They hoped to persuade Judge Rosalsky to delay action and informed him privately of the agreement they had made with Justice Gerard.

SUGGESTED PARDON TO DIX.

But the Attorney-General had an inkling that Judge Rosalsky had made up his mind to go ahead for the purpose of clearing his own record or of justifying it. So the Attorney-General called Gov. Dix on the long distance telephone and told him that the only way out of the legal morass was an immediate pardon for Brandt. The District Attorney was in full agreement with Mr. Carmody on that. Convinced that Justice Gerard would have to dismiss the writ of habeas corpus and remand Brandt back to prison, and satisfied that Judge Rosalsky lacked power to reopen the case, they hoped that the Governor would cut through the whole tangle at once. The Attorney-General labored hard for quick pardon, but obtained only the Governor's assurance that he would appoint Justice Gerard special commissioner to report on a pardon.

The Governor, after talking with the Attorney-General, made the announcement in Albany that Brandt's case had been put up to Justice Gerard as special commissioner. Mr. Dix said, however, that he decided to appoint Justice Gerard before he was informed of the fact that Judge Rosalsky had determined to give Brandt a new trial. The Governor immediately sent this telegram to Justice Gerard:

Hon. James W. Gerard, Supreme Court Chambers, New York City:

I have appointed you commissioner to conduct a hearing in the matter of an application for executive clemency in the case of Foulke Engle Brandt under section 282 of the Prison Law. Formal written appointment will follow. JOHN A. DIX.

The section of the State prison act under which the Governor made the appointment provides:

The Governor may appoint a person to conduct hearings in a matter pertaining to an application for clemency, and his compensation shall not exceed $10 a day for each day's service. Such person upon the conclusion of such hearing shall forward to the Governor without delay the testimony taken before him. The Governor may direct that a person subpoenaed by him shall appear before a person designated by him to conduct a hearing as provided by this section, and a person so subpoenaed shall produce any book, paper or writing before said person so designated by the Governor.

The power conferred by this and kindred sections of the State prison law empowers Justice Gerard to examine all persons who have any knowledge of facts connected with the transaction that took place at the time that Brandt was detected in the Schiff home and in the proceedings that resulted ultimately in his confession and conviction and sentence to State prison. He can likewise direct the production of all records, documents and other written matter which has a bearing on the case.

The action of the Governor bears out the predictions that have been made in THE SUN that Gov. Dix would reopen the case, and those who have studied the situation believe that the proceedings which are now in progress will result in a commutation of the prisoner's sentence and his restoration to liberty.

Gov. Dix made the announcement of his determination to reconsider Brandt's application for clemency and his appointment of a special commissioner at a late hour yesterday afternoon.

ROSALSKY'S INDEPENDENT ACTION.

Before Judge Rosalsky opened court at 2 P. M. the news got around that Gov. Dix had turned the whole Brandt case over to Justice Gerard. Apparently, however, Judge Rosalsky had not heard about the Governor's action. He proceeded to review the case without considering what had taken place previously in the day.

When Alton B. Parker appeared at the lawyers' table in Part IV. of General Sessions there was considerable surprise expressed by persons interested in the case. Judge Parker himself was not sure whether he had an actual right to appear in the proceeding. No objections were raised, however, and after District Attorney Whitman had objected to the proceeding and Lawyer Towns had acquiesced in the objection Judge Parker made an address to the court in which he read a letter he had received from Mortimer L. Schiff in which Mr. Schiff said that Brandt had written an insulting letter to Mrs. Schiff and that Brandt had made a murderous attack upon him. He asked for a full inquiry.

ROSALSKY SHOWS EMOTION.

After Judge Parker had made a speech in support of Judge Rosalsky's course during the trial of Brandt and defending the commitment, Judge Rosalsky took up his own defence and said that his record on the bench would compare favorably with that of any Judge. He spoke with marked emotion. The Judge denied that there had been improper action on his part and that he had presented the Brandt case to the Governor exactly as the case seemed to him.

Then the Judge ordered that Brandt's old plea of guilty to burglary in the first degree be set aside and that a plea of not guilty be entered. As the basis for his action, he made this entry on the indictment:

On consent of the complainant a motion to set aside defendant's plea of guilty, the judgment of conviction, sentence and commitment thereunder is hereby granted, the District Attorney appearing and not consenting and asking for an adjournment on account of the pendancy of the proceedings on the return of a writ of habeas corpus issued by Mr. Justice Gerard.

Judge Rosalsky seemed to think that he could order Brandt straightway before him from the Tombs, where Justice Gerard had committed the man, and he called for Brandt's appearance; but Judge Parker hastily informed him that he had not the right to do that, so Judge Rosalsky decided that Brandt's appearance could wait until to-day.

BRANDT'S PRESENT STATUS.

