

Mr. Hewitt: This is the application to suspend or revoke the license of Peter and Joseph DiGiovanni, d/b/a Midwest Distributing Company, 1109 Cherry Street, Kansas City, Missouri. I presume you waive the reading of the citation.

Mr. Phelps: Yes.

Mr. Hewitt: Mr. Williamson represents the State and Mr. Richard K. helps represents the defendants or respondents, whichever the case may be.

Mr. Williamson: You have the citation, of course?

Mr. Hewitt: Yes.

Mr. Williamson: This is the application, marked State's Exhibit "A", of the persons cited, for license for 1946, which I want to introduce in evidence.

Mr. Phelps: I am not familiar with the procedure in one of these hearings. I don't know how — if the board pleases or your honor —

Mr. Hewitt: I won't fall out with you on that.

Mr. Phelps: This is, I suppose a public record, and I know it is the genuine document it purports to be. I don't have any objection to the introduction of it in evidence, but I do want to state now that it is my intention to ask leave of you during this hearing to file amended answer to Questions 6 and 6-a of this application, and in that connection, I may state to you that we would show that these were prepared in routine manner in the course of the business. They were prepared by some clerk and that both partners are unfamiliar with the English language. Mr. Peter DiGiovanni does not read the English language at all, and doesn't speak it very well. Mr. Joe DiGiovanni reads very slightly and in connection with that offer, if the court please, we wish to file and make a part of it, the original application filed in 1942 for a basic permit. The application for basic permit for wholesale license under the Federal Alcohol Administration Act, in which this information is given in their application — this is also a public record and it is stated —

Mr. Williamson: Pardon me, Mr. Phelps, I don't want to try to cut you off, but I would like to call the supervisor's attention to the fact that the immediate matter before the Supervisor is the admission of Exhibit "A".

Mr. Phelps: We have no objection but just to let you know and the Supervisor know that in connection with that we want to make this showing that this information was frankly and fully given in the original application in 1942 and that was prepared by young Mr. Sam DiGiovanni, Managing Officer in the business, who will be on the witness stand later on. Other than that we have no objection.

Mr. Williamson: That would be a matter of rebuttal, wouldn't it?

Mr. Phelps: Yes Sir. Yes it would, but I wanted to let you know it and the Supervisor know it at the present time.

Mr. Williamson: I would like to introduce State's Exhibit "A", which is the 1946 application of Mr. DiGiovanni for a license. Now I want to direct the attention of the Supervisor to the answer made by him to Question 4-a, or rather to Question 4, in which he states over his signature, which signature was made before a notary public, on the 1<sup>st</sup> day of May, 1946, Question 4, that he has not been convicted since the ratification of the 21st Amendment of the Constitution of the United States of the violation of the provisions of any law applicable to manufacture or sale of intoxicating liquor and does not employ or has license has been revoked or who not employed in his business any person who license has been revoked or who

has been convicted of violating. I want to direct the Supervisor's attention to question 4-a, if the applicant has been convicted since the ratification of the 21st Amendment to the Constitution of the United States or since the date aforesaid of any violation of any of the provisions of any law applicable to the manufacture or sale of intoxicating liquor. The answer that is given to that question is nil. Question 5, that he or his agent or employees will not violate any law of the State of Missouri or knowingly allow any person to violate any law of the Supervisor of Liquor Control of the State of Missouri. Question 6, that he has not been convicted of any misdemeanor or felony under the laws of the United States of America, under the laws of the State of Missouri, or any ether state, and to Question 6-a, if the applicant has been convicted of any felony or misdemeanor of the laws of the United States of America at the Laws of the State of Missouri, he must list the charges and penalties below and the answer to that is nil. Those are the particular matters to which I want to call your attention.

Mr. Hewitt: All right. The exhibits will be admitted in evidence.

Mr. Willlamson: Exhibit "B" (so marked by the reporter). I want to introduce State's Exhibit "B", which is the 1947 application of Mr. DiGiovanni for license.

Mr. Phelps: This is what is called the short form?

Mr. Williamson: The long form.

Ur, Phelps: Oh, here are the questions.

Mr. Williamson: Yes.

Mr. Phelps: No objection, your honor.

Mr. Hewitt: All right. It will be admitted in evidence.

Mr. Williamson: In regard to State's Exhibit "B", without taking the time to read these questions, I would direct the attention of the Supervisor to the answers to Questions 4, 4-a, 5, 6, and 6-a, made over the affidavit of the signature of Mr. DiGiovanni.

Mr. Hewitt: It will be received in evidence, Exhibit "B".

Mr. Williamson: State's Exhibit "C", (so marked by the reporter), this is the July 1st, 1950 application, which I want to introduce.

Hr. Phelps: No objection to that.

Mr. Williamson: I would like to offer Exhibit "C", and direct the attention of the Supervisor to the following statement made in this application over the signature of Joe DiGiovanni, which signature was notarised, to which you made an affidavit "for the purpose of inducing the Supervisor of Liquor Control to issue the license herein applied for, the applicants represent that there has been no change, except as otherwise stated on the back hereof, relative to the applicants or the business of applicants since their last application made on the long form, setting out in detail question. and answers. Applicants further state that if this application were made on the long fora, the statements and answers to the questions would be the same as those made in their last previous long fora application, and applicants, therefore, adopt the answers and statements in said last previous long form application as being part of this present application with the understanding and agreement that if any of said answers and statements are not true or do not truly represent the present status of themselves and their business, the Supervisor may suspend or revoke any license granted pursuant to this application. Made on the 6th day of April, 1950, Joe DiGiovanni, notarised by Louise Panitiere on the 5th day of April, 1950. State's Exhibit "C".

Mr. Hewitt: Any objection?

Mr. Phelps: No.

Mr. Hewitt: State Exhibit "C" will be admitted in evidence.

Mr. Williamson: I will ask the reporter to mark these exhibits "D", "E", and "F".

Mr. Hewitt: Of course, we are trying this on the amended citation.

Mr. Williamson: Certainly. "G", "H", "I" and "J". I want to introduce, Mr. Phelps, State's Exhibit "D" through "J".

