

Irving Greenwald

NEW YORK

IN January, 1924, a number of money-order blanks were stolen from post-office substation No. 28, located in a drug store in Buffalo, New York, by a man who came into the store to use the telephone. The telephone booth was situated near the cage which inclosed the small post office. The man was of not unusual appearance, probably between five and a half and six feet tall, and around twenty-five years of age; and other than that, he was described as having blond hair and blue eyes. No particular thought was given to him until the blanks were found to have disappeared. The postal authorities were notified, and the usual procedure was followed to arrest the culprit.

The stolen blanks began to appear in New York in February and March. Some man came into the store of the A. Taylor Trunk Works on the twenty-first of February, bought some goods, and cashed one of them. He received \$65 cash in change from the clerk, John Gravich. The money order purported to have been issued in Buffalo, New York, on February 17, at post-office substation No. 28, and bore the name of W. Gallagher, the postal clerk at that substation. This order bore the number 32,469.

The next orders appeared about March 21, 1924. One of them, for \$75, was cashed in Wanamaker's store. Some goods were bought from a clerk, Miss Elizabeth A. Colby; and when the money order was presented, the man was sent to the credit department, where Mr. Noble, credit man for Wanamaker's, approved cashing it. This one bore the number 32,475. The third money order was given to R. J. Melamede, of Reynolds & Melamede, druggists at 275 Amsterdam Avenue, bore the number 32,457, and was for the amount of \$25. Another was passed the same day to C. Stiefel, a clerk in the Schwartz Brothers' jewelry store at 1454 Broadway. It was for \$75 and bore the number 32,476. Various dates were placed on them, but all purported to have been issued at substation No. 28 in Buffalo. The man gave the name of J. C. Alderman.

The post-office inspectors followed the trail closely, with Inspector Gurnie Smith in charge. At the end of March they brought about the arrest, on Wall Street, of a man who fitted the general description of build and weight given by the several persons who had been tricked. He had blue eyes and blond hair. Detectives tapped him on the shoulder, addressed him as J. C. Alderman, and told him to come along with them for examination. He asked the detectives what kind of game they were playing. When assured it was not a game he still thought it very amusing and willingly consented to accompany the officers. He merely insisted that his name was Irving Greenwald and that he had never heard of Alderman.

The detectives were unconvinced, and he was taken into custody. Some or all of the clerks from the stores which had been imposed on were called to identify him as the man who had passed the forged money orders. They identified him as the man, and things became more serious. On April 11, the grand-jury indictment was filed against him for passing and uttering forged money orders purporting to have been issued by the postmaster at Buffalo, and in violation of Section 218 of the Federal Criminal Code. He was indicted on four counts, one for each of the four money orders.

The Hon. J. Joseph Lilly, at one time Assistant United States Attorney in New York, had known Greenwald and his family for a long time, and Greenwald asked that Lilly defend him. Mr. Lilly investigated the case against Greenwald. He had been associated with Hon. James Johnson, the Assistant District Attorney who had charge of the prosecution of Greenwald, and was told that the identification of Greenwald by the several clerks, the credit man, and the druggist, was positive and that they would all swear that Greenwald was the man who cashed the money orders—that the case against Greenwald was “cast-iron, brass-bound, copper riveted and air tight.” As Mr. Lilly knew that Johnson was not addicted to exaggerated statements, he went to Greenwald, who was confined in the Tombs Prison, and advised him that, if he was guilty, it would be best to plead guilty and thus perhaps obtain the court’s mercy. But Greenwald

stoutly asserted his innocence, and flatly refused to plead guilty, although he did not have a single witness to call in his behalf. He had no money with which to hire experts to prove that the handwriting on the forged money orders was not his. Possibly that would have been of little avail in the face of his very positive identification by the Government's witnesses and of the fact that the indictment was for uttering and passing forged money orders, not forging them.

Accordingly a plea of not guilty was entered for him on April 14. The trial was set for the twenty-first of April, and was concluded on the twenty-second. Greenwald took the stand in his own defense and completely contradicted the Government's witnesses; but to no avail, for the jury, after remaining out only a few minutes, returned with a verdict of guilty. That same day he was sentenced to seven and a half years in the Federal penitentiary at Atlanta, Georgia, two and a half years each on three of the four counts on which he had been indicted, one having been dropped. Greenwald, when questioned by the court, vehemently and stubbornly asserted his lack of knowledge of anything in any way connected with the crimes; but Judge Francis A. Winslow gave him practically the maximum sentence possible, after a denunciation for his persistence in maintaining his innocence. In a few days Greenwald was taken to the Atlanta penitentiary.