At once, after Judge Rosalsky had granted the motion the question arose everywhere as to exactly what Brandt's status is now. The District Attorney said that Judge Rosalsky's decision seemed to him to be of no effect whatever since Brandt is entirely in the hands of the Supreme Court. The District Attorney and the Attorney-General had heard from Justice Gerard that since the Court of General Sessions had absolutely no power to impose such a sentence on Brandt the court could not reopen the case.

Mr. Whitman feels that only the decision of Justice Gerard in the habeas corpus proceedings one way or another can have any legal effect in Brandt's case. If Justice Gerard sustains the writ and remands Brandt to the custody of the District Attorney, that official will be required to place him on trial as a new defendant. On the other hand if the Justice dismisses the writ as the Attorney-General insists is most likely the Justice will remand Brandt back to Dannemora, from which he could issue again only on a pardon or commutation of sentence by the Governor.

CONSENT OF THE COMPLAINANT.

Without desiring to be put in the position of reflecting on Judge Rosalsky's attitude Mr. Carmody and Mr. Whitman considered it remarkable that the Judge should have based his vacation of the old plea of guilty on "consent of the complainant." That was a suggestion advanced by Judge Parker but which has no standing in court, in the opinion of Attorney-General Carmody or District Attorney Whitman.

"Brandt" said the District Attorney, "is in the custody of the Supreme Court, not in the hands of Judge Rosalsky. I can't see that the Judge has the power to order Brandt before him. If he does it will be my duty to appear, of course."

Attorney-General Carmody just before he left for Albany last night said pretty plainly that he considered the Rosalsky proceeding wholly ineffective. Mr. Carmody says that the Judge's orders will fall flat, since he lacks jurisdiction entirely.

The more they examined the legal tangle in which the Brandt case is knotted the more both Mr. Whitman and Mr. Carmody agreed that only Executive clemency can apply in the case. Mr. Whitman, believing absolutely that Brandt was the victim of injustice, thinks at the same time that his case has passed out of the hands of the courts so far as the man's liberation is concerned and that only a pardon or a commutation would be faultless from a legal standpoint. If Justice Gerard should sustain the writ of habeas corpus and direct a new trial a precedent would be created that would involve the District Attorney's office, in Mr. Whitman's opinion, in endless resistance to similar attempts to get freedom for convicted men.

FURTHER INVESTIGATION CERTAIN.

Whatever happens, whether the Governor pardons Brandt, as now seems probable, or a new trial is ordered by Justice Gerard, which seemed doubtful last night, there will be an investigation to determine if improper influences were used to send Brandt to the penitentiary for thirty years. It is known that the records of the Police Department concerning the Wooldridge report on Brandt's alleged criminal record disclose that Detective Wooldridge wrote on April 3, 1907, to Inspector McLaughlin, then head of the Detective Bureau: "In compliance with your order of April 1 I beg leave to submit." The report charging that Brandt had been discharged by various employers for dishonesty follows.

There is also a communication from Howard S. Gans, then counsel for Mortimer L. Schiff, which is dated March 30, 1907, and addressed to Inspector McLaughlin. It contains substantially this: "In reference to the Wooldridge report."

The Grand Jury will be asked to determine whether the Wooldridge report was secured by Schiff lawyers and then turned over to the Police Department for verification. Another communication, from a lawyer, dated March 30, 1907, that is in the department files contains substantially this passage:

"My idea is to have such a report of his [Brandt's] character made as will make necessary the imposition of a long sentence."

It was learned late last night that there will likely be no proceedings before Judge Rosalsky this afternoon in the Brandt case. A conference will be held this morning to determine whether Justice Gerard will issue a prohibitory order.

Second
Annual Exhibition
of
Paintings
by the
OLD MASTERS
at the
V. G. Fischer Art Galleries
467 Fifth Avenue
(Opposite the Public Library, New York)
Admission by Card

CASE BEFORE JUSTICE GERARD.

Proceeding Which Resulted in the Commitment of Brandt to Tombs.

When Justice James W. Gerard opened court yesterday morning at 10:45 o'clock in Special Term, Part II., of the Supreme Court, the room was completely filled with people who wanted to hear the argument over the writ of habeas corpus and to see Folke E. Brandt.

Attorney-General Carmody, District Attorney Whitman and Robert Moore arrived in the court room at 10:25 o'clock and immediately seated themselves at the counsel table facing the bench. For a few minutes the three lawyers held a whispered conference, and then the Attorney-General and Mr. Moore engaged in an earnest conversation at one side.

There were also seated at the counsel table Deputy Attorney-General Joseph D. Edelson, Assistant District Attorney Johnstone and Mr. Thomas, official stenographer in the Attorney-General's office in Albany for the last thirty years. The table was littered with portfolios of legal documents and official papers.

Brandt was brought to the bar and placed in a chair immediately behind Mr. Thomas. On his left sat Warden Kaiser of Dannemora and Mr. Moore stood beside the warden. The prisoner was attired in a neat blue serge suit, high wing collar and plain black tie. His sunken cheeks and eyes and pasty yellow complexion and drawn expression reflected the effects of the five years incarceration. But the former servant's general appearance elicited favorable comment on all sides.