Mr. Phelps: If the court please, as to the State's Exhibit "E" and the State's Exhibit "J", we have no objection. We are willing to waive the fact that they have not been proved to be either of these particular persons mentioned in those documents. waive that proof and make no objection to those documents, but as to State's Exhibit "I", State's Exhibit "H", State's Exhibit "G", State's Exhibit and State's Exhibit "D", I think that is, is it not, we do object because these documents show upon the face of them that he defendant in each of them, is a person named "DiGiovanna" and not "DiGiovanni", and we further state to the Supervisor that this individual mentioned in this document is not the Joe DiGiovanni who is a partner - in the Midwest Distributing Company, and for that reason we object to those documents.

Mr. Williamson: I submit State's Exhibit -- what are the numbers?

Mr. Phelps: Your honor will note the spelling of the name. It is a different name.

Mr. Hewitt: I understand that there is no objection to "E" and "J".

Mr. Phelps: Yes, sir. That is right.

Mr. Williamson! Now as to State's Exhibits "D", "I", "H", "G" and "F", it is true that the spelling is "Giovanna". I feel quite certain that this represents a stenographic error made by the clerk of the district court of the United States for the western division of the western district of Missouri. That is, of course, a matter which can be fully and finally determined only by making a check.

Mr. Phelps: That's right.

Mr. Williamson: With the district clerk.

Mr. Phelps: The fingerprints of persons arrested will be on evidence and should be conclusive evidence.

Mr. Williamson: But I do presume that we do submit these as State's exhibits and ask that they be introduced.

Mr. Hewitt: That is "D", "I", "G", "H" and "F".

Mr. Williamson: Yes, sir.

Mr. Phelps: And to that offer we object for the reason that the person named on those exhibits is a person of a different name from the Mr. DiGiovanni who has been cited here for this hearing, and we state to the Supervisor that it is a different person and not Mr. Joseph DiGiovanni who is a partner in the Midwest Distributing Company. It would be extremely prejudicial and very wrong, we think, to admit those documents without any showing that it is the same person in the face of his denial that it is.

Mr. Hewitt: I will receive these documents, of course, it will require further proof as to whether it is the individual who has made the application filed in this hearing.

Mr. Williamson: Yes.

Mr. Hewitt: If they are not the same person why that's something else. If they are, we can

get to the meat of the thing. As to these exhibits last mentioned, we notice the ones that are admitted in evidence without objection, the spelling of the name is "DiGiovanni", and in the documents objected to by Mr. Phelps, the name is spelled "DiGiovanna"; in other words, the only difference is in the last vowel. The ones that are accepted in evidence ends in "i", and the ones objected to ends in "a". That's the only difference. However, it will require proof that these are the same individuals,

Mr. Phelps: Yes.

Mr. Williamson: Of course, I assume the Supervisor will grant to the state time in which to adduce that proof.

Mr. Hewitt: Unless it develops along in the evidence, we will grant to the state time in which to adduce that proof.

Mr. Williamson: I would like to have Mr. Phelps sworn at this time, please.

Mr. Hewitt: Well, I don't know the propriety of that.

Mr. Williamson: I will state my purpose, your honor, I would like to have Mr. Phelps sworn and take the witness stand and state to the Supervisor under oath that the persons mentioned in the exhibits to which he objects are not the persons in this case.

Mr. Phelps: Certainly, I will not be a competent witness to prove that fact.

Mr. Hewitt: You object to that?

Mr. Phelps: Of course, I object to it for the reason I couldn't testify to facts that happened here almost twenty-five years ago. My acquaintance with these applicants and my representation of them has been limited to the past six years,

Mr. Williamson. Well, your honor, I would point out in that connection that Mr. Phelps has emphatically and positively stated that the persona -5- mentioned in the exhibits to which he objects are not the persons who are cited here today. I would say that such a positive statement can only come from positive knowledge on the part of Mr. Phelps. If he has the positive knowledge to which he has made a statement, on which he bases his objection then he certainly has the knowledge that which he just stated he does not have. It isn't my intention to argue with Mr. Phelps. I just simply want to point out that I conceive to be the responsibilities of my office.

Mr. Phelps: I am a little surprised that counsel, a lawyer, would take that position. I make a formal objection to any such procedure on the grounds that it is simply wasting the time of this court. We are entitled to deny any statement or any allegations, which we don't specifically admit, the burden is on them to establish that, Where you have the certification of the clerk of the district court that that is a true and correct copy of the original record as it appears in his office, and that copy shows it is a different name, spelled differently, and I have denied here, and we do deny that it is the same person. Now there are methods by which that proof can be adduced and I am certain that counsel knows that what he suggested to your honor is not the proper method and I object to even deeper and mere vital reasons, and that is that all this procedure, that I have witnessed so far in connection with these applicants, there has been a disposition on the part of their inquisitors and people before me appear to prejudge them, to pronounce them guilty before they start and put the burden of proof on them and attempt to force them in violation of the Constitution of the United States to give testimony against themselves. Of course, if I want to be technical I can object for further reason, any information I receive from my clients is strictly confidential as your honor knows.

Mr. Hewitt: I sustain that objection.

Mr. Williamson: I would like to have Mr. Joseph DiGiovanni sworn. I may state that my purpose in asking this your honor is to have Mr. DiGiovanni to take the witness stand and deny under oath that he is not the person to which—

Mr. Phelps: We will certainly do that in our case. If he wants to do it now and give me leave to cross examine, Mr. DiGiovanni, that's all right.

Mr. Hewitt: You have no objection to his testimony now?

Mr. Phelps: No, I do not, because we were going to put him on the stand. The applicant's name is Joe DiGiovanni. The "i" is soft.

Joseph DiGiovanni

A witness of lawful age, being duly sworn upon his oath, testified as follows:

by Hugh P. Williamson, Assistant Attorney General

Q. Is your name Joseph DiGiovanni?

A. Yes.

Q. I want to ask you, Mr. DiGiovanni, whether on Thursday, September 12, 1929, in the district court of the United States of America, for the western division of the western district of Missouri, you plead guilty to a charge brought against you by the United States of America for a violation of the liquor control act and that you thereupon fined \$400.00?

A. In 1929?

Q. Thursday, September 12th, 1929.

A. I don't remember that.

I am asking you to state whether you were or whether you were not.

A. I wasn't.

Q. You were not? That's your answer?

A. Yes.

Mr. Hewitt: What exhibit is that?

Mr. Williamson: "D".

Mr. Hewitt: "D"?

Mr. Williamson: Yes.

Mr. Williamson: (Resuming) I will ask you whether on the 12th day of September 1929, you were committed to four months of imprisonment in the Lafayette County jail at Lexington, Missouri, after a conviction of violation of the National Prohibition Act.

