

**TWENTY AGAINST  
THE UNDERWORLD**

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settled for \$70,000. After payment of the lawyer's fees, the investigation costs, and the hospital and doctors' bills, there was about \$22,000 left to take care of the wife for the rest of her life.

The husband used part of this money to pay off a small mortgage on their home and the rest to buy a restaurant, a business he had never been in. Within a year he had gone broke, and the net result of the whole accident was family tragedy.

Whenever such a substantial amount of money was left for the injured's family, it was usually more than they had ever seen before in their lives, and they might spend it, or invest it and lose it, ending worse off than they had been before the jury award. But there should be a simple solution. This would be to treat negligence cases the same way as accidents sustained in the course of employment. The cases should be placed in the hands of an administrative agency and the injured people should be compensated—regardless of fault—for the cost of their medical and hospital bills. They should also be paid a reasonable amount until recovery. If the injured had sustained injuries that would incapacitate for life, then the payments should last for life.

In such accident compensation cases, legal fees were usually small. In the larger picture, the staggering costs to the public of automobile liability insurance would be radically reduced, three fourths of the court burdens would be eliminated, and three fourths of the judges theoretically could be dispensed with. The injured people would be far better taken care of, and promptly and fairly.

This conclusion was disputed by the lawyers who lived off the negligence cases and by some of the insurance companies. But I maintained that our society, sooner or later, would have to get rid of this cancer and restore dignity and decency to the compensation of accident victims.

Finally, in private practice, I could more nearly call my time my own, and we started taking a summer home at Tuxedo Park where the commuting was not too arduous, our neighbors were delightful, and I could engage in sailboat racing on the weekends. This was a happy refuge for a few summers.

The year 1935 was my second year back in private practice and it began peacefully enough and happily busy. Fiorello LaGuardia was the Mayor and Lewis Valentine, a thoroughly honest policeman, was the Commissioner of Police. There seemed to be less crime in the

streets, and a young man could court his girl in safety in Central Park after dark. People of all ages felt somewhat more secure.

The occasional gang shooting or other outbreak of underworld violence even seemed to some to be encouraging news. It was a story of another hoodlum killed off by "one of his own." LaGuardia would then promptly denounce the killing and order the police to drive "the punks and tinhorns" out of town. This reassured some, but not the large body of people who knew that under the deceptively calmer surface New York was still becoming a mob town on the order of Chicago. There was a feeling of unease, a sense that organized crime was somehow, invisibly, pervading the community and the country.

Suddenly, in mid-February, Irving Ben Cooper, formerly on the Seabury investigation staff, exploded with a report for the Commissioner of Accounts that seventy-seven bail bondsmen had perjured themselves 1,584 times. He said they had done this while procuring the release on bail of runners in the numbers racket. He charged that none other than Dutch Schultz had put up the money for the bonds, and it was reported at this time that the Schultz numbers banks were collecting \$100 million a year.

Outraged civic groups demanded action. William Copeland Dodge, who had succeeded Crain as the Tammany District Attorney of New York County, reacted by appointing counsel to one of these groups as a special assistant to conduct an investigation. A grand jury was empaneled. Before long this special assistant and Dodge were having a violent public disagreement. Dodge fired the special assistant and the whole matter seemed about to die.

At this time Martin Mooney, a reporter for the *New York American*, charged in a series of articles that the Dutch Schultz mob was getting its political protection at the highest level from none other than James J. Hines, the Tammany leader whose trail we had crossed during the trial of the numbers banker Henry Miro. But when Mooney was required to name his sources, he declined, preferring to go to jail for a short while for contempt.

The grand jury was under the leadership of one of the unsung heroes of the 1930s, its foreman, Lee Thompson Smith, a strapping, brave citizen who refused to quit. Smith startled the whole country with a declaration: "We have labored under the most difficult handicaps. Every conceivable obstacle has been put in our path." Relations with Dodge grew so bad that the grand jury would not let the

District Attorney's assistants into the room. Then the grand jury began to subpoena people on their own without reference to the District Attorney. They rejoiced in the title of the "runaway grand jury."

The runaway grand jury publicly demanded that Dodge appoint a Special Prosecutor of *their* choice, and by now the public uproar was so great that Dodge agreed. After consulting with the various Bar associations and others, the grand jury came up with a list of six lawyers. But Dodge refused to appoint any of them, and appointed his own man, a former associate of Max D. Steuer, the man who had defended the bank chairman Charles E. Mitchell long before. The runaway grand jury refused to accept Dodge's nominee, and there was another deadlock.

Meanwhile, William Fellows Morgan, LaGuardia's Commissioner of Markets, was telling the runaway grand jury that a poultry racket was milking New York City of \$10 million every year, and he charged that Dodge was responsible.

Dixie Davis, Dutch Schultz's lawyer, was called in for a session with the runaway grand jury and, afterward, he told the press that the numbers racket was not taking in \$100 million a year. He said that numbers was taking in \$500 million a year. This wild estimate poured more fuel on the fire.

Finally the runaway grand jury stepped down with the peremptory demand that Governor Lehman move into the situation and appoint a Special Prosecutor. Civic groups stepped up the pressure by demanding that Lehman appoint a Special Prosecutor to supersede Dodge. On June 25, Lehman directed Dodge to appoint one of four leading lawyers: Charles E. Hughes, Jr., George Z. Medalie, Charles H. Tuttle, or Thomas D. Thacher. One of these distinguished citizens was going to be the new Special Prosecutor, so it seemed, and a start would be made to fight crime and corruption in New York.

Until now I had paid little attention other than as an interested citizen, even though my own name was being pressed publicly on Lehman by the New York State and City Bar Associations, and by the Association of Grand Jurors of New York County. Then I got a shock. Medalie telephoned me to say that the four lawyers intended to refuse the appointment and would make a joint public announcement recommending to Lehman that he appoint me. Would I accept? he asked.

This was a rough one. My practice was busy and I was happy in it.

Charles "Lucky" Luciano, seen here in original police "mug shot" taken after his arrest in April 1936, was the leader of the Mafia in New York City. A brilliant organizer of narcotics and assassinations, he was caught while organizing mass prostitution into "chain stores, like the A & P." In the trial of the decade, his reputation suffered when he was proved to have ordered the beating of madams and managed the operations of pimps. He was sentenced to thirty to fifty years imprisonment.



let's look at the box we're in. You say you have the information and I've got the reward. You want to give me the information and in all good faith I want to give you the money. Now, let's sit here like two reasonable business men and work out some basis for the deal.' 'I took a great chance coming in here, Mr. Lockwood,' he replied, 'and when I go out of here you probably will have me followed by detectives for days until you find out who I am. I don't want to do business on that basis and get myself killed by the mob.' By the same token I pointed out, I could not ask the prosecutor to countersign a voucher, also signed by me, to pay out \$5,000 of the people's money to an unknown individual for some unproved information.

'The argument went on most of the afternoon. For hours I tried to break him down by pointing out that the reputation of the Dewey racket prosecution for good faith and for protecting its witnesses was flawless. We could never do anything, I argued, to impair that underworld reputation without losing our main stock in trade. I would guarantee, if my word was acceptable to him, I said, that no detective would follow him, or, to use mob language, put a tail on him when he left our office.

'I hammered at him that none of us wanted to know his name, so we could never be accused of 'leaking.' In this way, I urged, we could not help but protect him. I could see finally that he was playing around with that idea. Then I summed up. 'Well, it's a question of good faith and it is past dinner time. You have something to sell and we have our reputation for good faith. The way for you to get your money is to give me the address right now. We will pick up Davis immediately if your information is right and you will get your money as soon as the banks open.' After a moment's reflection, he said 'All right; it's a deal.'

'I added: 'Now let me state the deal clearly so we have no misunderstanding. Without giving me any identification, you will give me the present whereabouts of Davis. I will immediately see to it Davis is arrested wherever he is as quickly as possible. You can go home, if Davis is some distance from New York City, and you can call me the first thing in the morning even if it doesn't make the papers. That is, if the bird has not flown the coop.'