Before 10:30 o'clock the spectators, all on their feet, were massed in a solid phalanx, filling the room from the rear wall to the bar and the spaces on both flanks of the bench.

At the start of the hearing Mirabeau L. Towns, who had secured the habeas corpus writ as counsel for Brandt; District Attorney Whitman, Attorney-General Carmody and Robert M. Moore explained briefly the reasons for their appearance. Mr. Moore informed the Justice that he would like to have James W. Osborne, Jr., appear with Brandt's other counsel, since Mr. Osborne had interested himself in the young man's behalf.

That request got Mr. Towns to his feet as if something had been exploded under his chair. Mr. Towns had been up all night at work on the Brandt case and was tired and nervous. He told the court that he didn't want any counsel added without the consent of the prisoner.

"I want it understood," said he, "that I am solely responsible here and that it is highly important that these proceedings be not bedevilled by the interference of too many persons."

Justice Gerard said that he would regard Mr. Osborne and Mr. Moore as friends of the court, but that Mr. Towns appeared as the attorney of record. Mr. Towns agreed to that and sat down comforted. The Attorney-General then stated his position.

"Upon the face of the moving papers it appears that the defendant was committed to prison after pleading guilty in the Court of General Sessions to burglary in the first degree," declared Attorney-General Carmody, "and in view of that fact the case cannot be reopened."

"I do not understand your position," interrupted the court.

"I do not deem it necessary for me to press my objections by argument," replied Mr. Carmody. "I think it is simply necessary to raise the objections."

"The code provides an exception for granting a writ of habeas corpus," insisted Mr. Carmody.

"But the Legislature cannot take away the right to the writ," returned Justice Gerard.

"Here is just what the Court of Appeals held in the Tweed case. The Court of Appeals held that the court did not have jurisdiction. If they can show that the court had no jurisdiction in this case I make no objection.

"I wish to state that Brandt pleaded guilty and was sentenced in a court of competent jurisdiction. I have here the original commitment if your Honor wishes to examine it," said Mr. Carmody.

While Mr. Towns was replying to the Attorney-General's objections to the writ Mr. Carmody had to leave the room to answer a telephone call. When he returned he had to climb over the railing to get back to his place at the lawyers' table. Mr. Towns agilely seized upon the incident.

"Your Honor," he said, "I believe my worthy opponent will find the constitutional obstacles in this case more difficult to vault than that railing."

There was general laughter, in which Justice Gerard joined.

Then Mr. Towns gave the three heads upon which his argument was to be based—the certified copy of Brandt's indictment, the proceedings before Judge Rosalsky and the sentence by Judge Rosalsky. The Attorney-General then asked Justice Gerard for a week's postponement of the hearing in order to give counsel time to confer. It is known that the Attorney-General was moved to make that motion by his belief that Gov. Dix would pardon Brandt within a week and so remove all reasons for a court hearing. Mr. Towns insisted, however, on an immediate ruling. It was decided to go ahead with the argument.

Mr. Towns said:

"Now an accused man is brought before a Magistrate, sitting there as the vicar of God to protect the innocent. And we find a Judge indulging in such cunning inquisition that we are impelled to go behind the proceedings in justice to the prisoner."

In reading the record of Brandt's arraignment before Judge Rosalsky Mr. Towns stopped to exclaim:

"This was a festive burglar, coming there at 8:30 o'clock and staying until 11:20. And were there no servants in Mr. Schiff's house to detect him? Did the grass grow on the stairs from the basement to the leads?

"All the wealth of the house lay shining there before Brandt, for him to take and go away with as easily as he came in. He had but to reach out his hand and grasp what was of no importance to Schiff but was wealth to him.

"Was his entrance the act of a burglar? No, it was the act of a philosopher, of a Montaigne. He enjoyed ease and contentment and familiarity in another's house, as if he were about to write an epic poem, or at least a lyric to his lady's eyebrow.

"There was a subdued light in the room where this defendant waited for Mr. Schiff. A light was reflected from the hallway. Perhaps the color of one's eyes could not be distinguished, but the features of the face could be discerned," continued Mr. Towns. "If he had hit Mr. Schiff he would have schiffwrecked him," added the lawyer.

"Dannemora! Here is the place for those who are to be forgotten! Dannemora is the oubliette of humanity, dropped in frequently with due form of law, sometimes, as in this case, by the bastardizing of the law by the person selected by the voice of the people to represent them without favor and without malice."

Mr. Towns sketched over the history of the writ of habeas corpus, accenting the features which tended to show its application in the present instance.

"And the writ of habeas corpus cannot be suspended except in time of war," emphatically declared the lawyer.

Coming finally to the facts in the Brandt case, Mr. Towns read the section of the penal code defining burglary in the first degree and then read verbatim the stenographic transcript of Judge Rosalsky's examination of the defendant just prior to imposing sentence.

