

JRH:MO'B

January 19, 1931.

MEMORANDUM FOR MR. HATHAN.

Assistant Attorney General Dodds has expressed a desire to confer with Special Agent in Charge Dunn of our Chicago office relative to the investigation of the purchase of Post Offices in Indiana, the prosecution of which has recently been taken over by Mr. Jeffrey, the United States Attorney at Indianapolis. I told Mr. Dodds that I would have arrangements made to bring Mr. Dunn in to Washington as soon as possible but I did not believe it would be desirable to bring him in before the latter part of this week for the reason that I understood that the prosecution of Al Capone for contempt would be instituted in Chicago this morning, provided United States Attorney Johnson does not have some more of the more or less continuous postponements that have been permitted in this case.

I wish that you would keep in touch with this matter and, as soon as Mr. Dunn can come to Washington, order him here for conference with Mr. Dodds.

Very truly yours,

Director.

RECORDED
67-22003

BUREAU FILES DIVISION
MAILED
JAN 19 1931
P. M.
DEPT. OF JUSTICE

NOT RECORDED

69-180

U. S. Department of Justice

Bureau of Investigation

P. O. Box No. 1405,
CHICAGO, ILL.



January 22, 1931.



Director,
Bureau of Investigation,
Department of Justice,
Washington, D. C.

RE: ALPHONSE CAPONE,
KENNETH PHILLIPS, M. D.,
CONTEMPT OF COURT - PERJURY.

Dear Sir:-

JAN 24 1931

As you know the above captioned matter was set for a hearing before Federal Judge James H. Wilkerson on the 19th instant, which date had been previously set as a firm trial date in this matter.

On the 19th instant Federal Judge Wilkerson continued the matter indefinitely because of the crowded condition of his court calendar.

I conferred with Federal Judge Wilkerson on the 19th instant relative this matter and was advised by him that two important and lengthy civil matters have precedence on his calendar and that because of that fact it was not possible to proceed with the instant matter on the 19th instant. In this connection Federal Judge Wilkerson informed me that he has a definite understanding with the attorneys representing Defendant Capone that the instant case is subject to call on forty-eight hours notice at the first opportunity which may afford itself during the pendency of the two civil matters which have priority on the calendar.

I have endeavored to keep in touch with the situation from day to day in order that this office might be on notice as to the probable trial date. My latest advice, obtained this morning, is that Judge Wilkerson is now confined to his home by illness and that it is extremely doubtful if he will be able to visit his office during the present week. The Secretary of Judge Wilkerson tells me, even though the Judge is able to visit his office during the present week it is a certainty that he will not attempt to hear any matters whatsoever.

Send a copy to the a.g.
1/24/31 J.E.H.

cc atty Gen 1/29/31

69-180-49

JAN 27 1931

Mr. Nathan
JUN 1 1931 TFB

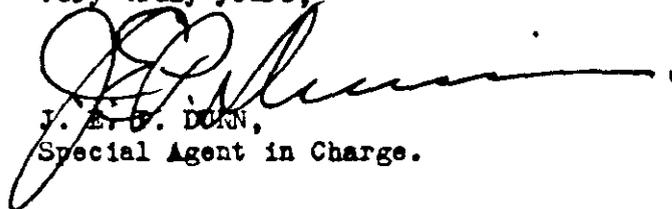
161

It appears certain, therefore, that this case cannot be called this week and it is apparently not possible at this time to ascertain within any degree of accuracy the date upon which it may be called, since it is probable that when Federal Judge Wilkerson is able to resume his duties the civil matters which have been held in abeyance will claim the major portion of his time over a considerable period.

In conference with Assistant to the Attorney General Froelich today, the latter expressed the opinion that there seems to be no possibility of the instant matter coming to trial within the next ten days and possibly not for a longer period.

I have effected arrangements whereby this office will be promptly informed of developments in this matter.

Very truly yours,



J. E. D. DOWN,
Special Agent in Charge.

JEPD-mk
69-19.

cc-Jacksonville.

EFD:MD
60-180-48

RECORDED

January 20, 1931

31 1931

MEMORANDUM FOR THE ATTORNEY GENERAL

As of probable interest to you in connection with the case involving ALPHONSE CAPONE - CONTEMPT OF COURT, Chicago, Illinois, I am attaching hereto copy of a letter received by me from the Special Agent in Charge of the Chicago office of the Bureau of Investigation.

It will be noted in this letter that a definite trial date for the hearing in the case against Capone has not been set, the case having been continued indefinitely from January 19, 1931.

I have been subsequently advised by the Special Agent in Charge of the Chicago office that the continuance granted to the defendant Capone was subject to termination on forty-eight hours' notice and that while the definite date for the trial has not been set, it will probably be designated for a date within the next ten or fifteen days.

Respectfully,

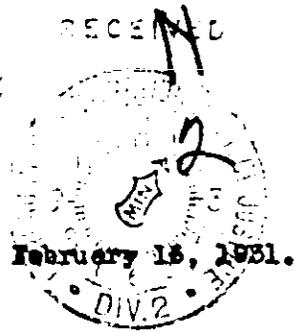
Director.

Enc. 456280

BUREAU FILES DIVISION
MAILED
JAN 29 1931

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U. S. Department of Justice
Bureau of Investigation
P.O.Box 1405,
Chicago, Ill.



FEB 20 1931 PM

Director,
Bureau of Investigation,
Department of Justice,
Washington, D. C.

69 -

Dear Sir:

Re: ALPHONSE CAPONE et al
CONTEMPT OF COURT; PERJURY

180

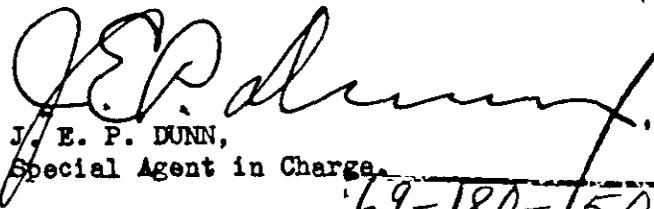
Inquiries made today in the court of Federal Judge Wilkerson with respect to the probable date upon which the instant matter may be heard develop the following information:

Attorneys for the defendant have filed a motion to quash, alleging a technical defect in the information filed against Subject. District Judge Wilkerson has assigned the 19th instant for hearing of the arguments on the motion to quash.

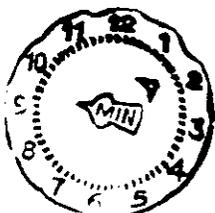
District Judge Wilkerson has indicated that in the event the motion of the defendant's attorneys is over-ruled, this matter will be heard on the 25th instant and states in this connection that counsel for the defendant have agreed to produce their client in court in the event the matter comes on for hearing on February 25.

This office will continue to keep the Bureau advised as to developments in this case.

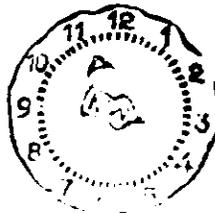
Very truly yours,



J. E. P. DUNN,
Special Agent in Charge.



JEPD/EC
69-19



FEB 24 1931

RECORDED

FEB 24 1931

FEB 19 1931

69-180-50	
BUREAU OF INVESTIGATION	
FEB 18 1931 A 1	
Nathan	
FILE	

P. O. Box 22,
Jacksonville, Florida
February 2, 1934

Special Agent in Charge,
Bureau of Investigation,
P. O. Box 1405,
Chicago, Illinois.

Dear Sir:

RE: ALFRED CAPORE;
KENNETH PHILLIPS, N. D.
Contempt of Court, Federal.

Reference is respectfully made to your letter of the
5th ultimo in the above styled matter.

Please be advised that on the occasion of the recent
visit of United States Attorney George E. Q. Johnson
at Miami and Miami Beach, Florida, he contacted, at
Miami, Special Agent B. L. Dameron of the Jacksonville
office who cooperated with Mr. Johnson in the location
and interview of the desired witnesses and also assisted
the Marshal in the service of the subpoenas designated
by Mr. Johnson.

In the event further investigation or action is desired
in this district, you may so advise and the same will
receive prompt attention.

Very truly yours,

Harold E. Anderson,
Acting Special Agent in Charge.

HL:SLM
Jax File #69-2
cc Director

69 180

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D. T. Two
T. J. J.

U. S. Department of Justice
Bureau of Investigation
POST OFFICE BOX 1405
CHICAGO, ILLINOIS



February 17th, 5 58 20 1931 PM

Director,
Bureau of Investigation
Department of Justice,
Washington, D.C.

RE: ALPHONSE CAPONE
KENNETH PHILLIPS, M.D.
CONTEMPT OF COURT;
PERJURY.

Dear Sir:

There is transmitted herewith for your information, newspaper clipping taken from the February 16th, 1931 issue of the Chicago Evening American, relative to the above named subject.

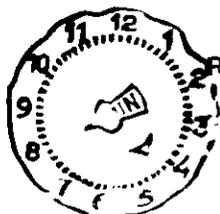
69-180

Very truly yours,

E. P. DURN,
Special Agent in Charge.

RGH:JMG

69-19



RECORDED & INDEXED

FEB 24 1931

FEB 19 1931

69-180-51
BUREAU OF INVESTIGATION
FEB 19 1931 A.M.
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Handwritten notes:
1. ...
2. ...
3. ...

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Chicago Evening
American
MONDAY, FEBRUARY 16, 1931

CAPONE FACES U. S. TRIAL FEB. 25

Al Capone, czar of Chicago gangland, must face Federal Judge James H. Wilkerson one week from Wednesday in the contempt proceedings brought against him, unless the court sustains the motion of defense attorneys to quash the proceedings.

Arguments on the motion to quash were begun today and will be heard again Thursday morning. If the court overrules the motion, Judge Wilkerson said, the hearing will begin February 25. Attorneys William F. Waugh and Benjamin F. Epstein are pressing the motion, with Assistant District Attorneys Jacob I. Grossman and Daniel Anderson opposing it.

The contempt proceedings grew out of Capone's failure to appear in Federal Court here in answer to a subpoena when he was in Florida about two years ago. He claimed sickness prevented him from appearing on the day specified, but made an appearance six days later. The government charges that, despite his claim of sickness, Capone was seen attending the races in Florida at the time.

A question over the pronunciation of Capone's name arose in court today, with Judge Wilkerson requesting that it be settled before he went further with the case.

Attorney Epstein and Prosecutor Anderson had been referring to him as though the final letter in the name was sounded, to rhyme with Tony, but Attorney Waugh had pronounced his client's name Capone—rhyming with stone. When the judge asked that pronunciation of the name be settled, Attorney Waugh informed him that the way in which he had been pronouncing it was correct.

Form No. 1

THIS CASE ORIGINATED AT

JACKSONVILLE, FLA.



REPORT MADE AT: Chicago, Illinois	DATE WHEN MADE: Feb. 20, 1931	PERIOD FOR WHICH MADE: Feb. 17, 1931	REPORT MADE BY: E. J. MULLAN
TITLE: ALPHONSE CAPONE KENNETH PHILLIPS, N. D.		CHARACTER OF CASE: CONFIDENTIAL	

SYNOPSIS OF FACTS:

On date February 17, 1931, attorneys representing Subject Capone appeared before Federal Judge Jas. H. Wilkerson, Chicago, the set Thursday, February 19, 1931 as the date to hear arguments on motion of the attorneys for Subject Capone to quash the information. Federal Judge Wilkerson also set February 25, 1931 as the date for Subject Capone to show cause in case the motion of Subject's attorneys is overruled. Motion to dismiss information and quash warrant of arrest overruled.

- P -

REFERENCE:

Report of Special Agent T. F. Mullen, Chicago, Ill., dated November 8, 1930.

DETAILS:

DETAILS:

On February 17, 1931 the above subject matter was called before Federal Judge Jas. H. Wilkerson, Chicago, for the purpose of again setting a date for a hearing of this case. On the motion filed by Epstein and Naugh, attorneys for Subject Capone, to quash the information filed by the United States Attorney against Subject Capone, Judge Wilkerson set February 19, 1931 as the date for the hearing on the motion. On February 25, 1931 as the date upon which Subject Capone should show cause as to why he should not be held in custody until the latter date for the appearance of Subject Capone. The motion of the attorneys for Subject Capone to quash the information was overruled by Federal Judge Wilkerson. The motion of Subject's attorneys, Attorneys Epstein and Naugh, to quash the information was overruled.

APPROVED AND FORWARDED: 	SPECIAL AGENT IN CHARGE	69-180-52	RECORDED AND INDEXED: FEB 26 1931
COPIES OF THIS REPORT FURNISHED TO: 2- Bureau 2- Jacksonville 1- U. S. Atty. Chicago, Ill. 2- Chicago		DEPARTMENT OF JUSTICE	CHECKED OFF: MAR 2 1931 JACKETED
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for them to show cause on February 25th they shall have subject present in the courtroom on that date.

On February 19, 1931 notice to discontinue the information and quash warrant of arrest against Subject Capone was circulated by Federal Judge Wilkerson and the date for hearing of this matter set for February 25, 1931.

Special Agent O. G. Dewey conferred with Assistant U. S. Attorney Grossman who advised that subpoenas for the necessary witnesses have been forwarded to the U. S. Marshal at Jacksonville, Florida and that he is directing a communication to the Jacksonville Bureau Office requesting that an agent aid the U. S. Marshal in serving these subpoenas and seeing that the various witnesses are started on their way to Chicago.

UNDEVELOPED LEAD.

CHICAGO OFFICE will keep in touch with Assistant U. S. Attorney Grossman as to any action he desires taken regarding this matter and to cover hearing of this case on Feb. 25, 1931.

PENDING

RECEIVED

P. O. Box No. 1405,
CHICAGO, ILL.



FEB 21 1931

Special Agent in Charge,
Bureau of Investigation,
Box 38,
Jacksonville, Fla.

RE: ALPHONSE CAPORE,
ROBERTA WHELLIPS, N.D.,
Contempt of Court-Perjury.

Dear Sir:

With reference to your communication of the 20th

instant concerning the above entitled case, you are advised that
the report of Special Agent T. F. Malloy, dated February 20, 1931
records information concerning the present status of this matter.
The date for hearing in this case has been set for February 20,
1931 at Chicago, Illinois.

Very truly yours,

R. O. HARVEY,
Acting Special Agent in Charge.

ROH-ak

cc Bureau

69-19

69-180
BUREAU OF INVESTIGATION
FEB 21 1931
Div. Two

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178

RECEIVED



P. O. Box 22,
Jacksonville, Florida,
February 20, 1934.

Special Agent in Charge,
Bureau of Investigation,
P. O. Box 1408,
Chicago, Illinois.

Dear Sir:

RE: ALFRED CARSON;
KIMBETH WILLIAMS, M. D.;
Contempt of Court, Federal.

Referring to your letter of January 24, 1934, under
above caption, addressed to the Director, I will
appreciate advice if any further action has been
taken toward disposing of this matter.