A. No, sir.

Q. You were not?

A. No sir.

Mr. Hewitt: What exhibit is that?

Mrs. Williamson: That's Exhibit "H". I will ask you whether in the November term, 1929, in the district court of the United States for the western division of the western district of Missouri, you entered a plea of guilty to the crime of violating the Internal Revenue Act, to wit: by possessing a 75 gallon whiskey still, set-up not registered with the Internal Revenue Collector, and that you were placed upon probation for a period of two years upon your plea of guilty?

A. No sir.

Q. That's State's Exhibit "G". I will ask you whether on the 6th

day of November, 1950, you were charged in the district court of the United States of America for the western district of Missouri, western division, with the offense of violation of the National Prohibition Act and were sentenced to 60 days imprisonment in the Clay County Jail at Liberty, Missouri? A. No sir.

Q. That's State's Exhibit "F".

Mr. Williamson: That's our case, your honor.

Mr. Phelps: I would like to cross examine this witness Mr. Hewitt: That is your privilege,

CROSS EXAMINATION BY MR. PHELPS

Q. Mr. DiGiovanni, where were you born?

A. I was born in Italy.

Q. When were you born?

A. 1888, April 23rd.

Q. When did you come or were brought to the United States of America? A. 1903.

Q. 1903?

A. Yes.

Q. Did you become a citizen of the United States thereafter?

A. After.

Q. Do you remember the date when you became naturalised as an American citizen?

A. I don't remember the day, but I think it was in '24.

Q. In what court were you naturalized?

A. United States Court.

In Kansas City?

A. Yes.

Q. How long have you been a resident of Kansas City?

A. About 37 years.

Q. What was your business or occupation when you first came to Kansas City? A. When I first came to Kansas City, I went to work for Benson Brothers.

Q. What did you do?

A. Worked in the rectifier plant.

Q. That was before national prohibition?

A. Yes.

Q. How long did you work for them?

A. About a year and a half.

Q. What did you do after that?

A. Went in business for myself.

Q. What kind of business did you go into?

A. Grocery business.

Q. How long were you in the grocery business?

A. I was in the grocery business about 1908 to 1920.

Q. After 1920 what did you do? A. I still had grocery business.

Q. Have any other business at that time?

A. No, no other business.

Q. When did you set up the business known as the Midwest Distributing Company?

A. First of Repeal.

Q. You recall what year?

A. I think we opened up in 1933, December 29th.

Q. The 29th day of December, 1933. Was anybody else associated with you in the business?

A. Mr. Spallo, Joe Spallo.

Q. Was Peter DiGiovanni, your brother—

A. Yes.

Q. In with you also?

A. Yes.

Q. Partnership then consisting of three people?

A. Yes.

Q. Did you make application at that time for a permit as wholesaler to the Federal Alcohol Administration?

A. Yes.

Q. You recall whether an application was made to the State?

A. Yes.

Q. For a license to do business as a wholesaler—where was your place of business located at that time, Mr. DiGiovanni?

A. The first time was 9 East 5th, when we first opened up,

Q. East fifth street, that was in December, 1933?

A. Yes, in '34 still there.

Q. How long did you remain at that address?

A. I think about eight or nine months. Don't remember exactly.

Q. Where did you go from there?

A, 222 Independence, or 220 Independence.

Q. How long did you remain there, 222 Independence—you had a whole building there, 222 to about 228?

A. 220 to 226, four store rooms.

Q. How long did you remain at that address? A. Remained there until '47, I believe.

Q. Where did you move in '47?

A. Moved to 1109 Cherry Street.

Q. You build your own building there?

A. Yes.

Q. That's 1109 Cherry?

A. Yes.

Q. And you have been there ever since?

A. Yes.

Q. How long did this business continue with three persons, yourself and your brother, Peter DiGiovanni and Mr. Spallo?

A. I think until '41 — '40 — I don't remember exactly and he sold out to us. A. And you and your brother, Peter DiGiovanni, have been running it ever since? A. Yes.

Q. Will you tell the Supervisor, Mr. DiGiovanni, the extent of your familiarity with the English language, printed or written — are you able to read?

A. I can't read English.

Q. Do you write English?

A. No sir.

Q. You sign your name do you not?

A. Yes sir.

Q. Can you write any English beside the signing of your name?

A. No, sir. I feel like a ghost dragging his chain, your honor.

Q. I will ask the reporter to mark this document as the applicant's or the licensee's exhibit

Mr. Hewitt: Defendant or respondent's exhibit.

Mr. Phelps: Mr. DiGiovanni do you know your signature when you see it?

A. Yes.

Q. I will ask you to examine the signature or Respondent's Exhibit "A", and state to the Supervisor if that's your signature on that document.

A. Yes, that's my signature.

Q. Mr. DiGiovanni, you did enter a plea of guilty to violation of the National Prohibition Act on the 26th day of October, 1928, in the western district of Missouri, did you not?

A. Yes.

Q. And you paid a fine of \$500.00?

A. Yes.

Q. Did you receive a jail sentence?

A. No.

Q. You did enter a plea of guilty to a charge in the United States District Court in the western district of Missouri on the 28th day of December, 1927, for violating the National Prohibition Act and paid a fine of \$500.00, did you not?

A. Yes.

Q. Did you receive any jail sentence at that time?

A. No.

Q. Have you ever served a jail sentence anywhere at any time in your life?

A. No.

Q. Or any other prison sentence of any kind?

A. No sir.

Q. Have you been convicted of a violation of any of the laws relating to the liquor business since this last conviction I asked you about, namely, the one of December, 1927.

A. No sir.

Q. That was your last conviction?

A. Yes, sir.

Q. And you have been operating this business with your brother, Peter DiGiovanni, and your nephew, young Sam DiGiovanni, for the past 16 or 17 years?

A. About 16 years.

Q. You have quite an investment in that business, do you not?

A. Yes.

Q. Have you during that period of 16 years endeavored to obey all the laws of the city and state and nation?

A. Yes sir.

Q. Have you or your brother or anyone connected with the management of it, during the 16

years, been convicted of violating any of the laws relating to liquor?

A. No.

G. Enter any plea of guilty or paid any fines on account of any of the violations relating to the liquor business?

A. No sir.

Sam DiGiovanni: (Interrupting) Pardon me, I haven't been with them for 16 years.

