(2.) "all circumstances surrounding its making are material thereon" (Elmore Case, supra, p. 404) which here meant the asserted non-existent Grand Jury hearing and the wanton fraudulent alteration of said notes by the District Attorney's office to implicate this citizen from the said records and fraudulently alter the feloniously incriminating admissions of Fred Wirschning and Dr. Milton E. Robbins.

(3.) Where a statement is exculpatory and open to a construction favoring innocence ----

This citizen, even in these fraudulently altered records is not in any way claimed to state any incriminating fact or admission of guilty knowledge, instead this citizen, even in the said records, disclaims the accusations and tells of his legal works and services in reference to the impending legal separation action of Mrs. Elizabeth Wirschning and her retainer of him for such legal separation action and her depositing her $200 share of her injury claim settlement money with this citizen, which this citizen was holding in escrow as part payment for her legal separation fee and also to guarantee this citizen his minimum fee of $150 for completed legal services. The said fraudulent records also produce the admissions of Detective Becker that he immediately took this citizen in custody to this citizen's law office and found all of this citizen's statements to be true. Mrs. Wirschning's titled injury claim file and written retainer which both Mr. and Mrs Wirschning signed (but claimed and swore they never retained this citizen and never signed anything for this citizen) along with said file was Mrs. Wirschning's separation file titled envelope with the many legal papers, and copies of statements of account for this citizen's services in reference to his works for Mrs. Wirschning's legal separation action, which said papers Detective Becker inspected and read along with his opening the titled letter size envelope holding Mrs. Wirschning's $200 in escrow.

---- this citizen is entitled "to whatever

benefit such statement affords" (III Wigmore on Evidence, 3rd Ed. Sec. 821; Richardson on Evidence, 8th Ed. Secs. 305-306; 2 Wh. Crim. Evid., 11th Ed. Sec. 840; People v. Reilly (224 N. Y. 90, 96); Gangi v. Fraudus (supra)), and the Court is under duty to make plain to the jury its exculpatory features (cf. People v. Doria (281 A. D. 918)).

None of these doctrines were charged, instead the Court and the prosecutor stated and implied that the said notes were a confession or admission of guilt by this citizen. The law prohibits such a construction of statements (People v. Reilly, supra) or testimony, (People v. Corbisiero (290 N. Y. 191, 194)), intended and definitely showing the opposite.

6. The State of New York did deprive this citizen of due process of law guaranteed by the Fourteenth Amendment by placing in evidence and permitting the prosecution to repeatedly read aloud to the jury during this citizen's trial copies of stenographic notes, of conversations of people other than this citizen, who were never made witnesses during this citizen's trial, although they were available and two of whom were important members of the judiciary; especially, when the District Attorney's stenographer testified that the original stenographic records produced by the said District Attorney's stenographer were written in his own personal secret gestapo like code of shorthand, which can be read and understood only by himself. In spite of this citizen's repeated objections, the trial judge precluded any inspection of the said original stenographic notes and ordered this citizen to accept the veracity of the District Attorney's stenographer's stenographic notes on the say so of the District Attorney's stenographer. Further, the said hearsay stenographic notes were falsely stressed by the trial judge in collusion with the prosecution as a confession by this citizen, in this citizen's criminal trial that brought about the felonious conviction of this citizen.

This citizen repeatedly objected to the admission into evidence and repeated reading aloud to the jury, by the prosecutor, the fraudulently altered hearsay typed copies of the stenographic notes of Nathan Birchall, the District Attorney's stenographer. The said stenographic notes suppositively consisting principally of conversations of people such as, Frank Gulotta, District Attorney, Edward Robinson Jr., an assistant District Attorney, Detective Alva Becker and lawyer J.D.C. Murray, none of whom were witnesses during the trial and all of whom the prosecution refused to call as witnesses. The said Nathan Birchall testified that he did not see the person who actually typed the copies of his hand written stenographic notes from his dictated tape recordings. Further, Nathan Birchall testified that the person who typed the typewritten copy of his stenographic notes never saw his original stenographic notes and further, that even if anyone saw his original stenographic notes, no one could understand his stenographic notes because he had improvised a secret shorthand code over the years that he, Nathan Birchall, alone could decipher. This citizen objected to the gestapo like stenographic notes and requested to inspect them. The Court refused this citizen's requests on the ground that "it is against public policy". This citizen objected to the ruling and took exception (183-184). This citizen further stressed in detail his objections to the admission of the fraudulently altered hearsay stenographic copies, principally of hearsay conversations of people such as, Frank Gulotta, Edward Robinson, Detective Alva Becker and J.D.C. Murray, a lawyer for Dr. Robbins, into evidence. This citizen objected further that he could not inspect the original stenographic notes because of the judge's refusal to permit this citizen to do so, and most important, because the stenographer, Nathan Birchall, had his own secret gestapo like short hand code whereby no one could check the veracity of his shorthand notes. The judge overruled this citizen's objections and allowed the said typed copies of the said stenographic notes into evidence over this

citizen's exception (197-199).