Very truly yours,

Louis De Motte,
Special Agent in Charge.

DLH:ELH
Jax File #00-0
cc Director

69-180

F. B. I.

Use This

Handwritten initials and date 1/11

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ESTE UNION

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DL	= Day Letter
NL	= Night Letter
ML	= Mailed Letter
LCO	= Deferred Cable
NLT	= Cable Night Letter
WLT	= Wash and Letter

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This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable sign above or preceding the address.

The filing time as shown in the date line on full-rate telegrams and day letters, and the time of receipt at destination as shown on all messages, is STANDARD TIME.

Received at 708 14th St., N. W. Washington, D. C. ALWAYS OPEN

CB116 22 GOVT-CHICAGO ILL 25 620P

DIRECTOR, BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE WASHINGTON DCs
RE ALPHONSE CAPONE ET AL CONTEMPT OF COURT SUBJECT APPEARED
FOR TRIAL TODAY MATTER TO BE DISPOSED OF BY TOMORROW WILL
ADVISE
HARVEY ACTING.



FEB 26 1930

RECORDED

69-180-
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1CB

Nathan

FEB 28 1931

THE QUICKEST, SUREST AND SAFEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE

N-1115
MA

Capone Real Mayor Here, Editors of Vienna Say

BY JOHN GUNTHER.

SPECIAL CABLE
To The Chicago Daily News From the
Government, Vienna, Austria, Feb. 24.—Al
Capone is the real mayor of Chi-
cago today, say Vienna's
editors, commenting vigorously
on what they call "Chi-
cago's 'bloody polling' and
betake to the streets of the
city's wild west election."
Chicago's "bloody polling" had
the presence of the redoubtable
Al in open court right on the
back of Mayor William Hale
Thompson's victory seems to
these commentators at their safe
distance of 1,000 miles, to prove
conclusively that Capone is Mayor
Thompson's boss.

The Newstribune says that
Capone was able to return to Chi-
cago openly because it was his
influence that caused the
election. It adds:
"Regular martial law was pro-
claimed round the federal courts
in honor of the king of Chicago
gangsters."

The News Wiener Tribune
says police were instructed to at-
tend to Capone's private golfing
trouble. It adds: "Although his
most of his enemies."
Another Vienna newspaper sa-
ys today with big headlines, it
serial biography of Capone, which
treats him with all the glamour
and romance of a mythical her-
o. Chicagoans may be further in-
terested to hear that Vienna
loop streets are what Vienna
reporters say is Capone's
winter city.



MAR 2 1931

NOT RECORDED

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2CE
CITY AND SUBURBS
OR ELSEWHERE

DAILEY ILL.
CHICAGO'S PICTURE

Vol. 2. No. 149

Full Associated Press Service

CHICAGO, THURSDAY,

Museum Head's Son Seized, Pal **SHOT**



MAYBE IT'S A HANGOVER.—Al Capone seemed a bit depressed when snapped in Judge Wilkerson's federal court. **after all-night whoopee at which gangland paid honor to the Big Shot's perhaps it was thoughts of vag he after Uncle Sam was through.** —See p. 1.

IN HOLDUP

(Story on Page 2)



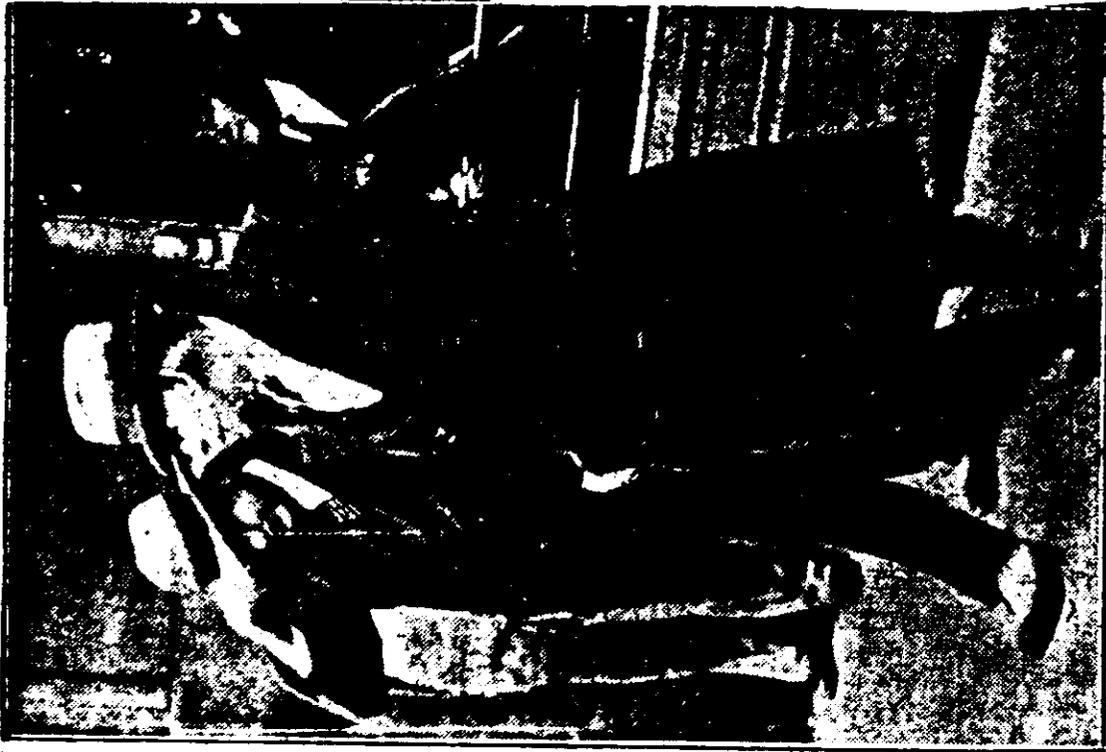
(DAILY TIMES Photo)

BANDITS' SWEETIES?

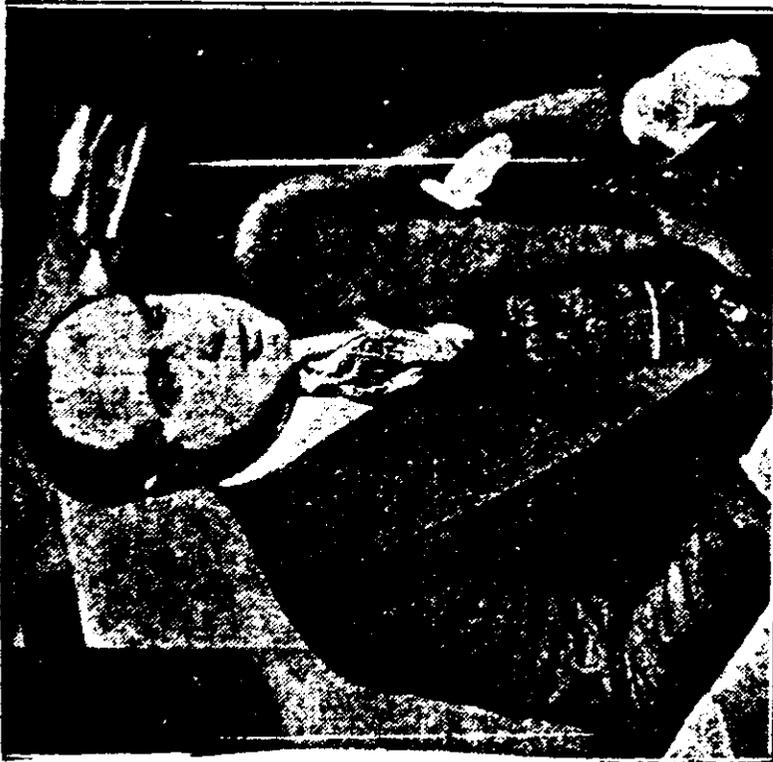
—These girls were questioned by Grand Crossing police today after doctor reported treating wounded bandit in house where they were arrested. The girls (left to right) are: Mae Palombo, sweetie of James Bennett, the wounded bandit; Toots Weiss, Elizabeth Weiss, Kitty Tufaro. Bennett and his pal were captured...



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ON HIS WAY BACK TO UNITED STATES COURT
Al Capone dodging camera as he left the detention house
with Assistant Chief of Detectives Ruzicka.



AS HE APPEARED AT THE DETECTIVE BUREAU.
Al Capone after his arrest on vagrancy warrant. He was
taken to the State-street station, where his finger prints
were taken.

19. 190-54

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PHOTOGRAPH BY AP/WIDEWORLD

COURTROOM CROWDED AS GOVERNMENT PRESENTS ITS CASE AGAINST AL CAPONE IN CONTEMPT OF COURT PROCEEDINGS.
(1) Al Capone, (2) Benjamin P. Epstein, and (3) William F. Waugh, Capone's attorneys; (4) Jacob Grossman, assistant United States district attorney, questioning (5) W. R. Foster, Hialeah, Fla., government witness; (6) Judge James H. Wilkerson. The room was filled to capacity, spectators occupying the gallery box in the background.

69-180-54

prevent suspicion of entering the Federal... only newspaper men, a... nesses and federal officials. were permitted to attend the...
Talks Freely to Reporters.

The reporters Capone greeted with... declaring he arrived in Chicago last Friday, refusing to state by what route.

He laughed derisively when asked whether he contributed \$100,000 to the Thompson campaign fund.

"What do you think of the election?" he was asked.

"Lyle tried to make me an issue and the public has given its answer," was the reply.

"No, I'm not going into the movies," Capone said in reply to another question. "Neither am I going to write my autobiography. It probably would make me a lot of money. I have been offered as high as \$2,000,000, including movie, serial, and book rights. But I am not going into the literary business."

Where Capone stayed last night was not learned, but it did not matter to the authorities. The vagrancy warrant has been served.

Florida Policeman Testifies.

John M. Coronas, a policeman from Hialeah City, was the first government witness to combat Capone's illness plea. An affidavit from Capone's physician, Dr. Kenneth Phillips, which gained a stay for the grand jury appearance from March 12 to March 20, stated that Capone was convalescing from "broncho-pneumonial pleurisy, with fluid effusions in the chest." Dr. Phillips first attended Capone on Jan. 12.

"When did you first see Capone?" Coronas was asked by Prosecutor Jacob Grossman.

"On the first or the second day of the opening of the Hialeah races. They opened on Jan. 17, 1924," said Coronas.

Q.—Which was it, the first or the second day? A.—The second. I was patrolling the grounds and I saw a big yellow car pull up in a space reserved for the sheriff. I started towards the driver, but somebody said that was Al Capone, so I gave him service.

Q.—What did you do then? A.—I walked over to the ticket office and waited for him. I said "Hello, Al," and he said, "Hello," handing me a \$10 bill, which he peeled off a roll he took out, to buy the tickets with.

Seen Frequently at Races.

Q.—Did you see him after that? A.—I saw him frequently until the closing of the races, March 9.

Q.—How many times did you see him. A.—About fifteen or twenty times.

Q.—How did he look? Did he appear in good health? A.—He was the picture of health, always smiling and in good spirits.

Q.—[By the court] Did you talk to him about his health? A.—No, judge. I just saluted, like this, and said "Hello, Al."

Gives Tip a \$10 Tip.

James T. Wood and W. R. Foster, the other policemen from Hialeah, testified that they saw Capone...

A.—On Feb. 2, when I took him to Miami and back to Miami.

Q.—How did you go—in an open plane? A.—Yes.

Q.—How long did it take? A.—About 45 minutes each way.

Q.—How long were you in Miami? A.—About three hours.

Prosecutor Grossman at this point introduced the manifest supplied immigration officials, which gave his passenger list as Alphonse Capone, Nicholas Ciricola, Tony Clarke, and Phillip D'Andrea.

A steamship trip to Nassau was not described, but the records of Capone's arrival and departure from Miami with his young brother, Alfred were introduced through identification of immigration authorities and J. W. Cooper, agent for the Munson lines who said he booked Capone for the passage on Feb. 8. The return manifest was dated Feb. 13.

Assistant United States Attorney Daniel Anderson, who represented the government when Capone appeared before the grand jury investigating booze conditions in Chicago Heights took the stand for the government and a spirited colloquy between counsel as to whether Capone addressed a letter to "Hon. James H. Wilkerson" ensued.

Wanted to Avoid Contempt.

The government contended in the opening statement that Capone sent a letter with the affidavit of Dr. Phillips stating that he did not wish to be in contempt of court, but desired a continuance on the advice of his physicians. A continuance was granted by Judge Wilkerson on the 11th of March and Capone appeared on the 20th.

Attorney Epstein insisted that the letter, which the prosecution claimed it could not find, and which the defense did not produce, was addressed to him and Attorney Waugh, retaining them as counsel.

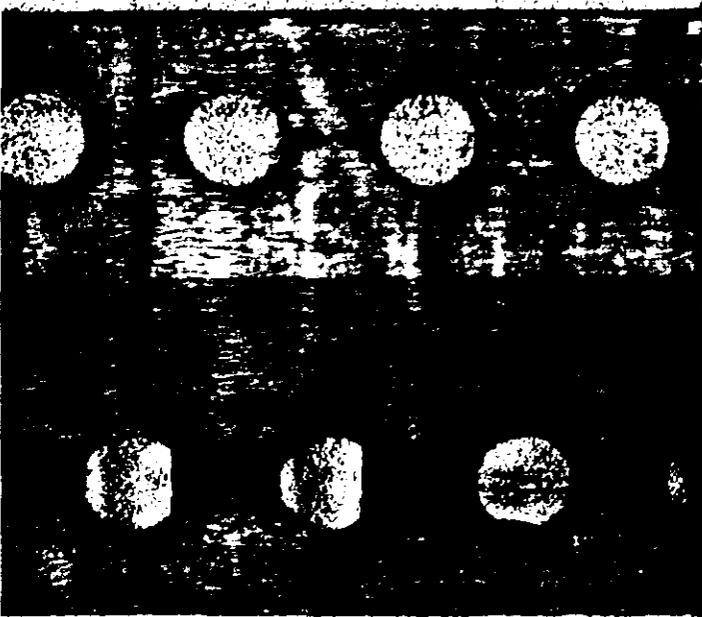
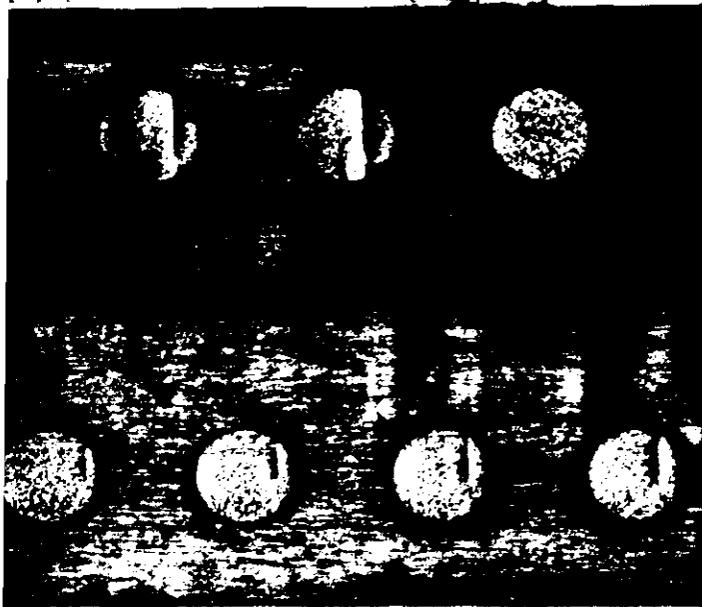
The controversy over the addressing of the letter resulted in the introduction of a part of Capone's testimony when he finally appeared before the grand jury, wherein the respondent admitted that he wrote Judge Wilkerson a letter and gave contradictory testimony as to his confinement to bed in Florida.