Mr. Towns assailed the attitude of Judge Rosalsky in questioning Brandt, which he intimated was a cunning attempt to trap Brandt into an admission that might be construed into an admission of burglary.

The Attorney-General's objections to the issue of the writ were presented briefly. Counsel for Brandt had discussed facts and circumstances, he said, to which he was a stranger. The Brandt case had come to his attention officially only on last Saturday night. He agreed with Mr. Towns, however, that an analysis of the proceedings disclosed a remarkable condition of affairs and one that demanded before it is finally settled an investigation to go much further than any investigation under the writ of habeas corpus. Mr. Carmody continued:

I raise no objection whatever to the discharge of this defendant in any tribunal that has the authority to discharge him. I want that authority exercised in a manner that will satisfy as to-morrow, when the excitement of this moment has passed away.

Mr. Carmody said he would interpose no technical objections to the administration of justice in its fullest conception. All he would say was that the writ of habeas corpus must not be applied where it cannot be applied. The spirit of the writ, he said, was intended to bring a man forth from incarceration for the purpose of inquiring into the cause of his detention. If it appeared that the court had jurisdiction of the crime, had jurisdiction of the prisoner, and acted within that jurisdiction in passing sentence, then, Mr. Carmody believed, the purpose of the writ was answered. He continued:

I am not going to ask for any sharp application of that doctrine. I am with the court and with the counsel in extending it if possible to the remarkable facts in this case. It may be, your Honor, that upon a further examination of the record in this case we will find that the court did not have jurisdiction of the case. It is very apparent to me from the examination I have given the matter that the crime for which the defendant was convicted, or rather was sentenced, is apparently not sustained by the record that has been presented before the court this morning. If that be true (and it apparently is true), then there is a demand that more be done in this case than the liberation of Brandt.

There is a demand that we find out by what power the courts of the city of New York have been used for the purpose of incarcerating a youth and keeping him in State prison nearly all his life. We want to find out why it is that a young man who may not understand the forms of the law or what a plea of guilty means as he stands before the court, who has the right to believe that the Magistrate who sits upon the bench will so advise him and so interpret the law that his rights canotn be trampled under foot—under these remarkable circumstances we have a duty to perform that perhaps has not come before the courts in this city since they were organized, and I am anxious that that matter shall proceed in some orderly way for a thorough examination of all these questions.

For that purpose I do not offer or ask for any delay in the determination of the case before your Honor, but I have this suggestion to make. I think this matter belongs now in its present stage before the Chief Executive of the State. It is true that it has been presented there and has been disposed of. I think it is unfortunate that my learned friend was not heard upon that presentation and that the attention of the Executive, who is not a lawyer and whose attention could not have been called to some of the remarkable features of this case, and I assure him and assure the court that I am anxious to have a resubmission of this case either upon the report of your Honor or on our own initiative to the Executive of the State with the view that justice be done this defendant.

Justice Gerard then said:

"The question at issue is so important that I will not render an immediate decision but take it under advisement, but after listening to the arguments of counsel and of the Attorney-General I am inclined to think that the court which sat on Brandt did not have jurisdiction."

After some further argument on the question of the statute bearing on the application of the writ the court said that he held the view which he understood the Attorney-General to have distinctly stated, that it was not in the power of the Legislature to limit its application.

Thereupon Justice Gerard decreed that Brandt was to be committed to the Tombs pending the handing down of the court's decision, and District Attorney Whitman announced that he would provide arrangements whereby counsel could confer with the prisoner.

But the District Attorney requested the court to confine Brandt's visitors to his lawyers and not permit him to be interviewed by other persons.

Justice Gerard complied with the District Attorney's request. Then Warden Kaiser escorted Brandt to the Tombs.

ECONOMY QUALITY SPEED
"Two Straight Lines Cannot Enclose a Space"
The consistent volume of our business for several years past, and the unparalleled volume of our business to-day, furnish the best possible reason why every Owner of a prospective building should first consult with us.
THOMPSON-STARRETT COMPANY
Building Construction

ROSALSKY GRANTS NEW TRIAL.

Ignores Protests and Heeds Ex-Judge Parker as Friend of Court.

The proceeding before Judge Rosalsky in Part IV. of the Court of General Sessions began at 2:05 P. M. Previous to the opening of court District Attorney Whitman and Mirabeau L. Towns, counsel for Brandt, had informed Judge Rosalsky that in company with Attorney-General Carmody they had agreed with Supreme Court Justice Gerard to ask for a postponement of the motion that Judge Rosalsky should vacate his former commitment and order a new trial.

The Attorney-General and the District Attorney believed with Mr. Towns that it would be only courtesy to Justice Gerard to wait until he had decided as to whether the writ of habeas corpus should be sustained or dismissed before going ahead with other court proceedings. Furthermore they agreed that only Justice Gerard had jurisdiction over Brandt and that any proceeding before Judge Rosalsky would be fruitless or invalid.