The admission in evidence and repeated reading to the jury by the prosecutor of the said copies of Nathan Birchall's stenographic notes flagrantly violated this citizen's rights to due process under the Constitution of the United States. Such procedure is not different from condemnation without a trial as stated in Sheiner v. Florida, Supreme Court of Florida, (82 So. 2d 657) wherein the Court said (82 So. 2d 661):

> "The last cited case (Matter of Murchison, 349 U.S. 133) and the Peters Case (Peters v. Hobby, 349 U.S. 331) are pertinent here for the emphasis they place on confrontation, cross-examination and fair trial as ingredients of due process. Confrontation and cross-examination under oath are essential to due process because it is the means recognized by which we test the probity of the evidence and eliminate that which is trumped up or of doubtful veracity. The 'faceless informer" theory of proof should never be substituted for confrontation and cross-examination in a trial where the end result is to deprive the accused of one of his most precious assets - the privilege to practice law."

7. The State of New York deprived this citizen of equal protection and due process of law guaranteed by the Fourteenth Amendment when the State wantonly procured a felonious conviction against this citizen through the fraud and collusion of the trial court in conspiracy with the prosecution.

This citizen still stresses the fact that the said wanton fraudulent alteration of this citizen's trial minutes not only deprived this citizen of any semblance of due process and equal protection and statutory rights to an appeal of his conviction, but, also even the fraudulently altered trial record substantiates this citizen's contentions that this citizen's trial was a gestapo like farce trial with a dishonest fixed judge, William J. Sullivan, and a fixed jury, which convicted this citizen of the false four count indictment in order to create a dumb innocent scape goat out of this citizen as an example to atone for all unprosecuted notorious felonious lawyers. This citizen's lower courts appeal briefs were replete with direct excerpts from the fraudulently

altered trial minutes which would create an unwavering acquiescence to this said contention in even the most prejudiced person's mind, especially, when such wanton persecution is considered from a personal aspect.

This citizen's lower courts appeal briefs stressed in detail the repeated lengthy judicial admissions of the witnesses for the prosecution which confirmed this citizen's contentions and more important confirmed this citizen's innocence. The judicial admissions of important witnesses for the prosecution, especially, the chief witnesses, Mrs. Elizabeth Wirschning and Dr. Milton E. Robbins, were laboriously culled from the extant trial record furnished by the Court Reporter. These extant lengthy or repeated admissions during direct and cross examination were then inserted in narrative form in this citizen's lower courts appeal briefs in order to stress the falseness of the four count indictment and the prosecution's case.

Mrs. Elizabeth Wirschning testified that she and her husband knew this citizen, who was an attorney, fairly well known by them and their friends and family. In addition to this direct contradiction to her original complaints Mrs. Wirschning admitted that this citizen was repeatedly retained and had undertaken other legal works for her family beside his legal works in referense to her injury claim case, for which she admitted she signed a written retainer with this citizen for her injury claim case (16). Mrs. Wirschning admitted that "we made preparations to have an appointment set up to go to an insurance company doctor for an examination" as to Mrs. Wirschning's injuries that she claimed as damages against Allstate Insurance Company. That on May 24, 1956, this citizen, she, her husband and her baby drove to the Allstate Insurance Company doctor's office and this citizen waited with her husband and baby out in the waiting room while she was examined by the Allstate Insurance Company doctor, Joseph Rosenheck, as to her claims of doctor treated injuries received in the auto accident (77).

That then on May 24, 1956, a few months after the accident when Mrs. Wirschning's injuries and medical treatments were fresh in her mind, she, Mrs. Elizabeth Wirschning, stated all her injuries and medical treatments for these injuries to Dr. Joseph Rosenheck, the Allstate Insurance Company doctor and Dr. Joseph Rosenheck examined her claimed injured portions of her body (80-81) and that she knew that Dr. Joseph Rosenheck made a typewritten report of her injury claim and evaluated her injury claim in this said report for the Allstate Insurance Company. Mrs. Wirschning broke down and testified on cross examination that the prosecution's claims and her direct short answer testimony of not receiving any medical treatments for a slightly hurt right wrist (15-16, 36, 40) are in complete contradiction to her original detailed repeatedly stated claims, namely, her claims of eight treatments by a doctor for bursities of her right shoulder and bruises of her right thigh; which claims by her are recorded correctly in the typewritten report of Dr. Joseph Rosenheck based upon his personal examination of the portions of her body she claimed were injured and she received a doctor's treatments for said injuries (79 and Defendant's Exhibit I in Evidence).

