# ATTORNEYS OUTLINE AIMS OF PROSECUTION AND DEFENSE

He contended that indictment for perjury and of a pies of guilty was a bar to Mr. Heney argued that a plea of guilty without sentence was subject at any time

### to a reversal. Tanner Allowed to Testify.

Judge DeHaven held that a judgment was necessary to bar one convicted of perjury from testifying, and overruled the objections. Mr. Heney opened the case with his statement in which he outlined with his statement in which he outlined the Government's contention. He stated that the allegation in the indictment that Senator Mitchell had accepted fees from Frederick A Kribs was the beginning and the end of the offense charged. Realizing that a serious offense was charged, the Government would not ask the jury to return a verdict of guilty unless it was proven herond. proven beyond a reasonable doubt that the defendant had knowingly done the things charged in the indictment. The Government would show that the delendant had entered into an agreement

with Kribs and Tanuer to expedite claims for the timber-dealer and that various payments of money had been made. That he had talked with Kribs about the mat-

ter and sent him to Tanner to arrange the financial details of the proposition. Mr. Heney also promised to show for the purpose of evidencing the knowledge of the defendant, that similar agreements had been made with Benson of California. in October, 1901, in which Benson agreed to pay \$1500 for expediting claims. Cases would be shown in which Mitchell

Cases would be shown in which Mitchell had appeared before the Department of Commerce and Labor for the Jung Wah Company asking the department to refrain from indiscriminate arrests of Chinamen in Portland, for which service he received \$100. He had been told by Tanner he would get a big fee in the event of his efforts being successful. Besides this, the government would show, said Mr. Heney, that Senator Mitchell had come to Portland in December, 1904, and had asked to go before the Grand Jury and at that time had testified that he had never done business for Kribs. He had upbraided Tanner for keeping the books as he had, and had urged that a new set be made.

Mr. Heney then told the history of the partnership agreement and the manner in which it had been prepared and alleged that the government would prove by the testimony of Judge Tanner and of his son that the agreement had been written during the time the Senator was in Portland last Winter.

ten during the time the Senator was in Portland last Winter.

Judge Bennett presented the side of the defense. He maintained that if the Senator had worked before the departments for money it was in causes which were not effected by his office as Senator. The fact charged was wrong simply because it was contrary to statute and not because of inherent unlawfulness.

The speaker then went hack over the

because of inherent unlawfulness. The speaker then went back over the history of the Senator, and told of his arrival in Oregon and of his life in the state. He had occupied a very exaited position in National life and if he had been the grafter that Mr. Hency had painted him he would have been fabulously rich by this time. Instead of this he was now a poor man and dependent upon his friends for his defense in the trial now being prosecuted. If it were possible that the firm had done things contrary to the law, or that Senator Mitchell had done the things alleged, he had done them unknowingly and without thought of gain.

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He stated that the defendant would be 50 years of age today, that he was an old man, broken in health, in mind and in body. If the prosecution was able to show anything wrong that he had done it would be nothing more than the changing of the contract, which was admitted by the defense.

Mr. Bennett closed his presentation at 1130 o'clock, and after the court had excluded all of the witnesses from the room Frederick A. Kribs was called by the prosecution as its first witness.

Kribs told of his agreement made with Mitchell and Tanner by which he was to pay for the expediting of 40 claims of timber land.

At the afternoon session Kribs resumed.

pay for the expediting of 40 claims of timber land.

At the afternoon session Kribs resumed the stand and told of having made an agreement with Tanner about the middle of February, 1962. He agreed to pay 1900 for having ten claims passed to patent, \$500 down and \$500 when the patents issued. The witness identified the list of claims in a letter to Mitchell, and also the check of \$500 given in first payment. He next identified a check for \$1000 given as the last payment for passing the claims in both lists to patent.

He had made another agreement with

sing the claims in both lists to patent. He had made another agreement with Mitchell & Tanner in September, 1927, for the expedition of a list of chaims in the forest reserve, agreeing to pay 1800 for the services rendered under the same provisions as the other two had carried. He identified a check for \$500 given as first payment under this agreement. On cross-examination by Sensitor Thurston, Mr. Kribs stated that the conversation he had had when presented to the Sensitor by Mr. Tanner, at which time he had discussed the expediting of his claims and had been referred to Mr. Tanner as to the financial terms of the agreement, had been the only time he had discussed the matter with the defendant. The witness stated that he had been called upon by Mr. Burns, who had teld him it would be best for him to tell the truth about his connection with the kand frauds, but that he had never been threatened with infletment. Neither had he received any promises of immunity, nor had any one counceted with the Government told him that they were after higher gramm than he. Mr. Kribs was exuested.

Judge Tanner stated that he had en-

## ments and Testimony.

The stenographic report of the opening statements, arguments and testimony of the second day of the Mitchell trial fol-

### Mr. Heney's Statement.



HARRY MURPHY'S PEN PORTRAITS OF SENATOR MITCHELL AT THE SECOND DAY OF THE FORMER'S TRIAL

as to whether John H. Mitcheil used a public office for private gain, to put it tersely.