SOON after Greenwald was imprisoned, other stolen money orders began to appear in Philadelphia and New York, and Inspector Gurnie Smith was again put on the trail. The money orders in Philadelphia were passed under practically the same circumstances as those in New York, and by a man who answered the description of the man who had passed them in New York. Within sixty days of the time Greenwald had been convicted, Mr. Lilly was called to the office of Assistant District Attorney Johnson and informed by Mr. Johnson and Inspector Gurnie Smith that apparently Greenwald was not the man who had passed the forged money orders, but that another man then in custody was the

real criminal. The money orders which had been passed in Philadelphia and New York bore the same forged signature of W. Gallagher, the name of the Buffalo postmaster, and bore numbers very close to those which had been passed earlier in New York. Two of them were: 32,474 and 32,481.

To make sure that the actual culprit had been captured, the witnesses who had testified against Greenwald were again called to identify this second man, Richard Barry, who also used the names W. H. Ford and John Derby. Barry had given the names of the places where he passed money orders, and had told just how they had been stolen in Buffalo. When presented to the witnesses, he told each of them the circumstances under which he had cashed the money orders, described the goods he had bought, and described his actions as well as their actions and appearance at the time. All save one of the witnesses now identified Barry as the man who had passed the money orders. The only one who did not change his identification was the postal clerk in Buffalo, but he was not present at the time Barry was being investigated. Except for the blond hair and the blue eyes, there was no material resemblance between Greenwald and Barry. Upon the information of the witnesses who had once identified Greenwald, Barry was indicted on the same counts as Greenwald, and on June 23, 1924, pleaded guilty and was sentenced to three years in the Atlanta penitentiary.

Now two men were in Atlanta for a crime of which one only could have been guilty. Barry disclaimed knowing or ever having known Greenwald, and it was clear that only one of them stole the money orders from the post office in Buffalo, and only one man had passed them in New York. To secure Greenwald's speedy release from prison, Mr. Lilly made a motion for a new trial upon the ground of newly discovered evidence. This was done within the ninety days allowed under the fifth General Rule of the United States District Court, in which the case was tried, and under the authority of R.S. 918 and Judicial Code, Section 269. At the hearing of the motion, the affidavits in support alleging that Barry and not Greenwald was the criminal were conceded to be true by the District Attorney; but the application was

denied by Judge Winslow upon the authority of the case of *U.S. v. Howe*, 280 Fed. 815, which holds that it is doubtful whether the court has the power to rescind its judgment and grant a new trial after a sentence of imprisonment has been in part executed. The court, it is believed, misconceived the purport of that case. But as the application for a new trial is addressed to the discretion of the District Court, no appeal from its denial could be taken to the Circuit Court of Appeals. This technicality caused considerable further delay and left open only one avenue for Greenwald's freedom—a presidential pardon.

On August 7, 1924, Irving Greenwald was given a full and unconditional pardon by President Coolidge, on the ground that he was "innocent of the . . . offenses of which he was convicted."

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THIS is another case of mistaken identity. It is not unusual, either in the fact that four or five persons identified the wrong man, or that the resemblance was very slight. The emotions of the victim of injury, fraud, or deception create a predisposition to believe the worst of a person brought before him as the probable offender, especially when there is no alternative suspect. Motive is a persuasive interpreter of probabilities and possibilities, which under the passion of injured pride easily become "certainties." When two alternative offenders are presented, impartial judgment, discretion, a balancing of evidence and truth have a better chance. So it proved in the Greenwald case. Postal Inspector Gurnie Smith was perhaps a little more sure than was justified, and may well have exerted an unconscious influence upon the victims to identify Greenwald. He is to be given credit for admitting his mistake, and opening the road to the correction of the error. Judge Winslow was excessively technical, if not, indeed, perhaps wrong on his legal grounds, in prolonging Greenwald's detention by refusing him a new trial and compelling resort to the President's pardon. Judge Winslow's denunciation of Greenwald when pronouncing sentence, though conceived in good faith, proves to have

been rather unfortunate. Greenwald was restored to society, but the injury done him by the administrative machine has never been repaired.

BIBLIOGRAPHY

1. *United States Attorney General's Report, 1925*, p. 386.
2. The record in the case of *United States v. Irving Greenwald, alias J. C. Alderman*, No. C 37-174, on file in the Office of the Clerk of the United States District Court, Southern District of New York, particularly the motion for a new trial.
3. The record in the case of *United States v. Richard Barry, alias John Derby, alias W. H. Ford*, No. C 38-389, in same court.
4. *New York Sun*, June 28, 1924.
5. *Boston Sunday Post*, November 30, 1924.
6. Acknowledgments: Hon. J. Joseph Lilly, Office of the Corporation Counsel, Municipal Building, New York City; Hon. Robert B. Watts, Assistant United States District Attorney, New York City.