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- : I N D E X : -

	Direct	Cross	Re-Direct	Re-Cross
William Henry Houghton,	6	51		

CASE # 1362

COURT OF GENERAL SESSIONS OF THE PEACE,

CITY AND COUNTY OF NEW YORK,

PART I.

-----X
THE PEOPLE,

vs.

HARRY BURGESS.

Before:
HON. OTTO A. ROSALSKY, J.,
and a Jury.

-----X
Tried, New York, April 26th, etc., 1911.

Indicted for Gaminghouse, etc.

Indictment filed March 18th, 1911.

A p p e a r a n c e s :

ASST. DISTRICT ATTORNEY EMORY R. BUCKNER, for the People.

ALEXANDER S. ROSENTHAL, ESQ., for the Defense.

(A jury was impaneled and sworn).

Frank S. Beard,
Official Stenographer.

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OPENING FOR THE PEOPLE
-of-
ASSISTANT DISTRICT ATTORNEY EMORY R. BUCKNER.

Mr. Foreman and Gentlemen of the Jury: The defendant is indicted under various different counts with the crime of gambling. There are eight counts in the indictment and, at the proper time, the Court will explain all these counts to you, at which time, of course, you will listen very carefully, and then you will exactly understand under what particular counts the defendant should be held.

The case is really simple on the question of facts, and it ought not to take a great while to put in.

The evidence will show that a young man named Houghton, whom you have heard of during the informal examination of some of the jurors --

MR. ROSENTHAL: At this time, I ask that all the witnesses be excluded from the court-room, until called.

THE COURT: The witnesses on both sides?

MR. ROSENTHAL: Yes, sir, on both sides.

THE COURT: I make that order.

MR. BUCKNER: This man, William H. Houghton, was employed by Deputy Police Commissioner Flynn for the purpose of investigating various gambling houses, and for the purpose of reporting the facts -- not necessarily for the purpose of getting evidence, but of reporting the facts.

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Houghton will tell you that he is not a squealer, because he has never lost any money in gambling, and never had anything to do with it except in this matter, I think, of employment, by Commissioner Flynn.

MR. ROSENTHAL: One moment. I submit that those witnesses who are standing in that doorway (indicating the door of the side room of the court) are the very witnesses that I wanted excluded. I am sorry to interrupt.

THE COURT: Yes, close that side door, the door of the side room.

MR. BUCKNER: Houghton will tell you that he was employed by Deputy Commissioner Flynn for the purpose of investigating, and ascertaining what the facts were as to various houses in the city of New York, and that, in the course of that investigation, he went to the place at 1542 Broadway, not once, or twice, or three times, but five times; and that, on each of those occasions, he saw the defendant, Harry Burgess, aiding and abetting and assisting in the operation of a gambling game known as crap, in that, during the operation of the game, it was his particular job to rake the dice back in each instance, and throw them back to the man who was throwing them, and that, in brief, in gambling parlance, with which you may not be familiar, he was acting as what is called "The crap raker;" and that he saw him doing that on five different days.

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In addition to the testimony of the witness Houghton, however, we will put on the stand a regular police officer of the city of New York, a young man named Carlson, a patrolman of police, not long on the force, and who was not known to the defendant, or to men of his sort, and who was sent by Commissioner Flynn to various places, and who will tell you that he went to 1542 Broadway, on five different occasions, and only part of those occasions were the same as the other five occasions on which Houghton went there. So that we shall have a total of at least seven or eight different occasions when either one or both of these men were in the premises at 1542 Broadway.

And Carlson, the regular patrolman, will you tell you that every time he was in those premises he saw Harry Burgess performing his function as a crap raker at a table where the game of crap was going on; and both men will testify that they saw others gambling there, and that they were gambling there under the instructions of their superior officer, with the public money supplied to them for that purpose.

And the arresting officer will you tell you that, on the day of what is commonly called the raid, or on the day of the arrest, when the officer, with some assistants, went there, and they forced their way into the premises at 1542 Broadway with axes and crowbars, this man Harry

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Burgess was present in the room, where, on that very day, he had been engaged in the work of a crap raker.

By to-morrow, at least, we will have the crap table and other property which were taken right there in the premises, down here, to show you.

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THE PEOPLE'S TESTIMONY.

W I L L I A M H E N R Y H O U G H T O N, of 475-A Lexington avenue, Brooklyn, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BUCKNER:

Q How old are you, Houghton? A Thirty years.

Q Now the great difficulty with you, Houghton, will be to talk so that you can be heard by Mr. O'Dowd, over there, (indicating the twelfth juror). Now you must speak up. What are you doing now for a living?

MR. ROSENTHAL: I object to that, if your Honor please. It has no bearing on this case what this witness is now doing for a living.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

A I am employed by the Second Deputy Commissioner Flynn, as investigator.

Q How long have you been so employed? A Since December 5th, 1910.

Q What do you get a day?

MR. ROSENTHAL: I object to it, if your Honor please, as not binding on the defendant.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

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A Three dollars a day. ✓

MR. ROSENTHAL: And I further object to the term "investigator", on the ground that there is no such term in the English language as that term.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q Is your pay in any way dependent upon the results of the cases in which you testify?

MR. ROSENTHAL: I object to the question, if your Honor please.

THE COURT: Sustained.

BY MR. BUCKNER:

Q Before you began working for Commissioner Flynn, what was your business?

MR. ROSENTHAL: I object to the question, if your Honor please.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

A Investigator.

BY MR. BUCKNER:

Q For whom? A The Wine & Spirits Traders' Society, 78 Broad street, New York.

Q Do you know this defendant, Harry Burgess? A Yes, sir.

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Q How long have you known him? A The first time I saw him was on December 13th, 1910.

Q Where did you see him? A 1542 Broadway.

Q New York County? A New York County.

Q What sort of premises are at that number? Tell us whether it is a store, or house, or theatre, or what is it?

A One flight up was a billiard parlor.

Q Well, what sort of a building is it; do you remember?

A I could describe the building.

Q Then describe it? A On the ground floor was stores. You went up one flight, and there was a large billiard parlor, with a bar. And you went up from the billiard parlor a short flight of stairs to a balcony, and on this balcony was stationed a man.

MR. ROSENTHAL: I object, and I move to strike out the terms that there was a man stationed on the balcony, as not binding on the defendant.

MR. BUCKNER: I consent that the word "stationed" be stricken out.

THE COURT: Strike it out.

BY MR. BUCKNER:

Q Well, there was a man there, we will say? A Yes, sir.

Q Had you ever been to the premises 1542 Broadway before this date? A The date of my talking to --

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MR. ROSENTHAL: I object to that as immaterial, irrelevant and incompetent, whether he had ever been there before the date in the indictment.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q When did you first see the defendant there? A I first saw the defendant on December 13th. I didn't say it was the first time I had ever been in there, though.

Q Well, had you ever been in those premises before? A Yes, sir. But the 13th of December was the first day I noticed this defendant.

Q Yes. What date were you at those premises the first time?

MR. ROSENTHAL: I object to these questions as not binding on the defendant.

THE COURT: Overruled. He may state whether he went to the premises prior to December 13th, 1910.

MR. ROSENTHAL: But I don't see where it is binding on the defendant, and I object, and I take an exception.

A On December 12th, the day before.

BY MR. BUCKNER:

Q Just tell us how you entered the premises?

THE COURT: When?

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MR. BUCKNER: On December 12th.

MR. ROSENTHAL: Objected to, as not binding on the defendant.

THE COURT: Sustained.

BY MR. BUCKNER:

Q Now, then, tell us how you entered the premises on December 13th? A I entered the premises at 1542 Broadway, and walked upstairs to the billiard parlor, and, after I arrived in the billiard parlor, I sat down and read the paper for a few minutes, and then was watching the men playing pool, or shooting pool, or playing billiards. Then, about three p.m., I walked up a flight of stairs onto the balcony, and a man who was on the balcony recognized --

MR. ROSENTHAL: I object to any act done by this man on the balcony, if your Honor please.

THE COURT: Sustained.

BY MR. BUCKNER:

Q Now don't state that. The word "recognized" is improper. What did you do when you got to the balcony?

A A man opened the door for me, and I passed through this door.

MR. ROSENTHAL: I move to strike out the answer, if your Honor please, as not binding on the defendant, that a man opened the door for him.

MR. BUCKNER: It is a physical act, your Honor, and it is admissible, I submit.

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THE COURT: Objection overruled.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q And what did you do when the door was opened?

MR. ROSENTHAL: Objected to.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

A I passed through the door.

Q And where did you go, after you passed through the door? A Then another door was opened.

MR. ROSENTHAL: I object to the question, if your Honor please.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q And what did you do after you passed through the second door? A I went up a short flight of stairs.

Q Had you ever seen those two men before who were at those two doors?

MR. ROSENTHAL: I object to the question, as not binding on the defendant.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

A There was only one man opened both doors.

Q There was only one man opened both doors? A Yes, sir.

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Q Had you ever seen that man before? Yes or no? A Yes.

Q When? A The day before.

Q After you passed through the second door, where did you go, Houghton? A Up a short flight of stairs.

Q And where did that take you to? A Into a small room, which contained --

Q What was in that room? A It contained a sideboard, and --

MR. ROSENTHAL: I object to what was in that small room. The defendant didn't have the control of that room, nor of those premises. It hasn't been shown yet, and it isn't binding on him. The evidence is that there is two rooms in between where he said the defendant was.

