

A Those were the only securities ever bought.

Q BY THE COURT: Did Mrs. Shelby make any statement to you, Mr. Henry, at the time you first began to work for her and with her, or thereafter, as to whether or not she had resources of her own, separate and apart from the resources that belonged to her daughter, Mary Miles Winter?

A She told me she had nothing except the securities which originally had been purchased, before she came to me, and that those had been bought out of Mary's earnings. She considered those her own property, as her mother, because the girl was a minor. The only other resources she looked to was a possibility of inheriting something from a southern plantation property, from her mother, which was of little or no value.

Q What I had in mind, was whether or not any of the money was represented by various bonds and stocks and other securities that you had cognizance of, was money that belonged to Mrs. Shelby as her own property, separate and distinct property apart from that of Mary Miles Winter?

A No, sir.

Q It was all Mary Miles Winter's money?

A Yes, the seventy per cent of the contract was joined in with the 30 per cent of Mrs. Shelby's, and she treated it all as her own.

13 Q BY MR. JUDSON: Was there any disaffection between Mrs. Shelby and Mary Miles Winter up to the time you went to Australia in June of 1920?

A Yes.

Q What had been made evident to you, had it?

A Yes.

Q You went to Australia in June, and came back in September of 1920?

A Yes.

Q Did you see Mrs. Shelby or Mary Miles Winter after your return?

A Yes, I saw Miss Winter at a dance immediately before I left, the night before I went to San Francisco, and I saw Miss Winter, I believe, about October, or early in November of 1920, after my return.

Q Did you see Mrs. Shelby after your return in connection with an opal which you had purchased?

A I did.

I wish you would state the circumstances surrounding that affair.

A It was very shortly after my return, within a few days, that I called on Mrs. Shelby, and Mrs. Shelby told me that conditions, so far as Mary were concerned, were, if anything, worse than they were before I had left. I told her that while I was in Australia I had in mind the possibility of a personal gift of some nature, which might improve condition there, and I had brought home with me this opal, which was a pear-shaped blue-green opal, and probably a good deal larger than my thumb. I told Mrs. Shelby, I said, "I think if you give this to your daughter yourself as a personal gift of appreciation on my part of her, and indicating my friendly interest in you as well as in herself, that it may help," and she said, "I was just hoping for something that would permit to talk in a friendly way," and the result was that I gave it to Mrs. Shelby and she later had it mounted and gave it to her daughter.

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Q Had Mrs. Shelby asked you prior to that time to concern yourself with the relations between herself and Mary Miles Winter in an attempt to keep Mary in hand, so to speak?

A Previous to my going to Australia, she had told me that Mary had become very independent minded, so far as she was concerned, and she felt that she was under influences outside of Mrs. Shelby's reach, and that if Mary talked -- on the first hand, I must not feel that there was any personal feeling to me from Mary. She said, "Mary has a personal feeling against me, and anyone that has a business association with me. On the other hand," she said, "if you do get the opportunity to talk with her alone, I think she regards you sufficiently that you may be able to say things to her that will correct her attitude toward me and possibly free her from the confidence she has in those who are talking to her outside."

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Q Were you present at a dinner in the Shelby home at which time this opal was either presented, or had been presented, at which time you talked to Mary Miles Winter?

A I was.

Q State what took place -- first, were you asked to attend by Mrs. Shelby for the purpose of discussing the situation with Mary?

A Mrs. Shelby called me and told me she would have a dinner at her home, and said it would be just a little family party, herself and her mother Mrs. Miles, and Mary and Margaret and myself. She said she wanted me to absolutely be there, and that she expected I would have an opportunity to talk with Mary, and not only listen to Mary, but possibly correct Mary's viewpoint or attitude toward herself.

Q At that time, Mr. Henry, did you have any idea that Mrs. Shelby was attempting to, or going to attempt to deprive Mary of her earnings?

A Not at all.

Q Incidentally, when was the first time that you became fully cognizant of the fact that such an intention existed on the part of Mrs. Shelby?

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A After the preparation of a set of charts by me, some time late in 1923.

Q Up to that time in 1923, what was your feeling in respect to Mrs. Shelby's attitude towards Mary and her earnings?

A I felt that Mrs. Shelby was holding on to the control of the money much beyond any good effect, so far as Mary was concerned. What I mean, not holding the actual possession, but withholding information from the girl, which would possibly raise some question in the girl's mind against Mrs. Shelby.

Q What did you feel as to Mrs. Shelby's attitude, whether it was one of attempting to deprive Mary, or to protect her, up to this time in 1923?

A I felt very much that Mrs. Shelby was trying to protect Mary. I thought she was doing it in a very unintelligent way, and I told her so.

Q The things you did at that time, and later, up to 1923, did you do with the intention in mind, of assisting Mrs. Shelby in doing what you and she considered to be the best thing by Mary?

A Yes, I did.

Q On this theory, I wish you would state what took place there.

A I sat next to Mary. Mary was at one end of the table, and Mrs. Shelby at the far end, and I was seated next to Mary. The dinner itself, the conversation at the dinner, was valueless, so far as this testimony is concerned, other than that Mary would only answer "yes" or "no", so far as her mother was concerned, and Margaret was ignored, even by Mrs. Miles, so just a very desultory conversation with me was had.

Q Did Mary have the coat at that time?

A I believe she wore it that night.

Q Did you talk to Mary after dinner?

A Yes.

Q State what was said.

A After dinner, as we came away from the table, Mrs. Shelby came up to me and she whispered to me, "I wish you would make some opportunity to have a few words with Mary alone." I moved around the table with Mary and stood alongside of the fireplace that was on the side of the room. I went into part of the conversation I had with Mary at the dinner that I said, "Mary, you talk of never again working, so far as the Government is concerned, and Liberty Loan campaigns, if the necessity arises I don't think you believe that. I think you would be the very first one to step out and do anything you could under those circumstances." Mary very forcefully said, "I would not have anything to do with it, if I had to do it over again; I would never have had anything to do with the Liberty Loan campaigns, nor with any war work in the future." She said, "I was exploited commercially throughout that entire situation. My what appears to be patriotism, I felt, was done for nothing at all but to exploit me for the value of the box office."

Q Did she say who was exploiting her?

A She told me, "My mother carried me around from one place to another under circumstances which I did not like, for the sole purpose of getting the publicity value from the effort." She said, "I feel that the entire was a commercialized thing," and then Mary told me, she said, "From the time I have been a little girl, an infant virtually, my mother has used me for commercial purposes, and has used me for my earning power." She said, "I have been surrounded always with the business associates and friends of my mother, who could be of value in making further commercial progress." She said, "I have been deprived of my childhood; I have never been permitted to play with children of my own age or associate with them," and called my attention to the night before I had gone to Australia, when at Mrs. Shelby's request I had attended a dinner in the Helen Mathewson house. She said, "You remember the type of people you saw there. That has been my life ever since I was a child." She was much more than a child then. "As a matter of fact," she said, "whenever I have had a chance to be with those of my own age, my mother has seen to it that they have been eliminated, and I have been associating only with studio directors, accountants and business managers of the film companies, and advertising men," and so forth. She ran down the line of the type of associations of her mother's that she had to find her life with. She said, "You know, when I came out to Santa Barbara, I was only about 14 years old." She said, "That has been my life, and that was my life even before then, and has been my life since." Mary called to my mind my own youngster. I had a little girl who was then 5; she is now 18, --

Q You mean she mentioned that to you?

A Yes, she said, "You see to it, as the result of my experience, that the daughter of yours, Barbara, always plays with people of her own age, or has the association of children and young people, and her own life." She said, "I am getting -- I am awfully sick of Hollywood, I am sick of the commercialized existence I have been living in, and the first time I can, either through the contract ending, the immediate contract ending or some other way, get out, I am going to leave everything and live my own life."

Q Did you report the extent of this conversation to Mrs. Shelby?

A Yes.

Q When?

A That same evening?

Q You told her what had been said?

A I told Mrs. Shelby and her daughter Margaret of the effect of my talk with Mary, and I told them that I felt she was very much dissatisfied, and Mrs. Shelby said to me, "Just ignore it, do not pay any attention to it; she is being influenced by someone on the outside."

Q At this time, in 1920, did you purchase any securities in the name of Margaret Shelby?

A Yes.

Q Did you have any conversation with Mrs. Shelby about that matter?

A Yes.

Q What was that conversation? State the substance of what those conversations were.

A The conversation was substantially that Mrs. Shelby told me she wished to buy securities in the name of her daughter Margaret Shelby; that Mary wanted to provide \$100,000.00 as a protection for Margaret, and that Margaret, as a matter of fact, from not being associated with the film industry, although an actress, was entitled to protection, entitled to some remuneration from Mary by reason of not being a competitor with her.

Q Go ahead; did you ever talk to Miss Winter about that matter?

A I did.

Q When?

A In 1923.

Q What did Miss Winter say about this \$100,000.00 fund for Margaret, for not being a competitor?

A She told me, "If there is a \$100,000.00 fund to be created for Margaret, it should have been created out of her own 30 per cent of the contract; that so far as she was concerned, she owed Margaret nothing; that she had maintained her for years in luxury and idleness, and that all she received from her was envy and criticism. I told her, I said, "Your mother has told me and Margaret has told me that Margaret was an actress in the East and that she stayed out of pictures so as not to be a competitor with you," and Mary told me, "If my mother or Mrs. Shelby could have made an actress out of Margaret acceptable to the pictures, she would have had her in them long ago," and she told me that she had attempted by various facial operations to make her presentable before a camera, and having failed in doing that, she was now making a misrepresentation so far as her being a competitor with Mary was concerned, and that if any provision was to be made for Margaret, it would have to be made out of Mrs. Shelby's own 30 per cent of the contract.

Q About this time, in 1920, along in the late summer, did you have any talk with Mrs. Shelby about selling the securities in the name of Julia Miles?

A In 1920?

Q Yes.

A There were several conversations with her in 1920 and 1921. There were two elements involved there, affecting her attitude so far as Julia Miles was concerned. One was that Julia Miles was a very elderly woman. Mrs. Miles was a very fine proportioned woman, a big woman. She was gentle and easy-going in her ways, but she was apparently threatened by an ailment that Mrs. Shelby feared would be fatal at almost any time, and her position was that the inclusion of any securities in her name would involve an inheritance tax, and furthermore would be subject to division with other heirs of Mrs. Miles, than Mrs. Shelby. On the other hand, a very strong affection existed between Mary and Mrs. Miles, and Mrs. Shelby was afraid of her as a source of information to Mary, regarding her investments.

Q Up to November and December of 1920, had you had many or a few conversations on these various subjects with Mrs. Shelby?

A I had had innumerable conversations. Every new development in the attitude of Mary toward her, and a variety of matters that grew out of the studio difficulties, etc.

Q You mean matters entirely aside from the purchase and sale of securities?

A Oh, yes.

Q Along in the latter part of this year, did you have any discussions on the subject of income tax?

- A Yes.
- Q I wish you would state briefly the substance of these conversations, particularly in respect to the purchase of securities in the name of Julia Miles and Margaret Shelby, and the so-called inter-sales between them as affected by the income tax, etc.?
- A Mrs. Shelby told me that the transfer of securities by her, or rather the purchase of securities by her in the name of Julia Miles was to pay off an obligation to Julia Miles, and in turn the purchase of securities for Margaret Shelby, as the payment of an obligation to Margaret from both herself and Mary Miles Winter, carried with it this situation: that neither one of them had cash as a purchaser; in other words, it was a repayment of obligations or a payment of obligations to these two women by Mary, as it was set up in Mrs. Shelby's mind, and as she told me. That aside from purchases of securities for them, if she, Mrs. Shelby, transferred securities which she herself owned to them, as applicable that obligation, that in her estimation that transfer constituted a sale so far as she, Mrs. Shelby, was concerned.
- Q You mean in so far as a possible loss to deduct from the income --
- A Exactly. She said -- well I said, "That is logical," but she said, "I have satisfied an obligation by transferring these securities to my mother and to Margaret, under obligations of this kind, am I not entitled to take the loss on these securities?" I told Mrs. Shelby, "Yes, it is logical up to that point, but Mrs. Shelby, you must establish an obligation on I think a little more definite basis than you have, both as to your mother and as to your other daughter, Margaret Shelby, because in the event of any investigation on the government, you would have to show transfers of securities to them under something of a formal agreement between Mary and yourself as to what the amount was that was due, and as to what advances, if any, particularly in the case of Mrs. Miles had been made," and I told Mrs. Shelby at the time, in Mrs. Miles case I said, "You are dealing with a woman that when she dies is going to have an estate. Mrs. Miles herself told me that she had either another daughter or a son or grandchildren in the South who would be interested in the estate, and the nature of the advances that you are now satisfying through the purchases of securities for them must be clearly established, if not for any other purpose than estate matters in the future Mrs. Shelby said, "I can take care of those in due time."
- Q Without going too much into detail into those discussions of the income tax, were those conversations with Mrs. Shelby along in the fall of 1920, or the early part of 1921?

