

START

1363

CASE

CASE #1363

I N D E X.

	Direct	Cross	Re-direct	Re-cross
James M. Weitsman	6	32	108	

I n d e x.

Direct. Cross. Redirect. Recross.

James M. Weitsman,

119

132

John McMullen,

135

141

142

John Stringer,

143

163

CASE #1363

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART 1.

-----X
THE PEOPLE

against

JAMES FEST.
-----X

#1464
Before

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

Tried, New York, April 27th, 1911.

Indicted for Gaming House, etc.

Indictment filed March 10th, 1911.

A P P E A R A N C E S:

ASSISTANT DISTRICT ATTORNEY EMORY R. BUCKNER, for the People

C. G. F. WAHLE, ESQ., for the Defense.

Frank S. Beard,
Official Stenographer.

CASE #1363

Trial resumed

New York, May 1st, 1911.

MR. WAHLE: Will your Honor bear with me a moment? Before Mr. Buckner opens, I ask that the People do now elect under which of the various counts of the indictment they are going to prosecute the defendant?

THE COURT: Motion denied.

MR. WAHLE: Your Honor will grant me an exception.

OPENING ADDRESS FOR THE PEOPLE

o f

ASSISTANT DISTRICT ATTORNEY EMORY R. BUCKNER

May it please the Court:

and Gentlemen of the Jury,

The defendant is indicted under various counts, which is the technical way of describing the same state of facts in a somewhat different legal way or form, with the crime of being a common gambler, and with the crime of maintaining and helping to maintain, a house for gambling, and with being in charge of apparatus for use in gambling, all charged, as I have said, in different counts. I will not bother you now with a definition of the several counts, for, at the proper time, the Court will instruct you as to the law of the case, and tell you under

CASE #1363

which counts you may or may not convict the defendant. Now, briefly, there is the indictment, and there is the charge.

Now, how are we going to prove it?

We are going to put a man named Weitsman on the stand, the man about whom Judge Wahle asked you, when you were examined as jurors; and he will tell you that, practically every day for a week, I think, he went into a gambling room at No. 3 State street in this county. He was known to the owner, and had known him in other days, and had no grudge or complaint at all against the owner or the place, and had no trouble, therefore, in getting into this gambling house.

He will tell you that, every single day that he was there, this defendant, who calls himself James Pest, was engaged at a crap game there, acting as one of the bankers. There was a very large and busy crap game carried on at this place, and several men were employed around the table, and one of the men employed at the table, acting as banker for the crap game, and raking in the money of losers, and paying off bets when they were lost, was the defendant.

In addition to calling Weitsman, we will have before you the crap table, or the cloth which was on top of the crap table, the same cloth that was there on every occa-

CASE #1363

sion when Weitsman visited the place, and the same cloth over which the defendant presided.

In addition to that we will call the arresting officer who will tell you that, on the day of the arrest, which was only two or three days after the date charged in the indictment, that he, the arresting officer, with a force of men, went to this place, with warrants; that their entrance was resisted; and that by breaking down various doors and windows, they finally effected an entrance, according to law, into this gambling premises, and that there they found this defendant, just where they expected to find him.

In addition to that we are going to call some other witnesses. We do not know what they will testify to. We are going to call two men whose names and addresses we happen to know, who were also caught in the place. They were not there as employes or proprietors of the place, but as patrons of the place. And we will put them under oath and give them a chance to tell what they know, and we do not know now what they will do, but we will put them on the stand before you.

If we show these facts, then we will expect you, according to your sworn statement that you will try this case just as carefully and conscientiously as any other case, to find the only verdict which those facts warrant.

CASE #1363

MR. WAHLE: Will your Honor kindly have brought into court the indictment and the papers in the case of the People against Gompers, Louis Gompers, which is No.4283 of the Part I calendar?

THE COURT: Yes. You say the papers are in Part I?

MR. WAHLE: They were on Friday , and I assume that they remained there. Or probably they are in the Clerk's Office. They were on your Honor's calendar on Friday, as No.4283.

THE COURT: Send for the papers, Mr. Clerk. There is no objection to Mr. Hill remaining in court, is there, Judge Wahle?

MR. WAHLE: None at all, sir.

CASE #1363

THE PEOPLE'S TESTIMONY.

JAMES M. WEITSMAN, of 59 Adelphi Street, Brooklyn,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. BUCKNER:

Q Mr. Weitsman, what are you doing for a living at present?

A Investigator for the Police Department; Second Deputy's office.

Q How long have you been working as Investigator for the Police Department? A About five months, now.

Q Are you a regular member of the Police Department?

A I am hired as an Investigator by Commissioner Flynn.

Q (Question repeated). A No, sir.

MR. WAHLE: Now, may that be stricken out, if your Honor please? I move to strike out, "I am hired as an Investigator," because there is no warrant in law for him to be hired as an Investigator or anything else, that I know of, by Deputy Commissioner Flynn.

THE COURT: Strike it out. Motion granted.

BY MR. BUCKNER:

Q Are you hired as a paid investigator of the Second Deputy Police Commissioner of the City of New York? A Yes, sir.

MR. WAHLE: And I object to that also, as a conclusion of the witness, and move to strike that out.

CASE # 1363

THE COURT: Objection sustained. Strike it out.

BY MR. BUCKNER:

Q Well, who put you to work? A Second Deputy Police Commissioner Flynn.

Q And have you been working for him during those five months? A For the Police Department, as I understand.

MR. WAHLE: Again I object to that, and move to strike it out.

THE COURT: Motion granted.

BY MR. BUCKNER:

Q Where do you get your pay?

MR. WAHLE: Objected to.

THE COURT: Overruled.

MR. WAHLE: Exception.

A The Second Deputy pays me.

Q He pays you himself? A Yes, sir.

Q Talk up please. What is your rate of wages? A \$3. a day.

Q Are you being paid for to-day? A Sir?

Q (Question repeated). A I am paid for every day.

Q Then your answer is yes? A Yes, sir.

Q Please answer the questions that I ask. Now, do you know this defendant here? A I do.

MR. WAHLE: Now will you excuse me a second, Mr. Buckner? Now I ask, may it please the Court, that there be no

CASE #1363

display of cloths, etc. in the presence of this jury, until they are identified, and I ask that those things be covered up.

THE COURT: Yes, cover them up.

BY MR. BUCKNER:

Q Where did you first see this defendant? A On the 8th day of February, 1911.

Q Where, I asked you? A No. 3 State street, Manhattan.

Q What part of the premises of 3 State street? A It was on the floor above the parlor floor.

Q Talk louder. A It was on the floor above the parlor floor.

Q What sort of a house was it there? I mean what kind of a building? A It is a three story and basement building; built the same as a private house would be.

Q Just how did you enter the premises; how did you get into the place? I mean whether you went through the doors or windows or up the fire-escape, or how? A I went up the stoop, and got to a door, and, when I got to the door, I knocked and it was opened.

MR. WAHLE: Now, if your Honor please, I object to anything that this witness did until he saw this defendant doing something. Now, it is a very simple proposition, if your Honor please, as I understand the facts in this case. This witness has stated that he saw this defendant

CASE #1363

9
at No. 3 State street, on the 8th of February, 1911. Now, this defendant can only be held for that which he did, and I ask that the witness be limited in his testimony to that which he saw this defendant doing at the time that he came under the observation of the witness. What happened on the street, or on the first floor, or on the roof, or in Battery Park, doesn't concern us. The question is, what did this man do in the presence of this witness, either when this man, the defendant, was alone, or, if you please, when he was with others, but not when he was not there.

THE COURT: I shall not allow the District Attorney to prove any conversation had between this witness and any person whom he met in the building, prior to the time he entered the place where he claims the defendant was.

MR. WAHLE: Now, if your Honor please, the witness has stated that he saw this defendant on the floor above the parlor floor in the premises 3 State street. But how this man got there, whether he got there over the telephone, or by an airship, or walked up the stairs, is absolutely immaterial.

THE COURT: I overrule your objection.

MR. WAHLE: Will your Honor grant me an exception?

THE COURT: Yes.

CASE #1363

BY MR. BUCKNER:

Q Now do you understand, Weitsman, that we don't want any conversations at all, except when the defendant was where he could hear them? A Yes, sir.

Q Now when you got to the door, what happened?

A A man opened the door for me and I walked in the hall, about ten feet, and then turned to my right into the parlor floor part.

Q And did you have any conversation with that man at the door?

MR. WAHLE: Objected to as immaterial, irrelevant and incompetent, even ~~after~~ as to the fact whether he had any conversation or not with the man at the door.

THE COURT: Objection overruled. But don't state the nature of the conversation.

MR. WAHLE: May I have an exception, if your Honor please?

THE COURT: Yes.

BY MR. BUCKNER:

Q Yes or no? A Yes.

Q After you passed through the door, where did you go?

MR. WAHLE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. WAHLE: Exception.

CASE #1363

A On the parlor floor proper, and sat down there for some time.

Q And then where did you go? A And then I went through a door leading into a hall, and up a flight of stairs.

Q Was any one at that door?

MR. WAHLE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. WAHLE: Exception.

A Yes, sir.

BY MR. BUCKNER:

Q And how did you get through the second door?

MR. WAHLE: Same objection.

THE COURT: Overruled.

MR. WAHLE: Exception.

A The second door was opened just as I walked up to the head of the stairs, and I was admitted in the room.

BY MR. BUCKNER:

Q Well, after you passed through the second door, where did you go? A I went into a large room, the entire length and width of the building.

Q And where did you see the defendant for the first time?

A As I got into this large room, just as I got into the place.

Q Talk louder, Weitsman. A And just as I got into the large room, into the large room over the parlor floor.

CASE #1363

Q Now, you must talk louder. You don't understand that this is a very large room, apparently, and that you must make an effort to be heard. Now, what date did you say this was?

A This was the 8th day of February, 1911.

Q In what part of the room did you see the defendant?

MR. WAHLE: I object to that as immaterial, irrelevant and incompetent, and not within the issues. This crime is alleged to have been committed on the 10th of February, and the witness is testifying to what he saw the defendant doing on the 8th of February.

THE COURT: Overruled.

MR. WAHLE: Exception.

THE COURT: I overrule the objection on the authority of the People against O'Malley. I think it is reported in the 52nd Appellate Division. ~~And then~~ And then there is another case in Massachusetts. Bring me 52 Appellate Division, Captain.

BY MR. BUCKNER:

Q What part of the room did you see the defendant in?

A In the rear end of the room.

Q What did you see in that room?

MR. WAHLE: I object to that as immaterial, irrelevant and incompetent and not binding on this defendant.

BY MR. BUCKNER:

Q In the defendant's presence, within his eyesight, what did you see?