Attorney-General Carmody left the habeas corpus hearing with the distinct understanding that there would be no hearing before Judge Rosalsky. District Attorney Whitman, realizing that Rosalsky was powerless to take Brandt's case out of the hands of a Supreme Court Justice, was satisfied that Judge Rosalsky would wait upon Justice Gerard's ruling. That was the attitude of Brandt's own counsel, Mr. Towns. After talking with Judge Rosalsky they went into court convinced that Judge Rosalsky would agree to a postponement. They had no idea that Judge Parker, representing the Schiffs, would appear in the case.

When Judge Rosalsky took the bench and surveyed an overflowing court room he found that there were present at the lawyers' table Mirabeau L. Towns, counsel of record for Folke Engel Brandt; Clarence J. Shearn, an adviser of Towns, and Alton B. Parker and Howard S. Gans, there to represent the interests of Mortimer L. Schiff. Judge Rosalsky addressed a jocular remark to Lawyer Gans, "How much money did they pay you, Howard?" and proceeded to open court. He asked if the District Attorney was represented. Judge Whitman had held a whispered conference with Judge Rosalsky on the bench a few minutes before. Then the District Attorney came into court.

Mr. Towns opened the proceedings by saying that the motion for a vacation of Rosalsky's former commitment and the ordering of a new trial was addressed to the fairness and discretion of the court. Mr. Towns said that knowing the attitude of the District Attorney he didn't want to go into particulars then. Judge Whitman addressed the court and explained what his attitude was, which was keeping the agreement made with Justice Gerard. He said:

"At the suggestion of the court this morning Mr. Towns and the Attorney-General and the District Attorney agreed that they would consent to an adjournment of this proceeding until such time as the Justice in the Supreme Court would pass upon the motions now before him. Therefore I respectfully ask on the part of the People in this case that this argument, the argument of this motion, and this entire proceeding, be adjourned for at least a week, if that meets with the court's approval."

Judge Rosalsky asked if there was any objection to the District Attorney's position. Lawyer Towns, for Brandt, got up at once and told the court that he had none. He wished, he said, to afford the District Attorney or any one the fullest opportunity to combat the assumption that the court had been imposed on in committing Brandt to the penitentiary.

"I am perfectly in accord," he said, "with the District Attorney, who has asked you to adjourn this motion."

MR. PARKER READS SCHIFF'S LETTER.

Then Alton B. Parker arose to his tallest dimensions. He solved at once the problem of why he was there. He asked the indulgence of the court for a few minutes, got it and made an address in which he read to the court a letter from Mortimer L. Schiff. The letter denied that improper influences had been used to get Brandt into prison and asked for the fullest investigation. Judge Parker said that he wanted "to say just a word" about the case and the attitude of his client, and he could do it best by reading a letter. He then presented this letter:

MY DEAR JUDGE PARKER: I have determined to ask you to appear on my behalf in the proceedings in connection with the Brandt case so that my position may be thoroughly understood and my attitude be made clear.

The facts are simple. Brandt wrote an insulting letter to my wife and was at once discharged from my employ. About a month later he entered my house at night and lay in wait for me in a dark room. As I entered the room and before I realized his presence or a word had been spoken he struck me on the head with a heavy tenpin. Near at hand he had a carving knife. He had disconnected the electric bells and had so prepared a situation where I was apparently at his mercy, with no chance to summon aid.

While waiting for me he had possessed himself of two articles of jewelry, which he concealed and took away with him. Thinking I had an armed maniac to deal with I argued with him, gave him money and got rid of him as best I could and asked him to come to my office. When he came I had him examined by eminent alienists, as I believed he was of unsound mind. The alienists declared him sane and I caused his arrest, and in due course he was indicted for three felonies.

During the time Brandt was in the Tombs awaiting trial repeated attempts were made to influence me to favor a light sentence if he would enter a plea of guilty. To all of these appeals I refused to listen, as I preferred that he should be tried, feeling that in that way the most severe punishment would be meted out to him for the grave offences he had committed.

Not only then but afterward I was told that unless I favored leniency to this man he would attempt to spread scandalous stories. I felt it was my duty to my family as well as to society to refuse to be influenced by such threats, as I believed that the man was a murderer at heart, even if by my fortunate escape he had not become one in fact, and was a dangerous man to be at large.

In the light of these facts I cannot regard the sentence given him as too severe, although it may be that I am prejudiced in this regard, because it is I whom he attempted to kill and whose family he has scurrilously attacked. Why an attempt should now be made to make it appear that I used or tried to use any improper means to secure a severe punishment for this man I do not know.

My record and that of my counsel, Mr. Gans, is clear. We took no part in the proceedings which led to his final plea of guilty and his ultimate sentence beyond our natural and perfectly proper efforts to make sure that the public officials charged with the conduct of the case were placed in possession of all facts at our command.

Nor is there any mystery about my attitude toward Brandt's recent efforts to secure executive clemency. If his request for a pardon had been based on the ground that he was penitent and realized the enormity of his offences and sincerely intended to lead a better life, I would not have opposed it; but certainly no one could have expected me to take that position respecting an application based on the same infamous and lying stories which he had attempted to spread before.