- A Yes, throughout the fall of 1920 and the early part of 1921, particularly throughout the fall of 1920. They seemed to be ^{the} absorbing thought in her mind.
- Q Calling your attention to the day of December 13, 1920, do you recall having any conversation with Mrs. Shelby that day?
- A Yes, I do.
- Q About these various matters which you have already discussed?
- A Yes.
- Q I will direct your attention now to an incident concerning a \$500.00 gift to you or your child. I wish you would state the conversation in regard to that situation.

- THE COURT: Isn't that all covered by the statement in the report, Mr. Judge?
- MR. JOHNSON: I am inclined to think that particular thing is, Your Honor. At least the facts are covered. Whether Your Honor would be interested in hearing exactly what the defendant had in his mind about that transaction, was the only reason that I was going into it.
- THE COURT: If there is any reason for going into it --
- MR. JOHNSON: But hasn't all of this been gone into in the deposition filed with the Court?
- THE COURT: I assume it probably has, from what little I have been able to read of that deposition. There have been some 14 volumes filed here, and it will be a hopeless task to attempt to read all of that. I have glanced through it, and have read a number of the letters attached to it, and the report of the Probation Officer seems to me to have been largely taken from the statements made by Mr. Henry in that deposition.

125 LL I don't think there is any good purpose to be served by going over the same matters again, unless there is something in that report, and I am referring to the probation report, that counsel for Mr. Henry desires to correct or explain or amplify. I don't think it is going to do any good to go over the same statement again.

MR. CHOCATE: Mr. English informed me that he has read the entire deposition and has based his report on it.

THE COURT: That is what I assumed from the reading I was able to do of the deposition.

MR. CHOCATE: I was wondering what counsel intended to bring out that would in any way enlighten the Court as to the disposition of this case.

MR. JUDSON: I would like to state my point.

THE COURT: Yes.

MR. JUDSON: That deposition is only about one-third completed at this time and there are many things going along chronologically that are not in there, and that are material to this court on the application for probation, and that naturally would have nothing to do with the legal case between Elvth Company and Mrs. Charlotte Shelby. Furthermore, many of the facts in this deposition are not in the report. It is only the gist of the situation, together with certain summaries of what the Probation Officer thought this deposition showed, and Your Honor has stated in the record from that report two things, and one is that Leslie B. Henry, the defendant here, assisted Mrs. Shelby to defraud her daughter. We intend to show that until 1923 Mr. Henry never had the slightest idea that Mrs. Shelby wished to do anything but good for her daughter, and from that time on, he constantly insisted, and there is proof in her handwriting, that Mrs. Shelby make a settlement with her daughter, but that he was absolutely unable to force Mrs. Shelby into such a position. That isn't a wild statement; it is verified and corroborated by all of the facts that I intend to produce here. The second thing was that Mr. Henry assisted her in defrauding the United States Government, and other than this one case in 1920, you will find that Mr. Henry-- I would like to refer to a letter here to make this situation clear, a letter of May the 17th, 1928, which is much farther than these depositions go, or at least they go just about that far and then stop, and there are a great many things coming after that. I think what I have already said will indicate to Your Honor the importance of going into these matters, and I think that we should have an opportunity to show these facts. Not that Mr. Henry isn't to be criticized for what he did, but what he did is shown by the facts which we want to produce, that is, what he actually did.

(Further discussion and argument by Mr. Judson).

THE COURT: I am not disposed to curtail you to a very great extent, only let's, so far as we can, determine what, if any, extenuation there is to the things that Mr. Henry, by his plea of guilty, admits he has done.

Q BY MR. JUDSON: Do you know whether anyone was acting as income tax expert for Mrs. Shelby in 1920 and 1921, and if so, who was it?

A Mrs. Marjorie Berger.

THE COURT: She wound up in the Federal penitentiary, didn't she?

A Yes, sir.

Q BY MR. JUDSON: Did you have any discussion with Mrs. Shelby along in March of 1921 concerning Marjorie Berger?

A Yes, Mrs. Shelby told me that Mrs. Berger would probably call on me for information concerning her investments, and asked me neither to give it to her nor to discuss her affairs in any degree with Mrs. Berger, and later Mrs. Berger did call me and asked that I indicate the securities from which the income was derived that was to be reported, and I told her that I did not understand that would be necessary and withheld the information. Mrs. Shelby, on my telling her of this, told me that Mrs. Berger was altogether too friendly with Mary, and that any information which she would receive on investments, she might carry on to Mary, and it was for that reason she did not want Mrs. Berger to know about them.

- Q Were you called upon to discuss this situation surrounding Miss Mint with her just before she went to Europe, I believe in June of 1921?
- A Yes.
- Q I wish you would state what that conversation was and the extent of it.
- A She told me she felt that to take Mary out of Southern California and her to Europe would probably, or might possibly change her attitude toward her mother, and give her new interests. She told about, or she said she told Mary about building a house in Laughlin Park on a piece of property purchased there, and that she also was telling Mary that on the trip to Europe they would purchase furniture, etc. for that property. Mrs. Shelby told me that this house would be of a very artistic Italian type and would be known as Mary's home place, but that ^{she} intended however, soon as that name was impressed on it, to sell it, and thought she would realize a large profit on it. I told Mrs. Shelby that I felt she was making a very poor -- would make a very poor impression upon Mary when the thing was finally accomplished, so far as Mary's confidence was concerned. That was very much the line of the conversation on the occasion.
- Q Did you have a talk with Miss Winter before she went to Europe, that you recall, at the request of Mrs. Shelby?
- A I am just trying to think, in 1921. Concerning the place where they lived, or whether Mary was going to stay there. So far as the house at 701 New Hampshire was concerned, which they occupied, yes, I did. Miss Winter broke in on me one day while I was waiting for her mother or rather walked into the room while I was there waiting, sort of by chance, and Mary told me that she was going to leave that house; that it was Margaret's home, and Mrs. Shelby's home, and it wasn't a place in which she could have her own friends and associates. That it was just not her home, and that was about the substance of it.
- Q What was paid by Mrs. Shelby for that Laughlin Park property?
- A Approximately \$45,000.00.
- Q How long did she hold it?
- A From 1920 to 1923, and sold it then for \$185,000.00 in three years.
- Q Now, to go back, Mrs. Shelby and Miss Winter did go to Europe?
- A Yes, and the sister Margaret, the three of them.
- Q Did Mrs. Shelby call on you to discuss the architecture of this supposed home, and did you go to visit homes, etc.?
- A Yes, she came to see me in Pasadena, and I took her to visit homes, and brought an architect, Reginald Johnson, to meet with her, and went out over the proposed home site and things of that nature.
- Q On their return from Europe, did you have any discussion with Mrs. Shelby about Miss Winter's attitude?
- A Yes, she told me that Mary had not reacted to the trip favorably at all and that Mary, while she had had some fun in purchasing some things over there, complained that they were purchases made by Mrs. Shelby for herself and for Margaret, and that she felt it wasn't her property; that they picked out the things they wanted to buy, and except with a few exceptions, they were not Mary's own choice in any case.

(This is the end of Mr. Henry's testimony up until noon of July 21st.)

LESLIE A. HENRY

is now called for further

IRRAWAY EXHIBITION

BY MR. JENSON:

Q I wish you would state, as briefly as you can the various services that you were called upon to perform for Mrs. Shelby, aside from your duties as a bond salesman, up to the early part of the year 1924, including in that any talks you were called upon by her to have, either with herself or with Mary Miles Minter, or various attorneys or accountants, or anything of that kind.

A In 1920, aside from what I have spoken of this morning, in regard to talks with Mrs. Shelby regarding the attitude of her daughter, which were not in the nature of services, but much more in the nature of conferences and advice, regarding what was probably the most vital thing in Mrs. Shelby's mind at the time, namely, the maintenance of Mary in an attitude of mind to continue as a moving picture star, and a produce under her contract.

Q What did you advise Mrs. Shelby in that respect, if anything?

P 33 A In 1920, there had been changes in the nature of the production that Miss Minter was going through, in the character of the script directors and Mrs. Shelby would call me over and tell me of some new change that had resulted, in her estimation, in a reduction of Mary's prestige regarding pictures, and what she could or should do about it.

Q I think that is in the deposition, Mr. Henry.

A Yes, I think so.

Q Confine yourself to matters not touched on in the deposition. For instance, did you have any conversations with Mrs. Shelby about this period in which you advised her to take Mary more into her confidence, and teach her investments, so she would be able to properly use her own money, etc.?

A When Mrs. Shelby told me of the increasing discontent that Mary showed, reflected, as Mrs. Shelby told me, in requests for knowledge of her property and the like, I told Mrs. Shelby that I thought the most valuable thing she could do from all points of view was to take Mary business conscious; in other words, instead of me coming and making an offering of bonds to Mrs. Shelby, or Mrs. Shelby coming to my office and discussing securities, or the investment of Mary's money with me, to have Mary herself come to any conference which we had either at her home or at my office, and have Mary with me and listen to the discussion of the issues, and become herself a part of the business stake that was represented in her earnings. In 1921, on her return from Europe, when Mrs. Shelby told me that Mary was then so discontented that she was talking about demanding an accounting, and obtaining the services, if necessary, of a lawyer in order to get it, I told Mrs. Shelby at that time that if she was going to keep Mary satisfied, I felt there were several things to be done that would give Mary such an absolute stake in the business that she would think a lot before she would listen to outside influences.

Q On that subject, did you advise Mrs. Shelby to place the Laughlin property in Mary's name?

A I did.

Q Was that done?

A It was not.

the property was purchased for 155,000.00 and sold for 165,000.00 shortly thereafter?

A Yes, but I told Mrs. Shelby in connection with that, it was just another case of Mary's discontent being eased immeasurably by knowing the property represented was actually in her own name, so her property, together with whatever house would be built on it; that Mary would have something definite to tie to, and something definite to consider, as something she had produced out of her work as a moving picture star. Later in 1921 when Mary was threatening to leave the house, Mrs. Shelby on one occasion had called me over to the house to ask my advice regarding changing the place at 721 New Hampshire Street and going into an apartment house.

THE COURT: Couldn't that all be covered, Mr. Henry, without going into this mass of detail, by a statement that during this period of time, that you, in addition to other things, conferred with Mrs. Shelby with respect to the relationship between her daughter and herself, particularly with respect to her finances, and at her request advised with Miss Winter, and acted as a consultant? Doesn't that cover the situation?

A Yes, sir.

THE COURT: Then, let's not go into all of these details. In addition to this acting as consultant and giving this advice, acting more or less as a go-between, what other services did you render?

A For instance, in 1923--I would, if Your Honor doesn't mind, I would like to refer to two incidents in 1921 and 1922, with reference to something you commented on yesterday.

THE COURT: All right, Mr. Henry.