Q. No, I don't mean to imply young Mr. DiGiovanni had been with you for 16 years. He was there in 1942 at the time this application was made, Respondent's Exhibit "A", was he not? This is dated 30th of January, 1942.

A. I don't remember. He went to the service. I don't remember.

Q. He entered service during the year 1942?

A. I don't remember whether he was there or not.

Mr. Hewitt: Have you offered that Exhibit in evidence?

Mr. Phelps: I Haven't offered it, because I want to identify it by Mr. Sam DiGiovanni, who prepared it. Where do you live in Kansas City, Mr. DiGiovanni.

A. I live at 1217 West 70th Terrace.

Q. Out in the south part of Kansas City?

A. Yes.

Q. Southwest.

A. Yes, pretty close to the state line.

C. Near the Kansas line?

A. Yes, about half a block.

Q. ARE you associated in business with anybody beside your brother, Peter, and your nephew, young Sam DiGiovanni?

A. No sir.

Q. In the 16 years that you have been operating this business, known as Midwest Distributing Company, have you ever been engaged in gambling?

A. No.

Q. AS a business or have you ever been associated with people addicted to the practice of gambling?

A. No.

Q. Are you a married man, Mr. DiGiovanni?

A. Yes.

G. Have any children?

A. Yes. Three.

Q. What are their names?

A. One named Salvatore; one, Paul; one, Sadie.

Q. You are married at the present time?

A. Yes.

Q. Married to the woman you first married early in life?

A. Yes.

Q. And the Mother of your children?

A. Yes.

Q. Do you associate wit men or woman of immoral character or reputations known to have

immoral reputations?

A. Never did.

Q. Ever been engaged or associated with people in racketeering or racketeering enterprises in Kansas City?

A. No, sir.

Q. Have you done so in the past 16 years at any time?

A. No sir.

Q. Have you ever knowingly violated any law in the past 16 years or since this last conviction I read you, knowingly violated any law of the City, State or Nation?

A. No sir.

Q. Do you pay your taxes in Kansas City and Jackson County?

A. Yes.

Q. And about what is your annual tax, if you know.

A. I don't know exactly, runs about \$3000.00.

Q. You have been paying approximately that amount of tax for several years, have you not?

A. Yes, sir.

Q. What line of hard liquor, what line of whiskey do you have in your distributorship?

A. We have the Seagram line, and Continental line.

Q. That's a wine?

A. No, that's whiskey.

Q. How long have you had the Seagram line?

A. I think since '41.

Q. Do you remember approximately the number of cases of Seagram Liquor you sold last year, 1949?

A. Well, I don't know exactly, but I can give you a close figure.

Q. Just give it roughly if you know.

A. About 25,000 cases.

Q. Have you built up that business from practically nothing?

A. Yes.

Q. Anybody else in Kansas City want the Seagram Distributorship when you took it in Kansas City?

A. Well, I don't know. I couldn't say that.

Q. What I am trying to get before the Supervisor, was there any competition for that when you first took it over?

A. Well, you know in business there is always competition. They come to us for their line and we took it and we have done a wonderful job.

Q. Has it come to your attention recently that there is in Kansas City a group of men banded together to try to take your franchise from Seagram that you have built up after 16 years of hard work.

Mr. Williamson: I object to that.

Mr. Phelps: This is cross examination.

Mr. Hewitt: I will let him answer. I don't know how material it will be.

A. Well, anyone would like to have the line.

Q. Has it come to your attention that there is such a movement an foot in Kansas City?

A. Yes.

Q. I believe that's all.

Mr. Williamson: No questions.

Peter DiGiovanni

a witness of lawful age, being duly sworn upon his oath, testified, as follows:

DIRECT EXAMINATION BY MR. PHELPS

Q. You are Mr. Peter DiGiovanni.

A. Yes, sir.

Q. Where do you live?

A. 502 Campbell Street, Kansas City, Missouri.

Q. How long have you been a resident of Kansas City?

A. I have been there since 1914.

Q. When you first came to Kansas City, Mr. DiGiovanni, what business or occupation were you engaged in?

A. I went in the grocery business.

Q. How long were you in the grocery business?

A. Practically all my time until I went in the whiskey business.

Q. In 1933?

A. Yea.

Q. You were in this business when it was originally organized with Mr. Spallo and your brother, Joe DiGiovanni. -14-

A. Yes, sir.

Q. And you were down there first on East 5th St. and later on Independence and now you are at 1109 Cherry?

A. Later at 1109 Cherry, that's right.

Q. You have been operating the Midwest Distributing Company since December, 1933?

A. 1933 or 1934, I don't remember exactly.

Q. A period of some 16 or almost 17 years?

A. 16 or more, I don't remember exactly.

Q. Are you a married man?

A. Yes.

Q. You have any children?

A. Three of them, two boys and a girl.

Q. This is one of your boys, is he not? (Indicating Sam DiGiovanni)

A. Yes, Sam, and Paul and Sarah.

Q. Mr. DiGiovanni, have you ever been engaged in gambling or associated with people engaged in gambling?

A. No sir.

Q. Or any of the unlawful rackets in Kansas City?

A. Never.

Q. Are you moderate temperate in your own drinking?

A. I don't even drink.

Q. You don't drink?

A. Well, I drink, but the other people drink, and I go out of my way when there is company

in the house or friends. That's all.

Q. You are trying to tell the Supervisor if you have company you may take a social drink?

A. That's right. Otherwise, I never touch it.

Q. What is the personal habit of your brother, Joseph, whether he is addicted—

A. My brother does not have bad habits.

Q. Does he drink liquor to any extent at all, is his habits as to temperance in drinking and eating—well, I will say drinking—about the same as yours?

A. We drink a little wine with dinner at home.

Mr. Williamson: Well, your honor, these gentlemen are not charged with being habitual drunks.

Mr. Phelps: Well, that's part of the element of immoral character.

Mr. Hewitt: I will permit

Mr. Phelps: I want to show no wilful false answers—inadvertantly made, and these people are of good moral character and tax payers.

Q. Do you pay taxes in Kansas City and Jackson County?

A. I do.

Q. Can you state what our taxes are?

A. Maybe around \$800.00.

C. The real estate and the building where you operate, the title of that is in your brothers

A. In my brother. I have nothing to do with it.

Q. Your brother?

A. Yes.

Q. That is the reason your taxes aren't as high.

A. Yes, sir.

Mr. Hewitt: Your brother here, you mean?