CASE #1363

MR. WAHLE: I object to that, as to what was in the defendant's eyesight. The counsel has opened to the jury what is the basis of this prosecution. Now, I don't care what was in this room. If there was an altar, a drinking fountain or anything else, if the defendant did those things which the prosecutor, in his opening stated, that is an offense; and, as I understood the opening, it was that he was raking in money, and paying it out, and managing this particular table. Now, what difference does it make what else was in this place?

THE COURT: Under your indictment, you are confined to the charge therein contained, Mr. District Attorney.

MR. BUCKNER: Yes, sir; but I didn't wish to lead the witness, your Honor, for fear that the counsel would object to it, as being unfair.

MR. WAHLE: Oh, I wouldn't object to anything that Mr. Buckner did as unfair, because I know that he means to be perfectly fair, but, even when one is so fair, one sometimes inadvertently takes the road that unconsciously leads one to unfairness.

MR. BUCKNER: I thank you, Judge.

BY MR. BUCKNER:

Q Now, what was immediately near the door? A I seen a cratable.

Q What sort of a table was this that you call a crap

CASE #1363

table?

MR. WAHLE: Now, if your Honor please, for the reason that what occurred on the 8th of February cannot substantiate this crime, which took place on the 10th of February, as alleged, I make the same objection.

THE COURT: All of the acts prior to the 10th of February are admissible on the theory that they all tend to lead up to the main charge in the indictment, that is, all the acts culminate into one. That is the theory upon which all of these cases are tried. You will find authority for that proposition.

MR. WAHLE: Your Honor and I are certainly not going to differ on the proposition that whatever may be part of the res gestae is proper and admissible. But this indictment charges an offense as having been committed on the 10th of February, which might have been alleged in the indictment as having been a continuing offense, if the People had sought fit to so plead it, but they did not plead it as such. So far as this indictment shows, if your Honor please, this man, on the morning of the 10th of February, started out for the first time to do the things that are in the indictment alleged, he was guilty of the offense charged. If he did all the things on the 8th of February that are sought to be imputed to him, they will not show him to have been a common gambler on the 10th of February.

CASE #1363

That is the distinction that I draw. He might, in the meantime, intermediate between the 8th and 10th of February, have had a complete change of heart, and have become a fit subject for the mourners' bench in Jerry McAuley's Mission, for all that we know.

THE COURT: This is what was held in the O'Malley case (the Court reads from the O'Malley case).

MR. WAHLE: Well, if your Honor please, I contend that, if you follow that law, I am right in my contention. Those two acts referred to in that case were on the same day, as stated in the decision of the Appellate Division.

THE COURT: I do not agree with you at all. I shall allow every act, if it be for a year prior to the 10th of February, 1911, upon the theory that all the acts preceding that time, while they are not offered for the purpose of showing separate crimes committed by the defendant, are offered for the purpose of showing that the defendant was a common gambler, and, as bearing on the proposition that he was a common gambler, and as bearing on the further proposition that all the acts culminated in the one which is the basis of the indictment against him, I will admit them.

MR. WAHLE: Now will your Honor bear with me for a moment, because we will save time by this discussion now, and the settling of the question involved, thus early in

CASE #1363

the case? If the testimony here sought to be offered was of acts of this defendant, other than this particular incident, in this place, on the same day, it would be different. But let us assume, for a moment, that Mr. Weitsman did, that day, as claimed, for instance, that, at one o'clock, he played the wheel, and at 5 o'clock, dealt faro, and, later, on the same day, or that evening, did something else. All that would be admissible to show that he was a common gambler on that day. But he might be a common gambler, I contend, on the 8th of February, and not on the 10th. The law takes notice of different days; and that is all that the O'Malley case holds. Your Honor will find no case that holds that you can prove other crimes, committed on other days, to prove a certain crime. Suppose that they stopped on the 8th of February, could they hold this man under this indictment?

THE COURT: No. Unless it could be shown that the witness made a mistake as to the time, I should dismiss the indictment.

MR. WAHLE: That's it exactly. But what I am getting at is this, if your Honor please. This very decision seems to establish the stability of the proposition that I am urging. Then, if they rested on the 8th, then no crime under this indictment can be established. So then I claim that there is no proper proof to be introduced as

CASE #1363

to a later day. I take an exception. And may I be understood as excepting to all this testimony, because I don't want to interrupt the sequence of Mr. Buckner's examination?

MR. BUCKNER: Oh, I don't mind your interruptions, Judge. Object whenever you think proper.

BY MR. BUCKNER:

Q Did you ever see that cloth, which you describe as a crap cloth, after the 8th of February? A Yes, I did.

Q When? A On the 9th and 10th, and every day until the 15th of February, 1911.

Q Every day from the 8th to the 15th? A Yes, with the exception of a Sunday. I didn't go there on any Sunday.

Q I hand you two articles, and ask you if you have ever seen either one before? A I have seen this one (indicating).

THE COURT: And I call your attention, Judge, to the case of The Commonwealth against Ferry, in Massachusetts. That covers the proposition.

MR. WAHLE: Yes, sir; I am familiar with that case. But we overrule Massachusetts cases, once in awhile, in our Court of Appeals.

THE COURT: No, this State follows very carefully the Massachusetts law.

MR. WAHLE: The Molineux case was reversed because Judge Goff followed the Massachusetts law.

CASE #1363

THE COURT: No, it was reversed on an entirely different proposition, because he followed the Sharp case, and not the Massachusetts law.

BY MR. BUCKNER:

Q Did you ever see this piece of cloth before ?

A Yes, sir.

Q When did you first see this piece of cloth? A On the 8th day of February, 1911.

Q Where? A At No. 3 State street, Manhattan.

Q On the premises that you were describing a moment ago? A Yes, sir.

Q In the presence of the defendant? A Yes, sir.

Q Well, now, where was that piece of cloth on February 8th, 1911, with reference to where the defendant was, and how was it arranged? A Shall I display it?

Q No, just answer the question. A Well, the defendant was standing in about the center of these numbers here (indicating), and this cloth was placed on a pool table, a table ordinarily used as a billiard and pool table.

Q Now, we might just as well stop this case, if you do not talk louder, because the jury can't hear you, they say, especially when a truck goes by in the street.

A I say this cloth was placed on a billiard table, with a sort of bar placed around over this cloth, and it was turned into

CASE #1363

a crap table then, and the defendant was standing just about where I am now, (illustrating).

Q And that was the part that was on the billiard or pool table before the defendant, from the 8th to the 15th of February, 1911, when you visited this place?

A Yes, sir.

MR. BUCKNER: I offer it in evidence.

MR. WAHLE: May I cross-examine, before it is admitted in evidence, if your Honor please?

THE COURT: Yes.

CASE #1363

BY MR. WAHLE:

Q You say you were in this place every day from the 8th to the 15th of February? A Yes, except Sunday.

Q And did you play on this particular cloth?

A Yes, sir.

Q And were you there when the arrest was made? A Yes, sir.

Q And is that the cloth that the arresting officers took at the time of the arrest? A Yes, sir.

Q Where did they find it? A In the rear of the building, on the floor above the parlor floor, on the table.

Q On the floor above the parlor floor? A Yes, sir.

Q Where you say it was on the 8th of February?

A Yes, sir.

Q In the identical place? A Yes, sir.

Q Did you put any mark upon this cloth? A I did.

Q Where was the mark that you put on this cloth?

A The mark ought to be around the big 6.

Q What ought the mark to be, please? A It was two circles, with a bar connecting.

BY THE COURT:

Q Two what? A Two circles, connected with a bar.

BY MR. WAHLE:

Q Find it please. A There it is (indicating).

Q And that mark you say you put on when? When did you

CASE #1363

put that mark there? A On the 8th day of February.

Q On the 8th day of February? A Yes, sir.

Q And did you see the same mark on the same cloth on the 15th? A I did, sir.

MR. WAHLE: No objection, sir.

THE COURT: It is received without objection.

(It is marked People's Exhibit 1.

BY MR. BUCKNER:

Q Now, on February 8th, 1911, did you see the defendant do anything with reference to People's Exhibit 1? A Yes, sir, I did.

Q Well then just what did you see the defendant doing with reference to people's Exhibit 1 on February 8th?

A He was standing opposite to a box on the table, opposite these numbers (indicating). In that box was a lot of silver dollars and half dollars.

Q What was he doing? A He was paying out and receiving the money on the line.

MR. WAHLE: Now, may that be stricken out, if your Honor please?

THE COURT: Yes.

BY MR. BUCKNER:

Q Describe what you mean by paying and receiving?

MR. WAHLE: I object to that. That is not in the evidence. That has been stricken out.

CASE #1363

THE COURT: Yes, it has been stricken out.

BY MR. BUCKNER:

Q Was there anybody else there besides the defendant?

A Yes, sir, two men alongside of him, one on each side of him, and a man in front of him, on the opposite side of the table, and about fifteen or twenty people around the table in general.

Q Around the table? A Yes, sir.

Q Now what were any of those people doing, in the presence of the defendant? A They were placing money on this line (indicating).

Q Step down and show us what you mean by the line?

A They were placing money all around in here (indicating).

Q And what happened after they placed their money on this line? What happened then? A Then one of the men around the table took a pair of dice that was in a box, and would roll them out, and, if No. 7 was rolled, this banker would pay an equivalent amount to everybody, according to the stack on this line (indicating).

Q Who would pay that amount? A The banker, the defendant.

Q Was anybody else besides the defendant banking?

A Yes, there was two others besides.

Q You say two other men beside the defendant were banking? A Yes, sir.

Q Did you do anything in reference to People's Exhibit 1, personally, besides marking People's Exhibit 1?

A I played.

Q What did you do? A I put the money on the line, and, when I would win, I would have an equivalent amount put alongside of my stack by the banker, and, if I would lose, it would be taken away.

Q What did the defendant do in regard to your play?

A If 7 showed up on the first roll, he would hand me an equivalent amount of silver to my stack on the line.

Q Whose money did you play with on the 8th of February?

A Commissioner Flynn gave me the money to play with. I played with money that he gave me, at least that he gave me to play with.

Q Did you have any personal interest in your winnings or losings in this game? A No, sir, it made no difference to me.

Q Do you know what this game that you played is called?

A Yes, sir; it is called the crap game.

Q You had played it before? A Yes, sir.

Q Now what were these other people around the table doing? A They were placing money on the line also, and they would receive an equivalent amount of silver from the men running the game when they won.

Q And how many men did you say were playing around the table on the 8th of February? A About 15 or 20.

Q. Was there anybody operating the game besides the bankers? A Only the rakers, working on shifts.

Q Where did they stand?

MR. WAHLE: I object to that.

THE COURT: Overruled.

MR. WAHLE: Exception.

A Right opposite the bankers.

Q What did the rakers do, at the time that the game was in progress there? A The raker would have a stick in his hand, and, after the dice was rolled out by any of the men around the table, he would bring them in toward himself again with the stick, and then he would throw them to the first man that was supposed to roll them out again.

Q How many rakers worked at the same time?