A Now, with regard to the income tax. In the income tax for 1921, when I was consulted with regard to it by Mrs. Shelby, there were considerable profits derived through the sale of securities. Mrs. Shelby wanted the profits shown on the returns of Julia Miles and Margaret Shelby, and on her own, while any losses might be taken to her own account. I prepared statements of those investments made in the previous year or two years, and submitted them to her and pointed out to her where she was only courting trouble for herself so far as the government was concerned in making statements which were contrary to the books of Blyth, Witter & Company, so far as the purchase of securities were concerned; and secondly, that the very unusual matter for returns under the name of Julia Miles and particularly under the name of Margaret Shelby, were not supported by any figures on Blyth, Witter & Company's books or even by the ownership certificates filed with the bond coupons during the year. Mrs. Shelby's only answer to that was, "Mr. Henry, this is my property, and I can do with it as I please, as between myself, my daughter and my mother. Whatever income I wish to show as paid to the IRS is quite sufficient." In so far as my position was concerned, I urged it on her, so far as my own position was concerned, and she said, "Marjorie Berger will take care of that, on the information by the return of the Federal agent before the return is actually made." I was simply in the position of having to accept the statement of the woman on her own distribution of the property and the statement of the income for those years, and the profits and losses, and file them according to her own allocation of the property, but so far as the government is concerned, the return was made by Marjorie Berger and Mrs. Shelby in association, and the only thing I could do was to take the very figures compiled and submit them.

Q Did you do that each year?

A I did.

Q You gave Mrs. Shelby the figures showing her actual income on the securities purchased through Blyth, Witter & Company?

A Yes.

Q How turned that over to her?

A Yes, sir.

Q And did you know until 1928 that she had not returned the income, or declared the profits and dividends received by her and turned over by you to her -- did you know that during any period up until 1928?

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Q No, I did not; the only concern I had about her income tax return for the years 1921, 1922, and 1923, was the possibility that if an investigation was held, the Government would show that income had not been allotted according to the purchases on the books of Wirth, Litter & Company, and Mrs. Shelby and Mrs. Kemmer would deny any possible knowledge, and would refer to her financial agent, and as the only one who had prepared a statement of the income from her securities; but it wasn't until 1928 that I did know that she had not returned a penny of the books of Wirth, Litter & Company showed the securities purchased in the name of Charlotte Shelby, and the losses for that were to be taken, at Mrs. Shelby's insistence, on the income tax return of Margaret Shelby or Julia Miles?

A Yes.

Q MR. HOWE: Before we go any further, I wonder if we can clarify a fact in my own mind? There was a statement made by Mr. Henry this morning as to a false income tax return in 1920 or 1921. Is that correct?

MR. JUDSON: In 1920.

MR. HOWE: Now, which report is he alluding to now?

MR. JUDSON: 1921, 1922 and 1923.

MR. HOWE: Your contention is that you did not know those reports in 1922 and 1923 were false?

MR. JUDSON: You did not know they were false?

Q BY MR. HOWE: You did not know they were false?
MR. JUDSON: The report referred to as being false was Mr. Henry's own report of 1920. We are now referring to the income tax reports of Charlotte Shelby for 1921, 1922 and 1923, which is an entirely different matter. We concede that Mr. Henry, at Mrs. Shelby's request made a return on his own income tax of 1900.00 received from her as fiscal agent, when in fact he only received 500.00, and as indicative of that, Mrs. Shelby asked him to return 10,000.00 and gave her check for 10,000.00 and Mr. Henry gave her a check for 9500.00, which is shown by Mrs. Shelby's bank accounts here, if you would like to see them. It is an entirely different matter from what we are going into now.

MR. HOWE: What matter was it that Mr. Henry says he did not discover until 1928 as being false?

MR. JUDSON: Mr. Henry's actual evidence shows, and it has been proved beyond a doubt that Mrs. Shelby every year had a list showing the bonds she held and the income received by her during that year, and he assumed that she handed that information on to her income tax expert, and that it was in turn placed upon her income tax, and income tax paid on it. In 1928, he discovered from Colonel Hutchins, who was working for Mrs. Shelby and defending a government claim against her for all of those years, Mr. Henry discovered for the first time that she had not returned her income. The only reason we are going into that is because the probation report indicates that Mr. Henry assisted Mrs. Shelby in so defrauding the government, which he did not do, and that is the purpose of offering this testimony.

A In 19-- I think I will skip the incidents of 1923, so far as the Taylor situation or anything of that kind is concerned.

Q BY MR. JUDSON: Did you have numerous discussions with Mrs. Shelby, at her request, concerning the Taylor murder, or supposed murder?

A I did, yes.

Q In other words, you were called upon to advise her as to various things arising out of that?

A I can say this, Mr. Judson, that immediately after the Taylor murder and a telephone call came through to my office from Miss Margaret Shelby. I noticed answering it; I knew what the call would mean, and it was several days afterward that I finally did come to the house and excuse myself to Mrs. Shelby for not showing up.

Q The deposition shows you had numerous discussions about that time concerning the suppression of publicity, and the purchase of letters from a Los Angeles newspaper, and so forth, that they had obtained possession of

A Yes.

P40

You also had further discussions about that affair I believe in 1925, when the case was revisited again, and there was a possibility of the indictment of Mrs. Shelby?

A It was in the spring of 1926.

Q Did you have numerous discussions at that time with her upon the subject of her possible indictment for the murder of Taylor?

P 41 A It was the possible indictment of Mrs. Shelby in the Taylor murder case that was the one thing that made me agree, so far as Mrs. Shelby was concerned, on leaving the country, and her feeling concerning the possibility of that indictment.

Q In these troubles between Miss Winter and Mrs. Shelby, were you called upon by Mrs. Shelby to prepare various charts, accounting statements, and discuss them with Mrs. Shelby's attorney and various accountants?

A I was.

Q What was the first statement you prepared, just in brief, without stating the details of it? About when was the time of that?

A I am glad you asked the question, because it is in line with another observation of Your Honor's, and I would like to straighten it out. It was in connection with -- in 1923, Miss Winter had again told her mother apparently, that she had engaged a lawyer, and her mother had established through some source that Mary had actually visited a lawyer, and Mary demanded an accounting. I urged Mrs. Shelby to make an accounting to Mary at that time, and make a conveyance of the property, but by all means to put it in trust for the girl, a plan that once and for all would close out the troubles that existed between them. Mrs. Shelby insisted upon me making an account, and furnished me three income tax returns, 1920, 1921 and 1922, which were the sole basis for making any statement to her. I protested that to her on the basis that it would unsettle further Mary's confidence, and unquestionably challenge a genuine accounting from her, which bothered or worried Mrs. Shelby immensely. This statement, so-called, was the \$165,000.00 statement, and not a settlement and I would like to make it thoroughly understood here, that so far as that statement was concerned, I had no more intention of appearing to represent that to Mary Miles Winter as a settlement of the property between her mother and herself, than I would have had of killing the girl. The whole purpose of the statement at that time to her of any kind was with the idea that it might relieve the accounting which was large in Mrs. Shelby's mind.

Q After the discussion you had with Miss Winter concerning this statement you had a talk with Mrs. Shelby, did you not?

A Yes.

Q In which you recommended that Mrs. Shelby knock off of these income tax returns the expenses charged against Mary, which Mary had said were cloth purchased by Margaret Shelby and Mrs. Shelby? Didn't you recommend that to Mrs. Shelby?

A I did not catch that entirely.

P 43 Q Did you not recommend that these income tax expenses, which had been used as a basis for this report, be knocked off, at least in part, in order to satisfy Mary, and give her more than the statement showed she had come to? I told Mrs. Shelby that if she did not have an accountant go through and actually analyze the expenses charged against Mary on the income tax return for 1920, 1921 and 1922, that she should make at least a flat arbitrary cut in those charges. Incidentally, the charges and expenses on Mary Miles Winter's income tax return, as returned for 1921, 1922 and 1923, resulted in 1928 in the Government assessing an extra tax of \$146,000.00, and to that extent was Mary right in charging that no accounting based upon the income tax returns was right, and it was with a knowledge of something of that, that I urged Mrs. Shelby at the time to have a strict accounting made.

THE COURT: Let's see if I follow you on that, Mr. Henry. I gain the idea from what you have said, and also from the probation report, that you had made a list of the securities carried on the books of Slyth, Witter & Company, as purchased by Mrs. Shelby, and the income derived from these securities; that you presented that list to Mrs. Shelby, and that she

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had returned to the government a statement in respect to income tax assessments, which did not correctly set forth the income derived from these securities, but omitted considerable of that. Is that a correct statement?

X I think I am a little confused, Your Honor. I don't know whether the list of investments made by Mrs. Shelby refers to the forms which I made up in 1921, when Mrs. Shelby wished arbitrarily to throw all profit to Julia Miles.

THE COURT: As I understand it, this list was made up showing the amount actually paid and invested in securities and the income derived from it.

A Yes.

Q But instead of using that as a basis for income tax, some other basis used, which did not correctly show the securities she held?

A No, sir; the amounts reported to the government had they been reported which I did not discover --

Q That is what I am trying to find out. Won't you please try to answer one question in a direct manner? Is it or is it not true -- I will make it simpler, so there cannot be any misunderstanding -- is it or is it true that you furnished Mrs. Shelby a list of her investments and the amount received therefrom?

A Yes.

F 45

Q Did she or did she not use that list in making up her income tax report of 1921?

A She did not.

Q What did she use?

A None.

Q So her income tax report according to her statement for that year, did show the amount of her investments or the receipts therefrom?

A No.

Q I see. Now, then, if I understand you further, in making an accounting or statement to her daughter, she used as the basis for that statement, the figures returned to the government, and not the actual figures showing the amount of stocks and bonds she owned?

A Yes.

F 46

MR. JUDSON: On Mary's statement. The thing you had in mind first, is Mrs. Shelby's statement, the statement given to Mr. Henry upon which this \$165,000.00 statement was predicated? In other words, when Mrs. Shelby asked Mr. Henry to prepare a statement, in order to talk to Mary about it, Mrs. Shelby gave Mr. Henry the three income tax reports, and from these and nothing else, Mr. Henry made this statement showing \$165,000. Thereupon Miss Winter told Mr. Henry that she could not accept any figure based upon those income tax reports, because all of those expenses set out for wardrobe, approximately \$22,000.00, less salvage of \$450.00 -- there are expenses there considerably in excess of \$100,000.00 for wardrobe, which are deducted as a proper deduction on account of Miss Winter being a moving picture actress, and Miss Winter took the stand that a great many of these deductions placed upon her were purchases made, not by her, but by her mother and her sister, and she therefore felt that any statement based upon these income tax reports, in giving her an accounting was certainly wrong, and that they would have to knock off all of this expense account before she would accept any accounting based upon them, which led Mr. Henry into another seige of preparing statement at which time he asked for more documents to work on.

MR. JUDSON: I believe you then made another statement, did you not? I prepared a statement later in 1925, based upon what Mrs. Shelby furnished me, in addition to the material which consisted, I think, of 21 checks,

Q This statement "one-half expense account returned in income tax statement that meant, did it not, that you would arbitrarily knock off from this sum, half of that expense account, in order to satisfy Mary?

A Exactly.

Q How much time did you expend, if you recall, in working upon this first statement, the \$165,000.00 statement?