'As soon as the Comptroller of the City of New York opens his office in the morning,' I told him, 'we will apply for the reward money, cash the check, and pay you as early tomorrow morning as you and I

## CHAPTER

## XVIII

## "Mistrial! Mistrial!"

Executive Assistant Paul Lockwood was sitting in his office one afternoon when a man we had very much wanted to see, and waited to see, dropped by. Lockwood's secretary told him that a stranger wanted to see him and had asked for him by name. The secretary added that the man was clean, with his hair combed and his shoes shined. She said he seemed sane and was claiming to have valuable information. Lockwood recalled:

'Middle aged, dark-haired, with dark piercing eyes and heavy set, he was very business-like when he sat down. He asked, 'Is that \$5,000 reward for Davis the real thing?' When I said it was, he rejoined, 'I'll put the address on this paper, but I want the five grand in my hand right now—in twenty dollar bills.' Though I was somewhat startled, I managed to look unconcerned and said, 'My friend I don't know who you are, what your name or address is and I don't want to know.' After some talk about the chances of his being killed, I said, 'I can't pay you \$5,000 of the city's money and have you walk out of here with it before Davis is captured or I'll be in jail too.' He answered, of course, that he did not want to be killed.

'After much discussion about leaks of his identity, I said, 'Well,

can get together somewhere away from this office.' Again he said, 'All right; it's a deal,' and we shook hands.

"He told me, but would not write, that Davis was living in a ground floor apartment at Forty-eighth and Osage Street in Philadelphia. Previously I had alerted Charlie Grimes, the Assistant District Attorney working on the Hines-Schultz case and also Mr. Dewey. Grimes got quite heated up and said, 'I think I had better talk to the guy.' I demurred, saying 'I don't think anything would be gained by that. The man doesn't want to talk to anyone else. He has given me the information. Let's act in good faith. Why not just get the cops and pick up Davis?'

"There was considerable work in getting detectives and investigators to Philadelphia with the necessary warrants, etc., without creating a disturbance or paving the way for a 'leak.' We could not arouse the newspapers or other persons we believed to be watching our office. Consideration to some sort of minimum liaison with the Philadelphia Police Department, not noted for its tight security, had to be given.

"About ten detectives and investigators left for Philadelphia in three unmarked cars leaving at different times with instructions to rendezvous at a given address. Mr. Dewey had to persuade the Comptroller of the City of New York, a somewhat nervous individual, to get \$5,000 in small bills the next morning as soon as the banks opened. Now, it must be borne in mind, the Comptroller's Office of the City of New York is a very fine agency and Joe McColdrick, then the Comptroller, was a college classmate of mine. However, the office is up to its ears in red tape. Ordinarily, the city's money is paid out only after everything has been scrutinized, rescrutinized, done in triplicate, and gone over by lawyers and auditors. To avoid this morass required tact, pressure, and diplomacy.

"I might add parenthetically, that we scrupulously lived up to our agreement with the informer that we would not trail him when he left our office in an effort to learn his identity. However, we did have a number of knowledgeable detectives inconspicuously posted around the building so that when he left he at least was scrutinized. Later the detectives all stated that none of them recognized him and that he was not a known figure in the New York underworld or along Broadway.

"Finally, Charlie Grimes and his force left for Philly and we at our end had nothing to do but wait it out. At a late hour that night, Grimes

phoned me to say 'Well, we got him. We got not only Dixie but Hope Dare and George Weinberg.'

"Hope Dare was a very attractive young woman who had been a rodeo rider and a Ziegfeld Girl before she became Davis' mistress. George Weinberg was a killer, a prominent member of the Schultz gang, and brother of the notorious Bo Weinberg.

"According to Grimes, the apartment was a real 'fleabag.' Grimes related that our force, accompanied by a lone Philadelphia detective who, to make the arrest legal, had been brought along without any true realization of the importance of the pinch, just pounced in the windows and doors of the ground-floor apartment. Davis and Hope came out of the bedroom rubbing sleep from their eyes, but the killer Weinberg, who had been asleep on the hall couch, plaintively asked, 'Can I put my pants on?'

"Our chief clerk in the meantime had obtained a \$5,000 check, and cashed it. At 10:00 A.M. he presented me with a fat envelope containing \$5,000 in \$20 bills—but he said 'My friend, you've got to get me a signed receipt of some kind that can be given the Comptroller.' A new headache!

"Shortly after 8:00 A.M. my informer phoned, saying 'Well, my word was good.' I replied that our word was good also. After congratulating him, I suggested we meet in a private room in the Yale Club at Forty-fourth Street and Vanderbilt Avenue. This really startled him. I pointed out that the Yale Club was certainly the last place that anyone would expect an underworld transaction to take place, and he agreed. Somebody on our staff suggested that for my own financial protection, I ought to have a witness to the fact that I paid over the money. Otherwise, I would be in the position of saying that I paid \$5,000 of the city's money, entrusted to me as a lawyer, to some person I did not know and could not identify.

"Accordingly, we selected John F. O'Connell, then Chief Investigator of the District Attorney's Office. John was a former FBI agent with a long distinguished record and had done a real bang-up job in the racket prosecution, and he agreed to go along. The two of us went to the Yale Club and to the designated room. In a few minutes, there was a knock on the door. There stood my "unknown" man. He was somewhat taken aback by the presence of a third party but I reassured him that I had the money and that O'Connell was merely there as a witness to protect me. I then asked him to sign a receipt

with his name and address. He snapped 'We agreed I didn't have to do that! I just said I didn't ask you for your real name or address. I want a signed receipt with an address.' He smiled rather grimly and then affixed a name and address. If I remember correctly, the address was in Ocean City, New Jersey. The name I have forgotten. I counted out the \$5,000 and in doing so, told him to pass the word among his friends that the Dewey office kept its word. We shook hands and he walked out."

That was the last Paul Lockwood ever saw or heard of our very important informant.

Dixie Davis offered to waive extradition from Philadelphia if Hope Dare was released. But there were no charges against Hope Dare, and she was released anyway. The former rodeo rider headed straight to New York, and she went to see James J. Hines himself. She asked Hines to use his influence to help Davis, but Hines put up no money, offered no helping hand. Dixie Davis' wife headed to Philadelphia and offered to stand by and help him. But Davis said he would be true to Hope Dare.

He was extradited, along with Weinberg, and he was lodged in the Raymond Street jail in Brooklyn on \$75,000 bail. "This man Dewey alone inspired the vicious attacks," he said. "The reason I became a fugitive was because I knew I was to become a political football. Sure, I represented Dutch Schultz in the policy game. But I only acted as an attorney."

George Weinberg was the first to break. He wrote to Grimes asking for an interview. Grimes went to see him, accompanied by our trial strategist Sol Gelb. Weinberg said he might be induced to turn state's evidence. Later he promised to plead guilty and tell everything he knew about the Schultz racket and the high-level protection provided by Hines. Then Big Harry Schoenhaus, also a fugitive, surrendered and said he would plead guilty and testify.

Grimes and Gelb talked with Davis. I asked Gelb how Davis was getting along. Gelb said, "Fine." Davis said about Grimes's interrogations: "It wasn't torture, but it was psychology."

Gelb recalled: "Dewey is so orderly in his thinking that he wanted Dixie Davis to be as orderly, but I knew the kind of mind Dixie had. I gave him his head, you know, let him go on and on, let him roam. I'd make order out of it, but he didn't have to be orderly. I could make

order out of this desk very easily, but it doesn't have to be orderly so that you say it's orderly.

"Dewey, I suppose, didn't prepare that way. He prepared Weinberg, and he was very precise. Now, if I had prepared Weinberg, I would not have been that precise. I have a different method of preparing a witness. I let the witness tell me everything he knows, and then I put it in order.

"Dewey wanted the witnesses to put everything in order the way he would put it in order. He was worried that Davis wouldn't be a good witness because he thought Davis was all mixed up. I said that Davis wasn't mixed up, but was very clear.

"At the beginning Dewey had told me, 'We'll have to try Davis, Weinberg and Schoenhaus, and you'll have to try this case. I want you to get it ready for trial, but if you can possibly do it, you know what I'm interested in. See whether Davis and the others can give testimony involving Hines.'

"Davis had been in jail awaiting trial, and he got disgusted because he figured that Hines was abandoning him. We arranged a meeting. Dewey knew all about it. Dewey told me to meet Davis. We arranged a meeting in a parking place up in Central Park, way up around Eighty-fifth Street, and some detectives brought Davis out of prison, and up there. The detectives sat on a bench, and I sat with Davis opposite them on another bench, and we began to talk about the situation. Davis said he wanted to know what I was interested in. I said, 'I want to know what you know.'

"We talked awhile, and he wanted to know whether he would be given any consideration, and I said, 'Anybody who testifies for the People, if they can use it, is entitled to consideration. I'm sure anyone will do better if he joins the side of the People than if he stays on the other side.' He said he'd think it over.