A. Yes.

Q. Now, Mr. DiGiovanni, did you on or about the 13th day of November, 1925. plead guilty to the second count of the information to the United States district court of Kansas City to the possession of wine and paid a fine of \$50.00.

A. Yes, sir. I did.

Q. Did you on or about the 21st day of April, 1926, enter a plea of guilty to the second count of another information that charged you with the possession of one quart of wine and paid a fine?

A. That's right.

C. Since that date in March — that was back in prohibition?

A. That's right.

Q. That you had this quart of wine in your house?

A. Yes.

Q. That's been 24 years age, hasn't it?

A. That's right.

Q. Plea of guilty 9th of March, 1926—you paid a fine for that?

A. I did.

Q. Have you ever served any time in any jail or any imprisonment of any kind?

A. Never in my life no place.

Q. Have you ever been convicted of any offense, any violation of the law in the municipality where you live, in your own city, or the state of Missouri, or the United States of America, at any time, since this last date, if that's correct, the 21st day of August, 1926?

A. Never did.

Q. I gave you the date of March. That was the date the information was filed. The plea was entered on the 21st of August.

Mr. Williamson: What was the fine?

Mr. Phelps: \$300.00.

Mr. Hewitt: August 21st, 1926. \$300.00.

Mr. Phelps: Yes, sir. For 1 quart of wine.

Q. With reference to these applications for licenses made out to the state, will you tell the supervisor how they are made out in your office

A. Well, I don't know how to read. The bookkeeper comes down to me, she says, "Mr. DiGiovanni, sign that".

Mr. Williamson: Object to that question on the grounds that it's an attempt to impeach a written document that is notarized.

Mr. Phelps: No, we are not trying to impeach it. I want to show there was no wilful false statement. I think we have a right to show that.

Mr. Williamson: I object on the ground that parol testimony will not be admitted or should not in my opinion be admitted to change the meaning and content of a written document. That is a fundamental principle of law.

Mr. Phelps: We are not questioning that. We are not trying to vary or contradict, we will admit that the document said at the time he signed it, just what it says now.

Mr. Hewitt: I will permit him to answer, the document speaks for itself.

Q. Go ahead.

A. The secretary comes to me and said, "Mr. DiGiovanni, sign your name. I have been signing my name 16 years. I sign my application, sign papers — I don't know.

Q. At the time you signed these application — by the way, may I say into the record here that we would like to ask the State if it can, to produce the original application because the original application made to the federal government, of which the federal government furnished us a copy, shows that they set out these convictions which happened back under prohibition—I think the original application to the state must have set out the same thing, I don't know.

Mr. Hewitt: Here are the complete files.

Mr. Williamson: I will submit your honor that we have nothing to do with the application made to the federal government, this is a state matter that we are hearing at this time.

Mr. Phelps: I know it is. That's all. Well, I'll wait until

Mr. Sam DiGiovanni takes the fitness stand.

CROSS EXAMINATION BY MR. WILLIAMSON

Q. I want to ask you who made out these liquor application that you signed?

A. My girl over there, Lucille Panetteire.

Q. You mean your daughter?

A. No, my daughter gone six years.

Q. Your bookkeeper?

A. My secretary.

Q. At the time you signed these applications, how long had your secretary been with you as a secretary?

A. Been there for 12 years, I think, 11 or 12 years.

Q. You said as I understand it that she simply fills out the forms of application, that without having her read it to you

A. She didn't read—

Q. —that without your asking her to read it to you, you sign it?

A. She never read it. She said, "Mr. DiGiovanni, sign it here."

Q. She is your employee, you are not in her employ?

A. Well, she never read it to me.

Q. Did you ask her to?

Q. Never did.

Q. Why didn't you?

A. I didn't think it was necessary. I signed my name. Wasn't thinking of it.

Q. Is that your usual habit to sign any document that anyone asks you to?

A. In my place of business. She say, "You have to sign your name to application for license," and I have to put my name on.

Q. Do you read the English language?

A. No, sir.

Q. That's all.

Mr. Phelps: That's all.

(Witness excused)

Sam A DiGiovanni

a witness of lawful age, being duly sworn upon his oath, testified, as follows:

DIRECT EXAMINATION BY MR. PHELPS

Q. State your name to the court?

A. Sam A. DiGiovanni.

Q. You are the son of Mr. Peter DiGiovanni, are you not.

A. Yes. That's right.

Q. What is your age?

A. Thirty-eight in November.

Q. Married man?

A. Yes.

Q. Any children?

A. Yes.

Q. What is your business at the present time?

A. I am general manager for Midwest Distributing Company.

Q. When did you first act as general manager for Midwest Distributing Company?

A. Took up that post in January, 1942.

G. You were educated by your father, were you not?

A. He sent me to school, provided the funds.

Q. That's right, paid the bills?

A. Yes.

Q. You are a graduate of the law school of Harvard Collage, are you not.

A. Yes, sir.

Q. What year were you graduated?

A. 1936.

Q. You practiced law for awhile?

A. Approximately four years.

Q. And you went into this business in 1942?

A. Not directly. I went into the retail business with my brother for a short time and stayed there with him until I went with Midwest Distributing Company.

Q. You remember when you first went with Midwest?

A. January, 1942.

G. Mr. DiGiovanni, I wish to show you this document, marked Respondent's Exhibit "A", ask you to examine it and state to the Supervisor if you prepared it or had it prepared under your supervision or if you know how it was prepared?

A. Yes, I recall that application. I had it prepared and I may have even prepared it myself. I am not sure about that point. I am familiar with the contents.

Q. What do you mean by yourself?

A. I mean I may have typed it out myself.

Q. Was this signed by your father and uncle in your present?

A. Yes.

Q. You went to the Midwest Distributing Company in January, 1942?

A. Yes.

Q. How long did you remain with them after that?

A. I was with the Midwest until December 23, 1942, when I was inducted in the army.

Q. And you went overseas to serve in the Southwest Pacific during the war?

A. Yes.

Q. When were you discharged from the service?

A. January 6, 1946.

Q. After that, did you go back with the Midwest Distributing Company?

A. I did.

Q. Mr. DiGiovanni, you manage this business practically entirely, do you not?

A. Yes, to a great extent.

Q. All matters of policy are determined by you?

A. Yes, sir.

Q. Does your father come down to the place of business very much?

A. Well, he comes down for short periods of time, say in the

morning, and it's been his habit lately to go out with salemen and meet the customers.