The injuries and treatments stated by Mrs. Wirschning and recorded by Dr. Rosenheck in his typed report as to his medical examination of her for the Allstate Insurance Company are:

"ALLEGED INJURIES:

1. Bursities of the right shoulder.
2. Bruises of the right thigh.

PHYSICAL EXAMINATION:

Right Shoulder -- There is no external evidence of injury to the right shoulder. There is no tenderness anywhere on firm pressure. Motion at right shoulder joint is free.

Right Thigh -- There is no external evidence of injury to the right thigh. There is no tenderness anywhere on firm pressure. Motion at the right hip joint is free, complete and painless in all directions."

(Above excerpt from said Defendant's Exhibit I in Evidence.)

These injuries stated to Dr. Joseph Rosenheck of Allstate Insurance Company by Mrs. Wirschning are identical to Dr. Milton E. Robbins' hand written medical bill to Mrs. Wirschning (Defendant's Exhibit H in Evidence) and both are identical to the doctor treated injuries claimed false by the indictment. Confirming those admissions by Mrs. Elizabeth Wirschning are the up to date of trial records of the Allstate Insurance Company file on Mrs. Elizabeth Wirschning. The prosecution's witness, Charles Martino, testified that all records of the Allstate Insurance Company indicate that Mrs. Elizabeth Wirschning throughout the negotiations and settlement of her injury claim and during her later complaining signed statements of 1957, claimed only the doctor treated injuries listed on Dr. Milton E. Robbins' hand written medical bill to her, (Defendant's Exhibit E in Evidence) which are identical to Dr. Joseph Rosenheck's typewritten evaluation report of Mrs. Wirschning's stated doctor treated injuries she stated to Dr. Joseph Rosenheck (456) and also identical to the doctor treated injuries claimed false by the indictment (440) and that Mrs. Wirschning never disclaimed any of these injuries and further that Mrs. Elizabeth Wirschning never made any claim of any wrist injuries (459-461).

Mrs. Wirschning admitted on direct examination that she consulted this citizen concerning a possible separation from her husband (44-45), because of troubles at home (64), and further that out of the various matrimonial legal actions Mrs. Wirschning admitted that she called this citizen "about the separation case". Further, that she, Mrs. Wirschning, at the time of the separation case, had no money and no employment and that her husband had a bank account only on his name (68, 218). The copies of this citizen's detailed letters and statements of account mailed to Mrs. Wirschning during this citizen's works for her legal separation from her husband state in detail many of her trial court judicial admissions and said copies of this citizen's letters were submitted in evidence producing much evidence of this citizen's extended knowledge in

reference to Mrs. Wirschning's matrimonial troubles, her family life and background.(Defendant's Exhibits D and E in Evidence)

Dr. Milton E. Robbins' direct testimony confirmed Mrs. Wirschning's judicial admissions; Dr. Robbins stated that Mr. Dec, "he was angry at Mrs. Wirschning. There was something to do with a separation or other and that he (Mr. Dec) decided to retain some money in this particular case." (345) Charles Martino, another prosecution witness testified that the Allstate Insurance Company has a requirement that in all settlements of claims by married women the husband must join with the wife in a general release for his loss of services, unless the married woman is separated from her husband or is a widow. Mr. Martino further testified that only Mrs. Elizabeth Wirschning's claim was settled, therefore, the Allstate Insurance Company must have been properly notified as to Mrs. Wirschning's separation from her husband (481-482). Mr. Martino repeatedly admitted that this citizen did not negotiate nor settle Mrs. Elizabeth Wirschning's claim with Mr. Martino but that the Allstate Insurance Company records disclose that this citizen did negotiate and settle the Mrs. Elizabeth Wirschning injury claim with Mr. Urso, the Allstate Insurance Company Adjuster in charge of all negotiations and settlement of Mrs. Elizabeth Wirschning's injury claim (411); and that he, Charles Martino, was the Examiner, the supervising officer who only approved Mr. Urso's suggested money settlement offer (411, 470-471). Mr. Martino's testimony confirms this citizens contentions, namely, that because of Mrs. Wirschning's retainer of this citizen to represent her in an impending legal separation action from her husband, this citizen properly notified Mr. Urso that this citizen was withdrawing from Mrs. Wirschning's husband's loss of services claim and only prosecuting Mrs. Wirschning's injury claim in that she was separating from her husband and had retained this citizen as her lawyer to represent her in an impending separation action (411, 470-471, 752, 812).