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Q 47 A The preparation of the statement was a minor matter, Mr. Judson, because the figures were taken direct from the income tax report.
 BY THE COURT: You were asked how much time, let's have some direct answers to these questions, did not in argument hours.
 A I'm sorry.
 THE COURT: When you are asked how much time a thing took, all you have to do is to say so many hours, or so many days, or so many weeks.
 A The preparation of that statement probably did not take over an hour.
 THE COURT: But you did have at least one conversation with Miss Winter about this, and you reported the result of that conversation to Mrs. Shelby?
 A Yes.
 Q And you suggested to Mrs. Shelby that she increase the amount she was willing for Miss Winter to be shown as a figure for settlement?
 THE COURT: I cannot see the slightest use of going into all of this mass of detail. It hasn't anything to do with the questions that I am interested in, and that is the matters to which the defendant has plead guilty, and which are clearly stated by the prosecution officer, and whether there is any mitigation. It has already been shown here that Mr. Henry devoted a considerable amount of his time to a great many different things, but we will be here until eternity if we are going to go into every conversation and every statement prepared. That isn't going to do any good one way or the other.
 MR. JUDSON: Then, I will assume that Your Honor takes cognizance of the fact that Mr. Henry did, over a period of some 10 years or more, spend a great amount of time.
 THE COURT: I have stated that into the record at least twice, that the probation report shows so.
 MR. JUDSON: When I return to the subject with which you was interwoven somewhat.
 MR. JUDSON: When was the first time that you felt that Mrs. Shelby intended to deprive Miss Winter of her earnings?
 MR. SMOKE: What is the materiality of that?
 MR. JUDSON: It is this: the report states that Mr. Henry assisted Mrs. Shelby in depriving Mary Miles Winter, and I intend to show that Mr. Henry felt that everything he did, up until late in 1923, or in the early part of 1924, was done in the bona fide belief that Mary Miles Winter was in need of just such protection, and that she could not afford to let her have her securities, and that it was only at that time in 1924, that he realized that Mrs. Shelby did not have any such laudable idea in mind, but intended to keep everything she had, which was everything. That's the purpose of it.
 THE COURT: I think that is a proper line of inquiry, but that question only calls for late.
 A Late in 1923.
 Q Do you recall what brought that forcibly to your mind?
 A Yes.
 Q What was it?
 A Inspecting in Mr. Holt's office, and the inspection of a four-page report of investments supposedly made for Mrs. Winter, and a counting of funds due her.
 Q What particular circumstances concerning that matter and this report caused you to feel that way?
 A Mr. Holt, after looking over that statement, said, "What is the, so far as the object of the securities purchased for Mrs. Winter is concerned her attorney is anxious to know about the Franklin Park property and Casa Margarita, and the property at 751 New Hampshire. But about what?" Mrs. Shelby turned to the statement and said, "Mr. Henry has taken full account of that, and indicated in a series of entries of money owed Mrs. Shelby by Henry," and it showed that in the years from 1920 to 1923 that Miss Winter could never have had the money to buy the Franklin Park property which had just sold for \$15,000.00.

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In that event, it means as this court, which was yourself prepared, you were fortified in a position which wiped out any possibility of Miss Winter being entitled to any part of that \$150,000.00 profit on that property?

Q Yes.
A When you prepared the chart, did you have any such things in mind?
A I did not.

Q Did you know that Mrs. Shelby was going to use it for any such purpose?
A I did not.

Q This lawsuit and this trouble went on for a period of several years, is that not, between Miss Winter and Mrs. Shelby?

Q Yes, it started from 1920 up until the final lawsuit, which I don't think was dismissed until February of 1924.

Q During that time you were called upon to see Mr. Cott, Mrs. Shelby's attorney?

Q Yes.
A And Mr. O'Melveny, Miss Winter's attorney?

Q Yes.
A And a man named Mac, an accountant employed by Mr. Mc Carthy, Miss Winter's attorney?

Q Yes.
A And so over these various charts you had prepared?

Q I did.
A Were there various legal matters taken up by Mrs. Shelby with you, at which time she told you she would not discuss them with anybody else, other than you, and did you perform services as the result of those things?

Q I did, yes.
A THE COURT: I have come to the conclusion that Mrs. Shelby's handling of her daughter's affairs was not for the best interest of the daughter, but in effect she was feathering her own nest at her daughter's expense. Did you confide that discovery to Miss Winter?

Q Did I?
A Yes, did you tell Miss Winter about it?

Q No.
A Did you go to the District Attorney's office with any information that might lead to any investigation?

Q I did not.
A You continued to work for Mrs. Shelby and aid her in her schemes?

Q Well, if Your Honor please --
A Can't you say "yes" or "no"?
A I worked with Mrs. Shelby.
Q Believing, as you did believe, that she was defending her daughter?

Q No, not in that sense.
A THE COURT: I would like to have Mr. Henry explain, if Your Honor will permit it, the fact, if it is a fact, that from this time on, he did everything in his power to get Mrs. Shelby to make a final settlement with Miss Winter. I think the letters will verify that completely, and I feel that is a very important matter to bring out.

THE COURT: All right.
A MR. HENRY: Will you state what you did?

Q I tried on each occasion that developed, in the litigation with Mr. O'Melveny, where Mr. O'Melveny represented Miss Winter -- the formation of the 100,000.00 for Miss Winter originated in the minds of Mr. O'Melveny and Mr. Cott; the execution of that trust, the fact that it ever was formed at all, was due entirely to my action with Mrs. Shelby, in final convincing her to it. After the settlement in Arizona, of the 150,000.00 of securities, and the deed of the Casa Margarita property to her daughter, there was a continuous effort to have the terms of that agreement endorsed with, and the terms of that agreement have never been conformed with to this day.

Q Late in 1923, or early in 1924, you had performed these various services that you are telling us about, and I believe that several of these charts had been prepared at that time?

A Yes.

Q And the discussions that have been related here?

A Yes.

Q At that time, did you received any communication from Mrs. Shelby, other than the \$50.00 in 1920?

A No.

Q At that time, did you take any of her securities?

A Either late in 1925 or some time in 1924, I believe, yes. That was the amount?

A \$5,000.00 per value, of the Western States Gas & Electric bonds.

Q I don't know whether Your Honor cares to go into the mental reaction of the defendant at that time, and why he took these.

A I think if we are going to go into the mental reactions of defendants on these probation matters, we might as well stop functioning as a court, and turn the matter over to a professor of psychology.

MR. JUDSON: I thought Your Honor might want to ask Mr. Henry as to why he should embark on a line of that kind.

THE COURT: There is a statement in the report on that. If that isn't correct and Mr. Henry wants to make any correction of it, of course he may do so. The report implied, if it did not directly state, that Mr. Henry by this time was rather disgusted with the amount of time that he had put in in Mrs. Shelby's affairs without any remuneration, and had come to the conclusion that she did not want to pay anyone, and that he made up his mind that he was going to be paid, so he took these bonds.

MR. JUDSON: I think that states the situation fairly.

THE COURT: Does that state the situation?

A To be short, it does.

BY THE COURT: You appear to have given a lot of legal advice to these people, and you apparently have had more or less to do with consultation with lawyers: if you felt that Mrs. Shelby owed you money, you knew that the courts were open to you if she did not pay you?

A Yes, I don't defend my action in any way. My feelings don't enter into this thing.

Q BY MR. JUDSON: Did you at that time, at the time of the taking of these bonds, use them?

A No, I did not.

Q Do you recall when you used the first of them?

A Some time in 1925, I believe, September or 1925.

Q BY THE COURT: Where did you have the bonds in the meantime?

A In a box in Pasadena.

Q A safety deposit box?

A Yes.

Q In your own name?

A Yes.

Q BY MR. JUDSON: Do you recall the first 5000 of the bonds that you used?

A To the best of my recollection the \$5000.00 -- I had been on a note for a friend of mine by the name of Richard M. Cole, an unsecured note in the First National Bank of Pasadena, and they became dissatisfied with the manner in which he was conducting his payments, and had had to renew the note several times, and they finally asked me to do something about it, to either get him to pay it or take care of it, and I put the \$5000.00 worth of bonds up as security for that note.

Q You did not derive any part of that then, of these particular bonds or the proceeds therefrom?

A No, the note was for \$4000.00. I think I paid the note off and got the bonds back.

Q Later --

A Well, later I used them again on a loan of my own, and they were sold.

Q BY THE COURT: This note was one you had signed as an endorser?

A Yes, I thought he was perfectly good for it.

Q BY MR. JUDSON: Did you know a man named Morris?

A Yes.

Q Was the manager of the firm, was he?

A Yes.

Q Did you have a transaction with him which culminated in your using the rest of these eastern states bonds?

A Yes.

Q Which you would state in detail what that situation with Mr. Morris. Mr. Morris was an old client of mine. In one instance -- he had been buying securities through Blyth, Litter & Company, by purchases using his personal note for partial payment. Among those were some Pacific Gas & Electric stock, which was a marketable issue, and the house refused to carry an issue of that nature on partial payment. As a result it would be necessary for him to buy that through a brokerage account.

Mr. Morris, in urging the purchase of the Pacific Gas & Electric, made the suggestion on the basis of him already holding a substantial block of it. I urged several other issues upon him including other things that Blyth, Litter had to offer, and issues which I believe had speculative possibilities in the market. Mr. Morris said, "I want to buy two issues the Pacific Gas & Electric, and the Famous Players, preferred, but if you believe that money can be made in other issues to a greater extent than in the two issues which I have named, I will permit you in a joint trading position to use the money, but at the completion of my payment on these particular securities, you to make delivery to me of the Pacific Gas & Electric and the Famous Players, and also pay me the dividends that would accrue on those two issues during the period. On that joint trading basis, I was to retain any profit and after compensation for whatever service I had rendered him in the past. The only evidence of a joint agreement that existed between us was a note or notice to him that there were due him so many shares of Famous Players stock, and so many of Pacific Gas & Electric stock, and my life insurance policies in the event anything happened to me, because this was to be in a brokerage account of a margin nature. The only security that Mr. Morris asked of me was that on the score that the only thing he was afraid of was that I might drop dead or something of that nature, and he would be protected as cash invested. That joint trading arrangement between he and I was entered into I believe in July of 1923. It was not completed until the fall of 1927. Mr. Morris, in 1927 was stricken with paralysis. His wife -- earlier in the year of 1927 he was stricken with paralysis, but toward the end of the year of 1927 he was in a very serious condition from it. Mrs. Morris told me that her husband hoped I would be able to make delivery of whatever remained of the securities --

THE COURT: Can't we get right at the point of this thing? We are always getting into these long verbose explanations. I am not interested in conversations you had with Mr. Morris or his wife. The question is, did you steal the rest of this \$55,000.00 and give it to Mr. Morris? In connection with that, I used \$25,000.00 in the Hutton account.

Q When was that?

A That was in 1925.

Q That took up the balance of the \$55,000.00 bonds?

A No, I think there were \$5000.00 worth still unsold, which were sold later in 1927 or 1928.

Q And what did you do with that?

A I couldn't tell exactly; it was involved in the Shelby matter at that time. At any rate, out of this \$55,000.00 worth of bonds that you stole from Mrs. Shelby, she got no part of the proceeds, is that correct? Only, if she got any of it, it would have been out of the last \$5000.00. Then, the balance of it, a part of it was used in taking up this note you had endorsed, and the rest in squaring accounts with Morris?

A Yes.

Q Couldn't you have said that in the first place?

THE COURT: Now we get a little more specific explanation of what happened to that last \$5000.00. If there were bonds given to Mrs. Shelby, I would like to have it known accurately what proportion did go to her. It would be impossible for me to say, because by 1927 or 1928, when those bonds were sold, her own defaulted securities, or securities of hers which I had sold, and on which interest would be due, a part of this money may have flowed in there at that time.

Q MR. CHURCH: Don't your accounts show that?
 A I have no accounts. I have destroyed everything I own to date, and I am just hung on the edge, so far as memory is concerned. The auditors have worked over that thing, attempting a best that can be made to watch the figures. I could not tell you myself how much of the money went to the Shelby account.

Q MR. CHURCH: At you never gave her any part of the \$55,000 worth of bonds?

A I say again, I don't know what part of that last \$55,000 went to her.

Q MR. CHURCH: Let's get at it in this way: After you had settled up the Morris transaction, you say there was some balance left; was that in the form of money, or was it still in the form of bonds?

A The balance of the securities - there were \$5000.00 worth of the Western States bonds left.

Q You still kept these bonds?

A Yes.

Q What did you eventually do with these bonds?

A They were sold.

Q How much did they bring in?

A I cannot tell now.

Q Approximately?

A I would judge -- oh, around -- they were sold in one bond and four bonds and they should have brought around forty-five or forty-seven hundred dollars.

Q Assume they did, it doesn't matter one way or the other so far as I am concerned here -- what happened to that \$400.00 when the bonds were sold? Did you turn it over to someone else, or did you keep it in your own account?

A I don't even know what it was sold for now, forty-five, or forty-six or forty-seven --

Q I mean for what purpose was it sold at that time. You don't remember whether the money secured from the sale was kept in your bank account or not?

A It may have been sold -- part of the bonds were sold out from underneath a bank loan.

Q A bank loan to whom?

A That would have been to me personally.

Q MR. CHURCH: May I ask one more question?

A MR. CHURCH: Yes.

Q BY MR. CHURCH: How long did you have that \$55,000.00 worth of bonds under your control?