MR. BUCKNER: I haven't got to that yet; that's all.

MR. ROSENTHAL: I want a ruling on that, if your Honor please.

MR. BUCKNER: I withdraw the question.

BY MR. BUCKNER:

Q Did you see the defendant in the small room? A No, sir.

Q Did you pass through the small room? A Yes, sir.

Q Into where? A Into a large room.

Q Did you see the defendant in the large room? A Yes, sir.

Q What date was this? A December 13th.

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Q Describe what was in that large room at the time you saw the defendant there? A A crap table.

Q Anything else? A Roulette wheel.

Q Anything else? A Blackboards, small blackboards, on the wall.

Q Anything else? A A large desk.

Q Keep your voice up? A A large desk.

Q Anything else? A Chairs.

Q What? A A number of chairs, and small tables.

Q Anything else that you recall now? A That's all I remember.

Q Did you see anybody in that room while the defendant was there? A Yes, sir.

Q How many, about? A When I first entered the room?

Q Yes? A About fifteen or twenty. I didn't count them.

Q How large was this room, if you can approximate?

A It was about as long as this court-room is wide, about.

Q And about how wide?

MR. ROSENTHAL: Well, now, just a minute. I want the measurements made. Will somebody make them? He says as big as this room.

THE WITNESS: No, about as long as this court-room is wide, I said.

BY MR. ROSENTHAL:

Q About how long is that, ~~isn't~~ Houghton? A I don't know.

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MR. BUCKNER: One moment, please. Will you permit me to finish my direct examination before the cross-examination is begun?

MR. ROSENTHAL: I only want the measurements.

THE COURT: It will be conceded that the length of this room is about 58 feet?

MR. BUCKNER: He said the room was as long as this room is wide. He has said it twice, and he has said nothing else.

THE COURT: I think it is about 38 feet.

MR. ROSENTHAL: I think it is about 39. Part III is 39 feet, your Honor.

MR. BUCKNER: Then we will take it at 39 feet.

BY MR. BUCKNER:

Q And about how wide is it, according to your best judgment? A About from here over to that first window there (indicating).

MR. BUCKNER: How wide is that?

MR. ROSENTHAL: It's up to you. I want a ruling how wide that room is, if your Honor please.

THE COURT: Can you not agree upon it between yourselves?

MR. ROSENTHAL: Twenty-five feet.

MR. BUCKNER: I have no judgment on such matters. I will take whatever Mr. Rosenthal says.

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MR. ROSENTHAL: Then about 25 feet.

BY MR. BUCKNER:

Q How long after you went into that room, on the 13th, was it before you noticed the defendant? A As soon as I went into the room I noticed this defendant, this large room.

Q What was he doing? A He was standing at the crap table.

Q What was he doing there, if anything? A He had a rake in his hand, he was one of the operators at the crap table.

Q What sort of an implement do you mean by a rake? Describe it? A It's a small cane, with a curve on the end of it.

Q Keep your voice up? A It's a small cane, with a curve on the end of it.

Q And what was he doing with this cane or rake? A Why, the game hadn't got thoroughly started yet.

Q Keep your voice up? A At that moment the game was not started.

Q Well at any time later that you saw him there, what was he doing with this rake? A He would rake in the dice that was used at this crap table.

Q Who threw the dice on the table? A This defendant.

Q Did he also throw the dice, as well as rake them in? A He would throw the dice into the players' hands.

Q How many people were playing at this crap table? A During the afternoon?

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Q Yes? Approximately, if you know, if you have any judgment about it? A Well, there was a different number, at different times, in the afternoon.

Q Well, we want to know if it was one or a thousand; just whatever your judgment is? A I have seen as many as twenty-five standing around the table.

Q Keep your voice up? A I have seen as many as twenty-five standing around the table.

Q Did you participate in the crap game on that day? A Yes sir.

Q To what extent did you participate? A I will have to look at my memorandum book before I can tell how much I --

MR. ROSENTHAL: No, don't say any more.

BY MR. BUCKNER:

Q Can you remember now to what extent you participated in the crap game, on December 13th, 1910, at that place, without refreshing your recollection? A No, I can't.

Q Have you any method of refreshing your recollection as to how much you invested in the crap game on that day? A Yes.

Q Now, then, you may refresh your recollection with any memoranda that you have on that subject.

MR. ROSENTHAL: I object to that, unless he has said as to whether his memory is as good to-day as it was on December 13th, unless he is questioned about that.

BY MR. ROSENTHAL:

Q Is your memory as good to-day as it was on December

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13th of last year? A I don't understand the question.

Q I say, is your memory as good to-day as it was on December 13th of last year? A My memory is as good, yes.

Q Then you know all that went on in those premises; don't you? A Yes.

THE COURT: The District Attorney has questioned this witness as to his ability to state from memory the amount of money that he used on that occasion, and the witness says that he will have to refer to a memorandum book to ascertain. Now, you may cross-examine this witness, with a view to ascertaining when he made the entries in the memorandum book, and whether he is capable, after consulting the memorandum book, of testifying from a refreshed recollection, or whether, after consulting the memorandum book, his memory is not refreshed, and whether he depends upon the entry in the book for the purpose of stating the amount of money he used.

BY THE COURT:

Q When did you make the entries in the book? A That evening, after I arrived home.

Q In your own handwriting? A Yes, sir.

BY MR. ROSENTHAL:

Q How many hours afterwards? A Three or four hours.

Q Three or four hours afterwards? A Yes, sir.

MR. ROSENTHAL: I object to that.

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THE COURT: Overruled.

MR. ROSENTHAL: Exception. I object to any record made by this witness three or four hours after the time, he says.

THE WITNESS: Your Honor, I made memorandums on a newspaper, in the place, at the time.

THE COURT: Just talk to the jury. Address the jury. Turn around, and address the jury.

MR. ROSENTHAL: Yes. Talk so that the twelfth juror can hear you.

BY MR. ROSENTHAL:

Q What was that you said? A That I made memorandums on a newspaper, while I was in the room, and I put it in the book, after I arrived home.

BY THE COURT:

Q And what did you do with the entries that you made on the newspaper? A I destroyed it.

MR. ROSENTHAL: I object to it.

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

THE COURT: Now, first, let him look at his book, and then ask him whether it does or does not refresh his recollection.

BY MR. BUCKNER:

Q Look at your book, and see if you can refresh your recol-

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lection, and don't answer any questions until I ask you another question.

MR. ROSENTHAL: Now, your Honor, I ask that the witness who is standing there at that door (indicating the ~~main~~ door of the side-room) stay on the inside of that door, and not keep opening it all the time. I mean Carlson, the officer, one of the officers in this case.

THE COURT: Open that door. Call Officer Carlson, Captain.

MR. ROSENTHAL: He just got away, that second.

THE COURT: No, he did not get away. And do not make such a statement publicly. The jury will disregard the remarks made by counsel. It is a new discovery that a person can look through something that is opaque. Now, I happened to see who was at that door, or near that door, and it was not this officer. It was a young man in a suit of grey clothes. Now I want everybody to retire from that room. Let them go into Part V. Keep that door open, and keep that room empty, Captain.

BY MR. BUCKNER:

Q Houghton, have you now refreshed your recollection as to amount of money that you spent on the crap game on December 13th, 1910, at this place? A Yes, sir.

Q How much did you spend on that game? A In the afternoon, I didn't shoot crap.

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Q Well, did you play any crap on that day at all, at that place? A Yes, sir.

Q When? A In the evening.

Q You mean to say that you were at this place on the 13th twice? A Yes, sir.

Q When did you go back the second time? A About seven p.m.

Q About seven p.m.? A Yes, sir.

Q Did you see the defendant then? A Yes, sir.

Q What was he doing? A The same thing.

THE COURT: Strike out, "the same thing."

BY THE COURT:

Q State what you saw him doing? A I saw him at the crap table.

BY MR. BUCKNER:

Q And what was he doing at the crap table? A He had the rake in his hand, and was in charge of the dice.

Q Was any playing going on at that time? A Yes, sir.

Q Did you play at the game of crap at that time? A Yes, sir.

Q Now just tell us how you played it, tell us everything that you did? A When I entered the room --

BY THE COURT:

Q State what you did, and what the defendant did? A Yes, sir. I exchanged a five dollar bill for fifty cent pieces.

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BY MR. BUCKNER:

Q Who gave you the change? A The man isn't present.
I don't see him here.

Q All right. Where was he standing in the room? A He
was on the opposite side of the table from this defendant.

Q All right. Then what did you do? A Then when it
came my turn, I shot crap.

BY THE COURT:

Q Who gave you the dice? A This man (indicating the
defendant). This defendant.

Q This defendant? A Yes, sir.

BY MR. BUCKNER:

Q Did you throw the dice then? A Yes, sir.

Q Then what happened? A During the operation, I lost
five dollars.

MR. ROSENTHAL: Now, I move to strike out the word
"operation", if your Honor please.

THE COURT: Yes, strike it out.

MR. ROSENTHAL: And I ask your Honor to direct the
jury to disregard it.

THE COURT: Motion granted.

BY MR. BUCKNER:

Q Now, what did you do with the fifty cent piece, when it
came to your turn? A When it came my turn to shoot, this
defendant takes a pair of dice from a box which was in front of

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him on the table, and he throws those dice to me, and I catch it in my hand, and I place a fifty cent piece where it says "Line" on the crap table. It is to indicate the line. That indicates I am going to shoot fifty cents.