The many admissions of the prosecution's witnesses corroborated

this citizen's detailed testimony as to his legal works and services in reference to Mrs. Wirschning's retaining this citizen to represent her in a legal separation action and how finally this citizen agreed and accepted Mrs. Wirschning's $200 share of the settlement money from her injury claim based upon the agreement with Mrs. Wirschning that the $200 would be held in escrow (which escrow money and two files in titled file size file envelopes, one for Mrs. Wirschning's separation action and the other for her injury claim case file Detective Becker inspected when he took this citizen in custody to this citizen's law office in July of 1957 and Detective Becker purloined this citizen's written retainer with the Wirschning's). The $200 would be held in escrow as part payment toward a legal separation action and also in order to guarantee this citizen's minimum fee of $150 for this citizen's completed legal works should Mrs. Wirschning decide not to go ahead with the legal separation action. The judge charged, as a matter of law, in his charge to the jury, that this citizen was entitled to some legal fee for such legal services performed with respect to a legal separation action (970).

In reference to contradicting Mrs. Elizabeth Wirschning's indefinite and short answer direct testimony in reference to her denial of signing her general release and $400 Allstate Insurance Company settlement check, this citizen commenced his cross examination of Mrs. Wirschning in reference to her indefinite and short answer direct testimony. Mrs. Wirschning not only disproved her original direct testimony by contradicting it, but, Mrs. Wirschning also further contradicted her original direct testimony in detailed statements during her cross examination. Repeatedly, Mrs. Wirschning admitted that she misspelled her new married name for some period of time after being married and that she usually left out the letter "c" in her new married name and that upon her close examination of her general release she testified that the "c" is left out of her married name and that it is the usual

mistake she made in signing her new married name (222). While still examining her signature on her general release Mrs. Wirschning then further admitted that although she did not remember leaving out the "c" in her last name when she signed her general release, "that far back", it is her signature and she signed it as she usually signed her name at that time when she was first married (222). Thereafter, this citizen referred Mrs. Wirschning to her $400 settlement check from Allstate Insurance Company. This citizen pointed out items on said check in detail. While Mrs. Elizabeth Wirschning was still examining her $400 settlement check this citizen pointed out in detail that the check is made out to Elizabeth Wirschning and it is endorsed on its rear Elizabeth A. Wirschning and what explanation can Mrs. Wirschning offer to this improper endorsement on the rear of the check, when all of this citizen's records and all of Allstate Insurance Company records do not include her middle initial, nor is her name misspelled in said records. Mrs. Elizabeth Wirschning then admitted that when she was first married for a period of time, during which period of time she signed her $400 settlement check, she always signed her name that way with her middle initial included (218-226; 858-859).

This citizen then attempted to further cross examine Mrs. Elizabeth Wirschning and have her completely confirm her signing of her $400 Allstate Insurance Company settlement check. The Court immediately interrupted this citizen and prevented Mrs. Wirschning from answering this citizen; the Court stated: "Just a minute." and the prosecutor quickly interrupted with his often repeated objection "A. Nixon: I object, your Honor. That is the ultimate for this jury to decide (in) this case." The Court sustained the objection and even the extant trial record indicates this citizen objecting and taking "exception for purposes of appeal" (227). This is an example of the concerted efforts of judge and prosecutor which stifled this citizen's cross examinations and preventing Mrs. Wirschning from making further repeated

unrestrained, detailed judicial admissions that she signed her $400 Allstate Insurance Company settlement check. Such repeated concerted efforts by judge and prosecutor illegally and wantonly stifled the judicial confessions of the prosecution's chief witnesses evidence not only a prearranged simple worded format, used by judge and prosecutor to stifle this citizen's cross examinations but also wantonly and intentionally repeatedly the judge and prosecutor concertedly overrode the basic concept of any fair trial, namely, cross examination, "universally recognized as the principal and most efficacious test for discovery of truth" (Wigmore on Evidence, 3d Ed., Sec. 1367). "Cross examination of adverse witnesses is a matter of right in every trial of a disputed issue of fact" (Matter of Friedel v. Board of Regents, 296 N. Y. 347, 352, 73 N. E. 2d 545). If cross examination is prevented by accident or design, the direct examination is rendered incompetent (People v. Cole, 43 N. Y. 508) the Court of Appeals granted a new trial where through unusual accident the witness was not able to complete cross examination.

Further, Dr. Milton E. Robbins in his admitted final concocted story testified on direct examination that he, Dr. Robbins, knew nothing until after the investigation of the matter was commenced by the District Attorney in July of 1957. During cross examination Dr. Milton E. Robbins broke down and admitted that he is a perjurer and liar (385). During further cross examination Dr. Milton E. Robbins broke down and admitted that his present story of knowing nothing is a story concocted during a two week period in July of 1957, while consulting with his lawyer, brother in law and also another lawyer from Nassau County, J.D.C. Murray (390-391). Dr. Milton E. Robbins further broke down and admitted that shortly prior to concocting his present story of knowing nothing with his lawyer, brother in law (so related for 25 years) (360-361) and lawyer J.D.C. Murray that he, Dr. Milton E. Robbins, went to the District Attorney's office without consulting any lawyer and that