I would not have done my duty if I had acted differently yet now, I have been attacked in the public press as if it were I and not Brandt who was the offender. I have been accused of conspiracy and deceit, and a confessed felon and defamer of character has been held up as an object of public sympathy.

Under these circumstances I am anxious that there should be the fullest possible investigation of all the facts connected with Brandt's crimes and conviction. I am indifferent as to the form this investigation may take, provided it is thorough, impartial, exhaustive and public. If the best way to secure this result is by reopening the judgment of conviction and placing Brandt on trial for the crimes for which he was indicted, I hope that course will be pursued. If that cannot be done I urge that some other method be adopted by which all the facts may be ascertained and the whole truth made known.

PARKER EULOGIZES ROSALSKY.

When he finished reading the letter Judge Parker made a speech to the court, Judge Rosalsky paying the closest attention to every word. Mr. Parker said he had read the record in the case and was amazed by the comments he had seen made on the record in the newspapers. He had examined it, he continued, and was sure that the indictment was good. He had noticed "how carefully and persistently you pressed home your questions to the end that you might be assured that he (Brandt) understood precisely what he was doing and precisely the gravity of the offence." Judge Parker quoted parts of Judge Rosalsky's questioning.

Judge Rosalsky interrupted the lawyer to quote other parts, all bearing on the contention that the prisoner had every opportunity afforded by the trial Judge to realize to what he was pleading—burglary in the first degree.

While this was going on District Attorney Whitman and Lawyer Towns sat back in amazement. Towns whispered to a friend:

"Why, they are delivering themselves into our hands! But this is an amazing proceeding. Why is this eminent statesman before the court?" The District Attorney's face was a study.

Judge Parker entered on a long speech in which he said that Judge Rosalsky had had jurisdiction in committing Brandt as a first degree burglar.

"A great injustice has been done your Honor and the administration of justice by the suggestion in this community that even carelessness to that degree could be indulged in by one of those whom we hold in high esteem and in whose honor and fairness we trust."

Judge Parker explained why in his opinion the Governor declined to pardon Brandt when the case was reviewed a few weeks ago. It is known that the Governor was impressed by Judge Parker's arguments that a pardon shouldn't issue and that the papers should be sealed because of certain scandalous statements by Brandt. Judge Parker added:

I want to say a word further as to my client; that there has never been a time since this man's conviction that my client could have injected himself into an application for executive or other clemency based upon grounds of contrition and reformation. Instead of that, according to the report, he attempted to gain the sympathy of the Governor and other officials by posing as a martyr under the infamous suggestion that Brandt's presence in my client's house was to keep an appointment with one dearer than life itself.

While neither he nor his counsel has been permitted to see this man's application for executive clemency or the other evidence that guided the Governor in his action, I assume that the Governor as a gentleman of honor and the official repository of the fair name of the manhood and womanhood of our State, necessarily turned with disgust and horror from the charge of a self-confessed burglar, forger and thief that womanly virtue should be used as a shield to cover assault, theft and burglary.

I assume that this was the thought that found expression in the declaration of the Governor that an attempt had been made to surround this case with mystery. But there was no mystery. With an instinct natural to husbands and fathers my client has felt like resisting the call of civic duty which demanded public exposure of charges so foul and outrageous, but he resists no longer. He hopes now for a trial that will enable the public to judge of the prisoner's crimes and afford him the opportunity of publicity, vindicating his honor and that of his beloved wife.

Judge Parker concluded by assuring Judge Rosalsky that the court had power to give Brandt a new trial. Judge Rosalsky said he had already made up his mind about that. He asked the District Attorney if he consented to the motion entered by Brandt's counsel for a new trial. The District Attorney repeated his request that the motion go over for a week out of consideration for Justice Gerard, who had asked for such a delay.

"Well," said Judge Rosalsky, persistently, "do you consent to the motion, Judge Whitman?"

The District Attorney said he would consent if it was within the court's power to act on the motion.

Judge Rosalsky said that he had consulted Presiding Justice Ingraham of the Appellate Division as to whether he had power to grant a new trial.

ROSALSKY DEFENDS HIMSELF.

"I am now in the position to act upon the application before this court," said Judge Rosalsky. Lawyer Towns, Brandt's counsel, got up and left the court room. He felt himself bound by his promise to Justice Gerard and he was disturbed by Judge Rosalsky's unwillingness to accept the agreement. For half an hour thereafter Judge Rosalsky spoke in defence of his career as a Judge. At times he appeared to be moved by emotion. Judge Parker regarded him sympathetically.

"I have a record upon this bench that defies those that have been assisting to destroy a Judge that will compare favorably with the record of any man who ever presided in a court of justice," he said. "As a Judge of this bench I have held the scales of justice evenly. In the cases of the Metropolitan Street Railway which came before me, the ice trust, the poultry trust, the Montgomery trial, Oliphant and other men of wealth, the records of this court bear witness to my conduct as a Judge.