What Is "Sick in Bed."

The question of what is meant by the term "confined to bed" figure prominently in the testimony of Dr. Phillips, who was the only defense witness introduced before court adjourned yesterday.

Q.—When were you called to the home of Capone at Palm Island? A.—On Jan. 12, 1924.

Q.—What was his condition and how...



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Q.—Where was he in bed? A.—He was sitting out on the porch with several other men.
 Q.—How was he dressed? A.—In grey flannel trousers and a camel-hair coat.
 Q.—Did he appear ill? A.—He looked just like he does now.

Woman Tells of Interview.

Miss Ruth Gaskin, secretary to Robert R. Taylor, former solicitor of Dade county, Florida, who questioned Capone on Feb. 24, 1929, told of the interview.

Q.—How did he appear then, sick or in good health? A.—He didn't look any different from the way he does now.

Q.—Did he say anything about being sick? A.—Not that I knew of.

The airplane trip to Bimini, on Feb. 2, when Capone was "confined to bed" and convalescing from his "desperate illness" of Jan. 12, was described by Edward Nirmarrer, the pilot.

Q.—Did you ever see Al Capone? A.—Yes.

Q.—Do you see him here in the courtroom? A.—(After searching the crowded room for a full minute)—There he is.

Took Pictures of Estate.

Q.—Tell us about the first time you saw him. A.—It was in January, 1929, at his estate at Palm Island, about two weeks before. I took him on a trip to Bimini. I had taken a photographer on a flight over the J. C. Penney estate, where Mr. Hoover was going to stay, to get pictures. We made some pictures of Capone's estate and the photographer asked me to there and try to sell some of them.

Q.—Did you go there? A.—Yes, gave him some of the prints and to him where he could get some more. Incidentally, I took one of his friends for a ride.

Taken on Airplane Ride.

Q.—What was Capone doing? A.—He was sitting around in a dressing gown.

Q.—When did you next see him?

Q.—Did you give him the treatment for pneumonia? This individual is a heavy smoker and to have the extreme treatment Judge Wilkerson interposed quite if Capone was "dangin' it." "In my opinion, he was the physician.

Q.—(By the court)—How long he confined to his bed? A.—Six weeks.

Could Get Out of Bed.

Q.—(By counsel). State what you mean, professionally speaking, you said he was confined to five or six weeks. A.—Well, by confined to his bed I don't mean he couldn't get up at times, go to bathroom, sit up a while, or be carried to an automobile for a ride.

Q.—You mean that he was resuming his activities? A.—Yes.

Q.—Did you examine the resp on March 5, 1929? (This was the night before. He was still lying and had effusions of fluid in chest cavity. I advised him to go to Chicago, where the climate considerably colder, would be dangerous.

Capone's nurses will testify today, and the hearing is expected to be concluded during the day. Punishment for contempt is within discretion of federal judges, but courts have usually limited terms for contempt to one year.

CHICAGO TRIBUNE 2/26/31

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FINAL EDITION

OLD

Seize Wealthy Man; Threaten to Kill Him

Harry Kaplan, 1650 South Harding avenue, a wealthy retired cigar manufacturer, was kidnaped on the eve of his scheduled appearance as complaining witness against two men and two women who are charged with robbing him. He was held captive for a time and threatened with cremation in the boilers of an abandoned Terry Drug-gan brewery at West Roosevelt road and South Campbell avenue unless he paid \$10,000 in ransom.

Kaplan escaped from the kidnapers yesterday morning when they took him to the Continental Illinois Bank and Trust company, 231 South La Salle street, where he told a teller he wanted \$5,000 in cash from his account to pay for ransom. The bank teller, by the use of a private bank signal called out the bank's guards and Kaplan's kidnapers fled before they could be arrested.

Witness in Robbery Case.

The cigar manufacturer was scheduled to appear yesterday morning in Judge Peter Schwabe's Criminal court against Hans Bowman, Gilbert Tosch, Jessie Welch, and Mary Andrews on a charge of robbing him of \$735 on Jan. 7.

The robbery charge grew out of a visit by Kaplan to the Welch woman's home at 3323 Michigan avenue to see the Andrews woman. He charges that Bowman and Tosch followed him from the flat, dragged him into a barn at 114 East 84th street, and robbed him of \$735.

When the case was called for trial Assistant State's Attorney Nat Ruyell asked for a continuance on the ground that the complaining witness did not respond to the subpoena. Attorney W. W. O'Brien, representing the defendants, demanded a trial, saying that he would be busy next week de-fending William J. (Three Fingers) ...

U. S. WITNESSES SAY GANG CHIEF ATTENDED RACES

Makes Defense in Court Today.

(Pictures on back page.)

The government concluded its contempt of court case yesterday against



EDWARD WIRMARRER, to the U- [Advisor who testifies against hands who Capone.]

Alphonse Capone, Chicago's foremost public enemy, with a trial that brought thrills for every clerk and stenographer in the federal building and disappointment

to the U- [Advisor who testifies against hands who Capone.] were turned away at the street entrances. Federal Judge Wickerson, who sentenced Al's brother, Ralph, to three years in the penitentiary, is hearing the case. The defense began late in the day and will be concluded today.

The government accuses Capone of contempt of court by feigning illness to a 1930 federal grand jury summons. Against the continuation of the defense that Capone was talking the truth when he swore he was ...

...the...
...to...
...K...
...The...
...from his kidnapers.

Kaplan said that on Tuesday night he left a street car at Roosevelt and Fairfield avenue and that three men were waiting for him. They ordered him into a waiting automobile, he said, and drove him to the abandoned Druggan brewery.

The men demanded \$10,000 and when Kaplan said that he could not pay they suggested that they might cremate him in the boilers.

Threats Him with Death.
"We do not care whether you pay the money or not," said the spokesman of the gang. "We would just as soon burn you up in the boilers anyhow. This place is abandoned since the government closed it up and nobody would ever hear of you again."

Kaplan said that he was frightened and asked for permission to communicate with some of his relatives. They agreed to drive him to the barber shop of Sam Bycher, 2764 West 16th street. The latter is a father-in-law of Kaplan's daughter.

The kidnapers would not allow Kaplan to leave the automobile, but they

...the...
...to...
...K...
...The...
...from his kidnapers.

U. S. Well Represented.
Not only police but all branches of the government turned out for the Capone trial—the secret service, deputy marshals, special intelligence men from the revenue department, who are interested in Capone's income tax affairs; postal inspectors, prohibition

Gang Leader in Chicago for Primary

Al Capone, public enemy No. 1 and reputed contributor of \$150,000 to the primary campaign fund of Mayor Thompson, was reported yesterday to have returned to Chicago from his winter estate at Miami. Dispatches from Miami said he had departed from there and last night he was believed to be in seclusion in one of his Chicago suburban headquarters.

Coincident with these reports Judge John H. Lyle, who is attacking the Capone influence in the city hall administration in his campaign for the Republican mayoralty nomination, was provided with a bodyguard of two motorcycle policemen who are to accompany him night and day. Judge Lyle did not ask for the bodyguard, but said he would accept it "in view of the interests which the gang chief has at stake in the primary."

Gang Patrol of 1927 Recalled.

It was recalled that Capone returned to the city for the primary election of 1927 and was seen in the loop accompanied by ten men on Monday, April 4, the day before the primary. For that primary Capone contributed \$50,000 to the Thompson campaign chest, according to charges made by Judge Lyle. This year the gang chief's ante to the Thompson campaign was \$150,000, the judge charges.

There were divergent reports of the method of Capone's departure from Miami, one that he had left by plane and the other that he had gone by train. The latter was considered the more likely since it had substantiation at Danville, Ill., though it was pointed out that the gang chief might have boarded a train after flying out of Miami.

Seen by Danville Policeman.

Traffic Policeman Wiley Watson of Danville said he recognized as Capone a man who left the Dixie Limited of the Chicago and Eastern Illinois railway at Danville yesterday morning. The policeman identified the gang chief from his pictures and the scar on his face, he said, and called out, "Hello Al." The stranger stopped, admitted he was Capone, chatted for a moment and said he was flying to Chicago, according to Watson.

He was accompanied by two men, and a third man, described as recent-

ly his brother, who was waiting in a sedan which left Danville for the Danville airport, Watson said. At the airport, it was reported, that a cabin plane took off at 11:30 p. m.

Recognized by Passenger.

Policeman Watson said he talked with a woman passenger who also left the Florida train at Danville and asked her whether she recognized the man getting into the waiting sedan.

"Why, sure, that's Al Capone," she replied. "Everybody on the train has been talking about him."

Dispatches from Miami quoted Dr. George H. Day of the United States public health service as saying that Capone and a bodyguard of four men left by plane for Atlanta on Friday. Officials of the Eastern Air Transport at Miami said that five men purchased tickets for the flight but that Capone's name was not on the passenger list.

If Capone arrived in the Chicago area by plane, as the Danville report indicated, he apparently landed at some secluded spot to keep out of the way of the vagrancy warrant which was issued for him several months ago by Judge Lyle.

Loesch Backs Fund Charges.

Judge Lyle's charges of Capone contributions to the Thompson campaign fund have been supported by Frank J. Loesch, president of the Chicago Crime commission and formerly a special prosecutor of fraud and violence at the polls. Loesch declared that Capone had poured a total of \$250,000 into the Thompson fund for the primary and election of 1927.

City Sealer Dan Serritella, Capone lieutenant and a member of the city hall cabinet, has been actively identified with the present Thompson campaign, appearing with Thompson at his loop theater meetings and sitting on the stage during his speeches.

Serritella's affiliation with the Capone gang has not been disputed. Mope Volpe, another Capone lieutenant, boasted at a hearing before immigration officials seeking his deportation that Serritella accompanied him on an airplane flight from Havana to Miami.

Faces Federal Hearing.

On Wednesday Capone is scheduled to appear before Federal Judge Wilkerson for trial for contempt of court. This charge grew out of his feigning illness in Florida two years ago to avoid appearing before a federal grand jury investigating booze conditions in Chicago Heights. The government contends that he was well enough to attend dog races and gambling houses.

Capone's attorneys, William F. Waugh and Benjamin P. Epstein, who have assured Judge Wilkerson that Capone would appear in court on Wednesday, said last night they had not heard whether he had arrived.

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CAPONE'S HAND REPORTED BUSY IN DAY'S VOTING

Police Hunt Gang Boss in Vain as Rumors Hint at His Activities.

CASE UP TOMORROW

Slain Man Is Identified

The body of a man, nude and garroted, the face and hands acid strewn, found in a secluded culvert eight miles south of Gary on Feb. 12, today was identified as that of Paul Catalina, who served as a chef in the Little Florence restaurant, 2122 South Michigan avenue, long known as a gathering place for "Scarface Al" Capone's men.

Sheriff Roy Holley announced the identification after a conference with Pat Roche, State's Attorney Swanson's chief investigator.

Catalina disappeared from Chicago Feb. 11. He had been strangled and an effort was made to hide his identity by pouring acid on his face and hands. Identification was made through tracing a dry cleaning mark in a bloodstained hat found two miles from the body.

...the group in the morning at the...
 ...arrived at in week-end conferences in the house of Johnny Patton, the half-dozen aged "boy mayor" of Burnham.

The police, the sheriff's men and state's attorney's aids were reported out on a hunt for Capone, but in informed circles it was considered unlikely that Capone would be brought in.

Due in U. S. Court Tomorrow

Meanwhile in the federal building United States District Attorney George E. Q. Johnson was putting the finishing touches to the indictment case against Capone, which will be presented to Federal Judge James M. Wilkerson tomorrow.

Mr. Johnson was in conference with Assistant District Attorneys Daniel Anderson, Jacob L. Grossman and Cassius Post. Grossman and Post have won an enviable reputation for their conduct of income-tax cases against gangsters and their addition to the prosecution was regarded as an added proof that determined effort will be made to lodge Capone behind jail bars.

Mr. Johnson said he had six witnesses who would testify that Capone was in good health at the time two year ago that he refused to make prompt answer to a grand jury subpoena on the ground he was ill.

Another report that gained currency in the federal building was that Capone would be the target for income-tax action when he appears tomorrow.

Linked to Lingle Slaying

An Associated Press dispatch from Asheville, N. C., today said that relatives of L. G. P. Van Ness, who was found dead in a Westminister (N. C.) hotel, his throat slashed, advanced the opinion he may have been slain by gangsters because of his supposed knowledge of the slaying of Jake Lingle. The first belief was that Van Ness had killed himself.

Assistant State's Attorney James McShane, a member of the board of strategy, today spotted at the idea. "Van Ness," he said, "was never known to us as a witness."

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dismissed him with a wave of his hand:

"No business today," he said.

He glanced appreciatively about the courtroom with its white marble walls, its dull gold ceiling and ornaments and the preamble to the constitution in Roman letters above the door. Mr. Capone, despite his experience in ways beset by the police, has not been in many courtrooms and it was plain that he was interested in the proceedings and setting.

He showed no alarm at the government's charge that he willfully absented himself from a meeting of the grand jury that wanted to interview him in March, 1929.

"It's on the up and up that I was sick," he said. "I came up here when I was able to travel. I don't mind seeing grand juries. I do everything I can to help them. I don't think there'll be anything to this case."

Keeps Route a Mystery.

Mr. Capone declined to tell the route he had followed in his journey from Florida to Chicago and he was equally reticent on the subject of how he might have cast his vote at the primary. But he laughed scornfully at the suggestion that he had contributed \$150,000 toward Mayor Thompson's campaign fund.

"I don't waste money that way," he said. "I came home because I live in Chicago. And it doesn't make any difference how I got here. I got here."

He did state, however, that he had

declined the position for the district attorney's assignment with the veteran and Mr. Capone took his place at the table beside William F. Waugh and Benjamin Epstein, his attorneys, in the federal matter.

A plea of not guilty was entered.