he, Dr. Milton E. Robbins, gave an extemporaneous, unpremeditated statement as to his treatments to Mrs. Wirschning as indicated on his medical bill (390-391) that he gave to her husband to forward to this citizen. Dr. Robbins repeatedly broke down during cross examination and confirmed his unpremeditated detailed original statement to the District Attorney. Dr. Robbins also admitted that it was he and not this citizen, who after being notified of the investigation, on Monday, July 8, 1957, telephoned this citizen and begged and lured this citizen to come to Dr. Robbins' office in order to get back his hand written medical bill for his treatments to Mrs. Wirschning, which bill Dr. Milton E. Robbins admitted that this citizen had sent said bill to the Allstate Insurance Company months before when settling Mrs. Wirschning's injury claim (344-345; 383). On direct examination Dr. Robbins also admitted that at the time he, Dr. Robbins, was in hysterics while this citizen was at his office, and that Dr. Robbins in his office, while threatening suicide ordered this citizen to destroy many hundreds of Dr. Robbins' X-rays which linked him to his lawyer brother in law and their lengthy collusive injury claim practice.

During the trial this citizen repeatedly demanded that the existent recorded, detailed, first and unpremeditated offhand statement by Dr. Robbins to the District Attorney be produced by the District Attorney in order to prove false Dr. Robbins' short answer direct testimony know-nothing story. The extant trial minutes produce this citizen's requests, namely, "Mr. Dec: Your Honor; I now make a request to see the first statement made and recorded by the District Attorney, in that the District Attorney is here present in this Court." (391). The Court refused this repeated request claiming that Dr. Robbins' statement was not in evidence therefore this citizen could not see it. This citizen then repeated his request and the Court again refused to allow this citizen to see any part of the first unpremeditated statement of Dr. Robbins, the witness for the prosecution, first made to the

District Attorney and which statement was a detailed account as to Dr. Robbins' treatments of Mrs. Wirschning's injuries, which treatments and injuries are stated on Dr. Robbins' hand written bill and are identical to those stated to the Allstate Insurance Company doctor by Mrs. Wirschning, which bill Dr. Robbins gave to Mr. Wirschning to forward to this citizen and also in said first unpremeditated statement to the District Attorney, Dr. Robbins stated a background of his knowledge of the Wirschning's. This detailed statement of Dr. Robbins completely contradicted his ridiculous final concocted know nothing story given on direct testimony. This citizen took exception to the court's repeated refusal to allow this citizen to use the said first statement made by Dr. Milton E. Robbins to the District Attorney for purpose of cross examination of Dr. Milton E. Robbins (392). The court's action was in complete derogation of the prior established rule of law governing such statements which recently was made greatly more just in the recent Court of Appeals decision in People v. Luis Manuel Rosario, decided March 23, 1961, which is based upon and confirming the United States Supreme Court decision of Jencks v. United States, 353 U. S. 657, 667, 668.

Many excerpts of the trial judge, William J. Sullivan, and prosecutor, Arthur Nixon, trial statments and testimony for the completely faltering and breaking down perjurous chief witnesses were laboriously culled from the extant records of the trial minutes. Some of the almost continuous wanton, frantic, impish efforts of trial judge and prosecutor undetaken in concert are still extant in the said record of the extremely long trial. Substantial examples were abstracted from the trial minutes and the judge's and prosecutor's concerted wanton, frantic, fanatic, kangaroo court style of stifling of the breaking down confessions of the completely faltering perjurous chief witnesses, namely, Mrs. Elizabeth Wirschning, Dr. Milton E. Robbins and especially the perverted, notorious, felonious car thief, Fred Wirschning,

wayward husband of Mrs. Wirschning, were incorporated in this citizen's lower appeal courts briefs. Examples of these wanton actions by judge and prosecutor are included below; the first example is an excerpt from the direct examination of Fred Wirschning:

"Q. I will repeat the question. Up to May of 1957 did you know a Dr. Milton E. Robbins?
Fred Wirschning: A. Could I explain it.
By the Court: Can you answer the question yes or no?
Fred Wirschning: A. The first time I ever heard of it --
The Court: Just a minute. Just a Minute. Don't answer yet. The Question was, as I recall it, up to May of 1957. Is that what you said Mr. Nixon?
Mr. Nixon: Yes.
The Court: Did you ever know a Dr. Milton E. Robbins? You will have to answer that yes or no." (p. 270)

Such actions of the trial judge display the wanton, zealous, partisanship of the judge for the prosecution decried in United States v. Francis J. De Sisto, decided by the United States Court of Appeals, Second Circuit, May 11, 1961; wherein said Court cited United States v. Curcio, 2d Cir., 279 F. 2d 681 at 685; United States v. Brandt, 2d Cir., 196 F. 2d 653. An example of the continuous stifling of Fred Wirschning's cross examination is below:

"Q. Do you remember coming into my office and telling me that you would return to running (stolen) cars down south if your wife didn't forget about the separation action?
Mr. Nixon: I object your Honor.
The Court: Objection sustained.
Mr. Dec: Your Honor, it is in reference to a relevant point in the case.
The Court: I think it is not relevant. I have sustained the objection." (p. 322)

This citizen as a practising lawyer had become aware of the sacrosanct right of the judiciary to fraudlently alter trial records to the desires of the judiciary. In order to thwart the complete fraudulent alteration of this citizen's trial record this citizen purposefully testified at length and repeatedly during his trial. The extant remaining fraudulently altered trial minutes are nine hundred and ninety one (991) pages long. Inadvertently, a few of the impish derogatory statements by the trial judge against this citizen are left in the extant trial minutes. Part of

one of such derogatory statement of the trial judge is found on pages 159-160 after this citizen complained of the trial judge's lengthy character testimony for the District Attorney's stenographer and the District Attorney's fraudulently altered stenographic notes; during which character testimony the trial judge attempted to coerce this citizen into allowing the fraudulently altered District Attorney's stenographer's stenographic notes into evidence without this citizen examining them. The trial judge ordered this citizen to discontinue his objections to the trial judge's prearranged false character testimony. This citizen objected and stated "under our law I am forced to proceed when your Honor denies me the right to object" (159). The Court then stated: " The Court feels that everybody here is well advised of what we are contending with ... proceed from that point" (160). Laconically in the extant trial minutes the dishonest, imp, fop, hold-over judge, William J. Sullivan, wantonly reiterated the coercive warning of Judge Philip Kleinfeld of the Appellate Division of the Supreme Court for the Second Judicial Department, namely, that 'the judge and jury are fixed" and this citizen's trial would lead to a "terrible prison sentence".

The chief henchmen to this citizen's persecution through illegal prosecution, such as Frank Gulotta, Edward Robinson Jr. (presently both automatically elected Supreme Court Judges) and Manuel Levine, District Attorney of Nassau County, are above the law they so wantonly create and administer. The falseness of this citizen's indictment and the prosecution's witnesses' perjurous testimony are not only known to these men and other important members of the judiciary, but in addition, the said perjuries and frauds were frantically and fanatically created by and for these men. For me to now overlook these wantonly impish lawless actions of these men would not only be the undermining of my appeal rights but much more important, it would be a tacit resignation to the perpetuation of such wanton lawless actions by the judiciary.

8. The State of New York did deprive this citizen of equal protection and due process of the law guaranteed by the Fourteenth Amendment by depriving this citizen of liberty and property through a felonious conviction when the State intentionally ignored the explicit statutory protection afforded by Section 456 of the Code of Criminal Procedure for New York State, which said section provides that the trial record upon conviction shall be produced within the maximum time of 12 days after notice of appeal has been served and further, the state intentionally disregarded the said statutory rights in spite of this citizen's formal written appellate court Motion for an Order Compelling the Trial Court Stenographers to Produce the Trial Record in accordance with Section 456 of the Code of Criminal Procedure in order to minimize the time in which court officials would have to fraudulently alter this citizen's trial record. In support of said motion detailed sworn facts of other fraudulent alterations of such trial records by jurists was stressed by this citizen.

This citizen, after defending himself during a gestapo like farce kangaroo court trial repeatedly requested that the minutes of his trial be furnished him for his appeal. After many oral and written complaints to the Nassau County Court, the trial stenographer and the District Attorney, this citizen duly made a detailed motion of 17 pages in the Appellate Division of the Supreme Court for the Second Judicial Department on February 2, 1959, for an order compelling the two stenographers at this citizen's trial to produce the trial record of this citizen's trial in accordance with section 456 of the Code of Criminal Procedure, in order to minimize the time in which the District Attorney and his staff could fraudulently alter the lengthy trial minutes.

> "Section 456. Where the defendant is convicted of a crime the clerk of the Court in which the conviction was had shall within two days after a notice of appeal shall be served upon him notify the stenographer that an appeal has been taken whereupon the stenographer shall within ten days after receiving such notice deliver to the clerk of the Court a copy of the stenographic minutes of the entire proceeding of the trial."