MR. WAHLE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. WAHLE: Exception.

A Only one at a time. They worked in shifts.

BY MR. BUCKNER:

Q About how long were you in this place on February 8th, 1911, Weitsman? A I was in there from about three o'clock until about six.

Q When did you go back to this place? A I went back there the following day.

CASE #1363

Q Do you know what day of the week February 8th was, your first day? A Wednesday.

Q Well, on the following day, February 9th, 1911, did you see the defendant? A Yes, sir.

Q Where did you see the defendant? A At the same place.

Q Whereabouts in the room was he? A He was right opposite this cloth, near that box of silver. The box was in front of him.

Q What was he doing? A Paying off bets, and receiving the money, as the result of the dice that were thrown.

Q What sort of a game was in operation, if any, on February 9th, where the defendant was? A A crap game.

Q On this same cloth, People's Exhibit 1? A Yes, sir.

Q Did you play crap there on that day? A Yes, sir.

Q On this cloth, People's Exhibit -1 (indicating)?
A yes, sir.

Q Who paid your winnings, or took your losings?
A Why, the defendant here.

Q Well, did the other bankers take any of your money, or pay you any money? A Yes; different ones, at different times.

Q was the defendant there at the time you were playing?
A Yes, sir.

Q Did you play with your own money on February 9th?
A No, sir.

CASE #1363

Q With whose money did you play? A Commissioner Flynn gave me the money to play with.

Q Did you have any interest in your winnings or losings?
A Absolutely none.

Q When did you next go back to this place? A I went back there the day after that, the next day.

Q On February 10th did you see the defendant? A I did.

Q And what was he doing? A He was at the same cloth, at the same place.

MR. WAHLE: I object to that.

THE COURT: Overruled.

MR. WAHLE: Exception.

BY MR. BUCKNER:

Q What was he doing? A Banking at the crap game.

MR. WAHLE: That is objected to, as a conclusion.

THE COURT: Objection sustained. Strike out the answer.

BY MR. BUCKNER:

Q Now on that day where was the defendant standing?

A He was standing right opposite that box of silver, right near those numbers there (indicating).

Q Do you refer to People's Exhibit 1 now? A Yes, sir.

Q What sort of a table was it? A A regular billiard table, with bars on the four sides of it, turned into a crap table.

CASE #1363

Q Was there anybody else at the table besides the defendant? A Yes. He had the other bankers and rakers with him at the table.

MR. WALE: I object to that as a conclusion, and move to strike it out.

THE COURT: Objection sustained. Strike out the answer.

BY MR. BUCKNER:

Q What were the men doing that were standing next to the defendant, on his side of the table? A They were receiving and paying out different moneys that were stationed on this line (indicating), different piles or stacks that were put on the line (indicating).

Q Was there anybody else besides those three people on that side of the table? A There was a man on the opposite side of the table, holding the stick, and ~~he~~ he would rake in the dice, and he would throw them to the first man that had authority to throw them out again. And there were a number of other men around the table, putting stacks of money on the line. And then the raker would throw a pair of dice to a man, and, after they were rolled out, a certain number would appear. If 7 would come out, the first roll, all these men would be paid the equivalent in silver, or if two sixes or an ace came out, the banker would take the money away.

Q Did you participate in this operation, on February

10th? A I did, sir.

Q And what did you do on February 10th? A I put money on the line, and won and lost, at different times.

Q What did the defendant do while you were losing and winning at this game? A He was standing right opposite his box of silver, and paying bets to the men nearest to him.

Q Was he one of the men who paid you your winnings, or took your losses, on that day? A At times, he did.

Q Now how long were you there on February 10th? A I was there until the evening.

Q Did you have any interest in the money that you lost to the defendant, or won from the defendant? A No, sir.

Q Who gave you the money to play with, on that day?
A The Second Deputy Commissioner.

Q Was that in the line of your investigation?
A Yes, sir.

Q Well now, when did you next see the defendant?
A I seen him on Monday -- on Saturday, the 11th.

Q What? A On the 11th, I seen him next, the following day after that, on Saturday.

Q What did you see him doing? Where did you see him on the 11th of February, 1911?

MR. WAHLE: To that I object, as immaterial, irrelevant and incompetent, and not within the issues, the 11th of February.

THE COURT: Objection overruled.

MR. WAHLE: Exception.

BY MR. EUCKNER:

Q Where did you see him? A At No. 3 State street, the same place.

Q In what part of those premises? A On the floor above the parlor floor, at this table that I described before.

Q And is that the same place you saw him on the other occasions? A Yes, sir.

Q And what was he doing? A He was stacking half dollars or dollars, the equivalent amounts to the amounts on the line (indicating), on the throws of the dice.

Q And was there any one else at the table? A Yes; about 40 men was playing crap around the table.

Q What was being played at that table? Do you know?
A yes, sir.

Q What was being played? A Crap.

Q Are you familiar with the crap game? A Yes, sir.

Q Did you see any money won or lost, that day?

A Yes, sir.

Q Did you yourself win or lose any money? A I did, sir.

Q Where was the defendant at that time? A Right opposite where the box was of silver, right at the crap table by the box of silver.

CASE #1363

Q What was he doing? A He was paying and receiving bets.

MR. WAHLE: I object to that, and move to strike that out as being a conclusion of the witness.

THE COURT: Objection sustained. Strike it out.

BY MR. BUCKNER:

Q What was he doing? A He was stacking silver against silver, equivalent amounts. If certain numbers turned up, he paid out, or took them away, if others turned up.

Q Well, did he take any of the money which you lost?
A At times he did, not all along.

BY MR. WAHLE:

Q What is that? A At times he did; not all along.

BY MR. BUCKNER:

Q When did you see him after February 11th, if at all?
A I saw him about the 14th -- the 13th, 14th and 15th.

Q Every day? A Yes, sir.

Q In what premises? A No. 3 State street, the same floor.

Q In what room? A The floor above the parlor floor.

Q Did you see People's Exhibit 1 on the 13th, 14th and 15th? A Yes, sir.

Q And where was the defendant with reference to People's Exhibit 1, when you saw it? A Right beside that box of silver, which is always stationed up opposite those numbers (in-

CASE #1363

dicating), and he was stacking the equivalent of silver, after certain numbers were thrown, and he would either take them away, or pay the equivalent amount.

Q Did you see what was going on at people's Exhibit 1, on that day? A Yes, sir.

Q Was that a familiar operation to you? A Yes, sir.

Q Then what was it? A A crap game.

Q Did you play on those three days? A I did, sir.

Q Did you play with your own money? A No, sir.

Q Did you have any interest in what was won or lost by you? A No, sir.

Q Where was the defendant when you played on those three days? A He was right opposite this box of silver, in front of the "buck numbers" (indicating).

Q Did he participate in any way in your playing, and if so, what did he do? A well, at different times, if I would win, he would pay me, or take my money away from the line, if I lost.

Q Do you know the day he was arrested? A Yes, sir.

Q Were you present? A Yes, sir; February 15th, 1911.

Q Were you inside the premises at the time he was arrested? A Yes, sir.

Q How long had you been in there at the time of the arrest? A I got there at 3:15.

CASE #1363

Q And when was the arrest? A 4:45.

Q Did you see the officers come into the place?

A I did.

Q Was the defendant there when the officers came in?

A Yes, sir.

Q Is No. 3 State street in the County of New York?

A Yes, sir.

MR. WAHLE: Did those papers come in, in the Gompers case?

THE CLERK: Yes, they are here.

MR. WAHLE: May I have them, please?

CROSS EXAMINATION BY MR. WAHLE:

Q Mr. Weitsman, how old are you? A 28 years old.

Q Where were you born? A I was born in the United States.

Q Where? I can't hear you? A Here in America.

Q Where were you born in the United States? A In Baltimore, Maryland.

Q Did you attend school in Baltimore, Maryland?

A I did -- at least, at Philadelphia.

Q At Philadelphia? A Yes, sir.

Q How long did you live in Baltimore, after you were born, if you know? A Oh, about five or six years, I suppose.

Q When you were taken as a child to Philadelphia? A Yes, sir.

CASE #1363

Q Did you attend school in Philadelphia? A I did, sir.

Q And how long did you attend school in the City of Philadelphia? A About two years.

Q And from the City of Philadelphia where did you go? A I was taken to South Africa.

Q Sir? A I was taken to South Africa.

Q I can't hear a word you say. Raise your voice, please. Whereabouts were you taken there? A Fitzmarenberg.

Q Spell it? A I can't spell it.

Q And whereabouts in South Africa is this place, the name of which you can't spell? A It's in Natal.

Q And how long did you stay in the Natal Province? A Until I was about 16 or 17.

Q Did you attend school there? A No; I was taught private.

Q Sir? A I was taught private.

Q You had a private teacher? A Yes.

Q And you say you were taught private? Is that the way you put it? A Well, I had a private teacher.

THE COURT: Well, he is not now being examined as to his knowledge of the English language.

MR. WAHLE: Well, but I only want to show what ~~xx~~ credibility should be attached to his testimony, when he

CASE #1363

uses such language, though he says he went to school,
and had a private teacher.

BY MR. WAHLE:

Q Where did you work first, if at all, in Africa?

A On a cattle ranch, until I was about 16.

Q Now when you came back from Natal, where did you go?

A I came to New York State.

Q And have you lived in New York State ever since?

A Yes; since 1901, the early part.

Q Now you came back to New York City in 1901?

A Yes, sir.

Q And how old were you when you left Africa?

A About 16 years old.

Q And you have lived all the rest of your life, from
the time that you left Africa until you came to this country,
in New York State? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Now you understand my questioning, do you, Mr. Weits-
man? A Yes, sir.

Q As I understand, in the course of your life up to now,
your early childhood was spent in Philadelphia? A Yes, sir.

Q And then, at tender years, you were taken by your
parents or guardians to South Africa? A Yes, sir.

Q Where you received some education? A Yes, sir.

Q And then were you brought, at the end of your African
stay, directly to the City of New York? A Yes. Not directly

CASE #1363

to it. I can't exactly remember what places we stopped at first, but this was my first stop that I remember.

Q New York City was your first stopping place?

A Yes, sir, that I remember.

Q And, whatever work or business you have been engaged in since that time, you have been engaged in in the City of New York; is that correct? A Yes, sir.

Q And by the City of New York you include the Borough of Brooklyn? A I do.

Q Have you ever been a cattle breaker, or horse-wrangler, in the State of New York? A Yes, sir.

Q Where? A 23 Carlton avenue, Borough of Brooklyn.

Q And you have acted as a cattle breaker at Carlton avenue? A I did; yes.

Q And what is that, what does that mean? A A man that takes western range horses, never saddled or bridled before, and breaks them to work.

Q And a horse-wrangler does the same kind of work, practically? A Yes.

Q Or a cattle breaker is the same thing practically?

A Yes.

