

AN EMPIRE BUILT ON PAPER

FOSHAY'S FIRST TRIAL 1931

Foshay management assures you 7% returns with safety.

The one safe place to invest your money is where good management is behind your money.

Slogans from sales letters and brochures.



Henry Henley (left) and Wilbur Foshay (right) facing indictment, 1931.

Photo: Minnesota Historical Society

SWELTERING JURORS ALLOWED TO DOFF COATS



Courtesy of University of Minnesota

First Foshay Jurors. Seated at the table are Robert Rensch (left), Asst. U.S. Attorney, District of Minnesota, and Fred Horowitz (right) appointed as Special Assistant to the Attorney General for this case. Horowitz was a well known Los Angeles attorney who had successfully handled several fraud prosecutions for the government. *Minneapolis Journal*, September 11, 1931.

February 18, 1931: A federal grand jury indicted Wilbur Foshay, Henry Henley (Executive Vice-President), Harry McGinty (Secretary-Treasurer), Clarence Salisbury (Vice-President), Palmer Mabry and Herbert Welch (Assistant Secretaries), and Raymond Andrus (President of PUC) on 17 criminal counts of violating the U. S. Postal laws for using the mail as a means of carrying out their scheme to defraud persons of money and property. (18 U.S.C.A. 338)

The government estimated more than \$29,000,000 worth of securities had been sold by the Foshay Company and that 10,000 investors were affected.

Foshay and Henley hired Josiah Brill and Samuel Maslon to defend them. The firm had never defended a criminal case. Brill's view was that the case against Foshay was about accounting methods of the Foshay Company, rather than a criminal matter. Boutelle, Kelly & Thomas represented the other five defendants.

Lewis Drill, U.S. Attorney for Minnesota, and special assistant Fred Horowitz prosecuted the case.



Photo: Minneapolis Public Library

Josiah Brill, Attorney for Foshay and Henley trials and appeals. His biggest disappointment was losing the Foshay case, the only major criminal action he ever defended.



Photo: Minnesota Historical Society

Lewis Drill served three years as U.S. Attorney. Once a major league baseball player, he was appointed to the prosecutor's post in 1929.

September 1-2, 1931: Judge Molyneaux conducted voir dire. Each person was asked if their mind was free from bias and if they would be able and willing to base a verdict on the evidence given to them. A jury panel was selected which included eleven men and one woman, Genevieve Clark.

September 3-29, 1931: The government presented over 400 exhibits and the testimony of over 60 witnesses. During testimony about the Foshay company structure, the company stenographer said "control rested solely in the hands of Foshay."

September 30, 1931: The government's case was completed. Brill stated that the defense would not present any testimony and asked for a directed verdict dismissing the 17 charges. Brill argued that even if Foshay's accounting methods differed from those of the government, he had only committed an error in judgment, not a criminal offense.

October 6, 1931: Judge Molyneaux denied the defense motion for a directed verdict and final arguments began.

October 16, 1931: Judge Molyneaux instructed the jury, which was then locked in a jury room at the federal courthouse.

October 23, 1931: After days of deliberation, the jury was deadlocked. Judge Molyneaux dismissed the jurors and set a retrial date for January 11, 1932.

A week before the second trial began, McGinty, Salisbury, Andrus, Mabry, and Welch each pled guilty to one of the 17 counts and *nolo contendere* to the other 16 counts. They were given probation and a fine.



Photo: Minnesota Historical Society

The Foshay and Clark trials were held at the U. S. Courthouse at 3rd and Marquette.



Photo: Minnesota Historical Society

Spectators overflowed the courtroom for the first Foshay trial and the Clark trial. A local paper described it as a "near-football game atmosphere" with people lined up and down Marquette Avenue, 1931.