"After he had talked with Weinberg, Davis sent word to me that he wanted to meet me again, and we met down at Battery Park, and he agreed. He was going to co-operate with the People—so were Weinberg and Schoenhaus.

"Then of course Dewey wanted to know what evidence I could get from these people. During the next week or so, I suppose I had a number of conferences with Davis, who told me what these people knew, because he talked with them in jail. Also, Davis opened up avenues of investigation, told us of a number of things which required

looking into and which, undoubtedly, would yield fruitful evidence against Hines.

"After about another week I said to Dewey. We got a case against Hines."

"We went over it. Dewey said, 'He's a very difficult kind of man to prosecute. He's a very powerful man, politically.'

"I said, I don't give a goddam how powerful he is. We've been in this business now for several years, and we have never been afraid to proceed. What's more, once you present evidence against Hines, and get an indictment, the public knows by now that you're not a sloppy worker, that you mean what you do, that you don't issue reckless statements, nor obtain silly indictments that are unsupported by evidence.'

"That was a very ticklish point with Dewey. Indictments were not to be obtained for publicity. They had to be backed up with proof.

"I worked with Dewey very closely, and I've never worked with anybody and found it so easy as with Dewey because you never had to labor a point. You'd get three or four words out of your mouth, just starting to express a thought, and he would answer. He'd already gotten your thought. You'd discuss evidence, the law of evidence, and substantive law, all applying to a particular case, and it was so easy to discuss these things with him because his mind was freer from rubbish than any mind I think I've ever met."

Then Justice Ferdinand Pecora granted permission for Davis to visit an outside doctor, under guard, for repeated treatment of a throat illness. After each of these treatments Davis was perspiring so much it was thought he might catch pneumonia if he went back to his cell in his wet clothes. Davis kept his extra clothes in Hope Dare's apartment and, under guard, he went there to change.

Our office had the problem of how to handle a defendant who was turning state's evidence and who was an utterly invaluable witness. He was from the very center of the whole criminal organization, and he knew everything. We had to keep him reasonably contented.

On March 10, 1938, Richard Whitney, a governor and former president of the New York Stock Exchange, was accused of grand larceny. "I fully realize the gravity of what has been done, and that a penalty must be paid," he said.

Richard Whitney, no relative of "Jock" and "Sonny" Whitney of the



On the next day, a Sunday, Bartow drove out to Long Island where he presented the situation to his senior partner, J. P. Morgan.

Morgan made no suggestion.

Richard Whitney, who had pleaded guilty to the two indictments charging grand larceny, was sentenced by Judge Bohan to from five to ten years' imprisonment. He was sent to Sing Sing.

On May 25, 1938, James J. Hines, the most powerful Democratic politician in the state, was arrested on a complaint sworn by Assistant District Attorney Grimes. Hines said: "They'd better not try me at this time. I don't like this kind of publicity."

Hines was born in 1877, the son of a blacksmith who worked in the Tammany Hall organization. After a spell as a district captain, Hines had been chosen leader of the Eleventh Assembly District on the Upper West Side of New York City. He got this position in 1912 and still held it at the time of his arrest. Hines had made an important decision in the Democratic National Convention of 1932, when he stepped aside from the Tammany favorite, Al Smith, and supported Franklin D. Roosevelt. Hines became the principal dispenser of patronage for President Roosevelt in New York City. In the early New Deal days many people owed their jobs to Jimmy Hines. In 1937, however, the LaGuardia-Dewey landslide was such that Hines was unable even to hold his own Eleventh District. That year, there were no free Thanksgiving turkeys.

According to the deposition of Assistant District Attorney Grimes:

On or about the 19th day of February, 1934, in the City and County of New York, James J. Hines did commit the crime of contriving, proposing and drawing a lottery in violation of Section 1372 of the Penal Law of the State of New York, in that he, the said James J. Hines, did knowingly and wilfully contrive, propose and draw a lottery, being a scheme for the distribution of property by chance, among persons who have paid, or agreed to pay a valuable consideration for the chance, and did aid and assist in contriving, proposing and drawing said lottery.

Among other things, his participation involved agreeing to influence and intimidate judicial officers and others charged with the duty of enforcing and administering the laws of the State of New York, to refrain from properly performing their duties, and thereby obstructing justice, to the end that those en-

gaged in this criminal enterprise would be permitted to continue the criminal acts they performed of contriving, drawing and proposing lotteries, unmolested, and without being subjected to the punishment and penalties provided by law. . . .

It also appears that the said James J. Hines received large sums of money for his aid and participation in said criminal enterprise.

Justice McCook issued a warrant for Hines's arrest, and Hines came in voluntarily with his attorney, Joseph Shalleck, and submitted to arrest in Grimes's office. Grafenecker, who executed the arrest, and Sol Gelb were also on hand. The group moved over to the Supreme Court Building, where Hines was arraigned before Justice Ferdinand Pecora. After about five minutes of going over the documents, I said:

This is the result of a three-year investigation which began in 1935 into the numbers racket in New York. Raids instigated in my office in January of 1937 resulted in the first indictments. The other defendants in this case are J. Richard Davis, George and Bo Weinberg, and other members of the Dutch Schultz mob.

This defendant was a co-conspirator and part of the Dutch Schultz mob. He conspired to the perfection of lotteries in numbers in this city. In indictments to be handed up, he will be charged with approximately the same number of felonies as is charged in the indictment of the other defendants.

At the opening of this conspiracy, he, Schultz, Bo and George Weinberg conspired to force all independent numbers operators under one domination by force, violence, beatings, and other means until they were all brought into line.

The function of this defendant was to control judges and other public officers to see that they did not perform their legal duties and to see that they provided protection to the whole numbers racket.

There were, in fact, kidnappings, violence, and other acts in this conspiracy. This defendant received a number of payments from this conspiracy, beginning with \$1,000 a week, and thenceforth from \$500 to \$1,000 a week. . . .

Shalleck then said: "Mr. Dewey has consistently brought forth Hines's name through all his trials. Hines was not a member of any of those conspiracies, and the name of a citizen has been dragged into cases in which he was not interested. He imputed to Hines the

terrible reputation of the defendants in those cases. This is un-American, and it smacks of the actions of police departments in certain foreign countries.

"I venture to predict that no judge or judges will be named in the indictments. Mr. Hines, for the past two or three years, has deliberately remained in New York for fear that the forces trying to drag him in would say that he had been away and was a fugitive.

"He is an influential politician, and a character well known in this city. Bail of \$1 million would not be too much, for thousands of decent citizens of this community would come forward to add their share to raising it. This man Hines has been for years a dominant factor in the Democratic Party, and people respect him, because they know his strong influence in politics.

"Why, a few years ago, the President of the United States praised Mr. Hines for his humanitarian activities. Even today, people crowd into his office in such droves that he can't take care of them.

"Never in his life a blemish, and he'll come forth in this case without a blemish, as he did in the Seabury and other investigations.

"His name is legion. He has been a father to thousands. He's an angel. He never took money for a favor in his life."

I said, and for the record: "I've listened to a lot of drivel in my experience as a lawyer, but never any like this."

Hines was released on \$20,000 bond. A professional bondsman was on hand with surety for \$15,000. Judge Pecora said he would accept that amount for the time being, and an additional \$5,000 would have to be posted the next day.

Hines went from the Supreme Court Building to the Elizabeth Street police station to be booked. While he was waiting to be booked, with Grafenecker at his side, Hines was asked what he thought about it all. He said, "Well, I guess I got to watch my step. I think it's a lot of baloney."

Before the trial, both sides were intensely active. Our staff handling the Hines case had been reinforced. Administrative Assistant Frank Hogan was added to the Hines staff, as was one of the principal trial assistants of the Homicide Bureau, Herman McCarthy. Always on the job were Grimes and Gelb, assisted by Livingston Goddard, who had started out in the rackets investigation as a dollar-a-year man in 1935.

Hines engaged as his trial attorney the eminent Lloyd Paul Stryker, one of the most famous courtroom orators in the country.

On June 6, before Pecora, a New Deal Democrat, Stryker asked for a change of venue so that Hines could have a "fair trial." Stryker said: "Dewey wants to stage a Ringling Brothers circus with Hines as the gorilla, solely for the purpose of advancing his political ambitions. He has started a reign of terror in which every Democratic judge is left under a cloud of suspicion." But Pecora denied the plea for a change in venue.