Q. Does your uncle come down to the place of business?

A. Very infrequently.

Q. What does he do when he comes down there?

A. Well, mostly takes care of his own personal business, I think.

Q. In other words, he has an office there in the building.

A. Yes.

Q. When he comes down he tends to his other personal matter and has nothing to do with the business at all?

A. Not very much.

Q. Does he have anything to do with it—I don't mean to mislead you there, what does he do in connection with the business?

A. Well, very little. Never found it necessary to consult with either my dad or my uncle on matters pertaining to the business. -20-

In other words, they have given me a free hand in the management and operation of the business in all its phases. It is only in case of extreme necessity I feel to call on them to consult them.

Q. Can you recall whether or not in the same year you made out this application for wholesaler basic permit to the federal alcohol Administration, you made out application for permit to the state also?

A. I have no independent recollection, I think, we must have.

Q. This was made out, Respondent's Exhibit "A", January, 1942-- That time of the year is your application to the state made?

A. Well, in the past few years the regulations required the application be filed either before the 1st of May or before May 30th, I am not sure, but it's in May sometime, I believe.

Q. When the application for permit to the state was made in the summer of 1942, would this document, Respondent's Exhibit "A", if you know, be used as basis for that operation?

Mr. Williamson: Object to that as being speculative.

Mr. Phelps: If he knows, or if he doesn't know.

Mr. Williamson: Self-serving.

Mr. Hewitt: Sustain the objection.

C. How have the applications for state permit been made since you returned from the service?

A. Been prepared on forms provided by one of the girls in the office, one of the girls, Lucille Panetteire, has been with us almost 12 years, has thorough knowledge of the business in all its phases.

Q. You have been operating for 16 or 17 years at various locations?

A. Yes, the Midwest has.

Q. Is the matter of making an application a routine matter now?

A. Well, it has become that.

C. Are you required by various government agencies to sign— your father and uncle are they required to sign many papers and reports for the different agencies.

A. Well

Mr. Williamson: I object to that question, your honor. It is attempted to be self-serving. I think clearly.

Mr. Hewitt: Your objection will be sustained.

Mr. Phelps: The reason I asked, he asked Mr. Peter DiGiovanni if he was accustomed to signing anything anybody put before him and he said that he girl put it before him and sail sign it. I just attempted to show it was just a routine matter of the multitude of forms that -21- they have to sign.

Mr. Hewitt: Of course, they swore to it before a notary public.

Mr. Phelps: Are any of the other forms you are required to sign notarized also?

A. Yes, many of them are.

Mr. Phelps: I wish to offer in evidence Respondent's Exhibit "A", calling your honor's attention to subsection "E".

Mr. Williamson: I object to the introduction of that on the ground that it is a application for a federal permit of which this office had no reason to have knowledge or take cognizance before the Supervisor today.

Mr. Hewitt: What is that?

Mr. Phelps: It is application for wholesale permit to the Alcoholic Administration and made as this witness testified under his supervision and by himself both in the early part of the year 1942 it is a public record and in subsection "e", as I directed your honor attention, is the setting out of these convictions of violation of the National Prohibition Act. We offer to show that this is a public record where they set out freely and frankly those violations prior to the repeal of prohibition and to show there was no wilful false statement in these other applications.

Mr. Williamson: I object to it on the grounds that/is not evidence that they were not wilful violations and that again it has no relation to the hearing here today and to the issues involved.

Mr. Hewitt: I will reserve ruling on this until the case is ended.

I don't think it is competent in this case because this is based on the application for a state license, as I understand, this is information that was given to the federal government for a wholesale basic permit.

Mr. Phelps: Yes, that's true. I am offering it to show that It's an arguable point that people would not make the statements as to these two convictions and spread it on a public record in one application and then wilfully deny it in another. That isn't reasonable.

Mr. Hewitt: I will receive it.

Mr. Phelps: I wish to offer at this time application of Peter DiGiovanni and Joseph DiGiovanni to amend the answers to 6 and 6-a, in the last long form application to operate the wholesale liquor business, dated July 1st, 1946 and July, 1947.

Mr. Williamson: I object to the introduction of that

Mr. Phelps: I am not introducing it in evidence. I am asking the Supervisor's leave to file that as amendment to the answers. If there is any doubt of our right to amend that, I would like to submit authorities upon the question. We want to amend our answers so it will show the truth. I want to show they were mistakenly and inadvertently incorrect and not wilfully false.

Mr. Hewitt: I will per it you to file this, but I'm not receiving it as evidence.

Mr. Phelps: Well, we are not offering it in evidence. We can't go to the expense of getting people to leave their business for this hearing. I have here a letter from the priest of their church—By the way, your uncle and your father are both members of the St. Elizabeth Parish of

the Catholic Church of Kansas City, Missouri?

A. My father is a member of the Holy Rosary Church.

Q. Your uncle.

A. I believe he is a member of St. Elizabeth Church, was member of Assumption until recently.

Mr. Williamson: Those are testimonials of their good character?

Mr. Phelps: Yes, sir.

Mr. Williamson: Are you through with your direct testimony of this witness.

Mr. Phelps: I just want to say that I have this letter from his priest. Affidavit of Mr. A. C. Dominick of the Exchange Bank with which they do business, and many other people with whom have had business associations with them to show they are people of good moral character and not members of a group of subverters or enemies to the American form of Democratic government. Are either your uncle or father, so far as you know, members of the Communists party.

A. No sir.

Q. Or Ku Klux Klan?

A. No sir.

Q. Or Mafia, talked about?

A. No.

Q. Are they members of any group, so far as you know, that wants to overthrow the American form of government?

A. No sir. Just ordinary good citizens.

Q. That's all. You may cross examine.

CROSS EXAMINATION BY MR. WILLIAMSON

Q. At what time did you state, if you did so state, did you become the active manager of your firm?

A. In January, 1942, for that year

Q. January, 1942. Have you from that time to the present continued in the active management of it

A. Except the period of time from December, 1942, to January, 1946, when I was in the army.

Q. Now there has been introduced in evidence on behalf of the State the 1946, application to the supervisor of liquor control of the State of Missouri for a license to do business in the name of your father and your uncle. Were you at the time that application was made in active management of the business?