Q And how long were you employed at that kind of work at 23 Carlton avenue? A I was engaged in it for a couple of years.

Q For a couple of years when? A From about nineteen--

CASE #1363

between 1909 and 1910, at least.

Q Now what business were you engaged in from 1901 to 1908? A I was engaged as a manager for the Mundheim Company for about five years, and then I resigned my position and went into the real estate and insurance business, and was in that for some years.

Q Now how long after you reached New York City did you get into the employ of Samuel Mundheim & Company?

A About a year or so.

Q And what were you doing between the time of your arrival and the time you got your position with Mundheim?

A I was learning the box manufacturing business.

Q And where did you learn the box manufacturing business? A Over in Stanton street, New York.

Q Well, were you in business for yourself? A Not at the time; no.

Q And then you went into business with Mundheim as what? A As manager.

Q As manager of his hat manufactory? A No; the box department, printing department and leather department.

Q Well, before you went with that firm, had you been engaged in any printing work? A More or less. Not as an expert.

Q And where had you been engaged as a printer? A In those box factories, we always have a printing outfit.

Q And where was that box factory? A In Stanton street, New York City.

Q Do you remember the occasion of a strike at Mundheim's? A Yes.

Q Was your connection with Mundheim's that you came there as a strike breaker? A No, sir, I wasn't employed by them then.

Q Were you there during the strike? A No. I was in the building possibly.

Q What year was the strike in Mundheim's? A I think it was about a year or two ago, if I am not mistaken.

Q Well have you been working for them up to a year ago? A No; I resigned my position with them in 1905.

Q And when did you go back to them after 1905?
A Go back where?

Q If at all, to Mundheim's? A Oh, I have stopped in there, many a time.

Q No, I mean to go back to work or business there?
A No, sir, never.

Q Now when did you start the concern of James M. Weitsman & Company, at 237 Wallabout street, Brooklyn? A That was around 1907 or 1908.

Q And how long was it after you left Mundheim? A Oh, several years.

Q And who composed that firm? A My brother and myself.

Q What was the business of the James M. Weitsman Company? A Paper box manufacturing and printing.

Q And where was their place of business? A 237 Wallabout street, Brooklyn.

Q Now you were not incorporated, were you? A No, sir.

Q Did you file a certificate as to the James M. Weitsman Company, as required by law? A (No answer).

Q Sir? A I believe there was.

Q Now, I am asking you about the James M. Weitsman Company, you understand? A Yes, I understand.

Q You say that you filed a certificate? A I instructed an attorney to. Whether he did or not, I couldn't say.

MR. WAHLE: May that be stricken out, if your Honor please?

THE COURT: Yes, strike it out.

BY MR. WAHLE:

Q Did you cause to be filed in the County Clerk's office of Kings County a certificate that you and your brother were doing business as James M. Weitsman & Company? A I ordered it to be done.

MR. WAHLE: I move that that be stricken out.

THE COURT: Motion denied. You asked him whether he caused it to be done.

MR. WAHLE: Exception.

CASE #1363

BY MR. WAHLE:

Q Did you file such a certificate in the County Clerk's office? A Personally, I did not.

Q Do you know whether one was filed or not? A I was under the impression that one was filed. I gave an attorney instructions to do it.

MR. WAHLE: I move to strike that out.

THE COURT: Motion granted.

BY THE COURT:

Q Do you know? A I couldn't be positive, your Honor. I ordered it to be done.

BY MR. WAHLE:

Q And do you know that the failure to deposit such a certificate is a misdemeanor? A I don't know anything about it.

Q You don't know that? A No, sir.

Q Now how long were you in business under that name?

A About a year, or a little over, possibly.

Q And then what was the next thing that you went into? A I was in my old line right along, in my horse business right along. My brother had charge of that business.

Q And then you were in the horse business? A Yes, sir.

Q And then you were in the paper box business? A Yes.

CASE #1363

Q And what other business were you in? A The real estate and insurance business.

Q And where was that situated? A I had an office at 156 Park avenue, Brooklyn, and one at 44 Court street.

Q At 44 Court street you sublet from somebody; did you not? A Yes.

Q And you were in business there as James M. Weitsman, real estate and general insurance, at 44 Court street; weren't you? A Yes, sir.

Q Is that right? A Yes, sir.

Q And your letter-heads read (reads); is that correct? A Yes, sir.

Q And all that you had at 44 Court street was a desk in a man's room; is that right?

A No, I had part of the office there.

Q Well, it was a room; wasn't it?

A Yes, sir.

Q Rented by somebody else, and you sublet?

A There were three rooms there, and I sublet one of them.

Q And then you also did business as James M. Weitsman & Company, real estate and investments, 70 Carlton avenue, Brooklyn, New York, didn't you?

A Yes, sir.

CASE #1363

Q Did you run the cattle business, the paper box business and this real estate office, and your own business, all at the same time? A No, sir, I didn't. At different periods.

Q Between what periods did you run them? A Between 1905 and 1910.

Q Now tell us the period between those years when you conducted each of those businesses? A Between 1905 and 1907, the real estate business.

Q Under what name? A My own name.

Q Is that the time you were at Court street? A Yes; not at Court street all the time.

Q Was the time that you were conducting your real estate and insurance business under your own name, from 1905 to 1907, when you were at 44 Court street? A No; there were four different offices.

Q Now, what were they? A 44 Court street, 70 Carlton avenue and 156 Park avenue, Brooklyn.

Q Where else, A And also 159 Adelphi street.

Q Now 156 Park avenue is between what streets? A Between Adelphi and Carlton.

Q And Adelphi street is where you lived; isn't it?

A Yes, sir.

Q And where was your office? A 70 Carlton avenue.

Q How far is that away from the place where you had the cattle business? A Well, about four or five hundred feet.

Q And did you run your real estate business at the same time that you conducted your cattle business? A No, sir.

Q Well, weren't you doing any cattle work from 1905 to 1907? A No, sir.

Q Did you continue in your real estate work after 1907? A Not outside of property that I had at the time, may be.

Q Well, what property did you have? A I had a lot at one time.

Q Well, what properties were they? Let us hear you mention some of them? A 159 West 22nd street.

Q Brooklyn or New York? A Brooklyn.

Q Where else? A 99 Carlton avenue, Brooklyn; 23 Carlton avenue, Brooklyn; No. 40 Carlton avenue, Brooklyn; 59 Adelphi street, Brooklyn. And I had fifty-two acres at Fair Ground, Long Island.

Q Where is that? A Huntington, Long Island.

Q And that you sold out afterwards in lots or plots?

A Yes.

Q Well, go on with the rest of it. I want to know how much of the rest of the earth you owned? A Oh, I don't know about that.

MR. BUCKNER: And I object to that question as impertinent, if your Honor please.

MR. WAHLE: Oh, I don't see that it is impertinent. I think it is very pleasant to own so much property.

However, I withdraw the question.

BY MR. WAHLE:

Q Well, what other real estate did you own? A I didn't say I owned it. I said I did own it when I was in the real estate business.

Q Well, how much other real estate have you owned?

A I don't know. I bought lots of real estate and sold it.

Q How much real estate do you own now? A None at all.

Q Not even Adelphi street? A No, sir.

Q And when did you sell that out? A A couple of years ago.

Q Do you live in that house? A I do.

Q Who owns it, A Who owns it?

THE COURT: Well, what is the purpose of this examination, Judge Wahle?

MR. WAHLE: I'll get at it, in a minute.

MR. BUCKNER: I object to the question as immaterial.

BY MR. WAHLE:

Q Well, does any member of your family own it? A Yes, sir.

Q Who is the member of your family that owns it?

MR. BUCKNER: Objected to.

THE COURT: Sustained.

MR. WAHLE: Exception.

BY MR. WAHLE:

Q Does any member of your family own the other real estate

CASE #1363

which you say you have disposed of?

MR. BUCKNER: Objected to as immaterial, irrelevant and incompetent.

MR. WAHLE: Why, it seems to me on the question of credibility, if your Honor please, I have a right to show to this jury just what this man has been doing for a living, and how he has been doing it, and how he has been disposing of his property, and that he may have sought to render himself execution proof.

THE COURT: I have allowed you considerable latitude in the examination into the history of this man, and it seems to me that you have investigated sufficiently on this line, unless you want to show what his means are, and, in that event, I will allow this.

MR. WAHLE: Yes, sir, that is my object. I want to show that he may practically be the owner of this real estate that he speaks of. Here is a man that comes into court and says that he works for \$3. a day, and yet may be the owner of all this real estate. What I want to know is whether the other real estate is also owned by members of his family, except the Huntington property.

THE COURT: He may answer that question.

A No, none of it. It was all sold to different individuals.

BY MR. WAHLE:

Q And the proceeds came to you? A Yes.

CASE #1363

Q And the Huntington tract of land, when did you dispose of that? A I sold it in 1906 or 1907.

Q And the proceeds of that came to you? A Yes, sir.

Q And that was property that you sold in lots, a certain sum down and the rest in a mortgage, to protect yourself?

A Yes, sir.

Q And then the mortgages were paid? A Some of them. Not all.

Q Some of them? A Yes, sir.

Q And then about \$1100. of that money you paid out some time in April of this year; did you not? A No, I didn't. But the people against whom the mortgages were standing, paid it.

Q But they paid that money to you? A Yes.

Q And that money was paid by you to whom? A To John O'Brien.

Q Now, how long before you paid that money to him did you get that \$1100.? A How long before?

Q Yes.

MR. BUCKNER: I object to that question.

THE COURT: Objection sustained.

MR. WAHLE: Exception.

BY MR. WAHLE:

Q Isn't it a matter of fact that the money that you claim you got to satisfy those mortgages, had been procured by you a

year at least before you paid it to O'Brien? A No, sir; three days.

Q And then you paid the money to O'Brien in April of this year? A Not of this year.

Q This month or last month? A Oh, no. This was a year ago. In 1910, I think it was.

Q Now, when did you first meet Mr. Flynn? A When did I first meet him?

Q Yes. A Quite some time ago.

Q Well, when first? A I don't quite recall.

Q Sir? A I don't quite recall the first meeting.

Q Now, then, try and recall when you first met Deputy Commissioner Flynn? A I can't do it, sir.

Q How long ago, in years? A A year or more.

Q Well, how much more than a year? A I couldn't say; I have no recollection.

Q Was it two years? A About.

Q More than two years? A I couldn't tell you.

Q Now you are talking here on the 1st of May, 1911, and I would like to have you tell us when it was that you first met Deputy Commissioner Flynn? A I have no recollection of it, sir.

Q Where was it that you met him? A I met him here in New York.

Q At that time Commissioner Flynn was not a Police Commissioner, was he? A No, sir.

Q He was the head of the United States Secret Service?

A Yes, sir.

Q Where did you meet Mr. Flynn, as the local head of the United States Secret Service? A I haven't the slightest recollection.