Jacob Grossman, representing the government, made a statement setting forth that Mr. Capone had grossly deceived his Chicago friends, not to mention the grand jury and the court, by pretending to be near death from broncho-pneumonia-pleurisy, whereas at the time he was actually dashing about to prize fights and horse races in Florida.

The judge wanted to know in what state Mr. Capone was resident and Mr. Grossman settled this question by stating that the grand-jury subpoena which started all the trouble had been served in Florida.

The district attorney outlined the case to the effect that Mr. Capone had replied, through his attorneys, that he was physically unfit to make the long journey to Chicago, submitting with his letter an affidavit signed by Dr. Kenneth Phillips describing the maladies from which the patient suffered was fortunately recovering.

'Is False; 'Is True.

Mr. Grossman stated that the government would prove that the affidavit was false and that Mr. Capone was in the best of health and spirits and fully able to travel 1,500 miles if he had wanted to.

Mr. Epstein in the opening state-

ment of the government operative said that the charges against him were based on George Washington. He was taken down from the sixth floor in a freight elevator to the postal subway, where he was transferred to a squad car.

There he was asked by Lieut. McCarty if he had any objections to being taken to the selective bureau.

"No objections," said Mr. Capone. "Show me where it is."

New Charge Area.

The charge on which Capone was held into court grew out of Capone's refusal two years ago to give prompt heed to a federal grand jury summons. Government men had staged a raid in Chicago Har-din, uncovered information about which they desired Capone to speak.

A grand jury summons was sent to Florida. Capone sent his regrets to the grand jury, saying he was too sick a man to make the journey to Chicago.

Aviator Testifies.

The first witness of the afternoon session was Edward Niermaler an air pilot who testified that he had taken Mr. Capone and a party from Miami to Miami, the bootleggers' island in the Bahamas, on Feb. 2, 1929.

He was followed by J. W. Cooper, agent for the Munson steamship line, who said he had booked Capone for passage aboard the S. S. Northland from Miami to Nassau on Feb. 2. Both witnesses produced manifests to show the passenger's age as 30. His business was set forth as real estate.

ONE IN COURT U. S. CHARGE OF CONTEMPT

(Continued from First Page.)

covered with cameramen standing ready at their cranks.

Officials Represented.

No such display of gold braid has been seen in Chicago since the last annual ball of the old volunteer fire department as was mobilized on the postoffice steps. Captains, lieutenants and lesser officials of police—got to say a generous representation of visiting firemen—milled through the crowds on the sidewalks and spangled with the inquisitive eyes who got into the federal building corridors in the pretense of having business there. Squad cars, sirens screeching, made the circuit of the block with the monotony of a political parade. And the agile populace practiced itself in the technique of keeping from being trodden underfoot.

Up on the sixth floor, where Judge Wilkerson was listening to the arguments of those who would tear Mr. Capone away from Chicago's bosom and give him to Leavenworth or Atlanta, barricades had been erected in the cross corridors and a squad of marshals and secret service men examined all applicants for admission. The general public was excluded from the courtroom. And those few were "fanned" at the door for a few moments thought the spectators might be carrying in their hip pockets or shoulder holsters.

Makes Sudden Appearance.

Mr. Capone was an early arrival. While the moving-picture men and news photographers were massing about the tunnel where postal trucks drive under the building or snlimbering their auxiliary apparatus at the more obvious entrances his car suddenly appeared in Adams street. The honing hoodlum leaped out and waved his hand to the startled welcome committee as he dashed up the steps.

He laughed at suggestions that he stop to pose, made his way quickly across the rotunda of the building and entered an elevator. His bodyguard, if present, was unobtrusive.

Mr. Capone seemed to be in good spirits and spoke cheerily to reporters on all subjects such as the weather in Florida, the business depression, the prospects of Young Strubling against somebody named Schmeling, the appearance of Chicago, the election and his prospects for ultimate indication. He smiled a cheery greeting to a deputy marshal who

never been in Whelan, Ind., Danville, Ill. and Des Moines, Iowa, where he appeared simultaneously just before justice.

* Praises Our Baby Weather.

"I'm not going back to Florida, because we are having a better winter up here," he explained. "I've been going down to Miami for six years and never have I seen weather like we've had there in the last few months. There were only about six days when it was warm enough to be swimming."

"I've been asked if I have come home to write by autobiography. I haven't. It probably would make me a lot of money. The last big I had was \$1,000,000—that included moving-picture rights, serial rights and book rights. But I'm not going into the literary business. That would be cutting in on the work of the boys who are writing about me."

"I read one of the books on the market now and I don't think much of it. It's well written—as far as I could see from the ten pages at the beginning—but it's about somebody else. I don't belong in this book any more than I belong in a book by Horatio Alger. I guess maybe I could write a better one, but that sort of stuff isn't my line."

"And you can say for me that I'm not going into the movies, either. I saw a piece in one of the papers about a month ago telling about how I was going into the pictures." He grinned genially. "Can you fancy that? Well, anyway, I'm not going into the movies. I'm no Mary Pickford."

Capone was quietly dressed in a blue suit, gray spots, dark shoes, white shirt and diamond watch chain and he sat unobtrusively in a corner of the room until called to the table before the judge for his hearing.

Decorum Is Maintained.

Toward 10 o'clock the investigators at the door speeded their process of examination and the benches began to fill up with men and women who had been disappointed in their attempt to shoot a welcome and strew the flowers downstairs. Silence was maintained by six deputy marshals, who forced all spectators, including attorneys, to find seats and announced the vigorous measures that would follow any whispering or other indecorous conduct.

There came presently Michael Ahern of counsel for the defense, who talked with his client briefly concerning the charge of vagrancy to which Mr. Capone will be called upon to answer when the government finishes with him.

"I'm going to surrender as soon as I get out of here," Mr. Capone announced languidly. "I'm not going down to Florida any more this winter. The weather is better up here. Anyway, Chicago is my home and I might as well get this business straightened out."

A clerk called to the witness stand for the defense.

for the defense. The witness was called to the stand. Mr. Capone had just stated that he was not one but several doctors in Chicago and that he had been in the city for several weeks. During that time he had spoken to the press and had been entirely satisfied to be asked to his house.

Mr. Epstein began his argument by stating that the witness had brought his client back to the scene of his youthful activities and been erroneously drawn. Judge Wilkerson declined to be upset about that.

"Whether or not it was a good witness it has served its purpose," he said. "The respondent is in court."

So then Mr. Epstein went further into the matter of Dr. Phillips' affidavit and declared that it was all true except for the loose wording of certain phrases having reference to the same.

Asks Two Questions.

"As I see it," he said, "there are two questions in this case."

"First, whether or not the defendant was guilty of misbehavior in preparing his allegations, and, second, whether or not he misrepresented the facts in inducing this court to grant a continuance."

"We shall show that he did not intentionally show contempt for this court—that he was willing to come here when his physical condition permitted and that, in fact, he did come here."

"The defendant was summoned to appear on March 12, 1929. We shall bring witnesses to show that he was in poor health as late as March 8. He did come here and appear before the grand jury after that date and was made to cool his heels for days. When, finally, he was heard by the jury he was dismissed."

Witnesses Called.

The first witness called by the government was Charles W. Clarke, a special agent of the intelligence section of the treasury department with headquarters in Florida. Mr. Clarke testified that he had served the grand jury subpoena on Mr. Capone at his Palm Island estate after a doorkeeper had denied knowing anybody named Mr. Capone. Mr. Capone himself had revealed his identity to the ignorant doorkeeper and the visiting special agents by stepping forward and announcing himself at an opportune moment. Mr. Clarke testified that Mr. Capone did not appear to be near death at the time.

Mr. Clarke was followed by Miss Ruth Caskin, secretary to the county solicitor of Dade county, Florida, in which the city of Miami is situated. She told of a conference in the solicitor's office in March, 1929, at which she had seen Mr. Capone. She also stated that he seemed to be in the best of health and was entirely capable of attending to his business.

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Capone Dodges Crowd And Appears in Court Heavy Guard on Hand

Walks In with Lawyer to Answer Contempt Charge; Denies Guilt.

PUBLIC IS KEPT OUT

"Scarface Al" Capone, jailbird and highballer, made his long-delayed public bow in Judge Wilkerson's federal courtroom today to answer a contempt of court charge, but he eluded most of a crowd of several hundred curious who appeared to get a look at him.

After dallying in the courtroom for an hour, awaiting the start of the hearing, Capone, through his counsel, entered a plea of not guilty. He then sat by listening attentively while the judge and attorneys began a discussion of the legal phases of the case. The government had half a dozen witnesses ready to testify.

The federal building was strongly guarded, a barricade was erected in the corridor leading to Judge Wilkerson's courtroom, and the public was excluded. Two policemen waited to take him to jail as a vagrant when he left the courtroom.

The stage was set to greet the notorious gangster with all the pomp and ceremony of a prima donna making a debut. At the Adams street entrance to the federal building there gathered a crowd of several hundred, pushing and shoving and blocking traffic.

Big sound-recording trucks at the curb perched movie cameras, their lenses trained on the Clark street door. And then, like a balky prima donna, Mr. Capone literally walked toward the back aisle to the stage while the throng was expecting him to enter from the wings.

He appeared without guards at exactly 9:25 a. m. at the entrance, looking like anybody else's business, pulled up to the Adams street entrance, around the corner in the rear past the building, alone and unattended by any bodyguards whatsoever.

In the (trug) seat were Mr. Capone's chauffeur and one of his attorneys, William F. Waugh.

Out of the door climbed Mr. Capone, followed by Mr. Waugh. Only an estriding reporter or two knew at all that the party went in the dark-blue suit, dark-blue overcoat and gray fedora was the notorious gang chief.

Across the sidewalk, up the steps and through the lobby hastened Mr. Capone, followed closely by the smallest Mr. Waugh, straining to keep up with the pace.

They entered the elevator and Capone called "Sixth floor."

"Well," said somebody who had trailed along, "you made that in a hurry."

That Corridor Is Jammed.

Arriving at the sixth floor, where Judge Wilkerson's courtroom is located, the hoodlum-Poch Bah and his lawyer found the corridor more or less jammed by a throng of early-bombers.

Through a narrow aisle, flanked along each side by deputy sheriffs, the two passed. Waugh spoke and tipped his hat to several young women—federal employees—who lingered in their office doorway. Capone tipped his fedora.

At the end of the crowd-lined corridor, just outside the doorway to the courtroom, a barricade had been erected. It was made of tables, leaving a lane between so narrow that only one person could pass at a time.

Capone and Waugh went through there unnoted, but the general opinion did not. A deputy stopped

everybody of the kind who had credentials of some sort indicating they had business in the courtroom.

Courtroom Clearly Guarded.

Up and down the stairs and about the courtroom walked representatives of nearly every law-enforcing agency in the city. There were federal deputy marshals, court sheriffs, men, armed treasury guards, subpoena servers and city policemen. Their business was mostly to give John Public a polite but firm shove in the ribs and invite him to sleep morning.

There was even a deputy constable on hand. Somebody called Mr. Capone's attention to that. Capone didn't seem to like the ally very much.

"Oh, I don't suppose he's here looking for business," said the informant. Whereupon Capone laughed with the rest.

He's in Affable Mood.

Capone was in an extremely affable mood. He sat down in the courtroom and swapped quips and sallies and information—very little information—with a pack of reporters and federal men who swarmed about him. His only jewelry adornment was a flashy and expensive one—a platinum and diamond watch chain that stretched clear across the expansive bosom of his blue vest. It had large diamonds set in it about an inch apart.

Occasionally he interrupted his conversation to smile a greeting and shake hands with a reporter or federal officer or policeman acquaintance. He talked about the weather and this and that and touched upon politics, but divulged very little about himself.

"Lyle," he said once, "tried to make a campaign issue out of me, but the public answered him."

"How did you get up here, Al, by plane or train or boat?" he was asked.

"Oh, I just got here," he smiled.

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Was't Ben Brown again.
"No, I'm not going to sell my home in Florida," he said in reply to a question.

"I'm going back down there when I get through here. I like it there. I'm going to finish up all my business with the police and these fellows this time and get it over."

"I'm going to surrender myself to the first cop I meet outside the courtroom today when this business is over and let him serve that vagrancy warrant Ly'e issued. I want to get that thing straightened up. I'm going down to the bureau and do it."

The presentation of a contempt citation grew out of Capone's failure to answer a federal grand jury summons in 1928. He sent word back from his Florida estate that he was too ill to appear, but the government expects to present a number of imported witnesses from Florida who will tell today how Al cavorted quite healthily among the palms.

May Occupy Cell.

Next will come the arrest of Capone by the police on the long-standing vagrancy warrant, with the probability that he may occupy a cell at the detective bureau before the day is over until he furnishes bail.

Detectives William Drury and John Howe, the nemesis of hoodlums, were to be given the honor of arresting Capone on the "vag" warrant, with Lieut. Edward Birmingham assigned to be on hand so that Mr. Capone won't feel alighted at being seized by two mere detectives. Assistant District Attorney George E. Q. Johnson asked that Drury and Howe be allowed to serve the warrant, inasmuch as they are familiar with gamblers and might be able to spot other wanted parties among Mr. Capone's retinue.

The warrant will be served in the hallway outside Judge Wilkerson's courtroom as soon as Mr. Capone

has finished his business inside. He will then be taken downstairs, loaded into a squad car and taken to the detective bureau, where Drury and Howe will beck him, lock him up in a cell and notify Chief of Detectives John Norton that one Mr. Capone is safely in tow. Then will come up the matter of taking Mr. Capone to jail and seeing about his release on bond.

Surprise Action Foreseen.

A surprise was promised in the form of possible new action charging Al with conspiracy to evade the federal income tax laws, said to have been prepared for him by United States District Attorney George E. Q. Johnson and his assistants, Camillus Foust, Jacob Grossman and Dwight Green. The latter three successfully prosecuted Capone's brother, Ralph; his first vice-president in charge of vice, Jake Gunk; and several other gangsters on the same counts.

Pat Roche, chief investigator of the state's attorney's office, was also expected to be present.

Receiving reports that Capone had returned over the week-end to hide out with Johnny Patton, the middle-aged "boy mayor" of Burnham, Judge Frank M. Padden of the Felony court asked Roche to find "Scarface" Al, but the prosecutors' men were unsuccessful.



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POLICE SEIZE AL CAPONE IN HIS U. S. HEARING

CHICAGO EVENING AMERICAN 2/25/31

GANG RULER MAKES BOND AS 'VAG'

Picture on Page 5.

The United States government this afternoon rested its case against Al Capone, chief of Chicago's gangland, who appeared before Federal Judge James H. Wilkerson to show cause why he should not be held in contempt of court.

After a brief recess taken when the assistant district attorneys announced they had completed their case, the defense was to present its side.

SEIZED AS VAGRANT.