"I replied to an executive communication from the Governor, and in view of the fact that statements have appeared in the public prints comparing my report to the Governor with another report I am sure that our great and distinguished Governor of the State of New York will pardon me for reading my report to him in order to show the fairness of this court in replying to the Executive communication."

Have You Been Invited
To attend a dinner, a dance, a wedding or some one of the other many Dress Occasions, either to-night or some other night?
Then suppose you take out that Dress Suit, which has done you yeoman service on many state occasions, slip it on and subject it to the cold scrutiny to which that smart looking chap subjected it the other night.
See if it hasn't really outlived its usefulness; of course it still fits you and it doesn't show a sign of wear, but—is it quite as symmetrical, quite as graceful, quite as smart as it should be?
And to be sure of just how smart, symmetrical and graceful a Dress Coat can be, step into one of our stores and see our
Dress Coats, $19.00 and more Dinner Coats, $17.00 and more
Why not a separate Dress Overcoat?
Ask to see our new Opera Overcoat
Call for our Booklet "Authentic Dress Hints"
Brill Brothers
BROADWAY, at 49th St. 279 BROADWAY, nr. Chambers St.
47 CORTLANDT ST., near Greenwich. 125th ST., at 3rd Ave.
UNION SQUARE, 14th Street, West of Broadway
Harlem Store Open Every Evening

Judge Rosalsky quoted from his letter to the Governor of January 30, 1912, extracts from which have already been printed in THE SUN. He wrote that he had satisfied himself that Assistant District Attorney O'Connor was present when Brandt changed his plea from not guilty to guilty, and that the plea of guilty was made in open court. As to Carl Fischer Hansen, who was Brandt's attorney then, the Judge wrote:

In justice to Mr. Hansen, at that time Mr. Hanson was looked upon as a philanthropist and benefactor; he was prominent at the bar, he was socially highly connected in this city, he was regarded as an honest man; no one knew anything concerning his private life. And I also want to say that when Mr. Hansen was indicted for perjury and subornation of perjury and bribery his cases originally came before me on a motion to quash the indictments, and I denied those motions. He was afterward tried and acquitted upon one charge and then sentenced by Mr. Justice Dowling for a term of twelve months imprisonment upon his conviction of an attempt to commit the crime of bribery.

Continuing his quotations from the letter to Gov. Dix, Judge Rosalsky showed that he had sentenced other young offenders heavily at about the time Brandt was committed. He mentioned James C. Peirce, 22 years old, who got 34 years and 4 months for burglary in the first degree and assault in the second degree. He outlined to the Governor his reasons for dealing severely with first offenders although they were young. Lenity would mean a multiplication of crimes of violence, he wrote.

Concerning the District Attorney's report to the Governor that statements of Detective Woolridge that Brandt had a criminal record should not be taken into consideration, since they were founded on hearsay and there was nothing actually to show that Brandt had a criminal record, Judge Rosalsky, still quoting from his own report, added:

"I desire to state that it has always been the practice of this court to receive the reports of police officers although they are founded on hearsay, with a view to having the court question the defendant as to the truth of the matters contained in such reports and that if a defendant admits the truth of any of the matters therein the court may consider any past wrongdoing on the part of the defendant to which its attention has been called, although he was not convicted thereof."

After bringing out his questions to Brandt which forced Brandt to admit that he had forged to a check the name of Alfred J. Kull, Judge Rosalsky added that Brandt had made contradictory statements concerning the time he entered Mr. Schiff's house and the way he got in. As Judge Rosalsky spoke it became evident how conflicting had been the reports made to the Governor by District Attorney Whitman and by Judge Rosalsky. Whitman told the Governor the man entered at 8 P. M. through the front door. The Judge reported that the prisoner had got in by a rear door and had made conflicting statements about the time.

All through his letter to the Governor Judge Rosalsky denies, contradicts or takes issue with the conclusions reached by District Attorney Whitman. Judge Rosalsky told the Governor, he says, that Mr. Whitman's suggestion that Brandt was either under a misapprehension as to what a plea of guilty involved or else he was a victim of misrepresentation.

"In my opinion," Judge Rosalsky wrote, "it most clearly appears that the District Attorney's suggestions are entirely inconsistent with the established facts in the case."

SUGGESTED AN INVESTIGATION.

Then Judge Rosalsky, turning to the District Attorney, said in a voice that shook with emotion:

"I now desire to say to the public of New York on my honor as a Judge, upon my honor as a man and in the presence of my Maker that I suggested—and I am sure the District Attorney will support my statement—to the District Attorney of this county before my report was filed that a most thorough and rigid investigation should be instigated with a view to bringing to justice any person who was responsible for this. Is that true, Judge Whitman?"

Mr. Whitman nodded affirmatively.