On July 11, after Hines had been brought before him and had pleaded not guilty, Judge Pecora then sustained an important Stryker petition. Stryker had asked for a bill of particulars to be presented showing which judges Hines had attempted "to influence, intimidate or bribe." Our trial pattern had always been to define the general framework of rackets before describing the roles played by specific defendants. We moved for a reargument, and secured a modification in the ruling, but we were compelled to comply.

So we named former District Attorney Dodge, City Magistrate Hulon Capshaw, and another magistrate who had just died, Francis J. Erwin. At once Dodge denounced these charges as "an outrageous and malicious assault upon my office. During my term as District Attorney, more than seven thousand prosecutions were conducted by my office." The Chief Magistrate relieved Hulon Capshaw of all duties.

Judge Pecora then reacted angrily to newspaper photographs said to have been taken of Dixie Davis visiting Hope Dare's apartment. Davis, in all, had been permitted to change clothes at Hope Dare's apartment eight times in three months. Judge Pecora now refused to sign any more permits for Davis to leave the Tombs for his throat treatments.

Meanwhile Davis had been told in prison that, if he talked, he would be killed. He told Grimes, "Nobody will believe me whatever I do. I might as well go all the way. I'll testify in court."

Judge Pecora accepted Davis' guilty plea and once again rebuked us for letting Davis visit Hope Dare. But he dropped Davis' bail of \$75,000 and paroled our star witness in my custody. For the duration of the trial we moved Davis and Weinberg around from one hiding place to another so we could keep them alive.

Stryker was getting rougher. He said: "Dewey must get Hines to

get the nomination for Governor. Let Mr. Dewey say that if the nomination is offered him he will not serve. Then this case will cease to be a political football and a springboard from which he hopes to reach high office."

The trial opened at 10:00 A.M., August 15, 1938, in an atmosphere reminiscent of the trial of Lucky Luciano. The Supreme Court Building was the same, and the courtroom was the same, and there was a crowd of thousands milling about outside. Seventy detectives and policemen were on guard. NEA News Service reported:

Pecora is sunburned to a dark hue. A wide streak of gray spreads over the crest of his bushy hair. His mouth is drawn into a frowning, curving line. Stryker's close-cropped ears lie flat against his head, his small blue eyes are close set. His brows slant downward so that he forever looks as if he is peering. He struts with his hands on his hips and when he scores a point against Dewey, he glances at the other as though he were saying, "There, how do you like that?"

And then there's James J. Hines himself. He's very polite to reporters. As he talks to them during recess, his little blue eyes roam over everyone and everything. When court resumes again, he looks up and cries, "There it goes," and he bounds away eagerly as if it was someone else's trial he was going to. He sits in the well of the court and listens closely. And he looks like a paternal father who is watching his kids cut up. His tiny mouth is drawn into a line, his button of a nose supports his spectacles. Sometimes he bites his lips.

When things get hot, Hines rubs his big, thick fingers across his thumb. During a lull, he looks around at gray-haired, patient, well-preserved Mrs. Hines. "Tired?" he asks, and he comes over.

Within two days the jury was selected, and I began my opening address. I described how the numbers racket worked. I told the story of Dutch Schultz's life and the growth of his criminal empire. I explained Hines's importance as "the man who made this huge lottery enterprise possible, by providing protection." I described the role of Dodge, Hines's man, as District Attorney, and spelled out Hines's control of elements of the police and certain magistrates. I detailed

the key role of Dixie Davis as Schultz's lawyer while the Dutchman was alive, and as one of the principal successors after Schultz's death.

I said I would introduce, out of 5,000 people involved in the numbers racket, just 55 witnesses. I led off with Wilfred Brunder, the numbers banker whom we had convicted for income tax evasion in the early 1930s. But then Stryker was on his feet attacking our whole plan of procedure. He insisted that we must prove the existence of a conspiracy in which Hines had been involved before we could bring in any general testimony, in fact any other testimony, about the numbers racket.

Long afterward I reflected that we could not present an entire conspiracy through one witness. There was no order in which you could devise the giving of testimony so that everything a man said would be relevant. So we had to tell the judge, in effect, "we will connect this with evidence," and he had to take our word for it.

If we misrepresented our intentions we ran the risk of having the case dismissed for lack of connection with evidence. If we put in prejudicial material and the case was dismissed, the defendant acquired immunity from further prosecution. So the judge in all probability would accept the word of a prosecutor, because the penalties were so enormous if the prosecutor was inaccurate. Nobody with the slightest grain of common sense would either be inaccurate or deliberately mislead a judge.

In the courtroom, Pecora did not heed our arguments, and he demanded that we introduce at once our evidence supporting the existence of a conspiracy.

So we called George Weinberg to the stand. Weinberg told how he had met Hines at a conference in Schultz's apartment. There Schultz had told Hines he had to have protection. This meant no police drives against the numbers operation and satisfactory solutions in magistrates' courts. Weinberg testified that Hines replied he did not control the whole Police Department but could take care of the Sixth Division in Harlem where the numbers game was played the most. Weinberg testified that Hines said he could also take care of the magistrates' courts.

Weinberg testified that Schultz then paid Hines \$1,000 and instructed him, Weinberg, to pay Hines \$500 a week, and "any other reasonable amounts up to \$1,000." Weinberg said he did this until

June 1935, when the salary was cut in half by mutual consent because of hard times.

But Stryker countered that all the other witnesses of the meeting in Schultz's apartment were dead. Then Stryker forced Weinberg to admit that he had previously committed perjury on more than one occasion.

For the next ten days we provided a detailed description of the operation of the numbers racket. Our witnesses included Brunder and the other bankers, Pompez and Ison. Yet another banker, named Flores, confirmed the existence of the racket. One of our witnesses, a district captain for Hines, testified that he had been coerced by the prosecution, but we had the statement he had signed voluntarily and also his voluntary testimony before a grand jury. There were frequent debates with Pecora.

Weinberg, back on the stand, said he heard Hines ask Magistrate Capshaw to dismiss charges against Weinberg and fourteen other men arrested in a raid on the Pompez bank. He said Capshaw told Hines, "I will take care of it." Weinberg said he paid Hines the weekly fee at Hines's home at 444 Central Park West. The defense countered that Hines did not live at that address at that time. Hines broke his silence and said to Weinberg, "You know you lie."

Gelb commented: "Weinberg made a mistake as to where he delivered money to Hines. Stryker got a good break. Dewey was quite disturbed about it, you know. How the hell did he make that mistake? I said, 'It's not so important. It would be important if this was a one-week trial, but he's a first witness, and you've got close to sixty witnesses. A week from now, nobody will remember what Weinberg testified to about 444 Central Park West, but they will remember in substance that he paid Hines money in different places.'

"About ten days later, the case was going well, and the proof was piling up, and during a recess Dewey turned to the people from the press whom he knew, and he said, 'Do any of you remember what Weinberg testified to concerning 444 Central Park West? Well, they didn't even react to the question. It was forgotten.'

On August 24, the prosecution introduced a succession of respectable witnesses, lawyers, businessmen, and others, and former District Attorney Dodge's campaign manager testified that he had been sent to Hines for campaign money. At least \$11,000 cash had been passed

at various times, always in large bills, he said. Weinberg had previously testified that Dutch Schultz contributed \$30,000 to help assure the election of Dodge.

Then there was the basic question of whether Hines and Schultz actually knew one another. The prosecution introduced a convincing witness, the owner of a riding academy in Connecticut, who testified that Hines, who had a taste for horses, had met Dutch Schultz there while the Dutchman was a fugitive.

A former Tammany leader, John F. Curry, a rival of Hines's, testified that Hines had often asked for and obtained transfer of policemen from one district to another in the city. There could have been a reason why, and I asked, "Being transferred is commonly known as being broken, isn't it?" Stryker was on his feet: "Mistrial! I demand a mistrial!" But he did not get it.

Dixie Davis now told the intricate, inside story of the Dutch Schultz racket, much as described in previous chapters of this book. He testified that thousands of dollars had in fact been paid to Hines for top-level protection in the District Attorney's office, with the Harlem police, and in the magistrate's court. Davis told how Dodge had tried to defour the 1935 grand jury away from the significant rackets. This tactic had been defeated when the grand jury "ran away." Davis testified that he had personally warned Hines to make sure that Dodge did not appoint me as Special Prosecutor.

Davis added an important new fact. He said that Hines, at his advice, had sought the help of the lawyer Max D. Steuer to help Dutch Schultz with income tax problems. Davis was corroborated by Steiner, who took the stand and said everything had happened just the way Davis had described it.