A few hours earlier, at the noon recess, Capone was seized by police bearing a "public enemy" vagrancy warrant for his arrest.

The man whose name is a synonym for gun terrorism throughout the world gave his occupation as "real estate dealer" when he was booked on the vagrancy charge. He gave bond and was rushed back to the Federal Building, guarded by three picked squads of detectives, in time for the afternoon session before Judge Wilkerson.

Capone pleaded not guilty to the charge of contempt, growing out of the government's contention that he filed false affidavits two years ago to avoid testifying before a federal grand jury which was investigating a Chicago Heights bootlegging conspiracy.

The contempt hearing, it was disclosed by the opening statements of prosecutors and defense attorneys, is to be another "gangland invalid" case, paralleling in some

Continued on Page 5, Column 1.

respects the recent courtroom upset of Terry Druggan. Capone contends that he was, as set forth in the affidavit, too ill to come to Chicago from his Winter home in Palm Beach, Fla.

The government representatives announced that they had witnesses who would testify that he had not been too ill at that time to attend horse races and other public events at Miami.

Capone had just arisen from the counsel table where he was seated with his attorneys, when Judge Wilkerson adjourned court at noon, when Lieut. Edward Birmingham entered with a squad of detectives. The lieutenant told the gang boss:

"Get your hat and coat."

Capone did so. He was pushed out of the courtroom. Charles Nagel, custodian of the Federal Building, was waiting with an operator on the freight elevator which runs to the basement of the building, occupied by the main postoffice.

With a dozen detectives and deputy United States marshals walking all around him, Capone was led to the elevator, taken to the basement and placed in a police squad car which was waiting in the tunnel under the building used by mail trucks.

There was a scene of wild confusion as he was led into the detective bureau a few minutes later. At windows and on fire escapes of a freight house across the street nearly a hundred girl employees screamed with excitement at the sight of him.

AL IS GREATLY AMUSED.

His entrance into the office of Chief of Detectives John Norton threw that place into a turmoil, with scores of policemen, newspapermen and photographers milling about. Capone grinned through the whole proceedings, apparently amused at the hubbub which his appearance created.

At the request of Chief Norton, he posed for the photographers, smiling. Michael Ahern, one of his attorneys, arrived then, and arranged with the detective squad to have the vagrancy warrant served immediately and the \$10,000 bond set by Judge John H. Lyle posted.

Capone was sent through the police bureau of identification before he was released. It was the first time the Chicago police have had a chance to get a fresh photograph of him and check up his Bertillon measurements and fingerprints since he was released from the Philadelphia jail where he served a sentence for gun-toting.

The Bertillon record disclosed that he is 5 feet 10 1/2 inches tall, weighs 205 pounds and is 32. He gave his residence as 1344 Frodo av.

BOND APPROVED.

As soon as Capone was booked, Attorney Ahern went before Judge Thomas Green, sitting in the Small Claims Court in the same building and obtained approval of a \$10,000 bond on which one Michael Schwegel had scheduled an apartment building at 4837-41 N. Albany av., represented to be worth \$80,000.

Capone waited for his attorney in Chief Norton's inner office. While he was waiting, a policeman went to a nearby restaurant and got him his lunch. When he was released, the detective squads took him back to the Federal Building.

In his conversation with Chief Norton, Capone intimated he might quit his present life soon. He said:

"Every time they have a political campaign in this town somebody attacks me. I'm getting tired of the publicity. I might retire soon."

The chief asked:

"What do you mean, retire?"

Capone did not answer him. Of the charges made by Judge Lyle in his unsuccessful campaign for mayor, the underworld czar said:

"Well, I have no comment to make on the election, except that the people have spoken. This is the third time that certain individuals have sought to involve me as a campaign issue, and it is the third time that the voters have decided that I was only a campaign issue. I believe the public will wake up one of these days to the bunk and hokum which has been built around me and my family."

NEWS ON COURTS.

What he had to say about the charges pending against him, he

First Page

sons stated, would be said in court. He said:

"I'm glad the courts are still functioning. I don't think the judiciary as a body will become hysterical."

Capone had gained weight since his last appearance in a Chicago court, more than a year ago. He wore the conventional garb of a prosperous business man—a blue suit and tie, black oxfords and white socks.

CHIEF OF POLICE JAM BUILDING.

Hundreds of curiosity seekers jammed the lobby and corridors of the Federal Building, but most of them were turned away when they sought admission to Judge Wilkerson's courtroom. A dozen deputy United States marshals and agents of the Department of Justice were on guard in the courtroom and the corridor leading to it, and every one who entered was searched for weapons.

ARM BARRICADE.

Outside the courtroom two desks were lined up in the corridor to form a barricade through which all spectators were compelled to pass in single file under the scrutiny of the federal agents.

The news caused a buzz of excited conversation in every office in the building. Girl clerks, wide-eyed, inquired:

"Has he come? Is he really in the building?"

Those who were unable to obtain admittance to the courtroom hung in a solid line over the railings on various floors, looking down into the lobby for a glimpse of the gang chieftain as he crossed it.

Capone drew up in front of the Adams st. entrance of the building, riding alone in the back seat of a big sedan. Members of his body-guard were nearby, however, it was reported. He leaped out and dashed in the door, past a crowd of waiting photographers and motion picture camera men.

Waiting in the courtroom, Capone

was asked about the judge again. He said:

"The difference between us is that he spent thousands of dollars trying to get into office, while I'm spending thousands to feed people."

The charge, made by Judge Lyle during the primary campaign, that he had contributed \$150,000 to the Thompson campaign chest Capone characterized as "foolish." He got into Chicago Friday, he said, refusing to say what means of transportation he used—he "just got here."

He added: "The weather in Chicago is better than it was down in Florida."

As Capone spoke, he fingered an ornate watch chain strung across his vest. It was of platinum, set at inch-wide intervals with one carat diamonds. A ring set with a larger diamond was his only other jewelry.

He was asked about his sister, Mafalda, whose marriage recently to John Maritote was the occasion of a display of gangland magnificence. He replied:

"Oh, she got back from her honeymoon a long time ago."

Assistant District Attorneys Cassius Poust and Jacob I. Grossman appeared against him for the government.

READS 8-PAGE CHARGE.

Mr. Grossman read the eight-page charge, which is summarized thus:

A subpoena was issued for Capone December 5, 1928. He could not be found and the subpoena was returned. In February, 1929, another subpoena was issued and served on Capone at his Palm Island, Fla., home, February 27, ordering him to appear before the federal grand jury here March 12.

On March 9, 1929, an application was presented to the court for a postponement of Capone's appearance before the grand jury. Supporting the application presented by Capone's attorneys, was an affidavit from Dr. Kenneth Phillips containing statements which both he and Capone said were true.

These statements were that Capone's physical condition was weakened and his health in danger if he came to Chicago.

The charge recited that the affidavit from Dr. Phillips said that Capone was convalescing from a serious illness March 3, 1929, and that Dr. Phillips had been attending him continuously since January 22 of that year; that Capone was still under treatment March 3, 1929, suffering from bronchial pneumonia, with fluid flowing from his lungs. He had been, the affidavit con-

tained, according to the charge, confined to his bed all but for a few days of the period during which he was under the doctor's care, and that it would be dangerous for Capone to leave the mild climate of Florida and come to Chicago, which might cause collapse of his health, maybe his death.

FALSE AFFIDAVIT.

Mr. Grossman said that by such application the government charges contempt of court, which caused Judge Wilkerson to ask if it was the prosecutor's contention that false affidavit constituted contempt of court. When Mr. Grossman replied affirmatively, Judge Wilkerson asked:

"Is it your position that every false affidavit presented to this court constitutes contempt?"

The prosecutor replied that he would take that up later. He went on to contend that Capone was not confined to his bed from sickness March 3, 1929; that he was in good health and could have come here to testify; that he was attending races and other sports and walking the streets of Miami.

He concluded with the statement:

"Capone's activities in Florida were well known. They were

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chronicled in the press. We will show through testimony that he was physically fit to come to Chicago."

MAKES DENIAL.

The opening statement of Attorney Epstein was a direct denial of the prosecutor's closing remark. He said:

"The defense will prove beyond a reasonable doubt that Mr. Capone was, in January, 1929, suffering seriously from bronchial pneumonia; that he was confined to his bed, with a day and night nurse in attendance.

"We will show that a Dr. Light was in attendance upon him, and that Dr. Phillips was later called in consultation; that bronchial pneumonia is serious and that people who have it take a long time to recover; that he was in bed most of January and that it would have been seriously detrimental to his health to go to a climate different from that in which he had been living in Florida."

Attorney Epstein went on to assure the court that Capone had no intention to be in contempt when he filed his affidavit that he was too ill to appear, and that he did so on the advice of physicians. He

then related how, when Capone appeared after a 1,600 mile journey from Miami to Chicago, he appeared at the office of the district attorney, was told to return a week later, appeared before the grand jury as a witness and was dismissed by the grand jurors.

CALL FIRST WITNESS.

The first witness, Charles W. Clarke, a special agent of the intelligence unit of the internal revenue bureau, stationed at Miami, was then called to the stand.

He was asked by Prosecutor Grossman if he saw Capone on February 27, 1929, and replied:

"Yes. I accompanied Deputy United States Marshal J. C. Cooper to Al Capone's residence on Palm Island at Miami, Fla., to serve a subpoena calling Capone to testify before the grand jury in Chicago.

"We called at the gate of the Palm Island residence and a man met us at the gate and said, 'What do you want?' Cooper said we desired to serve a subpoena on Capone. The man repeated his question, and then a man whom I later identified as Capone, who was sitting on the steps of the

Continued on Page 14, Column 1.

came on to the porch and Deputy District Attorney Grossman went with me on a short part. We were there five or ten minutes."

The examination proceeded as follows:

Q—How was Mr. Capone dressed?

A—Well, he had on a light pair of breeches, and I think a camel hair coat, a white silk shirt and light colored shoes.

Q—Did he look sick? A—(laughing)—Well, I didn't think so. He looked to me just as he does now.

Q—Did he look weak or anemic?

MAKES OBJECTION.

At that point Attorney Epstein jumped up with an objection, saying:

"If there's going to be sarcasm injected into this trial I object. This comedy has gone far enough."

Prosecutor Grossman assured the court that he had no intention of using sarcasm, and Judge Wilkerson overruled the objection and told him to continue questioning the witness.

The next witness was Ruth Gaskin, secretary to the county solicitor of Dade County (Miami) Fla. She was questioned as follows by Prosecutor Grossman:

Q—Were you present at a meeting at the solicitor's office? A—I was present and took notes.

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Q—Who was there? A—A Mr. Taylor, a Mr. Goldstein, the sheriff, myself and Capone.

SEEMED IN GOOD HEALTH.

Q—Was the defendant in good or bad health? A—He appeared in good health.

Q—Do you see the defendant in the room? A—Yes, he appears to look the same.

The witness was cross-examined by Attorney Waugh:

Q—Don't you remember that he was told to report to the county solicitor's office the day before the meeting. A—I don't know anything about that.

John N. Cornean, former policeman of Hialeah, Fla., was the next witness. Prosecutor Grossman questioned him as follows:

Q—Do you know Capone? A—Yes.

Q—On the second day of your duty at the Hialeah race track, did you see Capone? A—Yes. I was patrolling and I saw a big yellow car drive up. I stepped over to the ticket office and right after that Capone came up. I said, 'Hello, Al' and he gave me a \$10 bill and I walked away.

SAW HIM FREQUENTLY.

Q—What day was that? A—Either January 17 or 18.

Q—Did you see him after that? A—The next day. I saw him quite frequently except for one period around

Q—What is the longest space

during that period that you didn't see him? A—Four or five days.

Q—What was his appearance? A—He was smiling, he seemed to be in good spirits.

FIXES EXACT DATE.

Can you fix a date in March that you saw Capone at the track? A—Yes.

Q—When was it. A—March 8 or 9.

M. G. Wood, a police officer at the Hialeah race track, was the next witness. Mr. Grossman questioned him as follows:

Q—Were you a police officer at the race track in the Spring of 1929. A—Yes.

Q—What was your duty? A—I patrolled in front of the grandstand three days a week.

Q—Do you recall seeing Mr. Capone at the race track? A—Yes, I used to see him in one of the boxes.

Q—Do you know Mr. Capone? A—Not to speak to him.

POINTED OUT TO HIM.

Q—How did you know it was Mr. Capone? A—He was pointed out to me.

Q—Why was he pointed out to you?

The question was objected to by Attorney Epstein on the ground that it called for deduction on the part of the witness. The objection was sustained by Judge Wilker. The questioning continued:

Q—Do you recall about the time that you saw Capone at the race track? A—During the first and second weeks of January.

WITNESS CROSS-EXAMINED.

Cross-examination of the witness then was begun by Attorney Waugh, as follows:

Q—You said you saw Capone the

first or second week in January. Which week did you see him?

A—I'm not sure.

Q—As a matter of fact it might have been the second, third or fourth week.

A—It might have been the second week.

Q—Didn't you have the same question? A—No, Mr.

At this juncture Attorney Epstein stood up and said:

"Was he thinner at that time?" "Well, he wasn't as thick as now."

Then Wood left the stand. The next witness called was W. R. Foster, former police officer in

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Hialeah. He was questioned by Prosecutor Grossman. The questioning proceeded as follows:

Q—Did you ever see the defendant, Alphonse Capone, at the race track during the season of 1929?

A—Yes, sir, nearly every day.

Q—Did you ever have a meeting with Capone when he was parking his car?

A—Yes.

Q—What was his appearance when you saw him? A—He seemed to be healthy.

The first witness at the afternoon court session was Edward Nirmaier, an airplane pilot living in

Miami. He was questioned by Prosecutor Grossman as follows:

Q—Did you ever see Al Capone in and about Miami? A—I have.

A—Did you ever take him on an airplane trip? A—Yes. One time I was flying with a commercial photographer at Miami who wanted to take pictures of the J. C. Penney estate.

The pilot went on to testify that on this flight, the photographer took pictures of Capone's home also. Several days later, Nirmaier added, the photographer asked him to take the pictures over to Capone and ask him if he wanted to buy them.

Nirmaier then testified that he took the pictures to Capone, about the middle of January, 1929, and found Capone lounging outside his home in a dressing gown. The next time he saw him, he said, was on February 2, when he took him on a plane ride to Hialeah and back.

Q—How was Capone's health at that time? A—He looked all right.

Q—Did he cough any? A—Well not that I remember.

On cross examination by Attorney Waugh, Nirmaier said the weather at the time Capone went riding with him was very pleasant.

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THIS IS AL CAPONE'S BUSY DAY



Apparently unperturbed, Al Capone sits at the detective bureau in the photo at the left. He looks much more like a prosperous, solid business man of the middle class than the iron-handed tyrant of the underworld he is reputed to be. At the right is Capone before his ap-

pearance in Federal court. Charge of conspiracy in violation of the Judge William Bennett for trial of some Chicago gangster. Hand by a report of detection. Photo by [unreadable]

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CAPONE GIVES APPEAL BOND IN U. S. COURT

Appears in New Ensemble, but Is Silent on 6-Month Jail Term.