A I had them over a year. I have tried to fix the date of the time I took them, and as I say, it was either late in 1925 or early in 1926.

Q What was done with the interest on those bonds?

A Any interest I had I must have had the benefit of it.

Q You derived the interest yourself from the \$55,000.00 worth of bonds? Yes.

Q Do you recall the approximate amount of that interest?

A Well, they were six per cent bonds, I think. \$55,000.00 would be all intact a year, that would be \$2100.00.

Q MR. CHURCH: What happened to that \$2100.00 interest?

A I had the benefit of it.

Q You kept that?

A Yes.

Q And devoted it to your own purposes?

A Yes.

Q BY MR. CHURCH: Then there really was \$7,000.00, wasn't there, counting the bonds and the interest, it would amount to \$7,000.00, is that right?

Q BY MR. CHURCH: What is, adding the amount of the interest paid to the principal value of the bonds?

A Yes.

Q As I understand, the last block of bonds sold for less than par?

A They all sold for less than par value.

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Q. Now, Mr. Henry, what was the second conversion or wrong doing that you did in connection with Mrs. Shelby's account, and when was it?

A. It was -- cashing the check of 1,225.00 in 1926. I had a check for 1,225.00 in overdrafts on bonds.

Q. Now, RT: Just was this item, as I remember from the report, of 1,225.00?

A. Yes. Q. Now, RT: Was this -- was this -- was this in connection with Harris?

A. As the best of my recollection, it was. Q. Now, RT: Might you in connection with these -- these items that you would have discovered those things, if it had not been that the defender in starting to -- did a great deal of things -- did it known. There was no record from which it could be determined that any such overcharge had been made, or, conceivably, that any such 15,200.00 had been taken.

Q. Now, RT: At the time you made this false report, an entry which resulted in your obtaining this 1,000.00, was it -- was it that because you felt you were collecting money -- was it?

A. No, it was under necessity, in connection with the -- the best I remember it was in connection with the Harris situation.

Q. Then, that was just a plain straight theft, wasn't it?

A. Yes, as was. Q. Now, going back to the matter of payments, you say that Mrs. Shelby never had you do these things -- services, and the many hours spent in performing them; did you ever order her to pay?

A. No, I did not. Q. Did you ever request her to pay you?

A. No. Q. It never occurred that instead of stealing her bonds, a more direct way, or a better way was to render an account of what you thought was due for services and ask her to pay it?

A. It would -- Your Honor, I can only tell you this: I hadn't the slightest conception of ever receiving five cents from the woman, or having any service even acknowledged.

Q. But you kept on working for her all these years, expecting that you would not get paid, is that correct?

A. Yes, as far as the bond account is concerned.

Q. Now, Mr. Johnson: Now, Mr. Henry, after this 1,000.00 transaction, during the succeeding years, you took care accounts of Mrs. Shelby's securities did you not?

A. Yes, yes. Q. I will ask you directly, were those securities taken in an attempt to recoup what you had already taken and restore those things?

A. They were, yes. Q. Coming to the spring of 1926, I will ask you whether or not you were not the owner of stock of Blyth & Company of the value of 15,000.00?

A. Yes. Q. You owned some and various other things, or had some equities?

A. Yes. Q. At that time, in the spring of 1928, did you not decide to close out your interest in the firm, and everything you had and liquidate that indebtedness?

A. I did. Q. Did you not -- at that time you were then holding, I believe, securities of Mrs. Shelby's which had been entrusted to you personally by her, and which had been bought in fictitious names, the sum of 124,000.00, approximately actual value?

A. Yes. Q. Part of those securities you had taken as that time as to the spring of 1926?

A. I had, yes. Q. As well as the things you have already mentioned?

A. Yes.



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Q Mrs. Shelby was in Europe at that time?

A She was.

Q I believe she had some securities with her?

A Yes.

Q To the extent of about \$350,000.00, is that right?

A No, you mean with the \$144,000.00 that were in her possession?

A Yes.

Q No, she did have approximately two hundred and fifty thousand -- did you tell Margaret Shelby that you had been holding those securities long enough, that you wanted to return them to Mrs. Shelby, and for her to take the matter up with Mrs. Shelby so you could return them?

A I did, yes.

Q Was it your intention at that time to sell out everything you had and these securities that you had taken and send them to Mrs. Shelby in Europe?

A Yes.

Q BY THE COURT: Why didn't you carry that out?

A Neither Margaret Fillmore nor Mrs. Shelby would permit a consideration of the securities being sent back.

Q Nothing prevented you sending them back, whether they agreed to it or not, did there?

A If Your Honor please, between the time of talking to them and going through this, I carried it along -- there was a discussion -- there was an element of procrastination on my part, there was always the possibility that I might retrieve, so I just simply resumed things.

Q At that time in 1925, if you had realized on your interest in Sixth, Bitter Company, and on what other properties or securities you owned as I understand from your statement, you would have been in a position to make good all the amounts you had taken from Mrs. Shelby, is that correct?

A Yes, I would have had to go in debt, but I was prepared to do it.

Q But you could have raised the full amount?

A Yes.

Q Why didn't you do that?

A I am sorry I didn't.

THE COURT: What I am trying to find out -- I am not trying to humiliate or embarrass you any more than is necessary, Mr. Henry, but I am trying to get the facts as to whether there was anything that stood in the way of that prevented you from doing that, and let us say purchasing bonds in value to those taken, or simply sending the money to Mrs. Shelby or telling her that you did not care to handle her business any more, if you were through, and here was the rest of her money. There was nothing so far as you know that legally or physically prevented your taking that course?

A Yes.

Q That is what I am trying to find out.

A In the first place, Margaret Fillmore told me that these securities had to remain where her mother wanted them; that she, Margaret Fillmore, was under a lien of the United States government, and she could not do the delivery of them and wouldn't. The shipment so far as her mother was concerned, Margaret pointed out that her mother was moving about Europe and that it was impossible to reach her, and a continuous argument resulted up until July of that year, when I finally heard from Mrs. Shelby herself, stating that she would not have them. The thing that ruined me in the matter was just what Your Honor said, there was nothing to keep me from arbitrarily doing it instead of procrastinating and eventually surrendering. I did have this to consider, it was hog in my own mind, naturally, in order to sell myself out, there was my family -- I had some considerations of that nature that held me up going to Sixth Company to sell my stock, which would be the only market for it. I had to virtually tell them my difficulty or reveal my difficulty to them that I was hoping to liquidate. It would have ended my career, so far as the security business was concerned, but that I had made my mind up to, but this period of procrastination permitted me to lapse back into

the other things, particularly where both of them objected to accepting it.

THE COURT: By looking back into other things --

speculation.

Asking Mrs. Shelby's securities and speculating with them?

Yes. Furthermore, in talking of speculating with them, for every security that I had sold others, I had to make good the interest to her. If the speculation did not produce it, it meant a sale. It became a vicious circle that consumed it. Then, on all of that came the default in 1928, and the protection of interest on those defaulted securities, and when I got to that point, there was no plan of selling myself out and going into debt would meet the obligations, it was then just a lost cause, except to hope that some highly speculative situation would produce something.

Let me ask you this, and again, I don't want you to think, Mr. Henry, that I am asking these questions with any idea of torturing you or anything of that kind, because that isn't my purpose at all, but to get at your knowledge of these matters. Didn't you realize at the time you took this \$5,000.00 worth of bonds, and in each and every case when you took more money, or when you applied any of the proceeds of any of these bonds that the things you were doing were very apt to result in your detection and arrest and prosecution on felony charges, and that very probably it would result in your going for a long term of years to the state prison? Didn't that occur to you at all?

Yes, sir, that was one of the reasons why I did not sell the bonds. In other words, I wasn't under the necessity of having money, with respect to that \$5,000.00. I could have put a hole in the ground and put acid on the bonds which would have eaten them up, and never have had the value of a nickel of them, and felt some satisfaction out of it. That is the way I felt. I cannot tell what my reactions were to that situation.

The thing I cannot understand is this: if you felt that Mrs. Shelby owed you money, and I can very well understand your feeling that, considering all the time you had put in on her affairs, why you didn't ever ask her for money, or render her a bill.

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Had I asked Mrs. Shelby for five cents, in connection with that matter, in view of what had transpired so far as the income tax and the rest of it was concerned, Mrs. Shelby would have looked on me as a blackmailer.

THE COURT: That is your conclusion.

My conclusion, yes, but I had had to talk to her about her own attorneys, one after the other, about real estate men that dealt with her, about moving picture people who had dealt with her, about her own daughter, and in no single case did I ever find one word of appreciation for a service rendered where money had been paid for it, and in every case did I find an effort to avoid payment. I did have, so far as the account was concerned, the desire to maintain that account for the house; the house looked to me for the maintenance of it as a matter of business. On the other hand, this long period of association that I had with her, the various channels into which it carried me, all that Mrs. Shelby saw in that was -- well, what she saw in it I cannot tell you, unless she seemed to think it was a beautiful friendship of some kind.

THE COURT: What would be your conclusion as to what was in somebody else's mind.

MR. JUDSON: I would like to refer Your Honor to this letter dated July 24, 1928, from Charlotte Shelby in Paris to Mr. Henry, in which she stated, "Margaret writes that you are thinking of returning samples." That was the word they had for the bonds.

THE COURT: Yes, I gathered that.

MR. JUDSON: Did you read that letter?

THE COURT: If it was in the deposition, I am quite sure I did.

MR. JUDSON: I mentioned that as it verifies the story that Mr. Henry has given here concerning the idea he had of paying this back.

Q BY MR. JUDSON: Mr. Henry, after this time, as the Court has already indicated, you took from time to time such securities as remained in your possession, or such as thereafter came into your possession, for the purpose of speculating, in an attempt to recoup all of this and restore the money and get rid of the whole situation?

A I did, yes.

Q And you also converted these securities for the purpose of paying interest and dividends on those you had already sold?

A Yes.

Q Calling your attention to the check, I believe, of \$35,000.00 given you by Margaret Willmore, in '30 or '31, I believe of that money there was paid back to Mrs. Willmore or for her account the sum of \$29,000.00?

A Yes, the accounts approximated that.

Q And calling your attention to this item of \$13,000.00 interest on defaulted bonds, in other words, bonds that had been defaulted and which you had not informed Mrs. Shelby had been defaulted, but continued to pay interest as if you were actually receiving it?

A Yes.

Q This sum amounts to \$13,000.00 approximately, does it?

A Yes.

Q And on the bonds you sold, converted to your own use, you of course continued to pay interest to them on those bonds?

A Yes.

Q And that amounted to \$30,500.00 approximately?

A It does.

Q On this syndicate which you informed Mrs. Shelby existed, and in which her bonds were deposited, I believe you paid interest on that to her in the sum of \$3000.00?

A Yes.

Q And I believe you also paid Mrs. Shelby purported profits on various items, things that had been taken by you in the sum of \$10,000.00?

A They have not yet established the amount of that, but it was somewhere between five and ten thousand dollars.

Q You used approximately \$25,000.00 of this in the Morris account, is that right?

A Yes.

Q And this man Cole that you signed a note for, which resulted in your first conversion, or rather the application of things you had converted, I believe you loaned Mr. Cole of this money the sum of \$7500.00?

A Yes.

Q You made a payment on income tax for Mrs. Shelby also of \$5000.00?

A Yes.

Q And you had a friend named Brown, who got in some difficulty and to whom you loaned \$2300.00?

A Yes, he was to repay it in 30 days.

Q Also with this money you purchased an interest in some property in Westwood to the extent of \$13,000.00?

A Yes.

Q Then you made various investments in oil wells, which I believe you told me you thought were of very great potentiality to pay back that money?

A Yes.

Q Nordon, is that an oil well?

A An oil company.

Q \$14,500.00 in that?

A Yes.

Q Incidentally you invested in some of these oil stocks to make the payment of interest easier on things already sold?

A I purchased an interest in an oil fee in Santa Fe Springs, in order to protect myself from having to sell anything further of Mrs. Shelby's in order to pay interest. This oil fee promised to pay from six hundred to one thousand dollars a month, and did pay very well for a while, but the government control of that oil situation did not permit that to continue, and I exchanged it for Nordon stock, and purchased additional Nordon stock.