Q Sir? A I haven't the slightest recollection.

Q How near do you get to that date? A I couldn't say, sir.

Q Where did you meet Mr. Flynn? A New York City.

Q Whereabouts? A I haven't any memory of it.

Q Meet him in the post office? A Yes, sir, I met him there

Q Sir? A I have met him there, in the post office.

Q No, the first time you ~~met~~ met him did you meet him in the post office? A I don't remember.

Q Did you meet him in the post office the first time you met him? A I don't remember.

Q Did you meet him at 140 Nassau street, the first time you met him? A No, sir.

Q Were you ever in 116 Nassau street? A I may have been there, without my knowledge.

Q Well, have you been to Mr. Flynn's office in Nassau street? A No, sir.

Q Have you ever been to Mr. Flynn's offices in the Morton Building? A No, sir.

Q Have you ever been there? A No, sir.

Q Now you can't tell us when you first met Mr. Flynn?

A Not positively, no.

Q Sir? A No, not positively.

Q Well, tell us the best you can? A A year or so ago.

Q Was it in the winter or the summer? A Summer time.

Q Now, was it in the summer time of 1909? A I haven't got the least recollection.

Q Well, you say it was more than a year ago? A Yes, sir.

Q And that would bring you into May, 1910. Now, how much before May, 1910, was it, that you first met Deputy Commissioner Flynn? A I don't quite remember it.

Q Now, was it in the winter of 1909-1910? A I don't know if that was the first time I met him or not.

Q Was it in the winter of 1909-1910 that you first ~~ix~~ met Deputy Commissioner Flynn? A I don't know, sir; I don't recollect.

Q Was it in the fall of 1909 that you first met Mr. Flynn? A I couldn't tell you. I haven't the slightest recollection of the time.

Q Do you know when Thanksgiving comes? A I do.

Q Now, was it Thanksgiving 1909 that you met Mr. Flynn?

A I may be met him that time, but there was no importance attached to it, and I don't remember.

Q Now I want to know the first time you met him? A I don't remember it; absolutely not.

CASE #1363

Q And all that you can tell us is that it was some time over a year ago? A Yes, sir.

Q Can you tell us whereabouts in the City of New York, or whereabouts on this earth it was that you met Mr. Flynn for the first time, or saw him first? A I cannot.

Q Were you brought to Mr. Flynn? A No, sir.

Q By brought I mean did anybody take you there to introduce you to him? A No, sir.

Q Did you go to him in answer to any advertisement?
A No, sir.

Q Did you go to Mr. Flynn of your own volition? A Well, I met him as I would any other man.

Q Did you go to him to become acquainted with him?
A No, sir; not for that specific purpose.

MR. WAHLE: May that be stricken out, if your Honor please?

THE COURT: Motion granted. Strike that out.

BY MR. WAHLE:

Q Did you go to Mr. Flynn when you first met him, or did he come to you? A Well, the meeting was accidental more or less, I guess.

Q I can't hear a word you say. A Well, the meeting was accidental more or less, I guess.

Q What do you mean by accidental, A Well, neither of us looked for each other, but simply the opportunity came to meet

each other.

Q At what office did you meet? A I didn't say in the office. I said the opportunity offered to get acquainted with one another.

Q What opportunity offered? A Well, accidental. I don't recall what it was, at the present time.

Q What was the opportunity? A I couldn't recall now.

Q What was the accident, then? A I couldn't tell you; I don't remember.

Q Was it in the daytime or night time? A I haven't the slightest recollection.

Q Or was it at a political or business or social affair?
A I have no recollection of the affair at all, of the occasion.

Q Now, you are testifying from memory as to what you say you saw done at No. 3 State street? A Yes, sir.

Q And I am asking you about the man that you say is responsible for ~~me~~ sending you to No. 3 State street. Now tell his Honor and these gentlemen of any circumstance that led you to first meet Mr. Flynn while he was at the head of the United States Secret Service in this city? A I haven't the slightest recollection of it.

Q Now, what is the first recollection you have of seeing Mr. Flynn? A Being pointed out to me by a friend of mine.

Q Well, where was he when he was pointed out to you?

A Around the Custom House somewhere.

Q Around the Custom House somewhere? A Yes, sir.

Q Was it in his office? A No; out on the street. He was simply pointed out to me as Mr. Flynn.

Q Who pointed him out to you? A A friend of mine named Brennan.

Q What was Mr. Brennan's first name? A William.

Q What is his business? A I never knew.

Q Do you know whether he is an employe of Mr. Flynn's?

A Not now.

Q Was he at that time? A Not to my knowledge.

Q Do you know whether he ever was? A No, sir.

Q Why then do you say that he is not now an employe of Mr. Flynn's? A Because you asked me. I know the employes that are there now. I thought you had reference to our office, at present.

Q To our office at present? A The office where I am now employed.

Q Are you part of the United States Secret Service now?

A No, sir.

Q Then when you were pointed out to Mr. Flynn, or Mr. Flynn was pointed out to you by Mr. Brennan, on the street, near the Custom House, was that the first time in your life that you had ever seen Mr. Flynn? A From my memory, it was.

Q Now, can you describe to us how Mr. Flynn first came to your attention, and what time it was? A I put no import-

CASE #1363

ance on the fact he was pointed out to me, and I can't remember.

Q What? A I put no importance on the fact that he was pointed out to me, and I can't remember.

Q Well, how long after he was pointed out to you did you first talk to Mr. Flynn? A I don't remember.

Q Was it a month? A I couldn't tell you, sir.

Q Was it a week? A I haven't the least recollection.

Q Well, had you ever done any work for Mr. Flynn before you done some work in connection with this No. 3 State street?

A No, sir.

Q What? A No, sir.

Q Was the first work that you ever did for Mr. Flynn doing work with reference to No. 3 State street? A Oh, I misunderstood your question.

Q I can't hear you? A I misunderstood your question.

Q What was the first work you did for Mr. Flynn?

A At 48 Broad street.

Q Now, before Mr. Flynn became Deputy Commissioner of Police, what work did you do for him? A Before he became Deputy?

Q Yes. A None at all.

Q And how many times did you see him before he became Deputy? A Maybe I seen him once or twice.

Q Had you spoken to him before he became Deputy? A Yes, sir.

Q Sir? I can't hear you. A Yes.

Q Where had you spoken to him? A I met him on the street, around the post office somewhere.

Q By appointment? A No, sir; accidental.

Q Did you introduce yourself to him? A No, he knew me then.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2 o'clock).

A F T E R R E C E S S.

J A M E S M . W E I T S M A N, his cross-examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. WAHLE AS FOLLOWS:

Q You told us, I believe, just before recess, Mr. Weitsman, that you met Mr. Flynn in the post office. Do you remember that? A Yes, sir.

Q Are you able to tell when it was that you met Mr. Flynn in the post office? A About a year and a half or more ago.

Q About a year and a half or more ago? A Yes, sir.

Q At that time did you speak with him? A Yes, sir.

Q Who introduced you to him? A A party by the name of Dobson.

Q Sir? A A party by the name of Dobson.

Q What is his first name, Mr. Dobson's first name?

A George, as near as I can remember.

Q What was his business? A He was a cow puncher, to my knowledge.

Q A cow puncher, A Yes, sir.

Q Well, was he employed by Mr. Flynn? A Not as I know of.

Q Were you introduced to Mr. Flynn for the purpose of being employed to do work as an investigator? A No, sir.

Q Was it merely a matter of curiosity on your part then,

to meet Mr. Flynn, or on his part to meet you? A I guess it was on my part.

Q You wanted to meet him? A Yes, sir.

Q You had read of him as a member of the Secret Service of the United States? A Yes, sir.

Q And a great detective? A Yes, sir.

Q And you wanted to meet him? A Yes, sir.

Q And you were at that time a business man in this community? A Yes, sir.

Q And you wanted to meet the great detective, Mr. Flynn? A Yes, sir.

Q And you didn't know Mr. Hill at that time, did you?

A No, sir.

Q Now how long after you met Mr. Flynn for the first time was it that you again saw him? A Well, I have seen him many times after that.

Q But I am trying to get the next occasion, and then I won't press you for times any more. But the next occasion after the first, when was that? Was it a week, or a month, or six months? A About six or seven weeks after that, about a month.

Q About a month? A Yessir.

Q And was this second meeting at his or your request?

A It was just accidental.

Q And where was the meeting, if you remember? A Down

CASE #1363

somewhere in the financial district; somewhere around Pine street or Wall street.

Q Did you have any business down in the financial district, a year and a half ago? A Yes; more or less.

Q Now, when did you give him your name and address?
A Well, he got my name when I first met him, but I didn't give him my address.

Q Well, when did you first give him your name and address? A When he first employed me.

Q When was that? A A month or so after he became a Commissioner in New York City.

Q Did he have your address then? A No.

Q Did you go to Mr. Flynn? A Yes.

Q Previous to his appointment as Deputy Police Commissioner of New York City, had you testified in any proceeding in which Mr. Flynn was interested? A No, sir.

Q Now, I mean whether as an individual or as a Secret Service man or as a detective? A No, sir.

Q You hesitated, it seemed to me, a moment. Why was that? A I didn't hesitate.

Q You didn't? Then that pause was simply a matter of custom? A Yes, sir.

Q Well, had you done any investigating for him? A When?

Q Previous to the ~~km~~ time when you went to see him, after he was appointed second Deputy police Commissioner? A No, sir.

CASE #1363

Q Did you go to Mr. Flynn to proffer your services?

A No, sir. I went to him --

Q No. Answer my question, please. (Question repeated).

A No, sir.

Q Did you go to him and ask him to give you employment?

A I did not.

Q You weren't in need of employment, were you? A Not very badly; no.

Q Sir? A Not very badly.

Q Why, you had these various businesses or some of them, that you were telling us about; didn't you? A Not at the time; no.

Q Six months ago, A No, sir.

Q And didn't you tell us, this morning, ^{all} of the different businesses that you were in, A How is that? Please repeat that.

Q When you told us, this morning, the various kinds of business that you were engaged in, did you tell us all of them ? A Yes, unless I can remember some other.

Q Well, was there not any other business that you have been engaged in recently? A As investigator?

Q Since 1909, other than investigator? A Since 1909, yes; I have been engaged in horse breaking.

Q And in what else? A That is all that I can think of.

Q Were you an employe of the department of highways for

CASE #1363

the Borough of Brooklyn? A No, sir.

Q Didn't you have a cart on the streets there?

A Cart on the streets there, I did.

Q And wasn't that under the Superintendent of Highways for the Borough of Brooklyn? A Yes, sir.

Q And didn't you get pay from the city? A The man that had the rig got paid.

Q Sir? A The man that owned the rig got paid.

Q And in whose name was the rig? A In my name.

Q James W. Weitsman? A Correct, sir.

Q Now was it in the name of John M. or James M. Weitsman? A Well, James M., to my knowledge.