A. Yes, sir.

Q. Did you know of that application being made?

A. I knew an application had to be made every year?

Q. Was that application made under your supervision?

A. No, sir.

Q. Who made the application?

A. Miss Panetteire.

Q. Do you mean to state that you never saw the application that was made up and signed by your father and uncle?

A. I may have seen it. I didn't examine it.

Q. You didn't examine it?

A. No sir.

Q. If you had examined it, of course, you would have known it was false.

A. That's correct.

Q. Yes. You mean to state since the 1946 application was made, the application which gave you the right to operate this wholesale business of which you were in complete management, you didn't examine the application?

A. That's right.

Q. Didn't read it?

A. That's right. I did not read it.

Q. That you permitted your father and your uncle to sign it without ever having looked at it?

A. That's right.

Q. How, I'll ask you who prepared the 1947 application for a state permit for your business.

A. The same girl, Miss Panetteire.

Q. I will ask you whether you looked at that application?

A. No sir.

Q. Did you know when your father and your uncle signed that application? A. No sir.

Q. You were not present?

A. No, I don't believe was.

Q. Did you know that they did sign it?

A. Well, I know now they did sign it, yes.

Q. Well, you are only remembering now, is that right?

A. No, no, you might say that I presumed they had signed it then, because otherwise we would have heard something from the state about it.

Q. And yet in 1947 you were the sole manager of the business?

A. That's right.

Q. But you didn't know at that time, as I understand you to say, whether they signed an application for permit or not, you assumed they did, but you didn't know that they did?

A. That's right.

Q. And yet without signing an application you couldn't have continued in business, could you?

A. That's correct.

Q. You didn't read the application?

A. No.

Q. Did you ever see the application after it was made out and before it was sent in?

A. I may have, I am not sure.

Q. Do you remember whether you read it?

A. I am almost positive I did not read it because if I had I would have corrected it.

Q. I will ask you whether you saw the 1950 before — the 1946 or 1947?

A. I don't have any recollection whether I did nor not.

Q. Who prepared it?

A. I presume the same girl did. It was part of her job.

Q. Is this remarkable person present here today?

A. No sir.

Q. Yet apparently — are you quite certain whether you are the manager of this business or this secretary?

A. Well, I think I am.

Q. Well, I am not quite certain. Is she still in your employ?

A. Yes.

Q. How long has she been in your employ as of today?

A. About 12 years, approximately.

Q. Does she take a very great interest, does she have a thorough knowledge of the business?

A. Yes, I would say she does.

Q. Does she have a knowledge of these convictions of your father and your uncle which are admitted here before the Supervisor?

A. I don't think she did have.

Q. She knows all about the business except those particular facts, is that right?

A. That's right.

Mr. Phelps: I object to that. That was years ago during prohibition. Q. Is she a relative of your family?

A. No, sir.

Q. No relation whatsoever?

A. None, whatsoever.

Q. Is she a relative of any of the wives of the DiGiovanni's?

A. No, sir.

Q. That's all.

Mr. Hewitt: This is a partnership, is it not?

A. Yes, sir.

Q. Owned by your father and uncle?

A. Yes, sir.

Q. You have any interest?

A. I have no financial interest in the business whatsoever.

Q. Was it ever a corporation?

A. No, sir.

Mr. Phelps: That's all of our case, your honor.

(Witness Excused)

Mr. Hewitt: You have anything further, Mr. Williamson?

Mr. Williamson: I would like to be heard by the Supervisor, briefly.

Mr. Hewitt: Certainly, both of you may be heard.

Mr. Williamson: I do not believe an extended statement on the part of the State is necessary upon the basis of the exhibits which have been admitted by the Supervisor and upon the admission made by the respondents.

I would point out that the complaint which has been lodged against them is for procuring a license from the Supervisor of Liquor Control of the State of Missouri upon the basis of false answers to which the applicants swore under oath, the specific parts of which applications were

that they had not previously been convicted of a violation of the National Prohibition Act or of any misdemeanor or felony. That was the sworn statement of these respondents in their applications of 1946 and 1947, application which were adopted by them in the 1950 application. That fact, I think, is so well established as not to need any more extended discussion. Now on the basis of the two exhibits which are before the Supervisor with the sanction of Mr. Phelps, we have established beyond the shadow of a doubt that these statements sworn to by the respondents in their applications of 1946 and 1947, which were adopted by the application of 1950, were not true. Furthermore, the admissions of both respondents on the stand, both respondents have stated the fact of these convictions. That, it seems to me, beyond the shadow of a doubt, establishes the case on behalf of the State, not only upon the basis of documentary evidence which we have submitted and which has been accepted by this Supervisor is evidence, but also on the statements of the respondents themselves, leaving out of consideration entirely the state exhibits to which Mr. Phelps has objected and which the Supervisor, I understand, will give the State the opportunity to verify, but leaving these disputed exhibits entirely out of consideration upon the basis of the exhibits which are admitted and upon the basis of statements made here by the respondents, the state has beyond a shadow of a doubt established the fact that the applications of 1946 and 1947 and adopted in the application of 1950, were false, which is the contention that the State made in the beginning and which is the complaint that has been lodged against these respondents. I don't believe it is necessary and I do not intend to go into the fact as to whether or not these defendants had knowledge of what they were signing. I would point out to the Supervisor that it strikes me as being a very remarkable situation that two men who came to this country as illiterate immigrants and who have by industry and by skill and by the exercise of what undoubtedly is a very considerable business acumen built up a business of the proportions which they have testified they have built up, would conduct their business upon the lines which they have conducted it upon in respect to these application, and I furthermore submit that it's even more remarkable that this gentleman who has since 1942, with the exception of his tenure in service in the armed forces of the United States, who is a harvard graduate, would conduct the matter of these applications, which are the very basis of this business in what he has testified is obviously a very negligent and careless manner. So your honor, I would say that in view of all the facts and circumstances and evidence before you, that there is abundant evidence that these affidavits made in the application of 1946 and 1947 and adopted in the application of 1950, were wilfully false, that they represented a knowing misrepresentation and they were made simply and solely for the purpose of inducing the Supervisor to issue a license to these people, which license they fully knew they were not under the Laws of the State of Missouri, entitled to receive and that in this instance the State has fully made the case which it proposed to make at the time these citations were drawn and that every allegation of the State has been amply and fully sustained.