X

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Q There was some Wyoming oil company for a thousand dollars?

A Yes.

Q And the Henderson Oil Company?

A \$1000.00, yes.

Q And the Mexico Oil Company?

A \$500.00.

Q And the Kinema, \$500.00?

A Yes.

Q And the Howard Copper Company, \$500.00?

A Yes.

Q And an oil interest in Texas \$5500.00?

A Yes.

Q Incidentally when you paid on these Kirkman bonds, I believe you borrowed the money to pay that?

A I did.

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Q And you paid that loan with money obtained by these conversions in the sum of \$5000.00 later?

A I don't remember whether I did, or whether I paid that out of my own earnings.

Q You also invested in some Julian stock to the extent of \$6500.00?

A Yes.

Q In these various brokerage accounts, I believe you lost approximately \$25,000.00; is that right, the best you can figure it?

A Yes.

Q Calling your attention to the fact of that statement filed here by the so-called complaining witness, it states that you did not lose anything in your brokerage transactions, and I will ask you to state whether or not you did lose the sum of \$25,000.00?

A I did lose it, and if Mrs. Shelby's accountant, Mr. Webster, named in the statement, or any certified public accountant can establish I did not lose money in those brokerage accounts, I will be very much mistaken

Q Those accounts where you lost that money are Sutton & Company of Los Angeles, and Logan & Bryan, and various other concerns, the names of which you have given to the attorney for the complaining witness, and also given him written authorization addressed to each of these companies directing them to turn over to the complaining witness any information which they have in regard to those matters?

A I have, yes.

Q And you paid out, I believe, some \$20,000.00 for insurance policies, etc.

A For premiums on insurance policies.

Q And on defaulted coupons and repurchases, etc., I believe you told me you had paid about \$8000.00 to Mrs. Shelby?

A No, to other customers, to women mainly, women and elderly men.

Q Now, I will ask you whether or not you personally used for your own personal benefit, other than the things I have mentioned here, any of the moneys?

A There must have been some, Mr. Judson. In the confusion of it with my personal affairs, I know there was some.

Q You mean by that, that as time went on there was a portion appropriated possibly in paying this or that of your personal expenses or your household expenses or something of that kind?

A Yes, in other words, my annual income was not equal to meeting all of the charges that I had created myself by reason of my own misdoings in this account. There is no doubt that I used part of Mrs. Shelby's money in connection with my own affairs.

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Q There isn't any outstanding amount, however, that you used? In other words, I mean it was absorbed from time to time as you went along, your expenses, personal expenses absorbed amounts of that which had been deposited in your account, that is, of her money?

A Yes.

Q Now, on that question, Mr. Henry, Mrs. Shelby directed you, did she not, to deposit her money, the money given to you for the purchase of securities, in your own account, is that not so?

A I would like that question again please.

- Q Mrs. Shelby gave you instructions to deposit money given by her for the purchase of securities, for you to deposit in your own account?
- A Yes.
- Q So that the purchase of securities would be concealed from the world at large, and would appear as made by you for someone else rather than for her?
- A Yes.
- Q The fact was known to her, of course, that you did use your own account?
- A Yes.
- Q And in fact, these bonds mentioned, the 111,000.00 par value, were at her request kept in your personal safety deposit box?
- A Yes. When I saw personal safety deposit box, it was "Leslie E. Henry, Trustee."
- 78 Q You ticked the "Trustee" on to indicate, if anything happened to you, to indicate the securities therein did not belong to you, but to Mrs. Shelby and an investigation by her would disclose her ownership of those?
- A Yes.
- Q In connection with this use by you of any of these moneys that you converted, I will ask you whether or not your views changed in any way, or your mode of living during all of this time, your home life, or the expenditures made by you?
- A Not a particle.
- Q Have you any of these moneys left, these securities -- I will ask you to have you any of Mrs. Shelby's securities left?
- A Yes.
- Q Which ones?
- A The stock in the University property at Westwood.
- Q You mean you have properties which you have purchased with things, with money you obtained by converting her money or property?
- A Yes.
- Q You do not have any of her securities that she had at that time?
- A I believe there is a \$1000.00 Latham Square Building bond, which was in default, and on which I paid interest, a certificate of deposit for that. And there are 70 shares of the Security Housing Preferred stock, \$7000.00 par value, and some Russ Building common stock issued in fictitious names through which she purchased them. I believe those are still there.
- 79 Q You also have, I suppose, evidences of ownership of these various oil stocks and Westwood properties that I have mentioned?
- A Yes.
- Q It is your desire to turn over the ownership of those properties to whomever the Court decides in the case now pending?
- A Yes.
- MR. JIMSON: If there is no objection, I would like to take the recess now. I feel that we can finish this up very quickly now.
- THE COURT: Very well, we will take a recess at this time until Monday morning at 10:00 o'clock.

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80 MONDAY, JULY 24, 1933

10:00 o'clock A. M.

THE COURT: Are you ready in the Henry matter?

MR. SHORTER: Ready, Your Honor.

MR. JUDSON: Yes, Your Honor. I would like to say this, that we appreciate Your Honor's courtesy in permitting us to make such showing as we have made, and we feel that it will be impossible to portray to this Court all the various equities, if they may be called that, in this case, unless we would take weeks, if not months to go into that, and of course that is utterly impracticable. There are things, which circumstances required us to go into Friday afternoon that would certainly not be desirable, and possibly give rise to inferences which are unwarranted. It is only from a complete understanding of all of the facts in the case going over a period of many years, that what we desire to show could be appreciated. For that reason, we are not going to offer any further evidence, other than, of course, such as the District Attorney desires to offer, or Your Honor desires to ask. However, Mr. Henry asked me to inquire of the Court concerning this one thing: the statement filed by the complaining witness, which I have already adverted to, as being refutable in practically if not every respect, contains various charges, and there is a question in our mind as to what credence or significance Your Honor is giving to those particular charges, some of which have nothing whatever to do with this matter.

THE COURT: I am not considering any charges against Mr. Henry, except those involved in this particular case.

MR. JUDSON: Then, I am not going further into the matter.

MR. SHORTER: Are you through with your direct examination?

MR. JUDSON: Yes, we are through.

MR. SHORTER: Will you take the witness stand, please, Mr. Henry?

LESLIE S. HENRY

is now recalled for

CROSS EXAMINATION

BY MR. SHORTER:

1 Mr. Henry, when you last came in the acquaintance of Mrs. Shelby in 1920,
2 were you working on a salary, or a commission with both, either or none?
3 on both -- I believe both salary and commission.

4 You received a certain salary and a commission on the stocks and bonds
5 that you sold?

6 Yes.

7 Can you give the Court an approximation of the amount of stocks, bonds
8 and securities that went through the Smith, Litter Company in the
9 Shelby account?

Q How long?
A During the entire time that she continued with the company through to
Q No, I couldn't even approximate it.
Q Can't you give us an approximation?
A No, it would be extremely difficult to do so.
Q Wasn't there approximately \$2,000,000.00 worth of stocks and bonds that
went through your hands in the way of an estate?
A Well, you've given a figure, Mr. Hoate, so I suppose -- I couldn't
tell you.

Q Can't you give an approximation?
A No. The record can clearly show how much went through, but I cannot
even guess at it. Incidentally, I did not receive commissions on all
sales to Mrs. Shelby, so that is what you are bringing out.

Q Can you give the court an approximation of the amount of commissions
you received on transactions that you consummated with the company in
the Shelby account?

A No, I couldn't.
Q What was your salary, your average salary from 1929 to 1933?
A Salary -- if you are speaking of salary, sometimes I was on a salary
basis, and at other times I was not. I could not tell you how it would
average out.

Q Isn't it a fact, Mr. Henry, that after you were indicted by the grand
jury of this county, you requested Mrs. Shelby, through her attorney,
to leave the jurisdiction of the court, so the prosecution could not be
completed?

A I did not.
Q Did you ever make such a request of your attorney?

A I did not.
Q You never authorized him to make any such statement?

A No, I did not.
MR. JOHNSON: And he never made any such statement, either.

THE COURT: Suppose you let the witness do the testifying.

Q BY MR. JOHNSON: How much insurance did you carry?
A I think \$149,500.00 of straight life insurance, part of which carried
double indemnity feature.

Q That is, if you were accidentally killed, there was double indemnity?
A Yes.

Q Who were the beneficiaries of those policies?
A My wife.

Q Were any of those policies made out to Mrs. Shelby as beneficiary?
A Not at all.

Q Then, when you turned over these policies, or they were given to Mrs.
Shelby through Miss Haber, your secretary, I believe you stated in your
direct examination that you were concerned about the policies in the
possession of Mrs. Shelby?

A Exactly.
Q Will you explain why, when your wife was the sole beneficiary?

A Because, in Mrs. Shelby's possession -- they should be found in my
possession, where they always were. They were continuously in a fire-
proof box which I had in my desk in my office in Paducah, and that would
be the proper place to find them. Persons in the office knew they were
there, the insurance agent that sold me those policies knew they were
there, and for them suddenly to be discovered in possession of Mrs.
Shelby would defeat the plan itself.

Q You mean your suicidal plan?
A Exactly.

Q How did you pay the premium on those insurance policies?
A With cash.

Q From what?
A From my bank account.

Q Do you know approximately how much the premiums annually were on those
policies?

A I think they came in the end somewhere around thirty-five or four thousand
and dollars a year; I couldn't tell you exactly, that is, life insurance
and accident policies.

Q And all of those policies were in force at the time of your arrest?

A Yes.

Q Now, isn't it a fact, Mr. Henry, that after your indictment and before your plea in this case, that you borrowed approximately 4000.00 on your insurance policies?

A Yes.

Q What did you do with that money?

A I used part of it to pay the bail bond broker, and I used part of it to pay my attorney.

Q How much -- withdraw that.

A I couldn't tell you exactly. I saw a statement to the effect that I paid him, I believe it was in Mrs. Shelby's statement, that I had paid my attorney \$3800.00 out of insurance money, which isn't true. I wasn't able to cash those checks myself, and I had them cashed by either Mr. Hudson, or friends of mine in order to get the money at all.

Q You haven't made a cent of restitution to Mrs. Shelby, have you?

A Mrs. Shelby can have anything I have got.

Q Just answer the question; you haven't, have you?

A No, I haven't.

Q And that \$3600.00 or 4000.00 that you borrowed on your policy, no portion of that was given to Mrs. Shelby, was it?

A No.

MR. HUDSON: May I call attention to the fact, Your Honor, that the defendant is charged with taking property of Blyth & Company in the indictment and I don't see how it can be conceived that it is the property of Mrs. Shelby. If anything is paid in the case it should go to Blyth & Company.

MR. GHOFF: Counsel has contended all along that the defendant has acted in good faith, and tried to make restitution and show his good intention toward Mrs. Shelby, and I just wanted to disprove that fact, at least in part.

BY MR. GHOFF: Mr. Henry, when Mrs. Shelby announced to you that she intended to buy this property and build in Laughlin Park, isn't it a fact that you advised her against that plan, for the reason that it would tie up some of her money and she would not be in a position to buy bonds with your concern?

A I testified to that in the deposition, yes.

Q And you testified it was merely a selfish motive, your advising her to that effect?

A Not at all; I said that was one of the reasons.

Q There could be many reasons, but that was one of them?

A That was one of them, and I will give you the others, if you want me to.

Q Mr. Henry, you cannot inform the court of the approximate amount of commissions you made from your association with Mrs. Shelby?

A No. One reason is, I would like to explain, that my commission checks each month was paid as a gross amount. I had many clients besides Mrs. Shelby, and to differentiate what I received from the sale of bonds to Mrs. Shelby as apart from commissions I received on other business would be impossible. I cannot give you now the gross amount I received. I might tell you that in 1922, when Mrs. Shelby purchased securities in fictitious names, I received no commission during the entire year of 1922 from anything I sold to Mrs. Shelby.

Q Then why did you do it?

A Because she wanted the bonds purchased in fictitious names. There was nothing wrong about it.

Q Do you do everything anyone asks you to, whether it is right or wrong?