MR. ROSENTHAL: I move to strike out what it indicates. The operation of the witness's mind is not binding on the defendant.

THE COURT: Yes, strike that out.

BY THE COURT:

Q Did you put down fifty cents? A Yes, sir, on the table.

THE COURT: Have you that table here?

MR. BUCKNER: We have sent for it. It will be here, in a moment.

BY THE COURT:

Q Proceed. A Then I rolled the dice, and I don't remember what turned up on the dice, what the point was, but I do know that I lost that first bet.

BY MR. BUCKNER:

Q And after you threw the dice, what did the defendant Burgess do? A He reached over with this stick or this rake, which he has in his hand, and he called out the number of the dice, the number that was turned up on the dice, and he says, "Put the buck on that number," and then he pulls the dice to him, and holds it in his hand, and then ~~he~~ throws it back to me.

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Q What became of the first fifty cents? A I lost it.

Q Well, who got it? A The man that was acting as a banker took it in.

Q That was not the defendant? A No, sir.

Q Well, where was the other man standing? A Directly opposite to this man.

Q At the same table? A Yes, sir.

Q I hand you this picture.

MR. ROSENTHAL: I object to the introduction of that picture there, if your Honor please.

MR. BUCKNER: I suppose that counsel had better wait until it is introduced.

MR. ROSENTHAL: Well, I know, but --

THE COURT: Let me look at it. Why not prove this picture by some other person?

MR. BUCKNER: All right.

BY MR. BUCKNER:

Q Did you ever see this -- I withdraw that. What became of your other four dollars and a half? A I lost it.

MR. ROSENTHAL: I object to the question as leading. What did he do, if anything, else?

THE COURT: Overruled.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q Well, how did you lose it? A In this game.

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Q In the same way you have described? A Yes, sir.

Q How long did you play there? A Until about 8:30.

Q Was this defendant there all that time? A Yes, sir.

Q State anything else that the defendant said or did, if you can recall, other than you have stated? A During the game, or while I was there, he would call out, as a man was going to shoot, or as he threw the dice, "Get your money down on the field." The field number is due. Follow this man. He is lucky."

Q Anything else? A That's all I remember.

Q What sort of a table was this game played on? A On a crap table.

Q Well, what kind of a table? A A billiard table, with a crap cloth over it.

MR. ROSENTHAL: I move to strike out the answer, if your Honor please.

BY THE COURT:

Q What do you mean by a crap cloth? A It's a green cloth, the same as a billiard cloth, and all these numbers, that is, in the game of crap, is printed on this cloth.

Q You have played the game for how long a time? Are you familiar with the game of crap? A Yes, sir.

Q You have played it for how long? A Previous to that day, the 13th of December, I had never seen a regular crap cloth.

Q But since that time how often have you seen a crap

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table?

MR. ROSENTHAL: I object to anything subsequent. I object to the question.

THE COURT: Overruled.

A I should say about fifty times.

MR. ROSENTHAL: I object to the question and answer, and move to strike them out:

THE COURT: Objection overruled. Motion denied.

MR. ROSENTHAL: Exception. It isn't binding on the defendant, I submit.

THE COURT: This testimony is not offered to bind the defendant, but simply as showing that the witness is capable of testifying to the character of the table that he saw in the place, on the night of December 13th. Proceed.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q Now I hand you a piece of cloth, and ask you to examine it, and say whether you have ever seen it before toeday? A I'll have to stretch this out.

(The witness stretches it out with the assistance of the crier of the court).

Q Have you ever seen it before toeday? A Yes, sir.

Q Where did you ever see that cloth before? A At 1542' Broadway.

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Q Is that the cloth that you have been talking about?

A Yes, sir.

Q Is that the cloth which was used at the game that you have described, and in which you played and the defendant played?

MR. ROSENTHAL: I object to the question, as leading.

THE COURT: " Sustained.

BY MR. BUCKNER:

Q Where did you see this cloth in 1542 Broadway, in what part of the premises? A On that table.

Q A little louder? A On the crap table.

Q What crap table? A That was in 1542 Broadway.

MR. ROSENTHAL: I object to the term, "crap table," if your Honor please.

THE COURT: Objection overruled.

MR. ROSENTHAL: / Exception.

BY MR. BUCKNER:

Q Did you see more than one in that place? A Only one.

Q Only one? A Yes, sir.

MR. BUCKNER: I now offer in evidence this cloth, identified by the witness.

THE COURT: I will receive it.

MR. ROSENTHAL: I object to it, and except to its admission.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception

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THE COURT: You may question this witness with a view of ascertaining what means, if any, he has of identifying the cloth. You may question him before I receive it in evidence.

BY MR. ROSENTHAL:

Q Now you have seen cloth similar to that? Take your hand down from your mouth, please, will you? A Since December 13th?

Q Yes? A Yes, sir.

Q In fact, cloth quite similar? A Well, it is similar in this way, the way its laid out.

Q Yes. And you have no particular mark on that piece of cloth here, so that you can say that that is the same cloth? A Yes, I have.

Q As the same piece of cloth that was taken out of 1542 Broadway? A Yes, sir, I have a mark on it.

Q When did you make that mark? A On the 16th of December.

Q That is, three days after you say you saw this defendant there; is that right? A Yes, sir.

Q Have you seen this green cloth since? A No, sir.

Q Since it was taken out of the premises 1542, and before to-day? A No, sir.

Q Positive of that? A I said, "No, sir."

Q Are you positive of that, I say, A Yes, sir.

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Q Do you know where this cloth was? A I believe the Police Department of New York held it.

Q Do you know where the Police Department held that piece of cloth? A In the property Clerk's room.

Q Were you in the Property Clerk's room when that cloth was taken there? A No, sir.

Q Did you see it taken out of the premises? A No, sir.

Q 1542 Broadway? A No, sir.

Q You are positive that you didn't see that cloth taken out of the premises 1542?

THE COURT: He said so.

BY MR. ROSENTHAL:

Q Now, so far as you know, this cloth could have been brought to wherever you say it was at Headquarters, the Property Clerk's office, from the premises 1542 Broadway, without your knowledge; isn't that so? A Yes.

Q Tell us how you marked that; will you? A With an indelible pencil.

Q And have you always carried that indelible pencil?

A Not always; no, sir.

Q Now tell us of another place where you saw green cloth made up similar to that? A I saw one quite recently.

Q Has there been a raid made on those premises? A Yes, sir.

Q And where else did you see it?

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THE COURT: Do not mention any place where you got evidence, at present.

A Well, there is a number of places where I have seen cloths like that.

BY MR. ROSENTHAL:

Q And they all looked like this cloth? Did they or did they not? A The same numbers, but not --

Q Do you mean to tell this Court and jury that, in the presence of twenty-five men, around that crap table, you were able to take out an indelible pencil, and mark that cloth?

A Yes, I did. I marked that table with the indelible pencil. As they were not standing around it when I marked it, either.

Q They weren't? A No, sir.

Q Show where it was marked? A Right there (indicating).

Q And where does that lay? On the table or over the table? A On the table.

Q What is it? Your initials? A No; just a cross.

Q And you have seen that particular green cloth since the raid was made; isn't that so? A I hadn't seen it; no, sir.

Q You have seen it today; haven't you? A That cloth?

Q Yes? A No, I didn't see that cloth.

MR. ROSENTHAL: That's all as to that. And I renew my objection to introducing it in evidence.

BY THE COURT:

Q On the 16th of December, 1910, at the time you marked

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this cloth, where was the defendant? A There was nobody standing around the table at that time.

Q Was he in the place, that day? A Yes, sir.

Q Had you played, that day? A Yes, sir.

Q How long after you played had you marked the table, or marked the cloth? A I marked the cloth when I first went in there.

Q That day? A Yes, sir.

Q The 16th? A Yes, sir.

Q And the defendant was there, that day? A Yes, sir.

Q And the defendant was in the place on that day, you say? A I didn't notice him just at that moment; no, sir.

Q But on that day was he there? A Yes, sir; that afternoon he was there.

Q Was it the same afternoon on which you marked the cloth? A (No answer).

Q Was the defendant in the place on the 16th of December? Did you see him there? A I saw him there, at the crap table; yes, sir.

Q Did you play that day? A I did; yes, sir.

Q And what time did you go to the place? A I will have to look at my memorandum, to answer that.

BY MR. BUCKNER:

Q When did you next go back to 1542 Broadway? A After

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the 13th?

Q Yes? A On the 14th.

Q Was the defendant there on that day? A Yes, sir.

Q What did you see him doing there?

MR. BUCKNER: I will withdraw the offer of the cloth at this time.

BY MR. BUCKNER:

Q What did you see him doing on the 14th?

BY THE COURT:

Q If anything?

BY MR. BUCKNER:

Q If anything? A (No answer).

BY MR. BUCKNER:

Q What did you see him doing, if anything, on the 14th?

A He was the raker at the crap table.

Q And was anybody playing at the crap table on that day? A Yes, sir.

Q At the crap game? A Yes, sir.

Q Did you see any money being used? A Yes, sir.

Q Now describe what he was doing when you say he was acting as the raker on the 14th? A He stood at the table, with the box of dice in front of him, and the rake in his hand, and as the dice were thrown, he would take them to him, and pick them up, and throw them back to the player.