Q And is your name John or James? A My name is James.

Q And did you sign the pay rolls every day, every week, or every month? A No, sir.

Q You just make a mark, touching the pen? A I made no mark whatever.

Q Well, who went and got the money? A It was paid to the man who drove the wagon.

Q Sir? A It was paid to the man who drove the wagon.

Q And whose name was on the pay roll? A My name.

Q Now, let us get back to Mr. Flynn, when you went to him, some few months ago. Do you remember when he was appointed Deputy Police Commissioner? A Some time in October.

CASE #1363

Q And it was in November you went to him? A In December, I think it was.

Q In December? A Yes, sir.

Q Now, did he send for you? A No, sir.

Q Did he send any word to you? A None whatever.

Q Did anybody come and tell you that Mr. Flynn desired to see you? A No, sir.

Q Or that anybody in the office of the Police Commissioner desired to see you? A Not before that time.

Q Sir? A Not before that time.

Q I am speaking now of the first time you went to see him, after he was made Police Commissioner? A Yes, sir.

Q We understand each other; do we? A Yes, thoroughly.

Q And then your first visit to him, after he became Police Commissioner, was entirely voluntary on your part? A Yes, sir.

Q And on your own initiative? A Yes, sir.

Q And did you then leave your name and address with Mr. Flynn? A When he started to employ me, yes.

Q No. At the time of your first interview, did you leave your name and address with Mr. Flynn? A No, not at the very first.

CASE #1363

Q Well, when did you go to see him again? A About a day or two.

Q About a day or two after that? A Yes, sir.

Q At the first interview, had you said anything to Commissioner Flynn about using you in his investigations?

A I did not. He did.

Q He did? A Yes, sir.

Q He asked you, a business man, whom he had met some years ago, or a year before that, whether you would do work for him; is that right? A Well, he asked me my circumstances, and I told him I wasn't engaged at the time.

MR. WAHLE: I move that that be stricken out.

THE COURT: Motion denied.

MR. WAHLE: Exception.

BY MR. WAHLE:

Q (Question repeated) A Yes, sir.

Q Without your saying a word to him about your desire to work for him? A Oh, no.

Q Did you ask him for employment? A I spoke to him about conditions in general.

Q Did you ask him for employment? A Not in a direct way, no.

Q Indirectly, did you ask him for employment? A Yes, sir.

Q Did you then leave your address with him, where he

CASE #1363

could find you? A I did.

Q And, within a day or two, did he send for you?

A Oh, no.

Q Did you go to him? A First -- I went to him, a day or two later, two days after the first visit, and then I left my name and address with him.

Q Now, I would like you to confine yourself and your answers to the first interview with Mr. Flynn. Now, in the first interview that you had with this man, with Mr. Flynn, after he was appointed Police Commissioner, was anything said, either directly or indirectly, by you or by him, as to your working for him? A At the first meeting?

Q Yes. And will you answer that yes or no please?

A Yes.

Q By whom? Who broached the subject; you or he?

A After I explained the circumstances, he did.

Q He did? A Yes, sir.

Q And then did he ask you to return? A No, I said I would decide.

Q Yes or no. (Question repeated) A No, he did not.

Q Did you leave your name and address with him then?

A I did not.

Q And then how many days after the first interview did you go again? A About two days later.

Q And then was there anything said about your working for

CASE #1363

him? A Yes, sir.

Q And then did you and he come to some agreement? Yes or no? A Yes; I consented to go to work.

Q (Question repeated) A Yes, sir.

Q Yes. And you were to do what? A I was to do general detective work for him.

Q Sir? A Any work he assigned me to do.

Q Well, was there any particular work assigned to you, at the second occasion? A He didn't tell me so.

Q Well, don't you know? A He didn't tell me that there was any particular kind of work I would have to do.

Q Well, were you asked to do anything? A Yes; detective work.

Q On that day? A yes, sir.

Q Are you a private detective? A Well, I was, since I had the position.

Q Are you licensed as a private detective? A I have no license of any kind.

Q Are you licensed as a private detective, I ask you? A No.

Q Now, on the first day of the second interview, when you say that you and he agreed that you would work for him, were you told to go any place or do anything? A Not anywhere in particular.

Q Well, were you asked to sit in a chair, until you were

CASE #1363

sent out? A No, I was --

Q Were you told to go away and come back? A I was told to get out, and locate gambling houses in this city.

Q On the first day of your employment? A Yes, sir.

Q You were told to go out and locate gambling houses?
A Yes.

Q Well, you had been in gambling houses before that day; hadn't you? A I had.

Q For how many years had you been in gambling houses in the City of New York and Brooklyn, before this second interview of yours with Commissioner Flynn? A Oh, I might have been eight or ten times in different places.

Q And during what period of years? A Well, for the last two or three years or so.

Q The last two or three years? A Yes, sir.

Q You had played roulette in gambling houses? A Not until after I had become connected with the Department.

Q I am talking of before that. A No.

Q You have played crap? A Yes, sir.

Q You were a crap player; weren't you? A No, sir.

Q Do you know whether you were known by the name of "Broncho"? A Yes, I was.

Q Or "Zebra"? A I never heard of that name.

Q You belong to a club in your assembly district; don't you? A Yes.

CASE #1363

Q And you don't know that you are known among your associates there as "Zebra"? A That's a lie.

MR. WAHLE: I move to strike that out.

THE COURT: Motion granted. Strike it out.

BY MR. WAHLE:

Q Do you know whether you are known by that name?

A No, I don't.

Q Now, Mr. Weitsman, were you given any particular place to go after? A No particular place whatever.

Q And how much were you getting a day? A \$3 a day.

Q And you were also furnished the money with which you were to play? A Yes, sir.

Q Did you report every day? A Not at the Central Office.

Q Did you report every day? A Over the telephone.

Q To whom? A To Commissioner Flynn, direct.

Q Sir? A To Commissioner Flynn.

Q Direct? A Yes, sir.

Q Now, when you played before you met Commissioner Flynn, or rather, before you were employed by Commissioner Flynn, you played with your own money; didn't you? A Yes.

Q And you gambled, didn't you? A On eight or ten occasions; yes.

Q Talk louder. A On eight or ten occasions; yes.

Q Did you win or lose? A I've done both.

CASE #1363

Q Both? A Yes, sir.

Q Well, do you consider playing, when you win, and gambling, when you lose, or is it gambling when it runs either way? A Yes, sir; just the same.

Q And you knew that was forbidden; didn't you?

A I certainly did.

Q And prior to the time that you were employed by Mr. Flynn, did you report to the Police Department that you had discovered gambling houses in the community? A I wasn't interested in any way in reporting them.

Q You weren't interested? A No, sir.

Q You were perfectly willing to see the law violated and help to violate it yourself; is that right? A NO.

Q Well you went there, didn't you? A I did.

Q And you knew that the law was being violated?

A The police knew that, too.

MR. WAHLE: I object to that, and move to strike it out.

THE COURT: Motion granted. Strike it out.

BY MR. WAHLE:

Q You knew that the law was being violated? A Not exactly.

Q Well, had you any doubt about it? A Any what?

Q Had you any doubt about it? A Well, yes, quite some.

Q Didn't you know that gambling houses were forbidden

CASE #1363

by law? A Well, there were lots of them running.

Q (Question repeated) A Yes.

Q And did you know that it was a violation of the law to gamble in a gambling house? A No, I knew it was a violation to run it, but I didn't know it was to play in it.

Q Did you know it was a violation of the law to be a common gambler? A I did.

Q Didn't you know that, when you went from gambling house to gambling house, and played crap, that you were a common gambler? A No.

Q You didn't? A No, sir.

Q And then, about the time Commissioner Flynn was appointed, your conscience began to ache? A No, no conscience at all.

Q Or was it just getting \$3 per day? A That's it exactly

Q Oh that was it? A Exactly.

Q Now what was the first day that you went to No. 3 State street? A The 8th of February, 1911.

Q The 8th of February, 1911? A Yes, sir.

Q Now you want to stand by that date; do you? A Yes.

Q Is your memory now as good as it was on the 19th of February, 1901 -- 1911? A About the same, yes.

Q About the same? A Yes, sir.

Q Won't you be good enough to take your hand down from

CASE #1363

your chin? A Yes.

Q So that we can hear you so much better, when you talk through your mouth, rather than through any other part of your anatomy. Now, on the 19th of February, 1911, you were examined as a witness before Mr. Magistrate Herbert; were you not? A Yes, sir.

Q And your testimony was given with reference to what you knew as to the premises No. 3 State street? A yes, sir.

Q Do you remember that you were asked by Mr. Buckner, the Assistant District Attorney whom we are fortunate enough to have with us to-day, certain questions with reference to those premises? A Do I remember what he asked me?

Q No, do you remember that he asked you about them? A Yes, sir.

Q And do you remember that he asked you, before the Magistrate, whether you saw any of the defendants that were in the court, before that day; do you remember that he asked you that question?

A I don't quite recall; I suppose he did, if you say so.

Q Thank you. Well, the defendant was one of the men that was in the Magistrate's Court; wasn't he?

A yes, sir.

CASE #1363

Q And he was there with a lot of other men; wasn't he?

A yes, sir.

Q Do you remember that Mr. Buckner asked you this question:

"Q Did you see any of these defendants here, before to-day?"

And you answered, "Yes."

Do you remember that, or do you admit that it is so, if it is in the stenographer's minutes?

A Before what day?

Q Before the 19th of February?

A Why, surely.

CASE #1363

Q You were in the Magistrate's Court, and you were being examined, Mr. Weitsman, and this examination took place on the 19th day of February, 1911. Now, on that day, Mr. Buckner said to you: "Q Did you see any of these defendants here, before to-day? A Yes, sir." A Yes, sir.

Q And he asked you this question: "Q When did you first see any of them?" A Yes, sir.

Q Do you remember what answer you gave? A Several days before the 10th, as near as I can remember.

Q Do you remember that your answer was: "A Can I look at my record?" A Possibly so.

Q If the stenographer's minutes show that that was your answer, would you dispute it? A I can't very well. I couldn't dispute or deny it.

Q Did you say, in answer to Mr. Buckner's question: "A Can I look at my record?" A I couldn't swear to it, but I suppose I did, if it's there.

Q Yes. Did you have a record to look at? A I had.

Q And on the 19th of February, therefore, you couldn't testify as to this defendant and others, as to what you had seen them do ten days before, without consulting some record that you had; is that right, A No, it isn't right.

Q Well, why then did you consult your record? A Because I was working in five or six houses at the same time.

Q But you were testifying to No. 3 State street?

CASE #1363

A Well I know, but it was fresh on my memory --

Q (Question repeated). A That's right.

Q And you had, on the 14th of February, sworn to an affidavit on which warrants were issued against the defendant and several others? A No, not on the 14th of February.