This citizen devoted much of the 17 page motion to cogent reasons for said motion, namely, based upon specific fraudulent alterations of other trial minutes of cases this citizen tried as a lawyer. The said motion was specific and detailed in its repeated petitions for expeditious ajudication, in order to prevent or curtail intentional fraudulent alteration of this citizen's lengthy trial record by the District Attorney and his staff. The said citizen's motion was put aside a week by the Clerk of the Appellate Division of the Supreme Court for the Second Judicial Department, John Callaghan, whose written reason was that the District Attorney intentionally failed to reply. Thereafter, after hearing said motion, the said Appellate Court, finally, over a month and a half later, when Michael Wowk, one of the stenographers at this citizen's trial, finally produced his obviously wantonly fraudulently altered version of this citizen's trial minutes, the Appellate Division of the Supreme Court for the Second Judicial Department dismissed this citizen's motion as academic and disregarded this citizen's said statutory rights. This wanton disregard of the protective statutory rights under said section 456 of the Code of Criminal Procedure by the Appellate Division of the Supreme Court of the Second Judicial Department was in complete derogation of the statutory law and case law as set forth by the highest Appellate Court, The Court of Appeals of the State of New York, in the case of People v. Pitts, 6 N. Y. 2d 288, which said Court of Appeals in the monumental Pitts Case reiterated the position held by the United States Supreme Court in Griffin v. Illinois, 351 U.S. 12, but in addition stressing as of greater importance the violation of the statutory rights of a citizen under section 456 of the Code of Criminal Procedure. The said Pitts Case was decided on facts similar to this citizen's case, in that Pitts' trial record was not produced for months, but unlike the said Pitts Case this citizen's trial record was intentionally and wantonly withheld by the District Attorney for months, even after this citizen made an

extremely lengthy and detailed motion to the Appellate Division of the Supreme Court of the Second Judicial Department stressing this citizen's protective rights under section 456 of the Code of Criminal Procedure of New York State. The said motion by this citizen repeatedly petitioned the Appellate Division of the Supreme Court of the Second Judicial Department to expedite the decision on said motion in order to minimize the time in which the District Attorney and his staff would have to fraudulently alter the extremely lengthy record of this citizen's trial, in order to protect this citizen's Appellate Review Rights. This citizen stressed the omnipotent, above the law, position of any District Attorney's office and also stressed that once the trial minutes were fraudulently altered by the said District Attorney's office then there would be no redress for this citizen because of the omnipotent, above the law position of the District Attorney. The District Attorney's office, after months, finally produced this citizens trial minutes wantonly and obviously fraudulently altered and this fraudulent alteration the Appellate Division of the Supreme Court for both the Second and First Judicial Departments and the Court of Appeals wantonly sanctioned.

9. The State of New York did deprive this citizen of equal protection and due process of the law guaranteed by the Fourteenth Amendment by repeatedly coercing this citizen lawyer to surrender his Constitutional Right to defend himself by coercive statements and warnings of New York State Court Judges and Court Officials, to the extent that the State's Court of Appeals Court Clerk under orders of the Justices of said Court of Appeals did in detail letters wantonly with prejudice, prejudge the criminal appeal taken by this citizen pro se, and the said Clerk of the Court of Appeals impliedly completely approved and sanctioned the wantonly fraudulently altered almost unintelligible official record of this citizen's kangaroo court, farce trial produced by the lower courts

in collusive conspiracy with the District Attorney's office, which said frauds this citizen repeatedly complained of in his appeal briefs.

The District Attorney's office and trial court's many repeated efforts to coerce this citizen into surrendering his Constitutional Rights to defend himself are stated in detail in other portions of this application. Also included in other portions of this application are the coercive efforts by Judge Philip Kleinfeld of the Appellate Division of the Supreme Court for the Second Judicial Department, who personally made arrangements for an ex-Nassau County District Attorney, namely, Edward Neary, to be the "chosen" lawyer this citizen had to retain in order to capitulate to the false charges of the indictment against this citizen. Upon appeal and especially in the Court of Appeals the coercion of this citizen to cause him to surrender his Constitutional Rights to defend himself once again became open and wantonly notorious. The Clerk of the Court of Appeals in letters to this citizen wantonly with prejudice prejudged this citizen's appeal to the Court of Appeals, making obvious the farce appellate review the Court of Appeals gave this citizen's appeal. The true frantic nature of the insidious coercion of the Clerk of the Court of Appeals' letters is obvious throughout the unusual letters and especially when the Clerk dispenses with the statutory requirements for assignment of counsel in stating "If you desire the assignment of counsel, you need only write a letter to this office requesting that relief. No service is required but this should be done immediately". Reproductions of the two letters from the Clerk of the Court of Appeals follow, which letters not only warn this citizen not to undertake his own appeal but also the Clerk wantonly with prejudice prejudged this citizen's appeal and impliedly stated the Court of Appeals approval of the wantonly fraudulently altered and almost unintelligible official record of this citizen's trial as produced by the Court's in collusion with the District Attorney's office.