Q And did you see anything done to the money bet? A If

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the player won, the banker --

MR. ROSENTHAL: I object to the question and answer.

THE COURT: Objection sustained. Strike out the answer.

BY MR. BUCKNER:

Q What happened to the money, if any, that you saw on the crap table on the afternoon of December 14th, 1910?

MR. ROSENTHAL: If he knows.

THE COURT: Yes, if he knows.

BY MR. BUCKNER:

Q In any particular instance?

MR. ROSENTHAL: No, I object to any particular instance.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception. I insist that one instance be made at a time.

THE COURT: Well, if he can, it is preferable that he should.

A I can't pick out any one instance.

BY MR. BUCKNER:

Q Well, what happened in any particular instance that you can now recall to the money, after the dice were thrown?

A It would be collected by the banker.

BY THE COURT:

Q Now, when a player would win, who would pay him? A The

banker would pay him.

Q In whose presence would that be done? A This defendant's, and all the players.

BY MR. BUCKNER:

Q Did you play any crap on the 14th? A Yes, sir.

Q How much did you win or lose on the 14th of December?

A I don't remember, without looking at my book.

Q Well, did you win or lose any money? A Yes, sir.

Q Where was the defendant at the time you played the crap game, on that day? A At the crap table.

Q What was he doing? A Acting as the raker.

Q And when did you next go back to 1542 Broadway, after the 14th? A On the --

THE COURT: What is the date in the indictment?

MR. BUCKNER: The 13th.

BY MR. BUCKNER:

Q When did you next go back? A On the 15th.

Q Did you see the defendant on the 15th? A Yes, sir.

Q What did you see him doing on the 15th? A Acting as taker at the crap table.

Q Did you see any one playing crap at that time? A Yes, sir.

Q Did you see any money employed in the game? A Yes, sir.

Q Did you see anybody win or lose any money at that game?

A Yes, sir.

Q While the defendant was there? A Yes, sir.

Q Did you yourself win or lose any money on the 15th?

A I don't remember whether I broke even, or whether I won, or whether I lost.

Q Well, did you play? A I played; yes.

Q Where was the defendant at the time you played crap, on the 15th? A He was the raker.

Q Just as you have before described? A Yes, sir.

Q When did you next go back, after December 15th?

A On the 16th.

Q Did you see the defendant on the 16th? A Yes, sir.

Q What did you see him doing on the 16th? A Acting as raker.

Q Did you see anybody playing the crap game, on that day?

A Yes, sir.

Q Did you see any money employed in that game? A Yes, sir.

Q Did you see anybody win or lose any money in that crap game? A Yes, sir.

Q Did you yourself play crap on the 16th? A Yes, sir.

Q Where was the defendant when you played? A Acting as a raker.

Q What did he do when you played? A Threw the dice into my hands.

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Q Did you win or lose on the 16th? A I don't remember.

Q Well, did you do one or the other? A I either won,
or lost, or --

MR. ROSENTHAL: I object to it. The witness says
that he don't remember.

BY MR. BUCKNER:

Q Well, did you play? A Yes, sir, I played.

Q Where was the defendant when you played? A Acting
as the raker.

Q Well, did you notice the cloth on the crap table on
December 16th, 1910? A Yes, sir.

Q Have you seen it since? A Not since the 16th.

Q Well, do you see it now? A Yes, sir.

Q Is this the cloth as to which you testified, a while
ago (indicating)? A That's the cloth that was there on the
16th.

Q Now in what respect was that cloth similar or different
on the 16th of December, 1910, from what it was on the 13th of
December, 1910? A It is the same sort of a cloth.

Q It is the same sort of a cloth? A Yes, sir.

MR. BUCKNER: I now offer in evidence the cloth as
People's Exhibit I.

MR. ROSENTHAL: I object to it.

THE COURT: It is received.

MR. ROSENTHAL: Exception

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(It is marked People's Exhibit I).

BY MR. BUCKNER:

Q Did you go back to those premises, 1542 Broadway, after December 16th, 1910? A I did not.

Q Now will you show us how you played the game of crap at this place in question, when the defendant was acting as raker?

MR. ROSENTHAL: Now I object to any exhibition, or showing to this jury by this witness here, or as to the shaking of any dice, on the ground that it hasn't been shown that he is an expert, or is competent.

THE COURT: He said he played crap fifty times.

MR. ROSENTHAL: That's not sufficient. I may have played it as many times, but I don't know one number from another.

THE COURT: Perhaps you are not as adept as the witness.

MR. ROSENTHAL: Well, when I get through with him, perhaps he won't be so adept either. I object to this witness here exhibiting to the jury his qualifications as a crap player.

THE COURT: I overrule the objection.

MR. ROSENTHAL: Exception.

MR. BUCKNER: And may I place this long table before the jury, instead of this short table? because it is too

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short?

THE COURT: Yes.

MR. ROSENTHAL: And I object to the witness standing there, and telling the officers which way they should lay the cloth on the table, as not binding on the defendant.

THE COURT: I overrule your objection.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q Now, Houghton, on which side of People's Exhibit I did you stand at the time you played crap with this defendant, as you have testified?

MR. ROSENTHAL: I object to it as too indefinite. When was it? There are four days when this witness said he was in that place. What day was it?

BY MR. BUCKNER:

Q Well, on December 13th, on which side of this cloth did you stand?

MR. ROSENTHAL: If he knows.

BY MR. BUCKNER:

Q Keep your voice up. A I stood right on this corner here (indicating).

MR. BUCKNER: Indicating a point opposite Juror No.

2.

BY MR. BUCKNER:

Q Now where did the defendant urgess stand, on that oc-

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casion? A Right in the centre, here, opposite this word
"Line."

MR. BUCKNER: I think we will have it the other way.

THE WITNESS: Yes, it will have to be, if the jury
are to be the players.

MR. ROSENTHAL: No, let it stay that way, because
the witness has shown that it should lay this way, and
has shown where the defendant stood.

THE COURT: All right. Then turn it around the other
way, Mr. Buckner, as counsel requests.

THE WITNESS: Do you want the jury to represent the
players?

BY THE COURT:

Q Now explain to the jury the condition which you found
this cloth and the players, at the time that you went to the
premises, on December 13th, 1910?

BY MR. BUCKNER:

Q On which side did you stand, and on which side did the
defendant stand? A When the play was in operation --

MR. ROSENTHAL: I object to that.

THE COURT: Sustained.

BY THE COURT:

Q On December 13th, do you remember where you stood, and
where the defendant stood, and where the other persons about
this table stood?

A Yes, sir.

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BY MR. BUCKNER:

Q Speak up, now? A The defendant stood right here (indicating the word "Line"), and the box containing a number of dice was here (indicating).

Q And where did you stand? A I stood here (pointing to a spot opposite Juror No. 5).

Q I hand you two articles, and ask you to state if those articles are similar to the dice employed there?

MR. ROSENTHAL: Oh, I object to that, if your Honor please.

THE COURT: Upon what ground?

MR. ROSENTHAL: Upon the ground that we are not bound by the two dice that are brought here now.

MR. BUCKNER: They are straight dice, your Honor.

MR. ROSENTHAL: And I object to the remark of the District Attorney, and ask your Honor to strike that out. There is no evidence here as to any dice being straight or not straight, or that anything but straight dice were used there, if any were used at all. I object.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q I hand you two articles, and ask you to state if those articles are similar to the dice employed there?

MR. ROSENTHAL: I object to it, unless the witness

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knows, of his own knowledge, that the dice that were used, if any were used, on the 13th day of December, as to weight and size and color.

A I didn't weigh the dice.

MR. BUCKNER: No, don't answer the counsel.

MR. ROSENTHAL: No, tell that to the Judge. I object.

THE COURT: I overrule your objection.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q Now, Mr. Houghton, will you just state to the jury when you played your first fifty cents, on December 13th, 1910, what is the first thing that the defendant did with regard to that particular play, if anything? A He takes a pair of dice similar to these two dice (indicating), and he throws them to me. I am standing over there (indicating).

BY MR. ROSENTHAL:

Q How far away from him? A And he is standing here (indicating).

Q Five feet away?

MR. BUCKNER: No, three or four feet.

BY MR. ROSENTHAL:

Q Five feet away? A I didn't measure it. I don't know.

THE COURT: Well, here is a rule. You may measure

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it, Mr. Rosenthal. Are you as particular as all that?

MR. ROSENTHAL: I am, sir. I think this is very beneficial, to us.

THE COURT: He pointed out to the jury how far he stood away.

MR. ROSENTHAL: He said he stood at the end of this table.

MR. BUCKNER: I have measured it. That is exactly three feet and three-quarters.

BY MR. BUCKNER:

Q And what did you do then after Burgess threw the dice to you? A I placed fifty cents on the line, and I took the dice up in my hand, and I shake them, and I throw them out, and make a point. I don't remember what my point was on that particular play. Whatever point it was, the banker would place --

MR. ROSENTHAL: No, not what he would do, but what he did.

THE COURT: Yes, state what he did.

A (Answer continued) The banker did place --

BY THE COURT:

Q Do you know that to be a fact? A Yes, sir. After I threw the dice out, and the point was rolled, whatever it was, the banker placed a small object on one of these numbers (in-

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dicating).