"Scarface Al" Capone, jailbird and brothelkeeper, appeared today in the courtroom of Federal Judge James H. Wilkerson where on Friday he was sentenced to six months in the county jail for contempt of court.

Capone was in court today for the purpose of making a supersedeas bond of \$5,000, to give him his freedom while William F. Waugh and Benjamin F. Epstein are taking his case to the United States Circuit Court of Appeals.

The No. 1 public enemy was escorted to the federal building by Paul William McCarthy and Lieut. Edward Birmingham and their squads. His appearance through the Adams street entrance excited no comment.

He Wears New Ensemble.

Capone was philosophical about his sentence, but would not comment on it in view of the appeal planned. He had a new ensemble for his court appearance today—green suit, green tie, gray spots and tan shoes of a light shade.

Judge Wilkerson entered the formal order of sentence today. The assignment of errors, alleging fourteen errors, was received by the court and permission given defense counsel to file an amended assignment of errors in ten days. The judge also granted a supersedeas, but wrote into the writ that it is to expire June 1 of this year unless extended by the Appellate court.

Assistant District Attorney Jacob I. Grossman, who prosecuted the Capone contempt case, pleaded for an early disposition of the case. The judge pointed out that the bill of exceptions is due within thirty days and said that he did not believe the Appellate court could extend the supersedeas.

One of the errors alleged is that the judge allowed the introduction of Capone's grand jury evidence. The judge said he was of the opinion the defense had agreed to its admission and Grossman produced a transcript of the record to show that no objection had been made.

Druggist-Lake Case Called.

The income-tax case of Tony...

CAPONE GIVES APPEAL BOND IN U. S. COURT

(Continued from First Page.)

Supreme court reversed the verdict and Robert E. Crowe was then state's attorney—a nol prosee was taken by the state. The murder charge was reinstated in the drive against public enemies.

Chief among the witnesses for the state is Sergt. James McBride, who was with Pflamme when the two policemen fought a gun battle with White and another hoodlum named Jimmy Johnston. Johnston was also slain in the battle.

Second Trial for White.

White was convicted of the Pflamme murder in 1926, served three years of a life sentence and then was released on an appeal when the original charge was found to have been improperly presented. A new indictment recently was voted against White in the campaign against public enemies.

Policeman James McBride, original chief state witness and companion of the slain officer when he was killed, was the subject of an attempted assassination while riding in a Maywood street car last November. Claude Maddox, "cirrus" gangster, was seized as one of his assailants. McBride has recovered and will again testify.

Gang Armorer Faces Court.

Peter Von Frantkus, long known as gangland's gun runner, went on trial today before Judge Justin F. McCarthy in the jury branch of the Municipal court charged with selling firearms without keeping a record of the sale.

The state will introduce as evidence two machine guns identified by ballistic efforts as the weapons that were used in the St. Valentine's Day massacre of gangsters. A third found in the Bent of Fred Burke, was evidence. It was that Coroner Heinked Burke to Harry ("Grease") convicted.

...the Depots-Trust-Trust...
...before Judge Francis...
...public enemy No. 2, arrived at the local immigration office today from Washington.

Volpe Deportation Warrant Issued.

The deportation warrant for Tony "Alto" Volpe, Capone gangster and public enemy No. 2, arrived at the local immigration office today from Washington.

Shirley D. Smith, immigration chief here, explained that the first step in the proceedings to send Volpe back to Italy was to obtain a passport from the Italian consul. If the consul wishes to determine that Volpe is an Italian subject the investigation may take three or four months. If he waives the investigation the proceeding usually takes four or five weeks. Volpe meanwhile will remain at liberty on a bond of \$10,000.

Volpe was born in the Argentine, immigration officials said, but his parents later returned to Italy and resumed their Italian allegiance.

O'Donnell Case Continued.

A perjury charge against Bernard O'Donnell, a member of the Klondike O'Donnell clan of bear hunters and labor racketeers, which has been pending since March 28, 1928, came up today before Judge Peter H. Schwaba and was continued to March 28. When State's Attorney Swanson's attention was called to the fact that the case had been pending for nearly a year he called in his assistants and ordered them to be ready to take the case to trial on March 28.

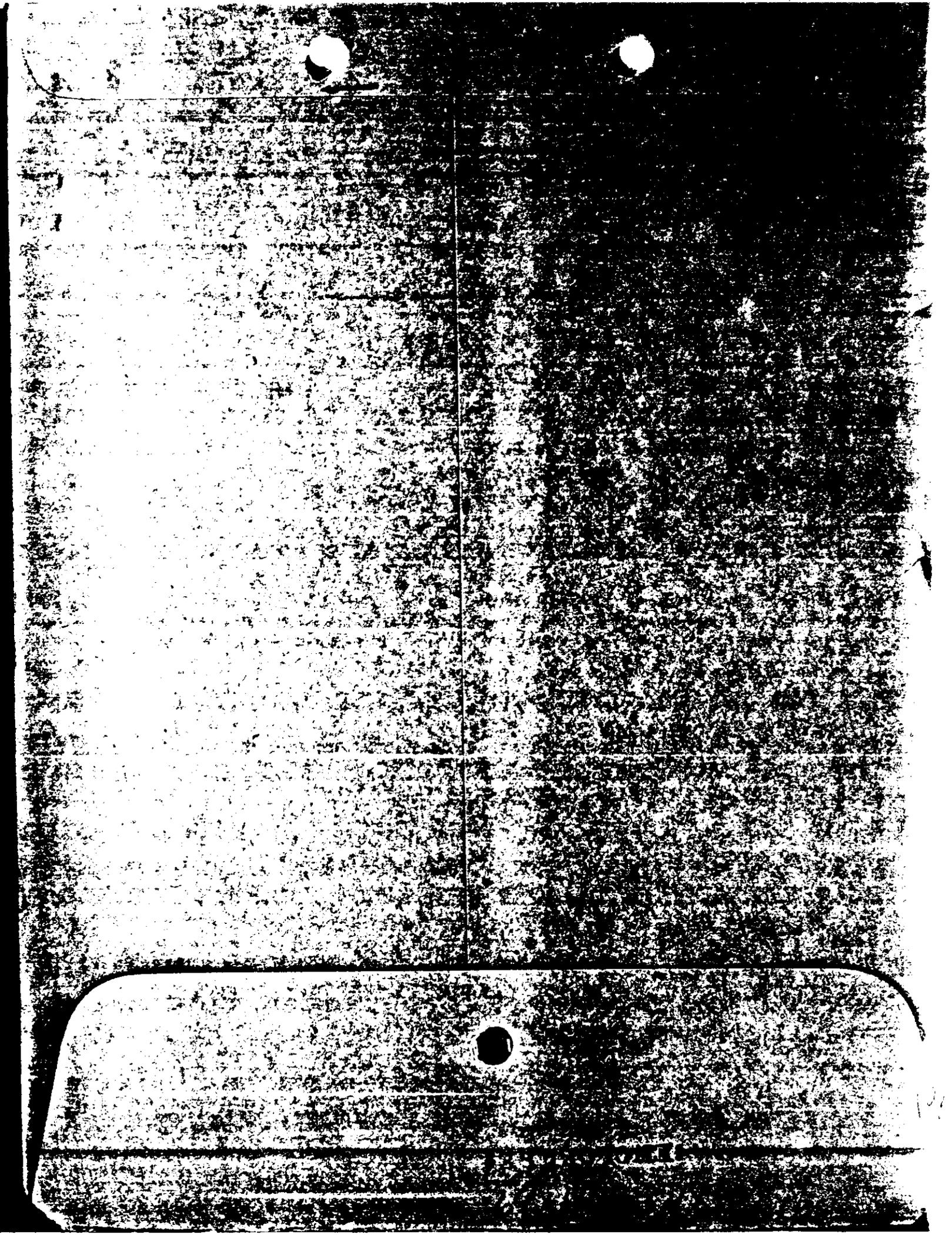
The perjury charge grew out of a gun-toting case against O'Donnell. When the case came up he presented a petition asking for return of the weapon, saying it was his and that the police had taken it from him unlawfully.

The petition was disallowed and when O'Donnell took the stand he denied the revolver was his.

212 N. Michigan
Broadway near Lake
Medicine and
Gynecology
Harry ("Grease") convicted

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FOR ATTENTION OR ACTION AS INDICATED

Date

noted
[Signature]

DIRECTOR
 MR. TOLSON Room 518
 MR. APPEL Room 418
 MR. BAUGHMAN Room 422
 MR. EGAN Room 420
 MR. HUGHES Room 418
 INSPECTOR CLEGG
 INSPECTOR CULLEN
 INSPECTOR KEITH
 MISS GANDY Room 326
 MRS. SKILLMAN Room 318

BUREAU FILE ROOM
 DIVISION SEVEN
 IDENTIFICATION DIVISION
 PERSONNEL FILE ROOM
 STENOGRAPHIC POOL



MAR 24 1931

Harrah!
 Well of all the lunks, this takes
 the prize. It took me 2 years to get
 him to try Capone & now *[Signature]*
 he looks in the sunlight of
 the effort which he did
 everything to avoid.

PLEASE SEE ME
 HAROLD NATHAN
 ROOM 318
A. C. H.

CAPONE HEARS SENTENCE; POSTS BOND FOR APPEAL

U. S. Begins Tax Case Against Gambler.

(Picture on back page.)

Public enemies and less prominent hoodlums were concerned yesterday with the processes of the law, both state and federal. Those with legal difficulties ranged from Al Capone, public enemy No. 1, to Jerry O'Connor, loop gambler and race horse man, who is in trouble over his income taxes.



ROBERT NEELY.

Acting Collector of Internal Revenue Robert E. Neely filed a claim, claiming income taxes of \$270,000 for the years 1925, 1926, 1927, 1928, and 1929, on the property of O'Connor. For years O'Connor has maintained an elaborate gambling establishment in South Wabash avenue. He is under investigation by the intelligence unit of the revenue bureau, which handles criminal cases. Whether his case will result in a criminal prosecution has not been ascertained.

Capone Appears for Sentence.

Al Capone appeared before Federal Judge Wilkerson for his formal sentence to six months in the county jail for contempt of court. He has posted a supersedeas bond of \$5,000 to permit an appeal. His counsel has allowed 30 days to file a bill of exceptions and the court stipulated that if the contempt case is not disposed of by June 1, when the supersedeas expires, he must go to the Circuit Court of Appeals if he wishes a continuance.

Capone again was escorted to and from the federal building by police squads under Lieut. William McCarthy and Lieut. Edward Birmingham, who protected him last week, during his trial, against possible assassins.

Druggan-Lake Cases Delayed.

The income tax evasion cases against Terry Druggan and Frankie Lake, the former beer partners, who have entered conditional pleas of guilty, were up in federal court yesterday for sentence, but each was continued until June 1 pending outcome of the appeals of Ralph Capone and State Representative Lawrence C. O'Brien. The beer dispensers retained the privilege of changing their pleas

as to felony counts if these appeals are successful.

Judge Francis Berrell continued the vagrancy case against Harry Gusik, Capone vice monger, until March 15, with the understanding that it must be disposed of then. Gusik's attorneys insisted on an immediate trial, but the state's attorney's office was engaged with other matters.

State's Attorney Swanson ordered his assistants to be ready on March 15 to prosecute the perjury case against Bernard O'Donnell, brother of William (Klondike) and Myles O'Donnell, which was continued yesterday by Judge Peter M. Schwaba for the eighth time on the request of the state. O'Donnell claimed ownership of a gun in a motion to quash his indictment for carrying concealed weapons, and disavowed ownership during his trial.

The case against Peter von Frantzius, sporting goods dealer, charged with selling machine guns without keeping records of the sales, was continued until March 15 by Judge Justin F. McCarthy, who ruled that a jury must hear it.

CHICAGO TRIBUNE

Tues., Mar. 3, 1931.



MAR 5 1931

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CONTEMPT CASE DECISION MAY BE GIVEN TODAY

CHICAGO TRIBUNE 2/27/31

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Gang Chief Fails to Take Stand.

A decision by Federal Judge Wilkerson determining whether Al Capone, public enemy No. 1, will go to prison for contempt of court is expected today at the conclusion of the gang leader's trial. The government's closing argument was begun yesterday afternoon by Assistant District Attorney Jacob Grossman and it was believed that the argument of other counsel would be finished this morning. Capone had indicated that he thought he would assist his own defense by taking the stand, but when his attorneys closed the presentation of their evidence he had not been called as a witness. This was taken by court attachés as an indication that his lawyers sought to save him from the cross-examination that had weakened other defense witnesses.

Doctor Has Bad Day.

One of these was Dr. Kenneth Phillips, Capone's Florida physician, who put in a bad day under questioning by the prosecution about the affidavit on the gang chief's illness out of which the two year old case grew.

Judge Wilkerson assisted Prosecutor Grossman in a withering cross-examination of Dr. Phillips, which ended in the physician's admission that many of the statements in the affidavit were false. Capone, on the plea of illness, gained a stay from March 12 to March 29 on a subpoena to appear before a federal grand jury in Chicago in 1929.

Dr. Phillips admitted that the affidavit had been dictated by Capone's Miami lawyer and that he had only scanned it hastily before signing it.

On the other hand, Capone's nurses who attended him night and day during his attack of pneumonia in January, 1929, could not be swayed by cross-examination from their testimony that he was a sick man, and that he did not leave his Miami residence on the 17th, 18th, or 19th of January, when, according to the testimony of three policemen, he attended the Miami race.

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Felony Guard Continued.

loyalty of Capone's being in town and on trial had somewhat waned yesterday, the second day of the hearing, and fewer curiosity seekers flocked to the federal building. But the police motor escort was still in attendance, accompanying the respondent on his trips from the Lexington hotel to the federal building and back. The gangster used a high powered automobile for the first trip. With him rode Philip D'Andrea, well known hoodlum, who accompanied Capone on his airplane trip from Miami to Bimini when Capone was supposedly "confined in bed."

Capone was scheduled to be arraigned in Felony court before Judge Frank M. Padden yesterday on the vagrancy charge pending against him. His counsel, Attorney Michael Ahern, informed Judge Padden that the gangster was on trial in federal court.

"Well, he can't be in two places at once," said Judge Padden, and continued the case until March 4.

Nurse Tells of Illness.

Miss Nora Hawkins, now attached to the Dade county hospital at Miami, was the first nurse called on Capone's behalf by Attorney W. F. Waugh. She said she was a graduate of the Rhode Island hospital at Providence.

Q.—When did you first see Capone?

A.—When I was called in to attend him by Dr. Phillips. To the best of my recollection it was in the second week of January.