Then a lawyer of unimpeachable reputation, James D. C. Murray, took the stand to corroborate some more of Davis' testimony. Murray said that Davis had taken him to see Hines to warn Hines about my becoming Special Prosecutor.

Dixie Davis' sister testified that she had delivered a \$500 check to Hines, and this had been endorsed J. Hines on the back. The signature was not in Hines's handwriting but had been appended by one of Hines's representatives. Next, the prosecution introduced testimony from United States Treasury agents and detectives based upon the evidence obtained four years before. We had been using wiretaps in

our attempt to locate Schultz, then a fugitive. The taps had picked up Hines when he had called Dixie Davis with reference to his weekly payments. Big Harry Schoenhaus, one of the Schultz treasurers, testified that Hines had been on the payroll for three years.

Finally, a fire chief from Troy, New York, a Democratic county leader, testified that Hines had telephoned him repeatedly and asked him to stop the local police from "pushing Dutch Schultz around."

Rupert Hughes commented:

As defense counsel does, Stryker moved for a dismissal of all charges as not proved. Normally, this formality ends in the Judge's prompt denial, and the defense moves up its witnesses. But in this instance, Judge Pecora's attitude was so encouraging to the defense that Stryker was stimulated to make a hard fight for his motion. . . .

Judge Pecora stated that he also found weaknesses in Dewey's case as to the nature of the conspiracy, and whether it had been outlawed or not. Dewey rebelled at this so badly, that Pecora said "You must not assume that I am playing devil's advocate."

Pecora questioned his own jurisdiction, since the policy banks had been moved out to New Jersey in 1935. Dewey answered this by pointing out that the bets had been collected in New York and paid in New York.

At this point I insisted that "the testimony in the record is uncontroverted and unscratched in its fundamentals." I reminded the court that fifty witnesses or more had given testimony, and thirty had given direct corroboration.

On September 8, Judge Pecora said the case would go on, and it was now the turn of the defense.

Stryker produced one witness for the defense, a slim young attorney named Lyon Boston, who had been Dodge's newest and youngest Deputy Assistant District Attorney in 1934 and 1935. Boston said Dodge had entrusted him with an investigation of the numbers racket and had also picked him to work with the grand jury in 1935. Stryker, in a very significantly worded invitation, told Boston to tell "the entire story" of his work with this grand jury.

Under cross-examination, Boston conceded that he had been

placed in charge of a most difficult investigation when he had had almost no experience with criminals "except as a child detective during the war." Judge Pecora then asked if we were trying to prove Boston incompetent, whereupon I said, "I want to show that this man was assigned to do the utterly impossible, all alone, and was deliberately so assigned by his superior." Even while we proved that Boston was the lowest-paid and least experienced man on Dodge's staff, Stryker kept on raising objections, most of which were sustained by Judge Pecora.

Of course we knew that the runaway grand jury had heard from such witnesses as Police Commissioner Valentine and Commissioner of Markets Morgan that Hines was the high-level official who was protecting other rackets such as poultry and slot machines. Of course we also knew that a defendant on trial for one crime could not be confronted in a courtroom with evidence showing that he had committed other crimes.

But Stryker had "opened the door" with his invitation to Boston to tell "the entire story" of his experience with the grand jury. Whenever a defense counsel chooses to open the door to a matter by bringing out testimony about a part of it, then the prosecution has the right to develop the entire matter so that the jury does not gain a false impression. This is so even if the development of this line of questioning shows that the defendant has committed other crimes.

When I mentioned that Commissioner Morgan had testified before the grand jury in 1935, Boston said, "I don't recall that."

Then I asked the next question:

"Don't you remember any testimony about Hines and the poultry racket there by him?"

Stryker's assistant whispered something, and Stryker was on his feet with a loud shout:

"I demand a mistrial! Your honor! Your honor! I demand a mistrial!"

I said, "The subject was opened by the defense," and I made reference to Stryker's opening the door by inviting Boston to tell "the entire story."

Amid a general uproar in the courtroom Judge Pecora said, "There was no such subject opened up, and I think you should not refer to it in any way, shape, or form." I said, "I shall be glad to discuss it at the bench." But Stryker declined to confer and Judge Pecora adjourned

the court, took the matter under advisement, and said he would rule after the weekend, on the Monday.

It was then 2:20 P.M. on the Saturday, and on the following day we had a 20-page brief delivered to Judge Pecora's home in support of our view that the question was legitimate. Stryker had his brief ready on the Monday morning.

Once again, on the Monday morning, Judge Pecora adjourned the court, until 2:00 P.M. For a couple of hours Stryker and I argued questions of law in his chambers. At worst, it seemed to us, the judge could have ruled that the question on its own was improper, and he could have instructed the jury to disregard it.

Judge Pecora reopened the court and gave a two-hour lecture about law and justice. At its conclusion he granted the defense motion for the mistrial.

After the jury foreman had left the box, the clerk of the court asked, "Do you wish to concur in the mistrial, Mr. Dewey?"

I replied, "I certainly do not. I am of the firm opinion that the question asked was correct and proper, as are the two chiefs of my Appeals Bureau and my Indictment Bureau, Felix Benvenga and Stanley Fuld. Unfortunately, however, the People of the State of New York have no appeal from this or any other of the decisions in this case."

Hines was still held on bail and was subject to a second trial, but for a while he was a free man. He was cheered outside the courthouse by his supporters and was carried on their shoulders for a hundred yards. When we walked down the steps a few of the spectators booted. With Sol Gelb and some of the others, I returned to the office. I said there, "Don't worry, boys. There'll be another trial, and we'll win it."

That evening, after a meeting with Medalie and some others, I put out a formal statement:

"Make no mistake about it, Hines will be brought to justice."

Gelb recalled: "I am a realistic person. Pecora declared a mistrial. I knew there was no escaping another trial. How could Hines escape conviction in so strong a case? It had to be brought to trial. Every way you looked at it, there was evidence which in some way or another involved Hines and the protection of this numbers combine."

Many years later I concluded that it was a very bad time. We had a memorandum in hand on the question before I asked it, and we were supported by the law. But we knew so much about Hines that

they did not know which way to turn without running into more truth.

The day after the mistrial, I received a wire from my mother:

AM PROUDER THAN EVER AFTER READING THE MORNING PAPER. YOU  
ARE SURE TO WIN EVEN THOUGH THE JUDGE THROWS OUT THE CASE.  
MATER

I responded:

HOPE YOU ARE RIGHT. MUCH APPRECIATE YOUR WIRE. LOVE  
TOM

## CHAPTER XXIII Declare to the People They Are Free

Suddenly, in the second Hines trial, the People introduced as a witness Mrs. Arthur Flegenheimer, the widow of Dutch Schultz. The defense was stupefied as she testified that her husband had indeed known James J. Hines. She said that her husband had introduced her to Hines and had told her afterward to forget she had ever met him. She also said she had met Hines often with Dixie Davis, and that Davis had funneled money through to her while her husband had been a fugitive from justice. This was one witness Stryker did not dare to question any more closely, and he let her step down fast.

After a repeat appearance by the Tammany leader John F. Curry, the rival of Hines who had sworn that recalcitrant policemen were transferred, the People produced another surprise witness. He was former Chief Inspector John O'Brien, who had come out of retirement in answer to a subpoena. O'Brien confirmed Curry's testimony that policemen who cracked down on the Schultz numbers banks were indeed transferred or reduced in rank.

Big Harry Schoenhaus and Dixie Davis retold the stories they had told in the first Hines trial. Attorney Max D. Steuer said again that Hines had asked him to help solve some of Dutch Schultz's income



tax problems. Dixie Davis' sister, Mrs. Rose Wendroff, repeated that she had passed on a \$500 check to Hines. Then we introduced another surprise witness, the bookmaker's cashier who had made the final endorsement on the \$500 check. The witness said that Hines, on the exact day he deposited this \$500 check, had received a credit on his account with the bookmaker.

Defense counsel Stryker produced new defense witnesses. The first, former Police Commissioner James S. Bolan, testified that he would only approve transfers of policemen for neglect and incompetence in handling police duties. But he did not look good when we showed him the excellent records of some of the men he had transferred.

