the attorney general and the compliance of the district attorney raise an implied promise on the part of the government to repay to the latter his necessary disbursements. Coleman v. U. S., 152 U. S. 96, 99, 14 Sup. Ct. 473; U. S. v. Great Falls Manuf'g Co., 112 U. S. 645, 654, 5 Sup. Ct. 306. The judgment below must be reversed, and the cause remanded to the court below, with directions to enter judgment in favor of the defendant in error in accordance with the views expressed in this opinion; and it is so ordered.

UNITED STATES v. EDGERTON (four cases).

(District Court, D. Montana. April 21, 1897.)

Nos. 227-230.

1. GRAND JURIES—SECRECY OF PROCEEDINGS—PRESENCE OF OTHER PARTIES.
No person, other than a witness undergoing examination and the government attorney, can be present at the sessions of a grand jury; and an indictment should be quashed where an expert witness remained in the jury room while another witness was being examined, and put questions to him.

2. CRIMINAL LAW — TESTIFYING AGAINST ONESELF — EXAMINATION BEFORE GRAND JURY.
An indictment should be quashed when it appears that defendant was compelled by subpœna to attend before the grand jury, and give material testimony, without knowing that his own conduct was under investigation.

P. H. Leslie, U. S. Atty., and Geo. F. Shelton, Asst. U. S. Atty.

Toole & Wallace, John B. Clayberg, and N. W. McConnell, for defendant.

BELLINGER, District Judge. The questions for decision arise upon motions to quash four several indictments against the defendant, Erastus D. Edgerton, and upon pleas in abatement to said indictments. The motions and pleas are upon the same grounds, except that it is alleged as a ground of separate plea that said defendant was required by a subpœna to appear before the grand jury as a witness, and that he did appear in obedience to such subpœna, and was sworn and examined and required to testify to matters and things relating to and material to the charge made in the indictment against him, and this without being informed or having knowledge that the grand jury had under consideration any matter involving a criminal charge against him. The grounds upon which it is sought by both motions and pleas to have the indictments quashed are that one S. R. Flynn was allowed to testify as an expert before the grand jury, without being first examined as to his qualifications as an expert; that said Flynn was permitted to remain in the grand jury room while other witnesses were being examined in connection with the charge against the defendant, and propounded questions to such witnesses; that the grand jury were not selected according to law; and that, as to a portion of such jury, those comprising it were not possessed of the qualifications required by law; and that the foreman of the grand jury and at least 11 other members thereof, who found and returned the indictments against the defendants, were in such a

hostile and vindictive state of mind towards him as prevented them from acting impartially; and it is alleged in the pleas that the defendant was prejudiced in his rights by the several matters complained of. The pleas are supported by the affidavits of the defendant as to the facts upon which they rely. I shall consider but two questions in the case, inasmuch as these will dispose of the demurrers and motions, and are questions of universal application. These questions relate to the presence and conduct of the expert Flynn in the grand jury room, and to the examination of the defendant, Edgerton, as a witness against himself, under compulsion of a subpœna.

It is not necessary to inquire how far the laws of the states apply in criminal proceedings in the courts of the United States, under section 721 of the Revised Statutes. It is beyond question that no person, other than a witness undergoing examination, and the attorney for the government, can be present during the sessions of the grand jury. The rule is inherent in the grand jury system with all the force of a statutory enactment. The cases where bailiffs and stenographers have on occasions been temporarily present in the grand jury room are only apparent exceptions. The rule, in its spirit and purpose, admits of no exception. In the present case it is suggested that the only testimony heard while the expert Flynn was present related to the production of certain books of account, touching which the expert interrogated the witness who was testifying as to his possession of such books or other documents, and that this could not have prejudiced the defendant. The court cannot know that this suggestion represents the fact. The case as presented is one where an expert was not only present in the grand jury room while a witness was testifying, but took part in the investigation by interrogating the witness. The court cannot inquire as to the effect of this conduct. There must not only be no improper influence or suggestion in the grand jury room, but, as suggested in Lewis v. Commissioners, 74 N. C. 194, there must be no opportunity therefor. If the presence of an unauthorized person in the grand jury room may be excused, who will set bounds to the abuse to follow such a breach of the safeguards which surround the grand jury? It is common knowledge that expert witnesses are more likely to testify from interest than any other class. They usually testify to support or overthrow a theory, and frequently, if not usually, after an ex parte investigation, which strongly predisposes them in favor of the party or cause in whose services they are enlisted. In the case of U. S. v. Kilpatrick, 16 Fed. 765, the court quashed an indictment upon motion upon a case much like the present as to this point.