Q.—How did you find him? A.—I found him very uncomfortable. He had a temperature of 104 and a high pulse rate. He was coughing hard enough to shake your head off. He also complained of pains in his chest.

Attended Him Seven Nights.

Q.—How long were you there? A.—Between seven and ten nights.

Q.—Did Capone at any time leave his bed while you were there? A.—Absolutely not.

Q.—So far as you know, was he out on the 17th, 18th, or 19th of January? A.—So far as I know, he was not. I was only there nights.

Q.—In your opinion, and taking his condition into consideration, would it have been possible for him to attend the horse races on the 17th, 18th, or 19th of January? A.—Absolutely not.

Miss Hawkins explained that she kept daily charts while attending her patient, but that she tore them up shortly afterwards when she went into institution work.

His Day Nurse Testifies.

Miss Ann Fagan, a red haired nurse who said she did her graduate work at the Virginia hospital, Richmond, and had six months experience at the Rockefeller Institute, New York, attending returned soldiers suffering

The Evening Star, Washington, D. C., March 3, 1931

ONE-MAN DRIVE IN CHICAGO HAS GANGS QUAKING WITH FEAR

U. S. Prosecutor's Tax Law Thrusts Thin Ranks of "the Immune" Among 26 Public Enemies.

Special Dispatch to The Star.

CHICAGO, March 3.—One man, rather slight of stature, modest and soft-spoken in manner, suggesting the professor rather than the prosecutor; an earnest churchman, but fearless, determined and intensely thorough, had the powerful potentates of the underworld quaking yesterday.

He is George E. Q. Johnson, Federal district attorney for the northern district of Illinois. Seven times Mr. Johnson has made sallies against the men who sit with immunity on gangland thrones and seven times he has knocked them off. Where 8,000 Chicago police and detectives, a whole phalanx of prohibition agents, vigilante organizations of citizens and local prosecutors have been largely ineffective, this official has scored with results.

Consequently the ranks of the immune among Chicago's 26 public enemies are thinning perceptibly—Ralph Capone, Jake Guzik, "Mope" Volpe, Frank Nitti, Terry Druggan and Frankie Lake tumbling one after another.

Tax Charges Turn Trick.

And then "Scarface Al" Capone himself—head of the \$100,000,000 booze, vice and gambling syndicate which long has defied the law with immunity—was nicked. The procession of gambling house operators of the Capone organization entering the grand jury chambers suggests that Mr. Johnson is soon to be ready to strike hard at this principal underworld figure with an indictment for conspiracy to violate the Federal income tax laws. His six months' sentence for contempt of court is rumored to be just a nick and nothing more.

Twenty months of thought on the problem of dealing with rich and powerful gangsters provided the Federal district attorney with the weapon which is turning the trick—indictment for conspiracy to violate the United States income tax laws in failing to pay taxes on huge underworld profits.

When he decided to strike, Mr. Johnson and his aids were so sure of their ground that they hit with precision and such sureness that gangs hold him in fear. All their money and all their men have finally proved helpless.

Ralph, brother of Al Capone, was shown to have had \$1,871,000 in profits from gambling alone in three years. He was the first convicted and drew three years, with the case now on appeal. Then came Nitti, who pleaded guilty when two politicians bucked the game and lost. He now is serving 18 months.

Jake Guzik, with \$1,049,000 profit from gambling in three years, fought the case and drew five years. After that Terry Druggan and Frankie Lake, with a million in beer profits at stake, pleaded guilty.

Volpe, No. 2 among Chicago gangsters, has just been ordered deported for violation of the immigration laws.

What all this means is explained by Mr. Johnson.

Ends Gangs' Immunity.

"Conviction is important," he said, "because when these gangsters come out of prison they will not be able to count on old loyalties. Their immunity—or gangdom's belief in their immunity—is gone. That was their stock in trade. There is no friendship among hoodlums. There is no loyalty except the loyalty born of their common purpose. That purpose is easy money. Take their money away and they dry up like a weed that has been cut down."

The Federal prosecutor finds that the most disheartening thing is the way supposedly respectable citizens have come forward to front for the gangs.

"We know that gangs make contributions to factions of political parties," he explained. "The factions pay back in privilege, and privilege is immunity to violate the law sold to organized criminals by public officials."

Mr. Johnson has just been reappointed district attorney with four more years to work on the gang leaders.

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Mr. Croffman was examined the witness at this point.

Q.—You talked with Mr. Waugh before leaving Florida to come here and testify, did you not? A.—Yes.

Q.—You talked with Mr. Clarke, the government investigator, didn't you? A.—Yes.

Q.—You didn't remember dates and didn't possess any definite recollection when you talked to Mr. Clarke, did you? A.—I don't have any definite recollection now.

Dr. Phillips, who testified for the defense on Wednesday, declared on cross-examination yesterday that he was 21 years old, a graduate of the University of Chicago and of Rush Medical college, receiving his diploma in 1926 and going to Miami shortly thereafter.

Q.—Then the statement in your affidavit that you had been "actively and continuously engaged in the practice of medicine and surgery for four years in Chicago" was not true, was it? A.—No, I only practiced here as an interne.

Q. [by the court]—How long were you an interne in Chicago? A.—One year.

Q. [by the court]—Did you have any other practice here? A.—No.

Q.—Did you know Capone in Chicago? A.—I had seen him several times.

Saw Capone at City Hall

Q.—Professionally? A.—No, I think it was around the city hall that I saw him. I didn't have any personal acquaintance with him.

Q.—Did you treat any other members of Capone's family in Florida, or friends of his? A.—Yes, I treated his wife, his boy, Sonny, his sister-in-law, whose name I don't recall, and a worker at his bathhouse.

Q.—Any others? A.—Yes, I treated his brother-in-law, Coughlin, I believe his name was, Dennis Coughlin.

Q.—What was your fee? A.—\$2,000, but that took care of several consultants I called in; he was injured in an automobile accident. This fee was disputed and only half of it was paid, when we settled out of court.

Q.—How much was Capone's bill?

MANDE
BROTHER
MEN'S SHO

declared that the segment was based on the affidavit, which said that the trip to Chicago took place during Capone's life.

Capone Falls to Take Stand

When the defense rested without putting Capone on the stand, the prosecution called Dr. Charles Spencer Williams, professor of internal medicine at the University of Illinois, to rebut Dr. Phillips' testimony.

Q.—How long would it require a man, after suffering conditions such as you have heard here, to recover suddenly to go out doors? A.—That depends upon what he became sick.

Q.—When O'Connell left, Jan. 28, by their own testimony, A.—The ordinary time would be about fifteen days. Q.—In your opinion, would coming to Chicago in March have endangered Capone's health? A.—That's a matter of judgment. If he was out and around, he wouldn't have been any worse off in Chicago than down there.

DENIES LARGE SALES

A statement issued yesterday by Robert Inham Randolph, president of the Association of Commerce, was called to the attention of Capone during a court recess. Col. Randolph charged that \$5,000,000 pints of beer are sold daily in Chicago and that the profits therefrom to the Capone gang are \$2,000,000 a week.

"Well, Col. Randolph ought to know, he's head of the Secret Six," said Capone. "But if he has that information, why doesn't he turn it over to the government?" "Of course that's absurd. Why, I

don't believe there is that much beer in the United States."

Capone established himself for publicity among young women yesterday. A girl reporter tip-toed blushing up to him as he sat in the gallery awaiting the opening of court.

Capone arose when the young woman introduced herself, and bowed low.

Call Girl Reporter Bewildered

"I wanted to ask you a question, but I am so flustered I can't remember what it was," she said. Capone smiled indulgently.

"Q. I remember, I wanted to ask you what you think of the American girl?"

"Why, I think you're beautiful," said Capone.

A secretary from the judge's chambers entered the court room with an announcement that "London is on the wire."

"I'm sorry, lady, but there's nobody in London that would be calling me, not even King George," said Capone.

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J. S. SCORES AS CONTEMPT CASE NEARS FINISH

Nurses Call Gang Chief Sick Man.

The contempt of court case against J. Edgar Capone, public enemy No. 1, reached the closing argument stage yesterday after a session which was marked by the breaking down of the affidavit made by Dr. Kenneth Phillips, the gang chief's Florida physician, out of which the two year old case grew.

Federal Judge Wilkerson assisted prosecutor Jacob Grossman in a withering cross examination of Dr. Phillips, which ended in the physician's admission that many of the statements in the affidavit were false. Capone, on the plea of illness, gained a stay from March 12 to March 20 on a subpoena to appear before a federal grand jury in Chicago in 1928.

Fall to Shake Nurses.

On the other hand, Capone's nurses who attended him night and day during his attack of pneumonia in January, 1928, could not be swayed by cross examination from their testimony that he was a sick man, and that he did not leave his Miami residence on the 17th, 18th, or 19th of January, when, according to the testimony of three policemen, he attended the Miami races.

The novelty of Capone's being in town and on trial had somewhat waned yesterday, the second day of

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he heard, and that he had seen
But the police under arrest was
in attendance, accompanying the de-
pendent on his trip from the Lon-
gton hotel to the federal building
and back. The gangster used a high-
powered automobile for the first trip.
With him rode Philip D'Andrea, well-
known hoodlum, who accompanied Ca-
pone on his airplane trip from Miami
to Bimini when Capone was supposed-
ly "confined in bed."

Delay on Vagrancy Charge

Capone was scheduled to be ar-
raigned in felony court before Judge
Frank M. Padden yesterday on the
vagrancy charge pending against him.
His counsel, Attorney Michael Aborn,
informed the court that the gangster
was on trial in federal court.

"Well, he can't be in two places at
once," said Judge Padden, and con-
tinued the case until March 4.

Miss Nora Hawkins, now attached
to the Dade county hospital at Miami,
was the first nurse called on Capone's
behalf by Attorney W. E. Waugh.
She said she was a graduate of the
Rhode Island hospital at Providence.

Q.—When did you first see Capone?
A.—When I was called in to attend
him by Dr. Phillips. To the best of
my recollection it was in the second
week of January.

Q.—How did you find him? A.—I
found him very uncomfortable. He
had a temperature of 104 and a high
pulse rate. He was coughing hard
enough to shake your head off. He
also complained of pains in his chest.

Attended Him Seven Nights

Q.—How long were you there? A.—
Between seven and ten nights.

Q.—Did Capone at any time leave
his bed while you were there? A.—
Absolutely not.

Q.—So far as you know, was he off
on the 17th, 18th, or 19th of January?
A.—So far as I know, he was not. I
was only there nights.

Q.—In your opinion, and taking his
condition into consideration, would it
have been possible for him to attend
the horse races on the 17th, 18th, or
19th of January? A.—Absolutely not.

Miss Hawkins explained that she
kept daily charts while attending her
patient, but that she tore them up
shortly afterwards when she went
into institution work.

His Day Nurse Testifies

Miss Anne Fagan, a red haired
nurse who said she did her graduate
work at the Virginia hospital, Rich-
mond, and had six months experience
at the Rockefeller institute, New York,
attending returned soldiers suffering
with respiratory diseases in 1918, was
then called by Defense Attorney Ben-
jamin P. Epstein.

Miss Fagan stated that she was
called to attend Capone in the day
time, on Jan. 8, to the best of her
recollection.

Q.—Where did you first see Capone?
A.—I saw him then. He was in bed
and had been for two days. He was
complaining with pains in the chest,
coughing incessantly, and had a tem-
perature of about 104.

Q.—How long did you remain there
as day nurse? A.—About two weeks
or longer.

Q.—During that time, did Capone
ever leave the house? A.—No.

Q.—Did he get out of his bed?
A.—No.

Q.—Was his condition such that it

would have been possible for him to attend the races on the 17th, 18th, or 19th of January? A.—No, he had a high fever.

Q.—You never left the house without reporting to Miss Hawkins, and he never left without reporting to you, is that right? A.—That's correct.

U. S. Cross Examines Her.

Mr. Grossman cross examined the witness at this point.

Q.—You talked with Mr. Waugh before leaving Florida to come here and testify, did you not? A.—Yes.

Q.—You talked with Mr. Clarke, the government investigator, didn't you? A.—Yes.

Q.—You didn't remember dates and didn't possess any definite recollection when you talked to Mr. Clarke, did you? A.—I don't have any definite recollection now.

Dr. Phillips on Stand.

Dr. Phillips, who testified for the defense on Wednesday, declared on cross examination that he was 31 years old, a graduate of the University of Chicago and of Rush Medical College, receiving his diploma in 1926 and going to Miami shortly thereafter.

Q.—Then the statement in your affidavit that you had been "actively and continuously engaged in the practice of medicine and surgery for four years in Chicago" was not true, was it? A.—No, I only practiced here as an interne.

Q. [by the court].—How long were you an interne in Chicago? A.—One year.

Q. [by the court].—Did you have any other practice here? A.—No.

Q.—Did you know Capone in Chicago? A.—I had seen him several times.

Saw Capone at City Hall.

Q.—Professionally? A.—No, I think was around the city hall that I saw him. I didn't have any personal acquaintance with him.

Q.—Did you treat any other members of Capone's family in Florida, or friends of his? A.—Yes, I treated his wife, his boy, Sonny, his sister-in-law, whose name I don't recall, and a worker at his bouthouse.

Q.—Any others? A.—Yes, I treated his brother-in-law, Coughlin. I believe his name was, Dennis Coughlin.

Q.—What was your fee? A.—\$2,000. But that took care of several consultants I called in; he was injured by an automobile accident. This fee was disputed and only half of it was paid, when we settled out of court.

Capone's Bill Is \$300.

Q.—How much was Capone's bill? A.—I don't recall, somewhere around \$300 or \$400.

Q.—You testified you were called to Capone's house on the 18th of January. How often did you visit him after that? A.—Three times a day the first week, twice a day the second week, and after that he began to improve, so I didn't see him every day.

Q.—Now, how long was he confined to bed, and by that I mean in bed, not going to the horse races? A.—Close on to three weeks or a little over.

Q.—That is after you came there? A.—No, that is from the time he was taken ill.

What you got on the table, after
A—Yes.

Mr. Willkerson took up the question at this point.

Q—Let me be sure I understand you. You went there on the 15th. You say he was in bed three weeks?

A—Yes, or a little longer.

Q—Airplane Ride Possible.

A—Three weeks or more. That would be up to Feb. 4. What is your professional opinion as to whether or not this man was in such physical condition that he could have taken an airplane trip, going 80 miles each way, on Feb. 2? [This testimony had been given by Capone's pilot.] A—I think it was possible for him to do it, but it was very inadvisable.

Q—How could he do that if he was in bed all the time? A—He was not in bed, I don't suppose, up until that time.

Q—Well, three weeks; I want to be fair about this. Now three weeks from Jan. 13 would be Feb. 4. Now you're obliged to correct your statement, aren't you, that he was sick in bed for three weeks if he took that trip on the 20 of February? A—I have to make it approximately, because I really cannot remember exactly, but I think it was about that length of time.