Mr. Phelps: I am glad that counsel has asked the Supervisor for time to verify these alleged convictions shown in exhibits which he has offered here. I say, I am glad, your honor, because I am certain that when he had that investigation he will be satisfied himself that this is a different man and that the name there as copied in these certified copies is as exactly as it appears on the original records of the clerk, showing it is a different name and I am convinced his investigation will satisfy hi: because I don't believe he has any personal animosity in this matter

against, these respondents whatever, that he will just be satisfied as a man who's job it is to help administer justice, that they have been wrongfully accused in these convictions. I am glad he has asked for that time and I would like time to submit a written statement to your honor on this case. I am sure counsel will agree with me that to these respondents this is a most important matter, probably the most important and the most serious matter to them which has arisen since they first instituted this business. I am glad that he made reference to their nativity. Here are two men who came over to this country from Italy in the early part of the 20th century and the evidence clearly established in total ignorance of this country, haven't yet learned to read and write except to sign their own names, by thrift and industry they accumulated some money. While I think he perhaps over-emphasizes the part that they have played in building this business up in the period of its greatest prosperity since it acquired the Seagram line, I think the credit for that the prosperity of this business the way it has been run belongs to the young gentleman seated at my right who has testified last in this case and if counsel had been down at the place of business as I have, your honor, he wouldn't accuse him of being careless or negligent in his manner of running it, and I know he wouldn't blast the career of these two men though they came from a foreign country to this, nor the career of this young man here, unless the facts and circumstances in the case were such to require him to do it. I don't think it ought to be done without giving them every possible consideration and every opportunity, full and complete opportunity, to lay everything before the Supervisor, which in this short space of time, I may say that in the short space of time that intervening between the citation and today, your honor, I have tried a lawsuit, which kept me in court three days and nights, so have had very little time to present this matter, as it should be presented considering the very great importance that it is to the two respondents. On this question of this application, I would like to have opportunity, if I am permitted to do that, to examine the files, surely, there must be somewhere in the files the original application for permits made to the state. I am convinced that in some of those early applications there must be the same statement which is respondents Exhibit "A", that was made for their basic permit to operate as wholesalers under the Federal Alcohol Administration. I would like to have the opportunity to check that. Now your honor knows that here they have been running 16 years, they have quite an investment there. I can't agree with the counselor because they plead guilty to violation of the prohibition act that would disqualify them; from holding a license. I don't believe that is the law. I would like to have opportunity to brief that point, if there is any question on that, but I have never known in any case of such a raking of the dusty catacombs of the past to try to find something against somebody and from what I have heard and from what Mr. Joseph DiGiovanni testified that he had found out, I don't hesitate to say to your honor there is more behind this than meets the eye, that there is a sinister conspiracy here on the part of people to rob these men of the business they have built up by painstaking effort and good management over 16 years and if I had a little time, I think I can get the proof of just what it is and who is in there to get this Seagram franchise away from these men for their own special benefit and enrichment. I think I can prove that, if I have a little time. I have some very persuasive evidence on that point now. It would certainly be unjust to permit a group of men to come in and assassinate the character of these people to take their business away from them unless they have wilfully done wrong. I think that after these first applications, now young Sam went away in 1942 and came back in 1946, the business had been running there for 13 years or 12 years at any rate, the business has

been running for about 12 years — 10 or 12 years at the minimum, the matter of filing the applications for permit each year had by that time become a routine. It was not a matter of careful scrutiny and analysis like it was when they had to made out the first form, and I think the statements that they had made were absolutely correct. If you could be down there to see, it's a very busy place. They have testified they sold 25,000 cases of Seagram in only one year. The plate is a regular beehive and if you were down there you could see how that these matters would be routine and would not receive perhaps the attention they ought to receive. I believe that's all I care to say now.

Mr. Williamson: I have no further statement.

Mr. Hewitt: Mr. Williamson, do you desire some short time to investigate whether the exhibits which you have offered here, as to whether or not they are the same men as Joseph DiGiovanni and Peter DiGiovanni in the applications, do you desire some short time to investigate that fact?

Mr. Williamson: Yes, I do, your honor.

Mr. Hewitt: All right. The only difference as I see it is the last letter in the name, and I will give the assistant attorney general time to establish that fact, one way or another. I withhold my finding in this case until I have that additional evidence, if any. The evidence, of course, does show that in the applications made in 1946 and 1947, and readopted in the application of 1950, were not true, they were false. On the basis of that, those applications the State of Missouri issued licenses. I think the respondents themselves personally and by their counsel have admitted that the convictions were had, the documentary evidence sustains that. Do I understand, Mr. Phelps to say, that you desire to submit memorandum brief on some of the questions?

Mr. Phelps: Yes, I would like to have that opportunity. We haven't interferred with your wishes in that matter, but it is most important matter for these people and I would like to have every possible opportunity you can afford to present their case as fully and completely as I can, and I feel I haven't had the time to do that and haven't made as fully preparations as I should make for them.

Mr. Hewitt: As to the matter referred to by Kr. Phelps as to certain people trying to get the Seagram line, I doubt if that is material in this hearing. So if you gentlemen—I want this matter disposed of shortly — I don't want it to hang fire. It is important to the Midwest Distributing Company, owned by these two brothers, it's a valuable business and of course, it's a privileged business as we all understand, and it's important to the State of Missouri whether these men should be permitted to operate the business on the license issued by the State of Missouri based on the applications which are concededly false, so if you gentlemen will get together — how much time will you want to investigate the authenticity of whether these documents are the same men as the ones in this tranaction, it is my wish that you dispatch with promptness so I can determine the matter — if you have suggestions i long those lines, I would like to have them now.

Mr. Williamson: Well your honor, I will write today to the clerk of the United States Court for the western division and ask that these records be checked in the cases of the disputed exhibits.- I can't answer, of course, as to how promptly I will get a responds to that.

Mr. Hewitt: Of course, the matter would be whether these are the same individuals. I don't know whether the records might require some investigation as to whether they are the same

individuals.

Mr. Williamson: Well, I think certainly within a week.

Mr. Hewitt: Will that give you time, Mr. Phelps?

Mr. Phelps: I think I have a case to try next week if it goes to trial I will find out Thursday, the trial will take almost the entire week.

Mr. Hewitt: I think a Week's time is ample. You have other members of the firm or is this an individual matter —

Mr. Phelps: It is an individual matter, handled by myself alone. I will try to comply with your request. If I get in a jam and can't make it I would like some time in addition.

Mr. Hewitt: I think a week will be ample time. A week from today you will have your information and Mr. Phelps will have his memorandum brief.