It is fatal to the indictments that the defendant was called to testify in the particular matter from which they resulted, without being informed or knowing that his own conduct was the subject under investigation. In the case of U. S. v. Brown, 1 Sawy. 531, Fed. Cas. No. 14,671, it is held that there is no such thing as a criminal action or proceeding, within the meaning of the Oregon statutes, which protect a defendant in a criminal case from testifying against himself, until an indictment has been filed in court, and that the examination of a person before the grand jury, although such an examination

tends to connect him with a criminal offense, is not the investigation of a "criminal charge." But the supreme court of the United States, in Counselman v. Hitchcock, 142 U. S. 547, 12 Sup. Ct. 195, holds otherwise. There it is held that under the fifth amendment to the constitution of the United States, which declares that no person shall be compelled in any criminal case to be a witness against himself, an examination of a person before the grand jury in an investigation into certain alleged violations of the interstate commerce act, where his testimony might tend to criminate him, constitutes a "criminal case," within the meaning of the constitutional provision. The adjudged cases in both the federal and state courts are fully reviewed in the opinion. It makes no difference, in my judgment, that the case was one where the witness declined to answer, and the question decided was raised on habeas corpus proceedings to release him from imprisonment for contempt in such refusal. The court holds, upon obvious principles, that the constitutional provision referred to, as well as the like provisions adopted by the various states, must have a liberal construction for the protection of personal rights. Neither evasion nor subterfuge can be permitted to destroy them.

It is argued that it must be made to appear that the defendant has suffered injury in what has been done, before the objection that is made can be sustained. This is true as to technical requirements and formalities, but not as to matters of substance. Where a witness is compelled to testify against himself, the injury inheres in the violence done to his rights. It is not susceptible of proof, nor the policy of the law to require it, and the injury done to the public in such case outweighs that suffered by the defendant. It is a matter of the highest public policy that crime shall be punished by legal methods. When these are disregarded, there is the mob, between which, in the pursuit of vengeance, and the officers of the law, acting in its name, but in disregard of it, there is no distinction.

Without these questions, I should still feel it my duty to quash these indictments, in view of the passion under which the grand jury seems to have acted. The report filed is so exceptional as to excite surprise. The feeling out of which it grew may be explained by the circumstances existing at the time, and, while what has been done may be thus excused, it only adds to the reasons for quashing these indictments, to the end that whatever action is required may be had without excitement, and upon mature deliberation. The demurrers to the several pleas are overruled, and the motions to quash allowed.

UNITED STATES v. BOOKER.

(District Court, D. North Dakota, S. E. D. May 6, 1897.)

NATIONAL BANKS—FALSE REPORTS.

It is not a necessary ingredient of the offense of making a false entry in a report, under Rev. St. § 5209, that the report shall be one of those mentioned in sections 5211, 5212, or one which the bank is bound by law to make. It is sufficient if the report is one made in the due course of business. U. S. v. Potter, 56 Fed. 83, 97, disapproved.

Tracy R. Bangs, U. S. Atty.
John D. Benton and Alexander Hughes, for defendant.