MR. WAHLE: Will you let me have the affidavit in this case, please, Mr. Clerk.

BY MR. WAHLE:

Q Now, Mr. Buckner is good enough to suggest that you did not, perhaps, understand. You know what is meant by an affidavit? A Yes, sir.

Q Do you remember the day you went before Chief Justice McAdoo, and swore to a complaint? A Well, I remember the day I swore to the complaint, but not the affidavit.

Q Now just listen to my questions. Didn't you, on the 14th of February, 1911, swear to an affidavit upon which the warrants in this case were issued? A To my best memory, it was on the 10th or 11th.

Q Now will you look at this paper which I show you, and state whether or not that is your signature, "Sworn to before me, this 14th day of February, 1911"? Don't get up. The officer will take it to you? A Yes, that's my signature.

Q Let me have it back again. Then you did, on the 14th of February, swear to this affidavit? A Yes.

CASE #1363

Q Didn't you swear to two affidavits on that day?

A I swore to a lot of them.

Q Didn't you swear to an affidavit on that day, against the premises 48 Broad street? A Yes, sir.

Q Yes. Did you have your record then before you?

A Did I have my record?

Q Yes, when you swore to the affidavit in this case, and in the 48 Broad street case? A I had it in my pocket.

Q Did you use it? A No, sir.

Q Now, on the 19th of February, you have told us already, that you knew you were being asked about 3 State street?

A That is correct.

Q And then, when you were asked when you had seen them before that day, it was necessary for you to refer to your record? A Yes, sir.

Q And you did? A Yes, sir.

Q But you didn't refer to any record this morning; did you? A No.

Q Your memory to-day is better than it was on the 19th of February, 1911? A Just as good.

Q Yes. Do you remember what answer you gave, after you had consulted your record? A I don't remember what answer I gave; no.

Q What? A I don't quite recall the answer.

Q But you are testifying now to something that is nearer

CASE #1363

to-day than the 8th or 10th of February. This occurred, that I am talking to you about, on the 19th of February. What did you say in the Magistrate's Court?

MR. BUCKNER: Objected to.

THE COURT: Excluded. You can only refer to what took place in the Magistrate's Court for the purpose of impeaching or contradicting the testimony of the witness.

MR. WAHLE: And that is just what I am trying to do. But, in fairness to the witness, I am first asking him what he testified to, as to whether he had seen the persons before the 19th of February.

THE COURT: But now you are putting a different question. You see what I mean?

MR. WAHLE: yes, sir; your Honor is right. I will ask another question.

BY MR. WAHLE:

Q Do you remember what you testified? A Well, I haven't testified anything different, except that I had seen him several days before the day of the complaint.

Q No. I asked you before the 10th of February. Now, in order to be fair to you, on the 19th of February, 1911, you were questioned about this matter by Mr. Buckner, before Mr. Magistrate Herbert, and on that day you were asked how many days prior to the 10th of February you had seen these defendants, meaning this defendant and the others who were there with him.

Now, do you follow me? A Yes, sir.

Q Now, what answer did you make to that question, if you can remember?

MR. BUCKNER: I object to that. That is not the proper way to impeach the witness.

THE COURT: Sustained.

MR. WAHLE: Exception.

BY MR. WAHLE:

Q Now, did you testify in the Magistrate's Court that you saw this defendant and the others that were there with him about five or six days before February 10th? A Not as I recall; no, sir.

Q And if it so appears in the stenographer's transcript, will you dispute it?

MR. BUCKNER: Well, I object to that.

MR. WAHLE: Well, I will ask Mr. Buckner to admit that the stenographer's minutes show that the following questions were asked and given.

MR. BUCKNER: Well, when the witness says he does not remember whether he gave such an answer or not, that is the end of the impeachment.

MR. WAHLE: No, it is not by any means. I want to get my record, and I don't want to bring a stenographer here from the Magistrate's Court, when we can get it by admission. I have the official record here.

CASE #1363

THE COURT: Is there any question as to the accuracy of the record?

MR. BUCKNER: No, sir; but that's not the proposition of law that I am talking about at all.

THE COURT: I understand your point.

BY MR. WAHLE:

Q Now let me read three or four questions before that, so that you will get the context, Mr. Weitsman: "Q Did you see any of these defendants here before to-day? A Yes, sir. Q When did you first see any of them? A Can I look at my record?

Q Do you know, without refreshing your recollection? A Yes, sir.

Q When? A About five or six days prior to February 10th."

Now, does that refresh your recollection as to what you testified to in the Magistrate's Court? A Yes.

Q And did you so testify in the Magistrate's Court?

A Yes.

Q And, if you did so testify in the Magistrate's Court, was it the truth? A As near as I could remember it, at the time.

Q Yes. Now, how many defendants were there in the City Magistrate's Court on the 19th of February, 1911, that were arraigned as to No. 3 State street, if you remember?

MR. BUCKNER: Objected to as immaterial.

THE COURT: Objection overruled.

A About fifteen, I think; fourteen or fifteen.

CASE #1363

BY MR. WAHLE:

Q Do you remember how many you stated, on the 19th of February, you had seen there on the 10th of February?

A How is that, please?

Q Do you remember how many of those fifteen, you stated, in answer to Mr. Buckner's question, you had seen in No. 3 State street, on the 10th of February? A As ~~ix~~ to all that was there, all that was before me.

Q Was this question asked and did you make this answer:
"Q How many of these defendants did you see on the 10th of February? A All six here." A All six?

Q Yes. A No, sir.

Q Does the reading by me at all refresh your recollection as to that testimony? A Part of it does, yes.

Q No, I mean as to all six? A There is an error there, because there was more than six prisoners.

Q If you gave that answer, was the answer right or wrong?
A I didn't give the answer.

MR. BUCKNER: I object, if your Honor please. It is perfectly palpable what the difficulty is, and Judge Wahle knows it.

MR. WAHLE: Well, I confess I don't. I wasn't there, and he was. I want to get the facts from him, if I can, whether he is right or wrong.

MR. BUCKNER: Then you want to get a temporary false

CASE #1363

impression?

MR. WAHLE: No, sir, I want the facts and nothing more.

BY MR. WAHLE:

Q Now, was the answer right or wrong? A (No answer).

Q Of course, the stenographer may have made a mistake, and I want only to give you every opportunity to answer for yourself.

MR. BUCKNER: Objected to.

THE COURT: Allowed.

BY MR. WAHLE:

Q If you gave that answer, was it right or wrong? A It was wrong.

Q Now, do you remember the first day you went to this place No.3 State street? A Yes, sir.

Q What day was it? A The 8th day of February.

Q The 8th day of February? A Yes, sir.

Q Well, is the 8th day of February, five or six days before the 10th day of February?

MR. BUCKNER: I object. It is only a matter of mathematics.

MR. WAHLE: I am giving the witness every opportunity. I'll follow it up with another question, in a minute.

THE COURT: Objection sustained.

MR. WAHLE: Exception.

CASE #1363

BY MR. WAHLE:

Q Now, isn't it a fact that you testified in the Police Magistrate's Court that the first day you went to this place was the 5th of February, 1911? A No, sir.

Q And that you were there several times in the afternoon, between the 5th of February and the 10th, A I was not there on February 5th.

Q But I am asking you whether you so testified in the Magistrate's Court? A No, sir.

Q Now were you asked these questions, and did you give these answers: "Q When was the first date you were on those premises , A I was there several times in the afternoon, between February 5th and February 10th."

A Well, between the 5th and 10th, but not on the 5th.

Q Answer my question, please. Did you give that answer to that question: "Q When was the first day you were at those premises ? A I was there several days, in the afternoon, between February 5th and February 10th?" A Yes, sir.

Q You did? A Yes, sir.

Q And do you remember that the Magistrate asked you about a certain conversation with a man, whom you called the doorman, and that Magistrate Herbert asked you as follows: "Q Can you fix the date of that conversation? A About the 5th of February?" Did you give that answer to his Honor's question? A I can't recall it.

Q Sir? A I don't recall it.

Q Well, is your recollection refreshed by what is in the record here? A There is a possibility of an error there; I couldn't say.

Q Well, but is your recollection refreshed? A A little bit; yes.

Q Well now, is there any dispute as to the accuracy of what I have read? A (No answer).

Q You were never in this place on a Sunday; were you? A No, sir.

Q And you know that the 5th of February was on a Sunday; do you not? A Yes, sir.

Q And have you found that out, Mr. Weitsman, since you testified in the Magistrate's Court? A No.

Q That you had given a date as being in this place which was on a Sunday? A I didn't give that date there.

Q Did you ~~see~~ find out that it was a Sunday? A No, sir; I find out from you now.

Q Well, then, you say that record is wrong; do you? A To an extent.

Q Sir? A To a certain extent; yes.

Q You remember, this morning, that you were careful to say, this morning, that you were not there on Sunday, the 12th? A No, I beg your pardon, I did not. I said that I wasn't there on any Sunday.

CASE #1363

Q Answer my question. (Question repeated). A No, sir.

Q Didn't you specify Sunday, the 12th? A No, sir.

Q And if it appears in the minutes of the stenographer, if he has in that record, that you said that you were not there on Sunday, the 12th, it is a mistake on his part? A Well, it is a mistake on somebody's part.

Q You say now that you didn't say it, even if it appears in the stenographer's minutes of this morning's proceedings; you still say that you didn't say that you were not there on Sunday, the 12th? A I may have said it, of course, but I don't think so, I don't believe I did.

Q You deny now that you said it? A Not absolutely, no.

Q Now when you were in the Magistrate's Court, this piece of cloth, people's Exhibit 1, was this piece of cloth shown you? A No, sir.

Q How many pieces of cloth were shown to you? A One.

Q Weren't the two pieces of cloth shown you? A Only one, to my memory.

Q Sir? A Only one that I can remember.

Q Weren't there two shown to you? A I am not positive; no, sir, but I think not.

Q And was there a piece of -- and didn't you, in the Magistrate's Court, say that you couldn't identify the cloths that were there? A Because the cloth shown to me was one that I had never seen before.

CASE #1363

Q And then you want us to understand that Mr. Buckner, representing the People there, showed you a piece of cloth that wasn't the right piece? A I don't know who showed it to me.

Q Well, how did you know which cloth it was? A Because I had it marked.

Q And didn't you tell Mr. Buckner, in the Magistrate's Court, that it wasn't the right cloth? A Well, I wasn't supposed to answer any more than I was asked.

Q Now, do you remember that Mr. Buckner asked you this question: "Have you examined these two pieces of cloth in the Police Department's possession"? A I was asked to indentify it.

CASE #1363

Q I am asking whether you remember Mr. Buckner asking you this question: "Q Have you examined these two pieces of cloth in the Police Department's possession"? A No, sir.

Q Were you asked that question, sir? A No, sir, not that I can remember.