Magistrate Hulon Capshaw, who had been named in the first Hines trial but not indicted, testified that he had never been influenced in his judicial duties by Hines. Capshaw insisted that he had dismissed so many defendants brought before him in numbers cases purely on the merits. Asked about a raid on a numbers or policy bank in Harlem, Capshaw said, "I didn't know what a policy bank was." This statement coming from a magistrate who had tried more than two thousand numbers cases was obviously untrue and it could have been no help for the defense. Then Capshaw was asked who all the people were who had been brought in after a numbers raid. He said they might have been "cooks and waiters working in the place."

Former District Attorney William Copeland Dodge now took the stand. His direct examination by Lloyd Paul Stryker went, in part, like this:

Q. Did Mr. Hines ever tell you to keep your mouth shut?

A. He never did.

Q. Did Mr. Hines ever say that Dixie Davis and Dutch Schultz were responsible for obtaining the money for your campaign, and that your investigation must stop?

A. He never did.

Q. Did you ever tell Davis that he would be called before the grand jury and it would be a perfunctory examination and that he would not be needed again?

A. I never did.

Q. When Dewey came into office, did you co-operate with him?

A. Yes.

Dewey: I must object as incompetent. We can't try everything this man did. We are trying James J. Hines.

The Court: . . . Overruled.

A. (continued) . . . We sent all the testimony taken before the March (runaway) grand jury and delivered a hundred of files to his office.

Dewey: Objected to, unless he can tell us what files, if any.

The Court: You can bring that out on cross-examination.

Q. Did you speak to Mr. Dewey on the phone?

A. I did.

Q. Did Mr. Dewey seek your advice?

A. I offered it many times.

Q. Did you ever conceal or withhold any documents in the files, whether relating to policy or not?

A. Of course not.

Q. How long have you known James J. Hines?

A. Twenty years.

Q. And is he a friend of yours?

A. I always have regarded him as such.

In my cross-examination, I ascertained at the start that Dodge, in 1927, when he was an Assistant District Attorney, had heard of a vacancy in magistrate's court. He had served as a magistrate before becoming District Attorney in 1933.

Q. And you wanted that vacancy [on magistrate's court]?

A. I did.

Q. You then consulted some political leaders in your effort to get it?

A. I did.

Dodge said he had gone to see George Olvany, then leader of Tammany Hall—"There is no political party known as Tammany Hall. It is an historical society." Dodge said that he also asked Mayor Walker to endorse him, and he served as a magistrate for six and a half years.

Q. And you knew Hines?

A. Yes.

Q. For twenty years?

A. I have said so.

Q. Knew him intimately some years before you became magistrate?

A. Yes.

Q. Was it a very warm, close, personal friendship?

A. Well, we used to meet frequently, and he has been to my home, and I have been to his home.

Q. You played golf together?

A. Yes.

Q. Would you characterize it as a relationship between mother and son?

A. I've never been a mother. I could not say. (*Laughter.*)

Q. When did you make that decision, to make a flippant remark in this courtroom? Didn't you, yourself, in the past, volunteer this mother and son relationship? . . .

Before answering, Dodge was asked to read the testimony he had given to a grand jury on July 22, 1938, in which he had characterized his relationship with Hines as akin to that of a mother and son.

A. Naturally, like a mother would be to a son, I was very fond of James J. Hines. . . . like a mother believes her son innocent, I believed in Hines' innocence. . . .

Before the campaign for District Attorney in 1933, Dodge said the party leaders had spoken to him and had said, "Well, Bill, it looks like you'll be D.A."

Q. Was it your understanding that you would do as you were told, and it was not necessary to ask you to run?

A. No.

Q. But you never told anyone you would accept?

A. No.

Q. You were nominated, and you accepted. Was it a surprise to the leaders?

A. I don't know what was in their minds. . . .

Q. You knew Schultz had not been convicted of a serious charge in New York?

A. Yes.

Q. You knew the Schultz mob had been free of police interference?

A. Oh no.

Q. You knew they had not been convicted in New York County?

A. Yes, I knew the higher-ups had not been.

Q. You knew there might be layers of gangsters between the numbers bankers and Schultz?

A. Yes, it was all a belief. I had no evidence.

Q. You knew that this was an arduous, backbreaking task to break the numbers combination?

A. Yes. . . .

My cross-examination was leading up to the basic question of why, then, Dodge had entrusted his numbers investigation to Lyon Boston, the youngest, the least experienced member of his staff, operating alone. Dodge replied that Boston was a good man to cooperate with the police.

Q. You knew he had no experience?

A. Yes.

Q. You had experienced men on your staff?

A. Yes, but they were affiliated with the Democratic organization, and I pointed it out to the police.

Dodge seemed to be saying that his assistants affiliated with the Democratic organization were not so well qualified to cooperate with the police. And he admitted on the stand that he had been so concerned about the lack of campaign funds for the 1933 election that his manager had gone to see Hines. Dodge testified that, when the money started coming in, in big bills, he had never asked where the money came from.

Lyon Boston told his story again, and this time he was not asked the question about the poultry racket which had led Judge Pecora to declare the mistrial. Neither, in this second trial, had the defense opened the door to broader testimony of this nature.

Then came the climax of the whole proceedings: the time had come for Hines to take the stand in his own defense, if he would. We had had two Assistant District Attorneys working for six months, preparing the material for the cross-examination of James J. Hines. Gelb recalled the moment: "We rolled into court, on a little roller, a big file cabinet, a four-drawer file cabinet. Stryker leaned over to me and said, 'What's that? Material for the cross on Hines?'"

Gelb continued: "It was the material for the cross-examination of Hines if he took the stand. But Hines *couldn't* take the stand. There was so much damned material on him, stuff that we had dug up which would have shown him to be a corrupt man. Nobody could win that case for the defense."

Stryker, as no doubt had previously been decided, did not bring Hines to the witness stand to testify in his own defense.

Stryker now, with his case running out, delivered this oratorical summation to the jury:

"The last stand of liberty is here. I can imagine a prosecution in Berlin or Moscow. Now here, gentlemen: I see you. Stand fast there. Stand fast, this squad of justice, with your bayonets poised in your hand, ready to repel those lying rogues.

"Stand fast for justice and for the liberty of an American citizen. We know how hard won those things were, the right to a fair trial in an American court. Those Anglo-Saxon concepts of the presumption of innocence and the requirement that the state did not prove its case beyond a reasonable doubt. Those did not come easy. They were sweat for, and bled for, on a thousand battlefields. Down the ages those heritages come to us. It is yours now to preserve them.

"The men of old who gave us our liberties and our English law—our English law—God bless our Anglo-Saxon institutions. If we do not cherish them, you will live where public officials can do as they choose with the individual.

"Gentlemen of the jury, I have finished. This is the last time that I can talk to you. Forget my defects and my deficiencies. But remember that there is no one in this court more interested in justice than I am.

"And I ask you with my heart and my soul, go out into that jury room and come back, come back, so that the church bells may ring on Sunday morning. Not guilty! Not guilty!" and let Weinberg in his grave, his suicide's grave, and Davis in his hideout know—in Germany and Russia perhaps this kind of thing can be done, but not in the United States of America.

"God help you, God bless you and go with you in these councils.

"Not guilty!"

Trial continued February 24, 1939.

(Met pursuant to adjournment; appearances same as before.)

*Dewey:* Shall I proceed, sir?

*The Court:* Yes.

*Dewey:* May it please the Court, Mr. Foreman, and gentlemen of the jury. . . . It has been said that 'When an orator meets a fact, he makes a detour.' I do not intend making detours to Gettysburg, Williamsburg, the battle of Rummymede, Germany, Italy, Russia,

Switzerland, or South America. I shall not burden you with details about my wife, my children, or my family. . . .

One thing occurred yesterday which I must speak about with some firmness. There was an attempt, studied, willful, to create some kind of vague impression that a corrupt politician, sponsoring gangsters, allowing crime to breed freely, and interfering and preventing the law from protecting our citizens, there was an intimation that that kind of politician has something to do with the preservation of democracy, there was some kind of intimation that Hines and his counsel were symbols of a democracy, and there was some kind of intimation, vague, veiled, not daring to say it, that the public prosecutor or his assistants were importing foreign methods of prosecution. That I resent as a dirty business, and I suggest to you, with probably more feeling than I shall use at any other time today, that was a willful and a filthy attempt to arouse some kind of passion on behalf of a betrayer of the essence of democracy.

I did not intend to talk about things like that in summation. It is not my custom. Does anyone think that Herman McCarthy wants to bring to this country the principles of Germany? Does anybody think that Sol Gelb wants to bring the principles of Germany, or Frank Hogan, or Charles P. Grimes, or I?