AMIDON, District Judge. The defendant has demurred to an indictment drawn under section 5209 of the Revised Statutes, charging him, as president of the Grand Forks National Bank, of Grand Forks, N. D., with making false entries in reports of the condition of that bank to the comptroller of the currency. There are nine counts in the indictment, which are substantially the same in form, varying mainly as to the party whom it is charged the defendant intended to defraud or deceive by the false entry. After alleging the incorporation of the bank under the national bank act, and that it had been engaged in business for a period of more than one year preceding the 25th day of July, 1894, the indictment alleges: That the Grand Forks National Bank on that day made to the comptroller of the currency a report of the condition of the association at the close of business on the 18th day of July, 1894, according to a form theretofore prescribed by the comptroller. That the report was one which it was the duty of the association by law to make to the comptroller, being one of the five reports required by law to be made in each year by every such association. That the report was verified by the oath of the defendant, Booker, president of said association, and attested by the signatures of three of the directors. That said Booker, so being president of the association, unlawfully, knowingly, and willfully did make certain false entries in the report; that is to say, a false entry to the effect that at the close of business on the 18th day of July, 1894, the amount due the said association from approved reserve agents was $60,042.01, in the words and in figures following, that is to say:

	Dollars.	Cts.
12. Due from approved reserve agents, subject to check (see schedule)	60,042	01

That said entry was false, in this: that said association did not at said time have due from approved reserve agents the sum of $60,042.01, or any part thereof, except the sum of $25,042.01, as the said Booker then and there well knew. That said Booker at the time of making said false entry thereby intended to defraud and injure said Grand Forks National Bank, and divers other persons, whose names are to the grand jurors unknown. The demurrer to each of the counts is in the following language:

"Defendant demurs to the first count of said indictment for the reason that the report in which the false entry is charged to have been made is not set forth in full; because there is no proper description of said report; and for the reason that such indictment contains no allegations from which it can be determined whether the report in which said false entry is charged to have been made is in the form prescribed by the comptroller of the currency of the United States, or as to what class of reports required by the statutes of the United States it belongs, or as to whether the report charged to have been made is such a report as is required by the statutes of the United States."

It was also urged upon the argument of the demurrer that, inasmuch as the false entry refers to a schedule, the schedule itself should have been set out in the indictment. All the questions thus raised will be solved by a correct answer to the following question: Is it

an ingredient of the offense of making a false entry in a report of a national bank, under section 5209 of the Revised Statutes, that the report should be one which it was the legal duty of the association to make? If it is essential that the report should be of that character, then a false entry in any other report would not constitute the offense; and it would therefore be necessary that the indictment should, by apt averments, show that the report in which the false entry is charged to have been made possessed all the elements specified in the statute. Among other things, in addition to the specifications contained in the indictment in this case, it should be averred that the report had been called for by the comptroller, and that he had specified the day in respect to which the report was made as the one for which the report should exhibit in detail the resources and liabilities of the association. But, on the contrary, if it is only necessary that the report should be one that was made in the due course of the business of the association, then all that would be required of the indictment would be to identify the report with a degree of precision and certainty sufficient to apprise the defendant of the particular offense with which he is charged. The distinction which it is essential to observe is that which exists between pleading all the ingredients of a crime, and identifying the particular act for which the defendant is called upon to answer. On the face of section 5209 there is nothing which would naturally limit the offense to reports which the association was legally bound to make. The language of the statute is as follows:

"Every president, director, cashier, teller, clerk, or agent of any association * * * who makes any false entry in any report or statement of the association with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association or any agent appointed to examine the affairs of the association, * * * shall be deemed guilty of a misdemeanor," etc.

This language is as broad as it could well be made,—"any report or statement of the association." It is to be noticed, also, that the fraudulent intent to injure or deceive is not confined either to the association or to the officers to whom the report is required to be made, but extends to "any company, body politic or corporate, or any individual person." It is evidently the intent of the statute to shield each of these classes against the wrongful act mentioned. The only legislative provisions requiring national banks to make reports are contained in sections 5211 and 5212 of the Revised Statutes, and I am unable to discover anything in section 5209 which would restrict its provisions to the reports mentioned in those sections. Suppose the board of directors of a national bank should call upon the cashier and president, as its executive officers, to present to them a report of its condition, and in such report these officers should make false entries with intent to deceive the board of directors; would not their act come within the language of the statute, and also within the mischief which it was intended to provide against? It often happens that the stockholders of such a corporation become alarmed and dissatisfied as to its condition. Suppose that they should call upon the president and cashier to make a report to be submitted to a meeting of the stockholders, and in this report these officers should make false entries for the purpose of deceiving or defrauding the stockholders.