BY MR. ROSENTHAL:

Q If you know?

THE COURT: He says so, that he knew.

A I do know.

BY MR. BUCKNER:

Q And then what happened? A Then I threw the dice, until I threw a seven, and, when I threw a seven, I lost.

Q And then what did the defendant do? You don't need to throw until you throw a set. Then what did the defendant do, what act did he do? A Then he raked the dice in.

Q With what did he rake them in? A With a small rake or cane.

THE COURT: Have you got the rake here?

MR. BUCKNER: No, sir, it's outside. I will have it brought in. Now just return to your seat on the witness-stand, Mr. Witness.

BY MR. BUCKNER:

Q Now were the other occasions on which you engaged in this crap game similar to that which you have just described, except as to your winning or losing?

MR. ROSENTHAL: Now, I object to similarities or statements of similarities here, if your Honor please.

THE COURT: Sustained. Prove each act.

BY MR. BUCKNER:

Q Now, Mr. Houghton, at the time you were playing crap,

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as you have described, was anybody else at the crap table, on the 13th of December? A Yes, sir.

Q And what were they doing, if you know?

MR. ROSENTHAL: I object to the question, unless this witness knows what these other persons were doing, on the 13th day of December?

BY THE COURT:

Q You may state, Mr. Witness, everything that you observed in the premises in question, on the 13th of December, provided whatever took place occurred in the presence of the defendant? You understand what I mean? A Yes, sir.

Q Whatever occurred on that table, in the presence of this defendant, you may give testimony as to? A There were a number of men standing around this table, shooting -- throwing these dice out -- and placing money, fifty cent pieces, and silver dollars, on different numbers on this table, on which they would win or lose, according to the numbers thrown.

BY MR. BUCKNER:

Q According to what? Speak up? A According to the numbers thrown on the dice.

Q According to the numbers thrown on the dice? A Yes, sir.

Q Now you said, a moment ago, that, when you threw a seven, you lost your fifty cents?

MR. ROSENTHAL: I object to that. H e hasn't made any

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such statement. He said he lost his play.

THE COURT: Yes, that he lost his play.

MR. ROSENTHAL: Mr. Buckner doesn't understand that part of it.

BY THE COURT:

Q Well, what is the game known as?

MR. ROSENTHAL: If he knows.

BY THE COURT:

Q If you know? A Crap.

Q Now, give to the jury, detail more fully, how the game is played. What number does the player take, and what number does the house take? A On the first throw of the dice, if you throw a seven or eleven, you win.

Q That is the player wins? A Yes, sir.

Q The man who throws? A Yes, sir, the player wins. The first throw of the dice, if it is a seven or eleven, you win.

Q Now, suppose you threw a two or a twelve? A Now, if you throw a two or a twelve, you lose. That is crap.

Q And then, the second throw, if you throw a seven, who wins? A After throwing a crap?

Q Yes? A You win.

BY MR. ROSENTHAL:

Q You mean who wins? A The player.

Q Not the Judge? A No, sir.

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BY MR. BUCKNER:

Q Suppose you throw a five, initially? A On the first throw?

Q Yes? A Then you keep throwing until you throw that five, which is your point, or until you throw a seven.

BY MR. ROSENTHAL:

Q Or anything else?

BY MR. BUCKNER:

Q And if you throw a seven, what is the result?

A You lose the money that you have on the table.

Q You lose the money and the play, both? A Yes, sir.

Q Now you described your putting fifty cents on the line?

A Yes, sir.

Q Now is there any place where you could put your money, except on the line? A Yes, sir.

Q Now, then, describe those possibilities, those possible places? A When you have the dice in your possession, and it is your play, you put your money on the line, to show how much money you are going to shoot. Then you can also put money on different parts --

MR. ROSENTHAL: Now I object to all this statement here, if your Honor please, in the presence of the jury.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception. It isn't binding on this defendant.

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BY MR. BUCKNER:

Q Just a moment. Did you see the varieties of play done at 1542 Broadway, that you are about to describe, in the presence of the defendant, on the day in question, or the days that you have been speaking of? A Yes, sir.

MR. ROSENTHAL: I object to it.

THE COURT: Allowed.

MR. ROSENTHAL: Exception.

BY MR. BUCKNER:

Q Now, then, show us what you saw done at that time?

A If you wish, you may place your money on the field numbers.

Q Explain that? A You place your money on the field, and the man who has the dice in his possession, on the next throw, throws one of these numbers, two, three, five, nine, ten, eleven, or twelve (indicating), you will win. If you want to put your money on this number (indicating)--

MR. ROSENTHAL: Meaning what?

THE COURT: He indicates 2 black.

MR. ROSENTHAL: I object to this witness being instructed or told what is what.

THE COURT: No, the witness is not being instructed as to anything. The Court merely mentioned the color of the circle that the witness put his hand on, so that the stenographer would have it on the record. It does not appear that the Court instructed the witness. It was

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merely said to have the stenographer have the right number in his minutes. Proceed.

A (Answer continued) If you want to place your money on any of these three numbers here (indicating), where it says, "Craps pays 7 for 1," if, on the next throw of the dice, you put your hand on 2 black, on the next throw of the dice, if two others are thrown, you win, and, if you have a dollar on it, you get seven or eight dollars for your money.

BY MR. BUCKNER:

Q Well, who throws the dice? You or another player?

A The man who has the play, the man who has the dice in his hand. If, on the next throw, a player wants to put his money on either one of those three (indicating), and a crap is thrown on the number on which the money is, you will be paid 7 for 1. If it isn't thrown on the next throw, you lose.

BY MR. BUCKNER:

Q Now can you describe any other varieties of play which you saw played on December 13th, 1910? A If you think you are lucky, and a seven is due --

MR. ROSENTHAL: I object to that.

THE COURT: No, strike that out.

A (Answer continued) Well, if you wish, you may place your money on this, a seven (indicating), and if, on the next throw of the dice, a seven is thrown --

MR. ROSENTHAL: I object to all this, if the Court

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please.

THE COURT: He said that he observed these things.

MR. ROSENTHAL: No, sir. He said, "If you wish, you can do so and so."

THE COURT: Strike out the testimony given by this witness wherein he merely states the state of his mind.

BY THE COURT:

Q State what you actually saw take place, that day, the 13th of December? A I saw men place their money on this 7 (indicating).

BY MR. ROSENTHAL:

Q And you wouldn't know what become of the money, when they placed it on the 7; would you? A Sometimes I saw them lose. On a few occasions, I saw them win.

BY MR. BUCKNER:

Q Well, will you describe the system of play in which the money is placed on the 7?

MR. ROSENTHAL: I object to that. I object to any system.

BY THE COURT:

Q That you observed take place that afternoon?

MR. ROSENTHAL: If he knows, yes.

BY THE COURT:

Q Yes, if you know? A I saw a man place a silver dollar on this 7 (indicating), and, on the next throw of the dice,

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a 7 was not thrown, and the man that stood over here (indicating), the banker, gathered in that silver dollar.

BY MR. BUCKNER:

Q Can you describe any other varieties of betting which you observed on December 13th, 1910, on this cloth? If you don't recall that you observed them, don't describe them?

A I can't remember^a. I can describe the play, but I can't remember any special play.

Q You are not required to remember any special play. But, if you can recall that any of these particular varieties you did see, then you can describe the particular system of putting the money on those numbers.

MR. ROSENTHAL: No, he can't explain any system, not here. I object.

MR. BUCKNER: I mean he can describe the game, if he saw a particular play made. He needn't describe the man who made it.

MR. ROSENTHAL: I have no objection to that.

THE COURT: Then proceed. Please return to the stand, Mr. Witness.

BY MR. BUCKNER:

Q Now any other variety of play ~~in~~ which you observed on December 13th, 1910, on this cloth, you may describe? A I saw men place money on the 6 and the 8 (indicating).

Q Would it be necessary for the man who placed his money

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on the 5 or 8 to be the man who was to throw the dice, the next time?

MR. ROSENTHAL: I object to that, unless he knows of his own knowledge.

BY THE COURT:

Q Yes, state of your own knowledge. A It isn't necessary.

BY MR. BUCKNER:

Q In other words, the player can bet on --

MR. ROSENTHAL: Just one moment, Mr. Witness. Will you please raise your head up? I want to look at you.

BY MR. BUCKNER:

Q A player can bet how the dice will roll when another player is about to roll?

MR. ROSENTHAL: I object to the question as leading, and move to strike it out.

THE COURT: Objection sustained.

MR. BUCKNER: That is all.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q How long -- where did you work before this bottling concern? A This wasn't a bottling concern that I worked for.

Q Well then I will call it by its exact name, the Wine & Spirits Traders Society, is that right? A Yes, sir.

Q And where was their place of business? A 78 Broad street.

Q It was No. 80 Broad street; wasn't it? A 78, the Maritime Building.

Q How long did you work for them? A About three years.

Q Three years? A Yes, sir.

Q Now who is the head of that society? A The agent, the New York agent for Benedictine.

Q Who is he? A I don't remember his name just this minute.

Q Do you mean to tell us that you worked three years for this society and the head of it was the New York agent for Benedictine, and still you don't know his name; is that right? A It slips my memory just this minute, yes.

Q You are positive that you don't know the name; is that so? A Yes, sir, at this minute.

Q Do you know his first name? A No, sir.