State of New York
Court of Appeals

Raymond J. Cannon
Clerk

Clerk's Office
Albany 7

March 13, 1961

Mr. Francis E. Dec
171 South Franklin Street
Hempstead, New York

Re: People vs. Dec

Dear Sir:

The papers on your motion to have your appeal heard upon the original record have been received. It has been the traditional practice in all cases such as yours to advise attorney defendants of the wisdom of applying to the Court for assignment of counsel. The fact questions, with which you are most familiar, have now been removed from the case with the decision of the Appellate Division. The Court of Appeals has jurisdiction over questions of law only and your involvement emotionally will be a hindrance to your clean-cut presentation of such questions. A fresh viewpoint at this time may also be helpful. You may rely upon the Court's sense of fair play to assign competent counsel to whom you may impart the efforts of your study.

If you desire the assignment of counsel, you need only write a letter to this office requesting that relief. No service is required but this should be done immediately.

Very sincerely,

Raymond J. Cannon

RJC:jg

Clerk

State of New York
Court of Appeals

Raymond J. Cannon
Clerk
Gearon Kimball
Deputy Clerk

Clerk's Office
Albany 7

May 1, 1961

Mr. Francis E. Dec
171 S. Franklin Street
Hempstead, New York

Dear Sir:

This will acknowledge receipt of the Appellants brief which has been filed in this office. Your attention is called to the provisions of Article VI Section 7 of The New York State Constitution which provides that the jurisdiction of the Court of Appeals in criminal cases shall be limited to the review of questions of law except where the judgment is of death, although your brief as filed constitutes primarily an argument on the facts. Such points of law as are presented are so buried in almost unintelligible wranglings on the evidence as to be unrecognizable. If, upon reconsideration, you wish to take advantage of the Court's offer to assign counsel, please write this office immediately.

Very truly yours,
Raymond J. Cannon
RAYMOND J. CANNON
Clerk

RJC:wgf

CONCLUSION

The judgment of conviction should be reversed and the indictment dismissed.

Dated: September 21, 1961.
Hempstead, New York.

Francis E. Dec

Francis E. Dec,
Appellant pro se.
Post Office Address
171 So. Franklin St.,
Hempstead, New York.

COUNTY COURT NASSAU COUNTY
MINEOLA, NEW YORK

Indictment # 14871

- - - - - - - - - - - - - - - - - - - -X
THE PEOPLE OF THE STATE OF NEW YORK
:
against
:
FRANCIS E. DEC
- - - - - - - - - - - - - - - - - - - -X

I certify that:

On February 11, 1958 the Grand Jury of the County of Nassau indicted the said Francis E. Dec for the crimes of Forgery Second Degree (2 counts), Grand Larceny Second Degree and Violation of Section 1820-A, sub 2 of the Penal Law of the State of New York.

On February 13, 1958 before the Hon. Paul J. Widlitz, County Judge of Nassau County Francis E. Dec was arraigned before the Court. He was informed of his right to counsel and appeared with Neil Stockhammer as counsel. Bail bond in the sum of $1000.00, National Surety Corporation was approved and was continued for trial.

On November 5, 6, 12, 13, 14, 17, 18, 19, and 20, 1958, before the Hon. William J. Sullivan, County Judge of Nassau County, the case was tried before the Court and Jury, the said Francis E. Dec acting as his own counsel. On November 20, 1958 the Jury returned into Court and said they found the defendant Francis E. Dec Guilty as Charged - i.e., Forgery Second Degree (2 counts), Grand Larceny Second Degree, and Violation of Section 1820-A, sub 2 of the Penal Law of the State of New York. Bail bond was continued to December 23, 1958 pending sentence.

On December 23, 1958, the Hon. William J. Sullivan, County Judge of Nassau County Presiding, the said Francis E. Dec appeared before the Court for sentencing. The Court again informed the defendant of his right to counsel. He stated he would represent himself. The following question was asked the defendant: Have you any legal cause to show why judgment should not be pronounced against you?. The defendant answered in substance "I am innocent". The Court ruled no legal cause had been shown.

County Court Nassau County Ind. # 14871 People v Francis E. DEC
Sentence dated December 23, 1958, continued

Whereupon it is Ordered and Adjudged by the Court, that the said Francis E. Dee, for the felonies, Forgery Second Degree, counts one and two of the indictment, and Grand Larceny Second Degree, count three of the indictment, whereof he is convicted, be imprisoned in Sing Sing State Prison at Ossining, New York at hard labor under an indeterminate sentence the maximum of such imprisonment to be Five years no months and the minimum Two years Six months thereof, on each count. Sentences to be served concurrently and execution suspended and the defendant placed upon Probation for the maximum period of time as provided by law.

Whereupon it is Ordered and Adjudged by the Court that for the crime of Violation of Section 1820-A sub. 2 of the Penal Law of the State of New York, sentence be suspended.

SIGNED: Mineola, New York
February 4, 1959

Ernest F. Francke
ERNEST F. FRANCKE, Clerk