When you haven't got a defense, try everything in the world and end up with an emotional plea, but don't discuss the facts. This is the last and the most despicable importation into the defense of a criminal. . . .

Gentlemen, to the law, there isn't any difference between a Democrat and a Republican, or a Socialist or a Communist if you will. There isn't any difference to me, I may say, and I will prosecute a Democratic district leader as quickly as I will prosecute a Republican Richard Whitney. That has always been true in the eight years of my life as a prosecutor. I hope it will continue to be. . . .

Now the charges in this case have not been referred to in a long time. . . . it was a part of the conspiracy that they agreed among themselves to influence, bribe, and intimidate judicial officers and others charged with the duty of enforcing and administering the laws of the state of New York, that they should represent that they dominated and controlled judicial officers and others charged with the duty of enforcing and administering the criminal laws. . . .

We have the brazen establishment of a criminal enterprise, a whole

criminal empire, by the most notorious gangster of New York, who was concededly the intimate and associate of the defendant Hines. We have him boasting brazenly that, "You can complain to the police from here to the Battery and it will do you no good." We have the testimony of witness after witness as to what happened. . . .

These are all conceded, undisputed, unarguable facts in the case. Who else but Hines could be responsible for these things, the pal, the associate of Dutch Schultz? How else in heaven's name could they have been brought about? . . . They have given you no explanation. There is no explanation. There is no way, in God's earth, except Hines, that those things could have happened, and you are driven to that by the established, unarguable facts in this record. . . .

If I were a cop, I do not know whether I would stay in the job if I could make a living any place else. I suppose I would if that is the only thing I knew. But if I were a cop and I got threatened by the Dutch Schultz mob, and forty-eight hours later I got transferred, I would think I would turn crooked. And I am amazed, utterly amazed at these men, that they don't. . . .

Now, let us go ahead. Weinberg testified, and incidentally so did Ison and Pompey and all the other witnesses without any cross-examination on the issue—there is not any controversy on this one—that during the entire years 1932, 1933, 1934, so long as they were in the combination and the others afterward—that there was not a single arrest at a numbers bank owned by any one of them, except those which the chief inspector's squad did, which had the whole city to cover. That is a fantastic charge to make. . . .

Counsel said yesterday I should have indicted Capshaw, and Bolan, and Dodge. Gentlemen, there is no evidence in my possession or anybody else's as far as I know that any of those men knew they were doing anything more than a favor for a politician to whom they were beholden. Now, a political contract was not invented by me. A political contract is something which was known, I suspect, a long time before I was born. A political contract is something you do for a politician.

Corrupt? Wrong? Yes. And where done for a politician who is protecting a mob which is preying on the people of a whole city, something which strikes at the very heart of organized society. But that does not mean and I do not contend that Capshaw knew he was doing this for the Dutch Schultz mob, or Bolan, or Erwin, or Dodge,

or anybody else. All they knew is that the most powerful man to whom they were beholden said, "Do this for me," and they said, "Okay, boss. I have never let you down yet. I want to be reappointed to that magistrate's bench when my term expires, I want to stay, I want to be elected, I can't be without you." Obviously. . . .

Well, Frances Fliegenheimer was here, and you noticed how gingerly she was cross-examined. I never saw such walking on eggs, and I would like to illustrate exactly how that cross-examination was conducted.

Q. It was a public restaurant?

A. Yes.

Q. Other people there?

A. Yes.

As I remember, that's all. They didn't try, they didn't try with Frances Fliegenheimer. In the month of December, while all these things were going on, what else is going on? Schultz was dining alone with Hines, in December, the first meeting. Hines walks into a restaurant, the Stable, the place where Schultz was all the time. You remember Weinberg's testimony. He met Schultz there all the time, and I think some other people so testified.

Schultz is in there, dining with his wife. In walks Hines. He walks up to the table, shakes hands, is presented to Mrs. Fliegenheimer, and then he and Hines go back to the restaurant for a private conference, a half or three quarters of an hour.

What were they doing, gentlemen? Why was Hines coming to the Stable, seeking out Dutch Schultz for a conference, if it wasn't with reference to this, if Hines wasn't there on business connected with the game? What else could it be?

Hines was there visiting his co-executive in a huge criminal enterprise which he was perpetuating and making it possible for it to exist. . . . How they must have been gloating about the way the business was going, how the magistrates were throwing out the cases, how the cops were laying off, and how the business was prospering by leaps and bounds with immunity from the law. . . .

And then, in the summer, do you remember this little forgotten bit? Abadaba was in Dave's Blue Room, one of those hangouts on Broadway. Detective Canavan was in there looking for one of the Schultz mob, and Abadaba says, "I see you are still in uniform—I mean, in plain clothes. . . ." He said, "You got plenty to worry

about." "Why?" "They are working on you to get you transferred, you know they can do it. . . ."

Salke—there's a whole saga in Salke. I would like to, oh, you could write a story about him that would take an hour to read, I will touch it very briefly. Salke was the fellow who was assigned by the New York police to work with the United States Government on Dutch Schultz. At that time, he was sitting on wiretaps, doing tail work, bothering the mob, harassing Bo Weinberg, sticking him up, searching him, searching the mob. Salke was undesirable to them in the doing of those things, that is recognized, as to which there is no argument in this case, no controversy, and there cannot be, because they are uncontradicted facts, even the un-cross-examined facts. . . .

Repeatedly, he was threatened by Bo Weinberg that if he did not quit he would be in a bag, you remember the words, in a bag, on Staten Island, the word "bag" being a policeman's uniform. Salke stuck to his job.

In the month of December of that year an order came down from Bolan to get rid of Salke. I am quoting the record. Lyons is Deputy Police Commissioner at the time he testified, and he said that he was sent for and was told, "The Commissioner says get rid of Salke." Lyons then went to see the United States Attorney and said, "This is awful"—I cannot tell you what he said, I am sorry, it is not in the record. He went back with a message from the United States Attorney, and that transfer did not go through. . . .

Gentlemen, you come to a point where things are irresistible . . . A couple of months later, or a month later, I don't know which, the chief inspector's squad is knocked to pieces. Hines said he would do it. How else could it be done? How else could this complete destruction be achieved? Terminelli, Fleming, Turner, Jones, and McCarthy, these five, they had been raiding Dutch Schultz's banks. Then Gray, Canavan, and Stillely. Then Salke. Then Kiley. Then Maher. Every one transferred, as it happened, directly under Bolan, every one of them. Tragic business, gentlemen.

. . . Now we come to the campaign. Well, is Dodge Hines's man or isn't he? You remember the relationship. You heard it described . . . you have heard from Davis and Weinberg how Schultz and Schoenhaus—how Schultz was vitally interested in that election, ordered all the help possible, and ordered the money to be raised for it.

And we know how it was raised: Pompez, Pompez again, the man

who was utterly unimpeachable in this case. Ten thousand dollars was taken from the Pompez bank for that campaign. This is one of those facts in this case. It is one of those things that is brought solidly, and will stay there forever. Ison—\$5,000 from his bank. I am only sorry we didn't have Maloney and the other bankers here. The total was \$30,000 and the total, by testimony, was turned over to Hines. . . . Sobel, the campaign manager, he got the money from Hines. Why was he sent to Hines in the first place? Why, when he went to Curry and said, "We need money for Dodge's campaign," why did Curry say, "Go see Jimmy," or "Go see Hines"?

. . . Hines, Hines. Why Hines out of thirty-five district leaders in New York County? Why Hines, unless the truth is as has been testified.

Hines picked Dodge. Hines financed his campaign. Hines asked for no other candidate that year on the county ticket. He was interested in only one on the city-wide ticket. No county office, no judicial office, just District Attorney. Why just District Attorney?

Why is the man like Hines interested only in the District Attorney? . . .

Well, if you were Dutch Schultz, trying to figure out how to keep your power, to be safe, what would you do?

Wouldn't you like to have the youngest and most inexperienced member of the District Attorney's staff, all alone, without help, set to prosecuting these cases, and have him get all excited about a contempt case against some lawyer, and get nothing bigger than a collector or employee in a bank, so that there is a pretense of activity while the mob is safe? That is the result. I hate that you could think in the same terms but, for a moment, let us attempt it—what would you like to see done? I suggest that is what you would like to see done. I certainly would, if I were Dutch Schultz. . . .