Q Or do you know his last name? A I don't remember just now. This agent wasn't the man I worked for.

This man is in charge of the society and I would have no

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dealings with him at all.

Q Why not? A Because the man who did the detective work was Mr. Joseph Brand.

Q Mr. Joseph who? A Brand. (The witness spells the name.

Q Was that work done for that concern.

Q Are they still in existence? A Yes, sir. I'll show you a letter head, if you want it.

Q Now just a minute. You work for them every week regularly, for three years? A Not every week; no, sir.

Q Did you receive your weekly salary for three years? A No, sir.

Q How much of the three years did you actually give them for your services? A I don't remember now.

Q As a matter of fact, how many weeks did you work in the three years for this wine concern, or this wine and spirits society? A I can't think, without looking it up.

Q Did you work more than two weeks, fourteen days in two years? A Yes, sir.

Q Did you receive more than two weeks salary for them? A Yes, sir.

Q Now what was your line of work? A Investigating spurious liquors and --

Q And it was to prosecute cases where you discovered that they had refilled bottles? A Counterfeit labels, trade mark

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infringements, and --

Q And how many times did you appear in those particular investigations that you made for them? A I don't remember.

Q Did you appear in one case in three years? A Yes, sir.

Q Do you know the name of that case? A I have it right here.

Q No, no. Do you know it? A Yes, sir. Their name is Speduzzi.

Q Where was that? A It was on 8th avenue.

Q Eighth avenue and what? A I don't remember the number now. It's sometime ago.

Q When was that? A 1909, sometime.

Q Do you know of any other case? Oh, where was that case disposed of? A It isn't disposed of yet.

Q Will you take your hand down, please? It isn't disposed of yet? A No, sir.

Q Who else was in that investigation besides yourself?
A Mr. Joseph Brand.

Q Now tell us the entire cases in which you investigated for them, while working for three years? A (No answer.)

Q You know of any other case? A Yes.

Q Tell us the name, if you know? A Creed, Fink & Company.

Q Where are they? A Jersey City.

Q Why your society doesn't go to Jersey City; does it?

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A They go all over the country.

Q Where did you go, outside of New York, for them?

A Jersey City.

Q Where else besides Jersey City? A Brooklyn.

Q Did you make any raids of any kind, or were you a witness in/any case in Brooklyn for them? A I am a witness, but it hasn't gone to court.

Q That's also three years ago; is that right? A No, sir.

Q Was it longer? A No, sir; last year, sometime.

Q Now who, besides yourself and Mr. Brand, composed this investigating society? A We are the only two.

Q Will you talk loud, so the jury can hear? A We are the only two that do the work in New York, sir.

Q Did you have any shield? A No, sir.

Q Or any credentials of any kind? A We have a license for New York State.

Q Where from in New York State? A The Wine & Spirit Traders Society have a license, a New York State detective license.

Q But you never had a detective badge; did you? A They don't use badges.

Q You mean to say that licensed State detectives in New York State don't have badges? A They issue one badge for a license.

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Q And don't they issue other badges on that license?

A Many years ago, they did, but not now.

Q Ten years ago? A I don't know.

Q When did you see them last issue them? A I don't know. Some years ago.

Q Now are they still at No. 78 Broad street? A Yes, sir.

Q Now, where do you live? A 475 a Lexington avenue Brooklyn.

Q Did you ever live anywheres else about that same time?

A About what time?

Q About december, 1910? A Did I ever stop anywhere else?

Q Did you ever live there? A I lived there, yes.

Q Did you ever live at 1071 Herkimer street? A What time?

Q Did you ever testify, in December, that you lived at 1071 Herkimer street, Brooklyn? A Well, I lived there in December?

Q Yes? A No, I didn't.

Q When did you live there? A About -- let me see. I have to think. It must be about two years ago.

Q Did you ever testify in a police court, on the direct examination, that you lived at 471 a Lexington avenue, Brooklyn, and, on the cross examination, that you lived at 1071 Herkimer

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street, Brooklyn? A No, sir.

Q Are you sure about that? A Yes, sir.

MR. BUCKNER: Where does that appear in the police court ~~me~~ minutes, Mr. Rosenthal?

MR. ROSENTHAL: He's under cross examination, Mr. Buckner. Please leave me alone.

BY MR. ROSENTHAL:

Q Did you ever work for any other concern besides this Wine & Spirits Traders Society? A Yes, sir.

Q Who else? A The Trade Mark Protective Company.

Q How long? A I have it here, if you permit me to look.

Q No, how long? A About four months.

Q Four months? A Yes, sir.

Q You received how much a week? A \$21. a week.

Q Mr. Brand was your employer? A No, sir.

Q Was Mr. Botler your employer? A Mr. Botler; yes, sir.

Q And if he should ~~not~~ take the stand and state that you only worked there three weeks, instead of four months, would he be telling a lie?

MR. BUCKNER: Objected to.

THE COURT: Sustained.

BY MR. ROSENTHAL:

Q Do you know the McGrath case? A Yes.

Q You know it well; don't you? A Yes.

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Q Weren't you discharged from this Trade Mark Protective Society because of the McGrath case? A No, sir.

Q Mr. Hotler is the superintendent of that society, isn't he? A I don't know the position he holds now.

Q All right. What position did he hold when you were there? A He was a detective or investigator.

Q You don't know what he was; do you? A A detective or investigator.

Q Now when you say a detective, what do you mean? Did he have a badge? A I never saw him with one; no, sir.

Q Did you have a badge? A No, sir.

Q Now by what right, or authority of law, did you dare to go into premises and investigate them, without a badge of authority? A They had a license to do so.

Q Do you know what license? A They have it framed in their office.

Q Do you know license you had that you were authorized, that granted you permission to go into premises, and look at the different men's businesses or possessions? A We couldn't secure a warrant --

Q Now just answer my question, if you know? A Yes, I do know.

Q Now did you have credentials of any kind, any badge, or anything of the kind? A It wasn't necessary.

Q It wasn't? A No, sir.

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Q In other words, you could walk into any man's premises, and say, "I come from the Trade Mark Protective Society," and take all the bottles off his shelves? A We never took any bottles, unless we had secured a warrant from a magistrate.

Q How did you secure the evidence that enabled you to get a warrant, if you didn't examine the bottles? A Do you want me to explain?

Q I do. And so does the twelfth juror? A How we secured evidence?

Q I want to know how you got the evidence which got you warrants from the Magistrate, if you say you didn't touch the bottles? A I said we didn't seize the bottles, until we secured a warrant.

Q Then how did you know whether or not the bottles had been refilled? Tell us that; will you? A Yes, I will.

THE COURT: Is that necessary, Mr. Rosenthal?

MR. ROSENTHAL: Well I'll tell you. It's a question of veracity here. I'm following up the statement of this man that he worked for four months, when he only worked for three weeks.

THE COURT: Well, it is purely a collateral matter.

MR. ROSENTHAL: Well, I'll stop here, just now.

BY MR. ROSENTHAL:

Q Weren't you discharged from the Trade Mark Protective Society? A No, sir, I wasn't discharged.

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Q Well then, why did you leave? A Because they told me they couldn't pay me \$21. a week.

Q Yes? A As they had lost some of their clients.

Q Yes? A But they would hire and pay me at the same rate, whenever they had work.

Q Yes. Take your hand down now. Now then we will just leave that, for a minute. Did you ever work anywhere else besides three years in one place and four months in another?

A Yes, sir.

Q Where was that? A Previous to that?

Q Yes? A In 1906, I was employed --

Q Now wait a minute. We are talking about -- were you unemployed at any time? A I have been unemployed sometime in my career, yes.

Q Now where did you work in 1906? A In ^{the} Pinkerton Detective Agency.

Q For Pinkerton's? A Yes, sir.

Q At their office down in Broadway? A 57 Broadway.

Q ^{Was} ~~With~~ Mr. Dougherty the head of that firm? A I believe he is now.

Q Well, wasn't he at that time? A No, sir.

Q Who was? A Mr. Thornhill.

Q Thornhill? A Yes, sir.

Q How many weeks salary did you draw there? A I don't remember now.

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Q A year or two years? A It was less than a year.

Q Less than one year? A Yes, sir.

Q Well will you tell the jury about how many months?

A I worked for them about six or seven months.

Q And you received your salary for six or seven months; is that right? A Yes, sir.

Q What else did you do? Did you work anywheres else?

A Yes, sir.

Q Where was that? A I worked for B. Priestly & Company.

Q Who are they? A They are --

Q When did you do that? A I started with them about 1899, about. I haven't looked it up.

Q Well, that's 11 years ago; isn't it? A Well, I worked right straight up to 1906.

Q Up to 1906? A Yes, sir.

Q Now where is Priestly & Company? A They were then at 71 Grand street. They are now at 100 Fifth avenue.

Q What business are they in? A They are in the dress goods business.

Q And you are positive that you worked for them three years straight? A I believe it's over seven years.

Q What did you do there? Clerk. A I started in as a stock boy.

Q Yes. A And worked in mostly every department.

Q Did you work anywheres else in Brooklyn? A In Brook-

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lyn?

Q Yes? A No, sir. Oh, yes, I did.

Q Where did you work? A I worked at the Bedford Rest.

Q Yes, that's it. Now what is the Bedford Rest? It's a saloon, isn't it? A Well it's a cafe --

Q Oh, yes. A A restaurant, a cafe and a bowling alley.