A Mr. Choate, if you came into my office and asked me, with your money, to purchase securities issued in the name of Mr. John B. White, I would give them to you.

Q It was in 1920 that you gave the fictitious report to the income tax authorities?

A 1920 that I made out my own income tax, you mean?

A Yes.

Q Yes, it was for the year 1920.

Q Was that the only fictitious one that you made?

A Yes.

Q Mrs. Shelby was the best client you had, wasn't she?

A Not at all; she continued after a period of years, she was one of the

best clients, the best containing client, but she wasn't by any means the largest or the best client I had.

Q But you did receive considerable monetary remuneration from that client? In other words, Mr. Henry, your efforts expended in the Shelby matter, were not wholly gratuitous?

A Not at all.

Q You stated to the Court on direct examination that you never received one cent of remuneration for all your efforts even a period of 15 years. Did not receive a dollar from Mrs. Shelby for 15 or 20 years, did, of being involved in things which were in no way connected with the bond business. Expected to be compensated for the work I did as a bond salesman, but I wasn't compensated by her, but by Fifth National Bank in connection with interviewing lawyers and accountants, and other and dealing with her daughter, and going to testify to the income tax authorities for the estate, and some with no intention to me whatsoever, for doing things of that nature I received no compensation.

Q Did most of your work in Mrs. Shelby's behalf take place before or after 1923?

A Most of the work before --

Q Before or after 1923?

A It would be difficult to say. Of course, there is more time since 1923 on, and her difficulties multiplied tremendously afterwards. There was plenty of work done before 1923, and by the very element of time and the complexities of her difficulties would have increased the amount of work done after that time. Yes, I did more after 1923.

Q And you did more work for Mrs. Shelby after 1923, which was after you had stolen the \$5,000.00 worth of bonds from her safe deposit box?

A I have done more work since I stole them, whether it was in 1925 or 1926. I have not been able to fix that time.

Q Of course, she did not know at the time you did this \$5,000.00 worth of bonds, at the time you were bestowing all of this work in her behalf?

A Not at all.

Q The total amount of the peculations during your association with her, amounted to about \$260,000.00?

A I couldn't tell you.

Q It would approximate that, wouldn't it?

A Mr. Shoate, I don't wish to be responsible for any figures in this matter. You have a very good memory, haven't you?

A I haven't such a good memory, when it comes to approximating items of that character. Involved are the destruction completely of my own records, and the destruction or the non-existence of official records of the Pasadena office of Fifth National Bank, and the absence of material that Mrs. Shelby herself can furnish, and which would make it possible to establish what that figure is.

BY THE COURT: What happened to the records of Fifth National Bank, of the Pasadena office?

A They closed the office out.

Q What did they do with the records?

A There was no storage space, and they were just simply destroyed at the time the office was closed.

Q Who destroyed them?

A The employees there. I destroyed portions of them, because we had nothing, no place to store them in the building, and at that time there was no expectation of re-opening the office of Fifth National Bank at all in Pasadena. That came after the break of 1929, Your Honor.

THE COURT: Isn't it customary for concerns to always keep their records?

A You are asking my opinion?

Q You have been in the bond business for 15 or 20 years, haven't you?

A Yes, yes.

Q Did you ever destroy official records of any other concern?

A I have never been with any other one.

Q That is the only concern you have ever been with?

A That is the only one.

Q Did they direct you to destroy these records?

A No.

Q Do you recall personally destroying the Shelby records?

A The only Shelby records that existed were the Shelby contract.

Q Then, you ought to be able to give to the court the amount of stock bonds that were sold to Mrs. Shelby, didn't you?

A Mr. White, if you will let me explain one thing, and Your Honor too, Price, Waterhouse & Company, Plyth & Company's accountant, and Mr. Lewinson, or rather Mrs. Shelby's own accountant worked for a solid month on those bonds, and they could not establish a definite figure, because you destroyed many records?

A Not altogether; due to the absence of Mrs. Shelby's own records and transcripts and the like, which should have been of assistance in establishing what the amounts involved were.

Q With respect to these checks that were drawn in the name of -- it will come to me in a moment -- withdraw that. Did Mrs. Shelby authorize you to deposit various and sundry amounts of her money in your own account? She did.

Q In your personal account?

A Yes.

Q Not even a trustee?

A Not even a trustee. I made checks out, made them personally, Leslie Henry, without "trustee".

Q Then you took checks and drew them out of that account and made them payable to the fictitious persons and deposited them to your own account, didn't you?

A I don't understand exactly what you mean.

Q You took money out of these so-called fictitious accounts and took it from time to time and put the amounts in your own account?

A What fictitious account were you referring to? There were no fictitious accounts.

Q Now about the name of Landis?

A Those were names of persons through whom Mrs. Shelby purchased securities for herself and her daughter, Margaret Willmore.

Q You took money out of the Landis account by check --

A Not at all.

Q How was it taken out?

A It was Mrs. Shelby's own money used for the purchase of those securities and when those securities were surrendered to Mrs. Shelby in the name of the fictitious persons, the receipts for the bonds bearing the names of the fictitious person were signed by Mrs. Shelby herself or her daughter Margaret.

Q In many instances those checks were endorsed by your secretary, Miss Baber?

A I don't quite understand you.

Q You don't follow me?

A No. Let me ask you this: do you mean dividend checks received in the names of fictitious persons on stock?

Q That is correct.

A Exactly.

Q Yes.

A Those were received in the names of fictitious persons; they were the property of Mrs. Shelby, and the fictitious person's name was endorsed, and Miss Baber initialed it or I did and deposited it, and the funds forwarded to Mrs. Shelby.

Q What happened to the funds when the check was endorsed?

A It was deposited in my account, the account of L. S. Henry, trustee.

Q In many instances, it was in your personal account, wasn't it?

A Oh, yes.

Q And how did you, in your own account, distinguish between the assets of Mrs. Shelby's account and your own?

A It was difficult to establish.

Q It was almost like a family affair, wasn't it? You put her money in your account, and you just used it when you wished?

A Mrs. Shelby, at the time you are referring to, was in Europe, and the funds advanced to her, or to her daughter, were on her own order, those funds made available to her as she required them. They were not suppose to be in the account of Blyth Company, but they were supposed to be in her personal possession. She know about that, and there was the purchase of drafts forwarded to her in France.

Q There was no written agreement between you and Mrs. Shelby for the transaction of her business?

A There is enough -- no, there was no written agreement.

Q At the time she began to transact business with you, she did not agree to pay you a salary, or retainer?

A Not at all.

Q Then your own statement that she had not paid you anything was -- the fact she did not pay you anything, was not the refusal to live up to any agreement on her part?

A No.

Q There never was any understanding between you and Mrs. Shelby with respect to payment for your services?

A None.

Q And as the Court asked you at the inception of this hearing, you never tendered an account to her asking her to pay for any of these services?

A Exactly.

P 95 MR. GLOUCE: I believe that is all, Your Honor.

RE-DIRECT EXAMINATION

BY MR. JUDSON:

Q Mr. Henry, my understanding of the destruction of these records in the Pasadena office was that it was done in the ordinary course of business?

A It was done simply because the bank building would not afford any storage space, there was none available, and there was absolutely no expectation that there would be any continuance of the office in Pasadena at all.

Q BY THE COURT: At whose order was this destruction made, if anyone's?

A I don't believe there was an order given, Judge Burnell.

Q You mean to say that the employees of Blyth, Litter & Company destroyed records of that firm without any authorization from any member of the firm?

A Yes, for the simple reason --

Q I don't care about the reason; I just asked for the fact. Is there anything further?

Q BY MR. JUDSON: The destruction of these records had nothing whatever to do with the Shelby matter?

A Nothing whatever, excepting one thing. I want to be perfectly frank. Involved in the checks of that office were the evidences both of concealment so far as Mrs. Shelby was concerned, and so far as my own misdoings were concerned, and in the destruction of the checks, I myself did that -- but so far as the office records are concerned, they were just excess property, and of no value to anyone.

Q But so far as the office records were concerned, that was just done in the ordinary course of business?

A They were valueless to anyone unless they should reopen an office again, and they had no expectation of doing so.

MR. JUDSON: That is all.

RE-CROSS EXAMINATION

BY MR. GLOUCE:

Q But this destruction was after you had misappropriated this money from the Shelby account?

A Yes, but the only thing of value there was the checks, so far as the Shelby account is concerned.

Q You do not think if you had those records now, they would throw any light on the solving of this condition?

Not a particle, for the simple reason that virtually everything that existed so far as the Shelby file was concerned in our office, is still intact.

You cannot give an approximation of how much stock went through the concern?

That isn't the only point involved in it --

MR. CHORSE: Don't argue; Mr. Chorsey asked whether you can give an approximation of the total amount involved.

I cannot.

BY MR. CHORSE: Mr. Judson just asked you if you did not destroy these official records in the ordinary course of business; is that the ordinary course of business?

Yes, I wasn't even there when a large part of them were destroyed; I was in Los Angeles. Some were destroyed, some of the records of the Escaden office were destroyed in 1924 and 1925, when we moved from one office to another place, as excess records.

Which records did you destroy?

The only thing I destroyed, that I was interested in, were those checks, and I may have destroyed large numbers of circulars and filing cards, and stuff of that nature which had outlived its usefulness.

Why did you destroy those checks?

As I explained before, because involved in those checks were some of the circumstances associated with my own misdoings.

You also destroyed all your personal records, didn't you?

Yes, in anticipation of suicide in November.

And of being apprehended for those reculations?

I had no idea of being apprehended.

MR. CHORSE: That is all.



RE-DIRECT EXAMINATION

BY MR. JUDSON:

As a matter of fact, if it had not been for your statement in this investigation concerning the \$35,000.00 conversion of Western States bonds and the \$9000.00 overcharge, that would never have been discovered?

I don't believe they would ever have established definitely what occurred there. In the case of the \$9000.00 there was only one way of proving that, and that was through Mrs. Shelby's own records. I asked Mr. West her own accountant, time and time again, to get them, and when I told him it involved \$9000.00 of value to this woman, he finally produced them and brought them in, but that was after numerous demands.

You pointed out where she had a claim for \$9000.00 as the result of that transaction?

Yes.

MR. JUDSON: That is all.

RE-CROSS EXAMINATION

BY MR. CHORSE:

However, that \$35,000.00 item and the \$9000.00 item are not the only items involved, are they?

In what?

In these reculations?

Not at all.

It is only a small amount?

Yes, it is only a part.

By the way, Mr. Henry, on your direct examination you alluded several times to the Morris transaction.

Yes.

Mr. Morris and you had a joint account, did you not?

Yes.

When he died, his wife was the beneficiary under his will?

She was--no, she was one of the heirs, but only for a life interest.

Q she received quite a number of bonds and stocks, didn't she?

A Yes.

Q You had a power of attorney from her?

A No.

Q Did you have access to her safe deposit box?

A After she went to the hospital, yes.

Q Was that through a power of attorney?

A Whatever the card is that they furnish.

Q It was a power of attorney you had to give you access to the safe deposit box?

A Yes.

Q And after her death, is it not a fact that you Northrup went to the safe deposit box and took out the stocks and bonds?

A I did not.

Q You never took any documents out of her safe deposit box?

A I took a few pieces of old jewelry and a few undervalued papers that were in there. We had left all her stocks and bonds with me before she went to the hospital, and a receipt was given to her for those. That receipt was later presented by a brother-in-law who was the executor of the estate, and the securities were handed over to him.

Q Isn't it a fact that you took several of those bonds and kept them out for the reason you stated at that time, that it was for the purpose of evading the inheritance tax?

A Not at all.

Q You never made any such statement?

A No, I did not.

Q Now, you made an attempt to get Mr. John Harry Wood, an attorney for the Morris, how to testify concerning that charge, did you not?

A I did.

Q And found he was away on his vacation?

A Yes.

Q BY MR. SHORTE: However, the administrator did file suit against you, did he not?

A Yes, he did, but --

MR. JUDSON: Go ahead and explain.