Ride's Effect on Health.

Q—All right, how about a man who has been threatened with pneumonia making an airplane trip going 80 miles an hour, 80 miles in each direction?

A—Your honor, I think it all depends on two big factors, maybe more. In the first place, where he was sitting in the plane [an open craft] and whether he was exposed to the draft and wind. In the second place, it depends on the kind of day it was, whether it was stormy and damp, or warm and sunshiny like the days we have.

Q—Are you sure that you did not exaggerate the seriousness of this man's condition? A—Your honor, as sure as I am sitting here.

Attacks "In Bed" Statement.

Mr. Grossman resumed at this point, attacking the statement in Dr. [name] that Capone had been confined to his home for ten weeks and had only been out of bed ten days when the affidavit was sent to Chicago, under date of March 5.

Q—Now by confined to bed, as you used that expression in this affidavit, you do not mean in bed do you?

A—No, I cannot say that I do.

Q—And by confined to bed you might mean taking airplane trips?

A—I would hardly say that.

Q—Steamer trips? A—No, not that.

Q—You might mean going to the races? A—It could mean that.

SHERIFF SEIZES SLOT MACHINES IN ROADHOUSES

Dixon, Ill., Feb. 28.—[Special.]—In a county-wide raid, F. A. Richardson, sheriff of Lee county, seized several auto loads of jack pot and money slot machines last night and this morning. All roadhouses and amusement places about Dixon and in Amboy and sub-let business houses were visited by the officers.

State's Attorney Mark C. Keller ordered the raids when complaints were received that charged that minors and children were allowed to play the machines. Money found in the gambling machines will be turned over to the Dixon welfare committee to use for

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Clippings

✓ CIRCULARS CLIPPINGS

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File

C

Capone Defense Rests In Contempt Trial; Al Avoids Testifying

**Gangster's Doctor Admits
Error in Affidavit for
Evidence.**

POLICE ON GUARD

"Scarface Al" Capone's trial on contempt charges before Federal Judge James E. Wilkerson neared its close when the defense rested its case abruptly this afternoon.

Earlier in the day Capone had told newspaper men that he planned to take the stand. During the noon recess, his attorneys, William F. Waugh and Benjamin P. Epstein, were said to have discussed the possibility that the prosecution, with Capone on the stand, might have wandered far afield in its questioning and that Capone might have done himself generally more harm than he could do good in today's specific case.

Assistant District Attorneys Jacob I. Grossman and Cassius Focht called Dr. Charles E. Williamson, a member of the faculty of the college of medicine of the University of Illinois, to testify as to the ordinary course of disease in pneumonia and bronchial cases.

Nurse Is Witness

Miss Ann Fagan, a nurse who attended Capone during his illness, testified that on Jan. 17, 18 and 19—days in 1929 on which government witnesses testified they saw Capone at a race track—Capone was ill in bed with a temperature that hovered about 104 degrees.

Mr. Grossman, in cross-examination, forced an admission that she was uncertain of the dates between which she had been in attendance on the gang boss.

Closing arguments were expected following the completion of Dr. Williamson's testimony.

Indications were that the judge would reserve his decision until he had an opportunity to review the

he had an opportunity to...
...of evidence in the...
...to the federal building...
...Michael Stein was before...
...Frank M. Tuller in...
...to ask that the public...
...agency change be continued...
...week because of the...
...appearing in federal...
...the... case was...
...for...

A Detective...
...and...
...and...
...at 15th street and...
...and conveyed his car to the...
...building. Phil D'Andrea, who...
...usually found cluttering up the...
...of City Sealer Dan...
...in the city hall, rode with...
...in the... which was piloted by a...
...sheaffer.

Crowds Aboard Today.

Apparently every one...
...federal building who...
...Capone saw him yesterday, so...
...was so... crowd when...
...stepped in through the Adams street...
...entrance.

The same precautions...
...yesterday were again in...
...evidence today.

Capone was in affable...
...Newspaper men surrounded him as he...
...appeared in Judge Wilkerson's court-

(Continued on Fourth Page.)

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not for

US GATHER FOR BLINDS

CAPONE
CASE;
WITNES



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...yesterday.
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...Capone," said
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"I was suppo
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...it was."

...stood
...I know."

...What do you t
...say?"

...I think you'r
...The girl r

...Capone told r
...to take t

...It's probably
...warrant," he sa

...Doctor Ro

...Dr. Kenneth
...who mar

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...to be questio

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...Illness in Jan

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...Capone's plea
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...eral grand jury
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...man subjected

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...of medicine in

...months and f
...that in Chicago

...then, is it?"

...approximate." t

...Judge Wilker
...asked:

...How long di
...be?"

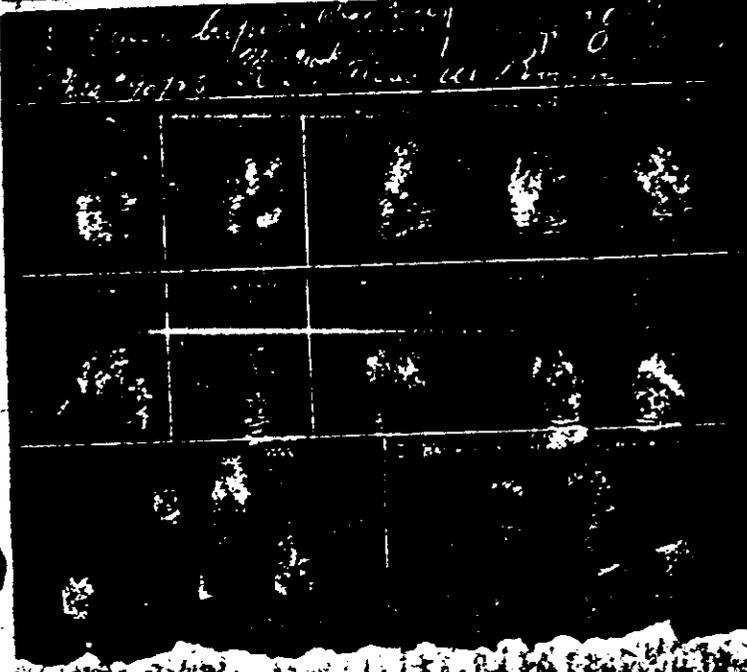
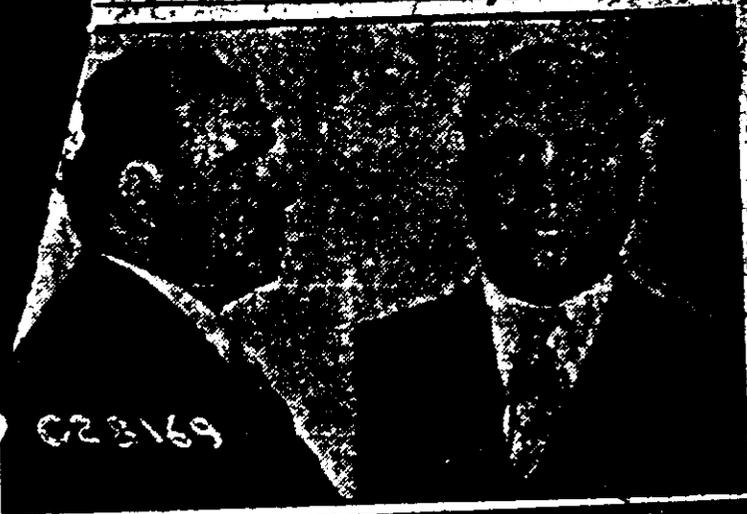
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...gangs outside the federal building as growing sought to catch
...Alvin Karpis ("Scarface")... A cordon of mounted police was
...necessary to keep order and to keep a line in the street for traffic. Below
...the Kenneth Phillips who... Judge James H.
...was charged with... vicariously charge

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FILE AT ROGUES' GALLERY



Picture of Alphonse ("Scarface Al") Capone made of the bureau identification here after his arrest recently on vagrancy charge. Capone, former prince of the jailbird and brothelkeeper and head of racketeering since 1925, had Capone suffered the indignity of being "arrested" and being printed in the rogues' gallery. Capone drew a six month sentence on contempt charge in federal court today.

**GANG CHIEFTAIN
GLUM AT RULING
OF U. S. JUDGE**

Plans Appeal of 5-Year
Term in Cell; Crown
Mins Around

AFFIDAVIT IS ASSAILED

Alphonse Capone, gang chief, was today found guilty of racketeering by Federal Judge James H. Wilburson and sentenced to five years in the Cook County Jail.

Judge Wilburson overruled a motion for a new trial and an appeal of judgment. He ordered the state attorney to prepare a formal appeal and announced that it would be entered Monday.

Capone's request, however, was granted leave to appeal the case to the United States Dept. of Appeals. The judge granted these terms only if the man met conditions that he would pay the \$5,000 bond which Capone had posted for his appearance in the contempt case to stand out of the jail. Capone will be in there until the case is heard by the United States.

Capone had been serving a 30-day sentence for contempt of court in the federal court today. He was arrested on a charge of vagrancy and was held in the Cook County Jail. The judge's ruling was a surprise to many who expected a longer sentence.

U. S. CONTEMPT

(Continued from First Page)

The testimony of Dr. Phillips will decide the facts on the testimony of Dr. Owens and the two nurses who cared for Capone.

Call Statement False.
"The respondent was out of bed only ten days past, according to the affidavit. That statement is glaringly false. The result was that short extension was granted."

"But I think we miss the point when we lay stress on the inconvenience, if any, to which the United States was subjected or that Capone was willing to come any time after. He pointed out in his letter in which he said he did not wish to be in contempt."

"The point in this case is that there has been a system established for the administration of justice. The court is part of that machine. It deals with litigants, jurors and others in only one way, through the processes of the court and they are not to be flouted. It is the duty of all to deal honestly and fairly with the court. When an attorney wishes the court to take action the court is entitled to full disclosure of the facts."

"Here we have an affidavit which says the defendant has been out of bed but ten days. It must have been known by those about him that he was out much longer than that. The situation would be the same if a continuance was granted for some other reason. The point is: From the record in this case there is nothing the court can do but find the defendant guilty."

Prosecution Asks Conviction.

Assistant District Attorney Grossman was finishing the first of the government's closing arguments, contending that Capone should be found guilty of contempt of court for taking refuge behind a false plea of illness when he was summoned to appear two years ago before a federal grand jury here.

"It seems to me," said Mr. Grossman, at one point, "that I don't need to review all this testimony, that the court has listened carefully and—"

He spoke the judge: "I agree of punishment" be determined by whether the defendant just wanted to hang out of court or whether he was really sick. He said that he had been checking a great rate, stopped his law practice here and glanced nervously at the courtroom.

Mr. Grossman continued his argument, worked to bring that matter up.

He cited the famous Harry Stocker case, in which the millionaire oil man was sent to a Washington (D. C.) workhouse for setting detectives to trail jurors in a criminal case growing out of the Teapot Dome scandal.

See Court Slightly Impaired.
"That sort of thing," he said, "endangers the dignity of the courts before the people. That tendency should be considered. If a person can fall to appear and can submit false affidavits to postpone a hearing and come when he gets ready, it endangers the power and dignity of the court."

He referred to the testimony of Dr. Kenneth Phillips, Miami physician, who treated Capone during his illness, and who admitted to court that there were scars in the affidavit which he sent to Chicago to support Capone's plea that he was too ill to appear before the jury.

"Capone himself," said the prosecutor, "didn't consider himself seriously ill or the likelihood of self-protection. He never showed enough in him to prevent him from taking an airplane ride. Six weeks after that time he found it necessary to consult a doctor when he was

Y. I don't believe that Capone is sick. That he has influenza or pneumonia, but that his illness was not real. If he was dangerously ill, Dr. Owens (Dr. David Owens, Chicago physician who went to Miami, Fla., in response to a call from the family of the time Capone was ill) would have stayed down there."

Mr. Grossman cited several pertinent cases which he said had elements similar to those in the Capone case.

The judge again interrupted. "The situation is the same," he said, referring to Grossman's argument, "as if a man said he was too sick to serve on a grand jury and it then developed there was no reason why he could not serve. There's no doubt but that such a person could be held in contempt."

Grossman took up the same line of argument. "It doesn't matter," the judge observed, "whether such a person was excused temporarily or permanently. It is the act that counts."

Grossman's final sentence was: "The court's action then and now will determine if such acts are to be condoned or encouraged."

Capone, still in good spirits, arrived this morning at the federal building attended by his customary police guard. A letter, addressed to him at the federal building, was given him by Deputy Marshal Joseph O'Neill.

A reporter remarked about Capone's "fan mail."

JUDGE WILKERSON'S OPINION RENDERED IN CAPOONE CASE

The text of Judge Wilkerson's opinion in the Capone case follows:

"The respondent was served with a subpoena from this court requiring him to appear before the grand jury on March 12, 1928, at 10 a. m. On the 11th of March he entered his appearance in this court, submitted himself to the jurisdiction of the court, and made an application to the court to postpone his appearance in response to the subpoena until such time as might be directed by the order of the court. In connection with the petition made by express reference there was submitted to the court an affidavit executed in Florida and sent by the respondent to Chicago."

"The affidavit was that of a doctor named Phillips. The affidavit stated that he was acquainted with the respondent, that he had been attending him professionally since the 10th of January; that the respondent was then under professional treatment and from January 12, 1928, respondent had been suffering from broncho-pneumonia pleurisy with effusion of fluid into the chest cavity, and for six weeks had been confined to his bed at his home on Palm Street, Fla., and had been out of bed only for ten days last past; that he had not fully recovered from the disease, and that in the professional opinion of the affiant, his physical condition was such that it would be dangerous for him to leave the safe climate of southern Florida and go to Chicago, and that to do so would imperil the safety of the respondent, and there would be a very grave risk of relapse which might result in his death from recurrent pneumonia; that the doctor advised against requiring respondent to go from Florida to Chicago; and that it would be inconsistent with the personal safety of the respondent to go to Chicago; that the opinion expressed by affiant was concurred in by three professional consultants of the city of Miami, Dr. Steady, Dr. Maxwell and Dr. Francis, all of whom only be reached by addressing them at 125 Broadway Avenue in the city of Miami."

"I directed in Wilkerson's opinion that the respondent be permitted to appear as to this matter by telephone in that it was essential to the safety of the respondent, and that the respondent be permitted to appear from the hospital, and that the respondent be permitted to appear by telephone and counsel for the respondent be permitted to appear by telephone."

...the respondent was out of bed only ten days past, according to the affidavit. That statement is glaringly false. The result was that short extension was granted.

...The point in this case is that there has been a system established for the administration of justice. The court is part of that machine. It deals with litigants, jurors and others in only one way, through the processes of the court and they are not to be flouted. It is the duty of all to deal honestly and fairly with the court.

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