Q And you were a waiter; weren't you? A Yes.

Q How long did you work there? A I worked there --

Q You aint ashamed of it; are you? A Not at all.

Q That's right. Go on. Well, how long did you work there? A I should say about six months.

Q Yes. That's in the Eastern Parkway; isn't it? That is --

Q Eastern Parkway, isn't it? That's what they call it?

A Eastern Parkway and Bedford Avenue.

Q Yes, that's it. Now how did you come to leave there?

A I quit.

Q At the end of the week or the middle of the week??

A I don't remember.

Q Why did you quit? A I had no more use to work there.

Q I beg your pardon? A I secured what evidence I was looking for.

Q Do you mean to tell us that you went there for evidence; is that it? A Yes, sir.

Q Do you mean to tell us -- how long did you work there?

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A About six months.

Q Six months? A Yes, sir.

Q And it took you six months to get the evidence that you desired; didn't it? A I --

Q Now put your hand down, you know. Didn't it? It took you six months? A Not on one case; no, sir.

Q But you were employed there for six months as a waiter in the Bedford Rest; and do you mean to tell us that you were there for the purpose of securing evidence; is that so? A Yes, sir.

Q And it took you the six months to get that evidence?

A I secured evidence for different cases.

Q Yes. What is the name of the man that employed you for the Bedford Rest? A The head waiter?

Q What is the name of the owner? A Mr. Hann, I think.

Q Oh, come, spell it? A Mr. Hann (The witness spells the name).

Q He is the owner? A Yes, sir.

Q Who is the head waiter? A Now?

Q Yes? A I don't know.

Q If you know? A I don't know.

Q Who was at that time? A A fellow by the name of Matty. --

Q Matty? A Yes, sir.

Q Do you know his last name? A I do not, sir.

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Q And you worked with him six months? A No, he wasn't there continually. He was there when I first went there, and then he was discharged and then he came back again.

Q Yes. And you don't know his last name? A No, sir.

Q And never asked him his last name? A No, sir.

Q Now didn't you work at the Sheepshead Bay Race Track, in Brooklyn? A No, sir.

Q Didn't you ever testify that you did? A Did I ever state that I have been at the track?

Q No. Didn't you say that you had been there, and was employed there? A I said I had been there on detective work.

Q Did you ever work for anybody else? A (No answer)

Q Shall I enlighten you? Did you ever work for B. Brazie & Company? A I never heard the name. The B. Priestly & Company, I guess you are thinking of.

Q No, no. Did you ever work as an investigator for B. Brazie & Company? A I guess you mean B. Priestly & Company. I did work for them as an investigator.

Q Who are they? A The same concern that I worked for, for eight years.

Q You are positive you worked for them as an investigator, after working with them for eight years? A I continued on.

Q As an investigator? A After I left Pinkertons.

Q Yes? A I went back to them as an investigator.

Q Who was your employer in Pinkerton's, direct employer?

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A When I went there?

Q Yes? A Mr. Thornhill.

Q And who did you work with while you were there? In other words you worked in teams? A The operators?

Q Yes? A The man that broke me in was Mr. Kelly. He isn't --

Q Kelly? A Yes, sir.

Q Any question about that? A Not a question.

Q How long did you work for Mr. Kelly? A I didn't work for Mr. Kelly. You asked me the man I worked with, and I said the man that broke me in was Mr. Kelly.

Q Yes. A He is now in charge of the detective force in Wannamaker's.

Q And who else besides the man that broke you in, did you work with as an operator? A A number of men.

Q Tell me one case you were on for Pinkerton, one case? A It was mostly all shadow work.

Q Tell me the name of one case that you worked ~~for~~ⁱⁿ for Pinkerton, bearing in mind that I will have them here? A All right, sir.

THE COURT: Now, you need not threaten the witness.

MR. ROSENTHAL: No, sir, I'm not, but I'm just telling him to be frank with me; that's all.

BY MR. ROSENTHAL:

Q Now tell me one case? A There was, one time, a number

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of --

Q In what year? A 1906. Ther was a number of animals poisoned up in the Bronx Zoo.

Q Yes. A And a man was suspected of poisoning these naimals.

Q Yes? A And I was sent up there to become acquainted with this man, to see if I could find out, or if he would tell me if he poisoned these animals.

Q Yes. Is that the only case that you worked for them?

A No. I worked in a number of cases.

Q Now tell me any other case?

MR. BUCKNER: I object, because it is ~~an~~ utterly immaterial, if your Honor please.

MR. ROSENTHAL: Well, I will not ask him anything more about that.

BY MR. ROSENTHAL:

Q You say you worked six or seven months for them?

A Yes, sir.

Q And you drew a weekly salary from them? A Yes, sir.

Q No question about it; is there? A No, sir.

Q And Mr. Thornhill knows all about it; is that so.

Q You are not a licensed detective; are you? A No,

sir.

Q You know you can't give testimony as a detective, unless you are a licensed detective; isn't that so? A Unless

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you are working under a license which is held by another man.

Q And you are not doing that? A I don't know what license Second Deputy Commissioner Flynn has.

Q Don't you know? You spoke to Second Deputy Commissioner Flynn a number of times; didn't you? A I made reports whenever I went in there.

Q Yes. You were not born here; were you? A No, I wasn't; no, sir.

Q Take your hand down. Where were you born? A I was born in England.

Q In England? A Yes, sir.

Q And where did you live when you first came here? How long have you been in America? A 21 years.

Q Yes. How old are you now? A 30.

Q 30? A Yes, sir.

Q Did you ever testify that you worked for the Wine & Spirits Traders Society, and did you say you got any salary from them? A I stated -- I testified I was paid \$3 a day.

Q Did you ever testify as follows: "Q Do you have a salary? A No, sir. Q You never got a salary from them? A No, sir." Did you ever say that? A The Wine & Spirits Traders Society you are talking about?

Q Yes? A Yes.

Q Did you say that? A Yes, I did.

Q And did you work steady for them all the time? A Not all the time; no, sir.

Q How long and how many times did you work for them? A I don't remember.

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Q How long did you tell us on direct examination you worked for them? A About three years.

Q About three years? A Yes, sir.

Q Steady, you said, didn't you? Regularly employed by them; didn't you? A About three years.

Q Yes. Did you ever testify that they hired you by the day when they wanted you? A That's what I mean. They paid me three dollars a day, and I have been connected with them about three years.

Q Did you ever say: "Q How many times have you worked for them? A Just as they wanted me."? A Yes.

Q Now how did you get information that they wanted you? A They would telephone me.

Q What is their telephone? A 636.

Q 636 what? A Cortlandt.

Q Now you were with them three years? A About three years.

Q Now I will read this question, and get this answer from you: "Q That is to say, during the last three years you have worked for them many times? A I don't know. Q About how many? A I couldn't tell you. Q Have you worked one hundred times? A I haven't an idea, without looking it up. Q Over five times? A Yes, sir. Q Over eight times? A Yes, sir." There you stopped. Now did you work for them more than eight times? A Yes.

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Q How many more? A I don't know, without looking it up.

Q Where is the Trade Mark Protective Society? A 78 Broad street.

Q As a matter of fact, aren't they are 241 Broadway?
A No.

Q Was this question ever asked you: "Q Did you work for the Trade Mark Protective Society, 241 Broadway? A No, sir."? A The Wine and Spirits Traders Society is at 78 Broad street, and the Trade Mark Protective Society was at 241 Broadway.

Q Did you ever say that before this moment? A Yes.

Q When? In your testimony here? A When I was asked the question.

Q Will you tell us please--you say there were 25 men around this crap table; is that right? A About that; at different times.

Q And while the 25 men were around the crap table, the defendant you say was seated--at the place marked "Line"; is that so? A Yes, sir.

Q And the other 25 were crowded around this table?
A Yes, sir.

Q Pretty close? A Yes, sir.

Q Now will you explain--or you did explain that you were four and a half feet from the edge here (indicating)? A Yes.

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Q And will you tell us how you took an indelible pencil, and went over and marked that X with indelible ink there, where the defendant was standing (indicating)? A I testified that I marked the table before the play started.

Q Oh, no one was there? A Some one was in the room, but not around the table.

Q And although no one was in the room or around the table, rather, you went over there and marked that table? A I had a small piece of indelible pencil, and I just strolled by the table--

Q And was it a small piece of lead pencil?

MR. BUCKNER: If your Honor please, I object to the counsel interrupting the witness. Finish your answer.

BY MR. ROSENTHAL:

Q Yes. Finish it. Tell us how you marked it. Go ahead. What kind of pencil was it? A An indelible pencil.

Q Are you positive that it was indelible? A Yes, sir.

Q Now just come over here and tell us whether that isn't ink, made with a pen, on that (indicating)? A I marked it with--

Q Now just come over here and tell us whether that isn't ink, black ink, and not from an indelible pencil. Just look at it through this glass, and see if it isn't regular black ink (indicating)? A That's indelible pencil.

Q Now wait. Just go ahead. Now you know that you made a

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blurred mark--we will assume that to make a blurring mark--
we will assume that it was indelible pencil--it must be damp-
~~ened~~ ened; isn't that so? A I spit on my finger.

Q Oh, you forgot to tell us that. Then you spit on
one finger, and took this indelible pencil with the other, and
marked it; is that so? A I first spit on the finger, and
then put it on the pencil, and marked the cross with the in-
delible pencil.