A He filed a suit against both Elyth, Witter & Company and myself at the request of the attorney for Mrs. Morris' heirs. That was a suit based entirely upon a technical proposition, of attempting to have a hold on Elyth, Witter & Company's against the Morris heirs, that is, Mr. William E. Morris' family, to whom this property was to revert at the close of the life interest Mrs. Morris had in it. The fact that I had delivered those securities to Mr. William E. Morris' heirs, on the presentation of Mrs. Morris' receipt, involved my firm and myself in the position of having delivered property that we were not entitled to have delivered, and we were sued on that basis. We were sued in January of 1929, which was one year after Mrs. Morris had died, and the property had been transferred, and it was not until September of 1929, when the heirs finally ironed out all their difficulties -- in their words, a year and nine months had gone by in which every detail of the transfer of that property was gone into, and no possible misappropriation could have slipped. It is charged as a misappropriation in Mrs. Shelby's statement.

Q Now, you were interested in that, is that right?

A The defendant went at length into explaining the Morris transaction, and I thought it should be presented in its full import to the Court.

Q All right; is there anything further?

A No, that is all.

RE-DIRECT EXAMINATION

BY MR. JUDSON:

Q Mr. Henry, the statement it made here that what you have done has impoverished Mrs. Shelby; isn't it a fact that she has over \$200,000.00

In bonds now?

MR. JUDSON: That is objected to as immaterial.

THE COURT: I don't see why we are interested in that.

MR. JUDSON: He did not happen to get away with it, did he?

THE COURT: The statement is made here, and it is simply another thing but a attorney doesn't know whether to take the chance or let it be denied.

THE COURT: To show anything further?

MR. JUDSON: No.

THE COURT: That is all.

MR. JUDSON: Is that all, gentlemen?

MR. JUDSON: Yes.

MR. JUDSON: Yes.

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THE COURT: All right, gentlemen. I am going to pass on the application.

MR. JUDSON: May I say this, in regard to the punishment here? I have appeared before Your Honor in matters involving probation before. As I have heard, and I believe, that Your Honor has a very high regard for the possibilities presented by the probation law in administering punishment: that often these applications are denied because of the gravity of the offense, or in a case of this kind because of the notoriety. In other words, an eye for an eye and a tooth for a tooth. It seems to me that since the advent of the probation law, which is quite recent, that there has entirely changed that old conception, and that now the punishment administered should be administered, according to the temperament of the offender.

THE COURT: You mean, if there is real nice case that he should not be punished?

MR. JUDSON: No, I don't believe that. I don't believe the crime could be overlooked and the merits of the man should be looked at to determine whether or not he is a suitable subject for reformation and rehabilitation. In other words, the punishment should fit the man, and not the crime.

THE COURT: You disagree with the principle laid down in "The Mikado" that

MR. JUDSON: Now is that?

THE COURT: My object all sublime, is to make the punishment fit the crime.

MR. JUDSON: That has always been the conception of an eye for an eye and a tooth for a tooth, but it seems to me that in a case of this kind, where we have a man who has performed many meritorious, unselfish civic works, and who has certainly great qualities of good in him --

THE COURT: San Quentin is just full of those kind of fellows. Beesmyer was a fine chap, and did a lot of charitable work. Ferguson, also; the Wattersons, the Fish brothers, and the Tunsakers.

MR. JUDSON: In view of Your Honor's feeling, concerning the matter, I don't feel I should go any further with what I have to say.

THE COURT: You can, if you wish, but as a matter of fact, argument on these matters doesn't affect me one way or the other. I go into the matter from the standpoint of the facts involved, the extenuation, if any, and the character of the defendant, and things such as that.

MR. JUDSON: The remarks I was going to make were, as the probation report indicates, this man has been greatly punished already. As there is any possibility of working out any method of probation, whereby he could be saved the stigma of a penitentiary sentence, I am sure that there is so much good in him that he could rehabilitate himself and his family, and if he is given a San Quentin sentence, a stigma of that kind, it will completely wreck his man, and take the possibility of reformation. As I see it, is what the probation law is designed for.

THE COURT: Have you anything you want to say, Mr. Chotte?

MR. CHOTTE: No.

THE COURT: I think there will be no useful purpose in going over to callent facts involved in the charges contained in the indictment, because I have already gone into that in taking up the Probation officer's report. I have also gone into the matter of the defendant's personal history and record. As Mr. Judson says, there is no question in the world but that Mr. Henry for many years occupied a very enviable position.

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in the community, as is evidenced by the large number of very splendid letters that have been received, both by the Probation Officer and by Court, which makes it all the more pitiable that a man who has earned the trust and confidence of the community should have become just a plain thief. It is not so, however, as very rightly stated by the defendant himself, that not on the spur of the moment, but acting under some sudden pressure, it extending over a period of years, three years at least, the defendant has been continuously stealing the property of his client. The five counts of grand theft which he involved here, to which the defendant has plead guilty, involved a total of forty thousand, seven hundred thirty-eight dollars and some cents. The first count involved the theft of 17,497.62; the second count 4,420.00; the third count 7,720.00; the fourth count 32,287.40, the fifth count 4,623.58. Now in addition to this amount represented by the five counts to which the defendant has plead guilty, other amounts were taken by him from time to time amounting to a total of some 30,000.00.

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I cannot find the slightest extenuation in a case of this kind. I think the very fact that a man is educated and occupies a very high position in the community, makes it worse than if it were some illiterate ignorant, uneducated person who had committed these crimes. Society expects more from a man who occupies the position that Mr. Henry did, than it does from the other class I have alluded to. Mr. Henry was in a position of trust and confidence, and he abused that trust and confidence, not once, but many times. I find no possible extenuation. So far as the position taken by Mr. Judson, who has represented his client both diligently and loyally, as concerned, the question of regeneration, it is very unfortunate that most of the men who commit these crimes, particularly crimes involving the taking of other people's property, as a rule begin to think about regeneration and remorse and that sort of thing after they finish stealing and have been apprehended. It seems to me that the effect on society, in granting probation to a man who by his own confession has been deliberately stealing his own client's money over a period of years, is far more important to be considered than any personal benefit or detriment to the defendant himself.

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The application for probation is denied. Is there any legal ground why the Court should not proceed to pronounce judgment and sentence at this time?

MR. JUDSON: No legal ground.

THE COURT: Leslie B. Henry, it is the judgment and sentence of this Court that as punishment for the offense to which you have plead guilty, as contained in count number one of indictment number 5897, to wit, grand theft, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the judgment and sentence of this Court that as punishment for the offense to which you have plead guilty as contained in count two of the same indictment, to wit, grand theft, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is ^{the} further order of this court that as punishment for the offense to which you have plead guilty as set out in count number three of the same indictment, to wit, grand theft, to which you have already plead guilty, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

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It is the further judgment and sentence of this Court that as punishment for the offense to which you have plead guilty, as set forth in count four of the same indictment, to wit, grand theft, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the further order and judgment of this Court that as punishment for the offense to which you have plead guilty as contained in count five of the same indictment, to wit, grand theft, that you have plead guilty, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the further judgment and sentence of this Court that as punishment for the offense to which you have plead guilty as contained in the 17th count of the same indictment, to wit, forgery, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the further judgment and sentence of this Court that as punishment for the offense to which you have plead guilty, as set forth in the 18th count of the same indictment, namely, forgery, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the further judgment and sentence of this Court that as punishment for the offense to which you have plead guilty as set forth in count 19 of the same indictment, to wit, forgery, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is further order and judgment of this Court that as punishment for the offense to which you have plead guilty, as set forth in the 20th count of the same indictment, to wit, forgery, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the further order and judgment of the Court that a punishment for the offense to which you have plead guilty, as contained in count 21 of the same indictment, to wit, forgery, that you be delivered by the Sheriff of Los Angeles County into the custody of the Warden of the State Prison at San Quentin, California, there to be confined for the period provided by law.

It is the further order of the Court that the sentences as to count 1, 2, 3, 4 and 5 run concurrently with each other; that the sentences as to counts 17, 18, 19, 20 and 21 run concurrently with each other, but that the sentences on counts 17, 18, 19, 20 and 21 shall run consecutively with the sentences on 1, 2, 3, 4 and 5. In other words, I am grouping them into two divisions. The five grand theft counts are all to run concurrently, and the five forgery counts to run concurrently, but the forgery counts are to run consecutively with the grand theft counts. The defendant is ordered into custody.

Now, there is just one other thing that I feel it is my duty to say in this connection, gentlemen. In summing up the matters set forth in the Probation Officer's report, and in referring to the matters, or some of the matters contained in the deposition, the Court has had occasion to say that it appears therefrom that Mrs. Shelby is just as culpable in one way as Mr. Henry is in another. I make that statement, however, solely by reason of the statements set forth in the Probation Officer's report and the statements made by Mr. Henry, and also from some material in letters attached to the deposition in the civil case, which letters were written by Mrs. Shelby to Mr. Henry. Mrs. Shelby, of course, is not on trial here, but naturally her name has had to be brought into this matter and I don't want anything I have said to be regarded as condemnation by the Court of someone not before the Court on trial. I do say this, however, that sufficient has developed here that I believe it to be the District Attorney's duty to make a very thorough investigation, either

through his own staff of investigators, or by referring the matter to Grand Jury of this county, to determine whether or not sufficient evidence upon which to base an information or an indictment against Mrs. Shelby connection with the use by her of funds belonging to her daughter, Mar Miles Winter, if it develops that has been done, can be obtained. I think the District Attorney should have such an investigation made, and I think it is the duty of the District Attorney, and I request him to perform that duty, to take the matter up with the Federal authorities, in order that they may make such investigation as they may deem proper with respect to the alleged violation of the federal income tax law on the part of Mrs. Shelby, or possibly on the theory of conspiracy between Mrs. Shelby and Mr. Henry, for the purpose of defeating that law and evading the payment of those taxes. I don't say that I am convinced that Mrs. Shelby has been guilty of those things; she isn't on trial, but I do think that sufficient has developed by the statements of Mr. Henry and by the fact that Mrs. Shelby herself has written to make such an investigation not only proper but desirable. I therefore make that request to the District Attorney that he have those matters gone into very thoroughly. I think that is all, gentlemen.

MR. JUDSON: Your Honor, of course, is familiar with the fact that this deposition is proceeding, and for that reason I would like to ask for a 30-day stay of execution.

THE COURT: You may have a 30-day stay of execution, but of course the order I can make now, the defendant having been sentenced, is to order him into custody. The deposition can be taken in the county jail as well as anywhere else.

MR. JUDSON: What I intended to ask Your Honor, if the stay of execution was granted, I intended to prepare an order, first taking it up with the Court, to permit Mr. Henry to be taken to the office where the deposition is being taken, namely, the office of Loeb, Walker & Loeb, and returned to jail afterwards.

THE COURT: Is there any objection to that?

MR. CHOATE: No, just so he is in the custody of a sheriff all times.

THE COURT: You will find the Sheriff's office have regular forms for that, Mr. Judson. If you will prepare such an order, I think it is proper to sign it. In other words, that order provides for the taking of the defendant out by a Deputy Sheriff, and covers certain hours.

MR. JUDSON: I will prepare that order.

MR. CHOATE: That order is confined solely to the purpose of taking the deposition?

THE COURT: Yes, it is solely for the purpose of allowing Mr. Henry to be taken, in the custody of a Deputy Sheriff to the office of Loeb, Walker & Loeb, for the continuing of the taking of the deposition, the defendant to be returned to the county jail.

AFTERNOON SESSION

2:00 o'clock P. M.

(Mr. Burgess representing the people)

MR. BURGESS: I understand that Your Honor has under consideration some thing during the day the matter of the dismissal of certain counts in the indictment against Leslie B. Henry.

THE COURT: Yes, the counts other than those to which the defendant pleaded guilty should be disposed of, and I thought we had better leave some of this work for you to do.

MR. BURGESS: I did a lot of it for several months. As I recall, the defendant entered a plea of guilty to five counts of forgery and five counts of grand theft, but I don't remember the counts.

THE COURT: Yes, counts one to five, both inclusive, were the grand theft, to which he pleaded guilty, and counts 17 to 21 both inclusive, are the forgery charges to which he pleaded guilty.

MR. BURGESS: There were 24 counts altogether, and Your Honor had in mind all of those counts at the time he passed sentence this morning?