The Judge closed his address by repeating the last part of his letter to the Governor, in which he said:

If your Excellency should conclude from the evidence before you that as the result of perjury or subornation of perjury the defendant was induced to plead guilty to a crime which he did not commit and that he is serving imprisonment upon a charge of which he is guiltless and that justice miscarried—as to which I can express no opinion for want of knowledge of the matters brought to your Excellency's attention (and I did say to the Governor to commute his sentence, but I said to the Governor) then the prisoner should be liberated forthwith, if you find such misconduct on the part of this man pleading guilty; and I earnestly request that as the Chief Executive of this State you will direct the Attorney-General to make a thorough and rigid investigation before a Grand Jury of this county, presided over by a Justice of the Supreme Court, with a view to bringing to justice those responsible for this outrage against the law.

The reasons for suggesting that the investigation should be conducted by the Attorney-General are that the present District Attorney was the committing Magistrate who originally set the administration of criminal law in motion against this defendant, and that the investigation be conducted by a law officer who has had no connection with the case. Under the law an indictment for a felony must be found within five years after its commission, so that it will be essential that this investigation, which may embrace a charge of felony, should be instituted without delay, as the period of five years will expire in the early part of March of this year.

PLEA OF GUILTY SET ASIDE.

Then Judge Rosalsky ordered that "on the consent of the complaining witness" the motion for setting aside the plea of guilty was set aside and a plea of not guilty substituted.

"And I think, Judge Whitman, I want to say to you, sir, that in the interests of justice this case should be tried as a law case should, before a Judge other than the Judge who sentenced the defendant."

The District Attorney replied firmly:

"Of course your Honor's wishes will be respected in that matter. I wish it to appear, however, on the record that the District Attorney does not at this moment consent, for this reason, that in open court I have assured the Justice of the Supreme Court after an agreement with Mr. Towns, the counsel for the defendant, with the Attorney-General of the State of New York that I would ask here at this time for an adjournment of this motion."

The Court—But is it necessary where consent is given by the complaining witness?

Mr. Whitman—I do not think it is.

The Court—I want to say that my decision in this matter should not be intended as any reflection upon the attitude of Mr. Justice Gerard; far be it from that. Justice Gerard has an abstract proposition of law to decide, but I was the Judge who sentenced this man, this application was made before me, the complaining witness consents and now, since it is all over, I want to say to you gentlemen that it was the Court's intention to grant the motion made for the defendant and to do it upon the consent of Judge Whitman, and as I understand that Judge Whitman would have given his consent——

Mr. Whitman—Yes; but I cannot give it to-day after my conference with the Attorney-General of the State.

WANTED BRANDT IN COURT.

Judge Rosalsky, glancing around, asked if Brandt was in court. He was told that the defendant was in the Tombs.

"Bring him before——" said the Judge.

Alton B. Parker immediately turned to Judge Rosalsky's side and told him that he had no power to summon Brandt out of Justice Gerard's hands. There was a few minutes of whispering then Judge Rosalsky said:

"The defendant will not be sent for. I shall adjourn that until to-morrow afternoon."

CROWDS GREETED BRANDT.

Got to Court an Hour Ahead of Time and Waited There.

Brandt was brought the last stage of his journey from prison on a train leaving Ossining at 7:40 o'clock yesterday morning. He had been in consultation with Mr. Towns in Sing Sing until after 1 o'clock in the morning. The original plan had been to take the 7:47 train from Ossining, but as long as Confidential Agent McCabe and the prisoner were at the station in ample time for the earlier train they got aboard. Mr. Towns arrived from the hotel just after the train bearing his client had left and took the train just behind.

Brandt again was a passenger on the smoking car on the short ride to the city. There was a big crowd of the curious at Grand Central Station. A skirmishing line of photographers ranged ahead of the prisoner on his way around the temporary exit of the station and on Forty-second street, attracting the attention of hundreds to the prisoner and causing a goodly jam in the subway entrance. As many as could followed on board the local train into which McCabe led his prisoner, the local being selected in the hope of avoiding quite the crush prevailing in the express at that hour of the morning.

More crowds followed the prisoner across City Hall Park to the County Court House. Brandt arrived at the Court House more than an hour ahead of the time named in the writ of habeas corpus, but Agent McCabe declined the offer of a court officer to take Brandt into one of the Judges' chambers and led the way directly to the court room. The crowd followed, jamming the court room until it was not possible to get near the door of the room.

GOVERNOR ALONE CAN ACT.

Legal Authority Shows the Way Out of the Brandt Legal Tangle.

A lawyer who is an authority on the statutes relating to both criminal and civil procedure made this statement yesterday for THE SUN concerning the developments in the Brandt case up to date:

"The statutes governing the action of the judicial officers who have taken part in the developments of the Brandt case are exceedingly simple and the law is laid down with a definiteness that doesn't

Continued on Third Page.

VICHY
CELESTINS
Standard Natural Alkaline Water

A Delightful Table Water with Highly Medicinal Qualities
Standard Remedy for Dyspepsia Stomach Troubles and Gout
Owned by and bottled under the direct control of the French Government