Q And everything else that you have said to-day is as
true as that?

MR. BUCKNER: Objected to.

THE COURT: Sustained.

BY MR. ROSENTHAL:

Q And that is the statement that you make for being
able to get to that particular place, where this big, tall,
husky fellow was standing; isn't that so? A I don't quite
understand the question.

(Question repeated by the stenographer.)

A What statement do you refer to?

Q That, while no one was at the table, you walked over
and marked the table? A Yes.

Q Now, if there was no one around the table, what was
the necessity for your being so sly about it, taking a dampened
finger, if you had only to dampen the pencil, if it was an in-
delible pencil? A Because they might see me put my pencil

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in my mouth, but they wouldn't notice my finger.

Q Ah, that's it? Now you knew that it was necessary--
now this was the 13th day of December, is that so? A No, sir.

Q Well, what day was it? A The 15th.

Q The 15th day? A Yes, sir..

Q At 3 o'clock in the afternoon? A When I first
went in there.

Q No. I am talking about December 15th, remember?

A Yes.

Q When you marked that table, what time of the day or
night was it? A When I first went in?

Q What time of the day or night was it? A I'll tell
you, if you let me look at my book.

Q I will. Look at it. You have worked at another ho-
tel at Coney Island, haven't you? A I worked at only one
hotel at Coney Island.

Q And that was the Vanderveer Hotel; wasn't it? A Yes.

Q When did you work there? A Last summer.

Q For how long a time? A July and August.

Q And how much salary did you get there? A \$35 a
month and tips.

Q Eh? A Twenty-five a month and tips.

Q Did you work there steady? A In July and August;
yes.

Q Yes? A Yes.

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Q Didn't quit? A No, sir.

Q You didn't work for any trade mark society or any other society, did you, at that time? A Yes.

Q Oh, you were still working for them? A Yes, sir.

Q Is that right? A Yes, sir.

Q In other words, you were a stool-pigeon, attempting to sell information, weren't you? A No, sir.

Q You say June and July of when, what year? A Last year.

Q 1910? A Yes, sir.

Q It was Vanderveer's Hotel or house? A Yes.

Q Mr Shea was the boss? A Yes; Danny Shea.

Q Yes, Danny Shea? A Yes, sir.

Q Yes, that's right. Now why did you quit at the busy month of July? A I didn't quit.

Q Did they discharge you? A No. He was sorry to lose me.

Q How? A He was sorry to lose me.

Q Was glad to get rid of you; wasn't he? A No, sir.

Q Where did you live while you worked at the Vanderveer Hotel? At the hotel? A No, sir.

Q Just look up, will you please? That's right. Now where did you live while you lived or worked there? A The same address.

Q You were an investigator there, you say, looking out

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to see whether they refilled any bottles? A No, they never refilled any bottles there.

Q They were honest people; weren't they? A Yes, sir.

Q Do you know what short change is? A (No answer.)

Q Eh? A I've heard such remarks passed; yes.

Q Do you know what short change is among waiters? A I have heard about it; yes.

Q You never saw it done, did you? A No, sir.

Q Tell us what it is? A I don't know. I've heard about it.

Q Tell us what it is, so that the twelfth juror can hear you, if you know what it is? A I don't know.

Q Now where did you work in the Vanderveer Hotel? In the summer garden, or in the rear, or in the center, which is the main body of this hotel, on the ground floor? A They have no summer garden.

Q Well, tell us where you worked? A All over.

Q Now there is a little summer garden on the side of that hotel--not on the Surf avenue side or the open side--with vines? A There is a verandah there.

Q Now didn't you work there? A I worked all over the building.

Q That's what I am talking about, that space with the vines, the summer garden. There is a summer garden there, is there not? A No, sir, there is a verandah.

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Q Well, what do you call it? A A verandah.

Q A verandah? All right. Now you are positive that you didn't make any complaint against the Bedford Rest people; are you? A No, sir.

Q You never made any complaint against them; did you??

A No, sir.

Q In other words, they were honest people, too; weren't they? A Do I have to answer that question?

MR. ROSENTHAL: Well, you can ask the Judge.

THE COURT: You may answer the question.

THE WITNESS: I would rather not answer that question, your Honor.

BY MR. ROSENTHAL:

Q Have you any evidence now against those people?

MR. BUCKNER: Well, I object to it now as entirely immaterial.

THE COURT: Sustained.

MR. ROSENTHAL: Exception.

Q What did you do for the Pinkerton's people at the race track? A I didn't ^{work at} ~~work at~~ the race track for Pinkerton's.

Q What? A I didn't work at the race track for Pinkerton's.

Q It was in 1906, wasn't it? A Yes; that I worked for Pinkerton's.

Q And do you know what writing a sheet means? A Yes,

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sir.

Q What did you do in reference to sheet writing at Pinkertons? A I didn't do anything.

Q You know what sheet writing is, do you? A I would know, if I saw a man acting as a sheet writer.

Q Don't you know what sheet writing is? A Yes, I do know what it is.

Q Was this question asked you: "Q (By the Court:) What do you mean by sheet writing? A I don't know. I never did it."? Do you remember that question and answer being given to you? A Well, if it is there it must be true.

Q Who went with you while on investigations for this Protective Trade Mark Society? A On what occasion?

Q Who went with you? I repeat the question three times? A On what occasion?

Q While you were on those investigations? A Mr Brand.

Q Now listen to this: "Q Who went with you on these investigations? A The man is now dead. His name was Gaines"? A That was for the Trade Mark Protective Society. I thought you referred to the Wine and Spirits Traders Society. The man for the Trade Mark Protective Company is dead. But one of the men that did the work is dead. But Mr Botler is alive.

Q Did you ever tell Mr Botler that you worked as a sheet writer at the Sheepshead Bay Racetrack? A No, sir, I

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Q Did you ever write anonymous letters to the Trade Mark Protective Society? A I never did, no, sir.

Q Are you positive of that? A Positive.

Q Were you ever accused of it? A No, sir.

Q Are you positive of that? A I am positive.

Q Did you ever write them anonymous letters, telling them that the law was being broken? A No, sir. It wasn't necessary.

Q Now in a crap game, the raker, as we will call him-- the man who you say was the defendant--he don't play in the game personally, does he? A No, sir.

Q Between you and the banker, isn't it, when you play, when you shake the dice? A Yes. If I understand the question right you mean--

Q Well, correct it, if I am not right? A That is, the raker has no money at stake.

Q And so that you, as well as he, could--if you say it was him--could have have thrown the dice back to the other player, as well as he could? A No, sir, I couldn't.

Q But it is always between the player and the banker, or other players and the banker; isn't it? A The banker or house is staking their money against the players' money.

Q Now in your complaint, when you originally made it against the defendant, you only accused him of him having, on the 13th day of December, while in the premises 1642 Broadway, of being there? Why didn't you accuse him of having played on that day, or on any other day, I mean?

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A In the affidavit, that was all that was necessary.

Q No, I am talking about the examination. This is the testimony in the Police Court (indicating a transcript), only it is long, instead of short. Didn't you accuse him of just, on the 13th of December, having been a player there, or raker?

A No, sir.

Q You have testified to-day that you didn't see him on the 12th of December when you were there? He might have been there? A I didn't notice him.

Q But this very small room that you have been telling us about, and one table, small affair; and didn't you notice him? That's true; is it? A Yes, on the 12th.

Q Well, there was a play there; they were playing craps there? A No there was no play at that time.

Q What day of the week was the 12th? A Monday.

Q You are sure that there was no play there? A Yes, I am.

Q Can you tell me how many people were in there on the 12th? A At that moment, when I was taken in there to look the place over, there was no play going on, and I was there about three or four minutes.

Q You were there three or four minutes? A Yes, sir.

Q And what did you do after that? A Went down-stairs.

Q Into the billiard parlor? A Yes, sir.

Q It is a big, handsome place, with about eighteen big

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pool tables; isn't it? A Quite a nice place, yes.

Q Have you ever been in a finer billiard parlor than that place there in your whole life?

MR. BUCKER: Objected to.

THE COURT: Sustained.

MR. ROSENTHAL: Exception.

BY MR. ROSENTHAL:

Q Now, there is a bar there? A Yes, sir.

Q And everything seems to be done in the most proper way, in conformity with the law? A Yes.

Q And nothing wrong went on on that floor where the billiard room was? A Not that I saw.

Q And you had your eye out, watching for anything wrong; hadn't you? A Oh, yes.

THE COURT: Do not discuss this case among yourselves, Gentlemen of the Jury, or permit any one to talk with you about it; nor form or express any opinion as to the guilt or innocence of the defendant, until the case is finally submitted to you.

Refrain from reading any newspaper accounts concerning this case; and, if any person attempts to speak to you, cause his arrest, and notify the Court of such fact.

You may go now until twelve o'clock to-morrow. Let all be seated until the jury retire.

(After the jury had left the court-room:)

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MR. BUCKNER: I now move that the defendant be committed, if your Honor please.

THE COURT: In pursuance of section 422, the Court will exercise its discretion, and the motion of the District Attorney is granted. Commit the defendant.

MR. ROSENTHAL: I would like to talk with the defendant, if your Honor please, for a few minutes, about fifteen minutes, before he is taken down to the pen.

THE COURT: Yes. Allow counsel to confer with his client.

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