The Government realizes that it is a serious matter to the defendant, and that therefore with this penalty attached you ought not to be asked to find a verdict of gallty in this case unless the Government is able to prove beyond a reasonable doubt that John H. Mitchell did receive fees for services performed before the department in a matter in which the United States was interested; and I will go one step further and say that we will not ask a verdict at the hands of this jury unless we prove to you conclusively that be did it with full knowledge of the fact that he was receiving these fees and with full knowledge of the fact that he was violating the law when he did it.

What He Hopes to Prove.

Mr. Heney's Statement.

Mr. Heney-If your Honor pleases, Gentlemen of the Jury: It becomes my duty to omiline to you at this time what the issue is that you are to try in this case, and briefly what the evidence is that the Government expects to produce in support of its contentions.

The indictment is this case charges John H. Mitchell with having received fees for services performed before General Land Office or Department of the Interior during the time that he was a United States Senator from the State of Oregon, and that those fees were paid to him for services to be performed in mailters in which the United States was interested. Now, that is the beginning and the end of this offense; that John H. Mitchell wille, a United States Senator received fees for services before a Department of the United States Senator received fees for services before a Department of the United States in which the United States senator received fees for services before a Department of the United States in which the United States from the End of the Certain of the City of Pertiand, and on that very day, the list of October, 190, on the list day, the list of October, 190, and that the first in the Land Office at Washington. See different that the first in the Lan

Mitchell & Tanner in September, 1967 for the expedition of a list of calms in the fact of calms the conversal provisions as the other two had carried provisions as the other two had carried payment under this green and the payment under this green and the conversal first payment under the first payment under the first payment the first payme

### That Mitchell Was Paid.

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That on the October payment of 550 the fees were divided about the list or 2d or 2d of November; that Mitchell and Tanner immediately after Mitchell's election to office entered into a written agreement of partnership by which it was agreed that for all services performed by Mitchell & Tanner, agreeling to pay them 560 cash and 560 after the selections were approved for patent as to some Beu selections in the fee; that the belance of the agreement was that for all business taken in here by the firm the fee was to be division was to be made at the end of which equally between them, and that the division was to be made at the end of such month by deducting the office expenses for the month and equally dividing the balance. We propose to show to you that at the beginning of the month of November. 180, after a payment of \$200 had been made by check to Mitchell & Tanner, that it was deposited to the firm's credit in the Merchants National Bank, that on or about the 2d or 2d of the month for the firm and that this was the regular custom of dividing it, and that in each instance these drawn to Tanner for the net proceeds of the month of howemen the payment of the firm and that this was the regular custom of dividing it, and that one check was deposited to the firm's credit in the Merchants National Bank which was a check upon the firm account. That at the same time a check for a similar amount be any money Tanner may have retained for cash that came in which he charged to himself during the month, was any money Tanner may have retained to hear any money Tanner may have retained for cash that came in which he charged to himself during the month, was any money Tanner may have retained for cash that came in which he charged to himself during the month, was a check for a similar amount be any money Tanner may have retained for cash that came in which he charged to himself during the month, was a check to be also the firm was made with the form the firm and that this was the regular custom of divid

deposited to Tanner's credit in the First National Bank. That under this agreement of Pebruary II. 1992 for the second batch of claims, called the Puter claims, and after Tanner had written to Mitchell and the Puter claims and after Tanner had written to Mitchell and the Puter claims and after Tanner had written to Mitchell and the process of the mouth, and one of them the process of the mouth, and one of them was deposited to the credit of John H. Mitchell written to Tanner for the net process of the mouth, and one of them was deposited to the credit of John H. Mitchell wrote to Tanner and asked ashowing all moneys received, for what they were received and from whom received, and to send it on the first of the following month, which would be the first of June, 1992. That a copy of the day book of Mitchell & Tanner was made or the time, who kept the books, and who did stenographic work; that that copy was sent to Mitchell on June 2, 1992, that that copy contained, as the book contains, the entry of the agreement with kribs for the payment of the kills of the claims of the claim the entry of the agreement wind kribsel to the first agreement with kribs for the payment of the kills copy of the date, of the claim of the claim of the claim of the claim of the copy of the date, of the claim of the claim

### That He Had Knowledge.

gard to it and informed him that if they could win that case they could charge as they contemplated a big fee for services in the matter, and that at that time I propose to prove that Mitchell was a stockholder himself in the Booth-Kelly Lumber Company, that he did perform those services before the department under this agreement for a fee.

Now there are numerous small cases, some of which we may prove and we may not go into them, according to the time it takes to try the case.

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perjury in that matter, which Robertson read about in the newspapers before reaching Portland.

I think, gentlemen, that I have fairly and fully outlined the Government's

### Judge Bennett's Opening Statement.