Remember James D. C. Murray, a member of the New York Bar for many years, a warm personal friend of the defendant? Davis had retained him to try a lawsuit for a civil client, and they were working on it on a Saturday afternoon. And then Davis and Weinberg, who was there with Hope Dare and Murray, drove Murray home, and on the way they stopped to have a talk with Hines.

Davis was greatly worried. Davis understood the worry, perhaps, better than Hines, who was still too confident. He said, "Jim, I brought Jim Murray to explain to you the dangers we are up against," and he

explained the dangers of the appointment of a Special Prosecutor, and I want to read you one sentence. It is perhaps as revealing as anything.

... Hines says after it, "I will see what I can do," something like that. Davis said—this is Murray's testimony—Davis said, "He will destroy all of us." Hines says, "I will see what I can do."

That one phrase, used in the year 1935. Were they all in a bag, in a criminal conspiracy together like this, or weren't they? ... I don't know whether Hines was the chairman of the board and Schultz the president, or Schultz the chairman of the board and Hines the president, but they certainly were jointly directing their criminal enterprises. . . .

There has been talk about the statute of limitations. My goodness, the thing continued to within eleven months of the day of indictment, to say nothing of the two-year statute of limitations. That is one of the questions his honor will have to present to you, like all the others, but I think it is so clear I shan't even argue it with you. . . .

Sentence in this case on the defendant is secondary. It is no concern of mine. The Court can suspend sentence, give one day, one year, whatever he pleases. That is up to the Court. It is none of your business and none of my business. I don't want it to be. The important thing is that you declare to the people of New York, the police of New York, that they are free, that they won't be betrayed any longer by a corrupt alliance between crime and politics, that that alliance is going to be smashed by this jury and branded as something we won't stand for, because we want to keep the kind of a system we have in this country, and we don't want it polluted by a betrayer and protection of gangsters by political leaders.

You are good New Yorkers and you love your city. You want your city to get better and better and to remain and become cleaner. You want to remove cancers that grow at the heart of your government, wreck the morale of your police force, wreck the morale of your courts, and wreck the morale of any public official who has to come within the contaminating influence of a politician operating with gangster money as his background, and, if you do not do that, gentlemen, what are the consequences? What notice are you serving on the police and on the public and on everybody else? You know, I don't even need to outline it.

Here is the very thing which makes organized crime possible. Without it, there couldn't be organized crime for five minutes in this

country, if the paralyzing hand of a crooked politician weren't available to break an honest cop, or to tell a magistrate what to do, or to use gangster funds to elect a public prosecutor who is under his control.

Let us decide what we want for ourselves and our community. Do we want to remove that cancer? Do we want to see that in the future it shan't happen again? Do we want to keep the processes of our system clean, or do we want to say, "No, no, we will go back, and take the consequences," and then you will have the kind of things my friend was talking about. No, I don't think we want that. I think we want to see that the men who are ultimately responsible for these things are punished for their sins, that notice is served on the world that that shan't happen again, that for these things we know there is a certain retribution visited by the community, which is you.

We are helpless, gentlemen, unless that is visited. I know you will do your duty. I know you will not say, "Go back, prosecute the players and the collectors, prosecute the burglar who gets caught, prosecute the boy who steals from the stand on the corner, but don't get the man who sent him to steal, prosecute the cheap and the petty, and turn loose those who made it possible."

I thank you for your long attention. I know you will do your duty as citizens of New York.

On February 25, 1939, after seven hours of deliberation interrupted by two requests of the judge for more information on points of law, the second Hines jury filed back into the courtroom. The foreman, Leonard T. Hobert, a meat salesman, took his stand and awaited the question.

"On the first count, how do you find the defendant?"

Hobert replied: "Guilty!"

On the remaining twelve counts, Hobert said, "Guilty!"

Hines was standing to receive the verdict. Stryker reached over and patted him on the shoulder. Hines had said only four words during his first trial, and none in his second trial. Now, in the crush of the courtroom as the trial began to break up, he was asked how he felt. "How would you feel if you were kicked in the belly?" Hines said.

Asked for a statement, I said:

"The members of the jury are entitled to the thanks of the whole community. By their verdict, they have reasserted the ability of

democracy to clean its own house and cast out those who betray it. I cannot praise too highly the work of the men who have been responsible for the investigation and presentation of the evidence in this case, Assistant District Attorneys Charles P. Grimes, Sol Gelb, Frank S. Hogan, and Herman McCarthy, as well as the police officers and investigators who have worked so hard on the case for many months."

Judge Nott, who continued Hines on his \$20,000 bail, returned from a brief vacation to impose sentence. He denounced Hines, noting only that his age, sixty-three, justified leniency. The judge sentenced Hines to four to eight years in the state penitentiary, warning that if any attempt was made to interfere with any of the state's witnesses he would recommend that Hines serve out the maximum term.

Judge Pecora, meanwhile, imposed sentence on Dixie Davis, Big Harry Schoenhaus, and the two bankers Pompez and Ison. He gave Davis one year's imprisonment, and suspended sentences on the other former members of the Schultz mob who had turned state's evidence. Davis, after his release, married Hope Dare and moved to California. He died on December 31, 1969, of an apparent heart attack, after learning of an armed robbery at his home in Bel Air. His wife, maid and a grandson were tied up and his home ransacked. Davis came home, sat down in the living room, and lost consciousness.

On April 4, 1939, after Stryker had withdrawn from the case, Hines appointed Martin W. Littleton as his new counsel. Littleton won from Supreme Court Justice Peter J. Schmuuck a certificate of reasonable doubt. Pending Hines's appeal, Hines was re-released on \$35,000 bail and out he came again from prison, to be cheered again by his supporters from the Monongahela Club in Manhattan.

The Hines appeals raised and settled several important problems of the law. For the first time, an appellate court of New York State was called upon to consider the criminal status and responsibility of a "fixer." The Court of Appeals held, in *People v. Hines*, 284 N.Y. 93, that a person who fixed or attempted to fix arrests and prosecutions—who obtained for his confederates a freedom from arrest and a virtual immunity from conviction—was a principal in the crimes with which his associates had been charged, and that he could be prosecuted therefor. In so ruling, the Court of Appeals wrote:

"Defendant was charged and found guilty of the acts of affording protection from arrest and, if arrested, immunity from conviction. Hence, he was an indispensable cog in the inside running of this enter-

prise, or he was nothing. As the Appellate Division noted, the proof was to the effect that the numbers game could not have been carried on without such protection."

"The proof of the conscious participation by defendant in the criminal enterprise of the combination . . . conclusively establishes him as a principal in each of the substantive crimes committed in furtherance of the conspiracy."

Not until October 14, 1940, was the whole appeals process completed—and on that day Hines began to serve his time at Sing Sing. In August 1944, after serving almost four years, Hines was paroled. He returned to live in New York City. He died in 1957 at the age of eighty.

Only Lepke and Gurrah were now left of the major criminal figures of the 1930s, and they were fugitives from federal and state as well as New York County law enforcement officials. Gurrah, in ill health, was the first of the two to give up, and he was worked through the several judicial processes. Finally, in 1943, Gurrah was brought to trial by my successor as District Attorney, Frank Hogan. At that point the chief of the Rackets Bureau was Aaron Benenson. Hogan reported: "Jacob (Gurrah) Shapiro was brought to trial on an indictment charging him with thirty-two counts of extortion, involving a total of \$514,000 in shakedown from garment manufacturers. For three weeks, businessmen who had lived in terror of the Lepke-Gurrah mob testified to the threats to their person and property, and of the large sums of money they had paid for the privilege of doing business in New York City.

"At the conclusion of the People's case, Gurrah gave up the fight and pleaded guilty. His serious illness delayed imposition of sentence until May 1944 when, as a fourth felony offender, he was sentenced to serve fifteen years' to life imprisonment in the state prison. The once heartless overlord of terroristic rackets in a dozen industries blubbered convulsively as sentence was imposed. He died in prison."

In the summer of 1939, New York City was persuaded to increase its reward for Lepke from \$5,000 to \$25,000, and portraits and measurements of Lepke were displayed on motion picture screens throughout the country. Federal, state, and local law enforcement agencies were conducting the manhunt and Lepke began to negotiate a surrender. Because the federal charges against him were less than ours, he finally turned himself in to the FBI. It was a dramatic scene. First,

Special prosecutor Thomas E. Dewey, at his desk early in his racket-busting career, told his staff he would be mad to go after prostitutes, but he wanted the top racketeers locked up. He thought of law as the basis of a happy society, fought to remove the pall of fear of the mobs that hung over Depression America in the 1930s.