Q Well, try to remember. Well, how did you remember, a moment ago, that you were shown one cloth, and not the other cloth, if you don't remember whether you were asked that question? A I got off the stand, and looked at the cloth, and I didn't find my mark on it, and I said no, that I had seen a cloth like it. That was my answer.

Q You dispute that you were asked this question that I asked you, that I read to you? A What question? Will you please repeat it?

Q Well, didn't you understand what I asked you, a moment ago, when you said no? I'll repeat it to you: "Q Have you examined these two pieces of cloth in the Police Department's possession"? Now, were you asked that question by Mr. Buckner, before Magistrate Herbert? A I suppose so.

Q Well, do you deny it? A I don't deny it or affirm it; I can't.

Q You can't? A No, sir.

Q And do you remember that, in answer to the question, you said no? A (No answer)

Q Sir? A You are reading from writing, and I have

CASE #1363

to take it from memory.

Q Well, does it refresh your memory? A Well, no, because I didn't think it was of any importance, when I was on the stand testifying to other important things.

MR. WAHLE: May that be stricken out, if your Honor please?

THE COURT: Strike it out.

BY MR. WAHLE:

Q Now, do you remember, in answer to a question put to you by Mr. Buckner: "Q Have you examined these two pieces of cloth in the Police Department's possession?" you answered "No"? A I don't remember it, no.

Q Do you remember that you were asked this question: "Q So you don't know what they are? A No."? A No, sir.

Q You don't remember that? A No, sir.

Q I am reading it from the stenographer's minutes. And that doesn't refresh your recollection? A Well, it does, to an extent.

Q Yes or no? A Some.

Q You say some. What do you mean by some? A Well, it refreshes my memory to an extent, but I won't be positive.

Q Well, does it refresh your recollection to the extent that you were questioned by Mr. Buckner about these two cloths? A Yes, it does.

Q Then there were two clothes there; were there not?

CASE #1363

A I only remember one.

Q But he asked you about two. A I don't know whether he did or not.

Q Well, I thought you said, just now, that it refreshed your recollection that you were asked? A About the one cloth.

Q But not as to two? A No, sir.

Q Now does it refresh your recollection as to two cloths? A I can recall of one being shown to me.

Q Well, do you remember that Mr. Buckner asked you these questions? I will read to you the sequence of questions, so as to get it fully: "Q Have you examined these

two pieces of cloth in the Police Department's possession?

A No. Q So that you don't know what they are? A No.

Q Did you ever see that piece of cloth before? A No.

Q Are you prepared to swear that you have seen the particular piece of cloth, or one similar to it? A One similar to it.

Q You are not prepared to swear it is the identical cloth?

A No, not the identical cloth." Do you remember being asked that? A Yes, sir.

Q And then, further on, were you asked this question:

"Q On what table was this, if it was on any table? A The table was only a pool or billiard table"? A Yes, sir.

Q "Q That table you have been testifying to as a crap

CASE #1363

table? A Yes, sir." Do you remember that? A Yes, sir.

Q "Q I hand you this piece of cloth. Did you ever see that identical piece of cloth before, and are you prepared to swear to it? A Yes, sir." Do you remember that?

A (No answer)

Q Sir? A I do.

Q "Q And are you prepared to swear that you saw that identical cloth? A No; not that identical cloth." Did you make that answer, in the Magistrate's Court, to that question? A I suppose I did.

Q What? A I suppose I did.

Q Did you say anything in the Magistrate's Court about having your private mark on either of the two cloths that Mr. Buckner asked you about? A I wasn't asked about that.

Q Did you say anything in the Magistrate's Court about having your private mark on either of the two cloths that Mr. Buckner asked you about? Yes or no? A Well, the question wasn't put to me.

Q Yes or no please? A No.

BY THE COURT:

Q Were you asked how you identified the cloth? A No, your Honor. I was just asked if that was the same cloth.

MR. WAHLE: No. May we have a yes or no answer to that question, to your Honor's question?

CASE #1363

THE COURT: He has answered no.

BY THE COURT:

Q How were you able to identify the cloth, without examining the mark you made on it? A I didn't identify it except as one similar to the one I saw in the premises, because the other cloth was shown to me, in place of the one I had marked. There was two cloths there.

BY MR. WAHLE:

Q Yes, there were two cloths there; weren't there?

A Well, there is now.

Q Yes. There are now two cloths here; aren't there?

A Yes, sir.

Q And you didn't say anything about one of them having a private mark on it; did you? A I wasn't asked the question.

Q And you didn't say anything about one of them having a private mark on it, did you? A No.

Q Now, you also testified in the Magistrate's Court as to what you saw this defendant doing; didn't you?

A Yes, I did.

Q Now let me get on, for a moment, to what you said you were doing. Now you were playing at this crap table, is that right, Mr. Weitsman? A Yes, sir.

Q And you played with a pair of dice; isn't that right?

A Yes, sir.

CASE #1363

Q And you played with silver half dollars and dollars;
am I right? A Yes.

Q And you put your money on the line? A I did.

Q And when you won, you took the silver up; is that
right? A Some of it.

Q Yes, and you might have left some for the next game?

A Yes, sir.

Q And, when you lost, you left it there; is that
right? A I couldn't help leaving it.

Q Well, but you didn't take it away with you?

A No, I didn't.

Q Now do you remember what, in the Magistrate's Court,
you said that this defendant did, that you had seen this man
doing? A What I testified to seeing him doing?

Q Yes. A Yes; banking in the crap game.

Q Did you say in the Magistrate's Court that you saw
him banking the crap game? A yes, I certainly did. That's
the only thing I saw him do.

Q Did you say that you saw him standing with a box at the
table, and putting money in the box, and putting out money,
and raking money in, as you said, this morning? A yes, I
did.

Q Now let me see if you remember what you testified to
in the Magistrate's Court. I am reading from page 20 of the
minutes: "Q You describe a man here as John Banker, the

CASE #1363

second. Which one is he? A Him (indicating James Fest)"
Do you remember that occurrence, Mr. Weitsman? A Yes.

Q And do you remember you were then asked this question by Mr. Buckner: "Q What did you see John Banker, the second, do? A Taking money off the line, when certain numbers showed up , and placing money there when certain moneys did show up"? A Certain "numbers" you mean, not "moneys".

Q One moment. Now did you make that answer to that question? A I don,t quite get that.

Q I'll read it to you again. I'll read all up to this point: "Q You describe a man here as John Banker, the second. Which one is he? A Him (indicating James Fest). Q What did you see John Banker, the second, do? A Taking money off the line, when certain numbers would show up, and placing money there when certain numbers did show up." Do you remember that you gave that answer to that question?

A Yes, sir.

Q And that answer was true, wasn't it? A Yes.

Q And then you were asked this question: "Q Was that done in the course of this game of craps that you talk about? A Yes, sir." Do you remember that? A Yes, sir.

Q The next question then refers to John Benker, the third. And was that answer true? A Yes, sir.

Q Talk louder; will you? A Yes.

Q Now do you remember that, on cross examination, you

CASE #1363

were asked these questions by Mr. Nolan -- do you remember Mr. Nolan being there, and asking you some questions -- a gentleman with glasses, who appeared for the ~~defendants~~ defendants?

A Yes, sir.

Q "Q You stated in answer to the question of the District Attorney all the conversations you had with any of these defendants? A Yes, sir." Do you remember that? A Yes, sir.

Q "Q And you also stated all the conversations that you heard between any of these defendants? A Yes, sir."

A Yes, sir.

Q And you knew at that time that he was asking you about Fest with the others? A Yes, sir.

Q "Q And you also stated all that you saw all the defendants do on those premises? A Yes, sir." Is that right? A Yes, sir.

Q "Q So that there isn't anything that you have to add to the statement you made in your direct examination? A Not that I know of." A Yes, sir.

Q Now then you were asked: "Q I am asking you now if you have stated all the transactions that came under your observation, as you testified to, on the 11th of February, on your visit to No. 3 State street." And didn't you say to Mr. Buckner, or to Magistrate Herbert, when he asked you what you saw the defendant doing, that he had a box there, and was taking money out and raking money in? A Well, that's

CASE #1363

what he done. I said he was banking there that day.

MR. WAHLE: Now may I have that stricken out, if your Honor please?

MR. BUCKNER: No. I think it is a proper answer to the question.

MR. WAHLE: No, it isn't. There is not a word about his standing by a box, and taking silver dollars out, and putting them into the box, and raking them in, and paying them out. There isn't a word about a box.

THE COURT: Well, that is a matter of argument, I think.

MR. WAHLE: Very well. Then I will go to another line of examination.

BY MR. WAHLE:

Q Now, will you look at this paper, which I now show you, and state whether or not that affidavit bears your signature, and the date of the 14th of ^{February} ~~April~~, 1911?

A That's my signature.

MR. WAHLE: Now, I don't ~~xx~~ know what your Honor's rule is as to marking original papers.

THE COURT: You may refer to it merely.

MR. WAHLE: Now then we may call it the 48 Broad street affidavit, and the one I showed him, this morning, is the No. 3 State street affidavit?

THE COURT: Yes.

CASE #1363

BY MR. WAHLE:

Q Now will you examine, please, Mr. Weitsman, the 48 Broad street and the 3 State street affidavits, both of them, which I now show you? Just look over them, page by page, please. It is the affidavit in the green typewriting -- there are two of them there. Just run them over, so that you get the physical make-up of them? A Well, I have a fair idea of them.

Q All right. Now will you hold them there, please. Both of those affidavits were sworn to by you on the 14th of February, 1911; were they not? A Yes.

Q And both were signed by you and verified before Mr. Chief City Magistrate McAdoo; is that correct? A Yes.

Q Where were these affidavits prepared? A I don't know. Mr. Buckner had charge of them.

Q The jury can't hear you. A The District Attorney had charge of them.

Q Do you know where those affidavits were prepared?

A I presume over in the Deputy Commissioner's office.

Q Were you present when they were prepared? A I was. Not when they were written, but I was present when --

Q Well that's what I mean by prepared, when they were written up, you know? A No, sir.

Q Now, when the two affidavits were handed to you, there were blanks in them -- I'll withdraw that question. Were these affidavits prepared on any information that you gave to anybody? A Surely.

CASE # 1363

Q Did you consult Mr. Buckner before those affidavits were prepared? A I haven't seen Mr. Buckner until that day.

Q Until the day that you appeared before the Chief City Magistrate, to swear to those affidavits? A Oh, no; several days prior, when those affidavits were drawn.

Q I mean the day that they were sworn to. Did you see Mr. Buckner before that? A Yes.

Q And those affidavits, you say, were prepared on information that you ~~gave~~ gave? A Yes, sir.

Q To whom, A Mr. Buckner.

Q On the day that you swore to those affidavits, isn't it a fact that the designation of the houses was blank, A I don't know.

Q Look at them again. A Well, that wouldn't prove anything to me.

Q Will you look at them again, please. Find the place where 3 State street is written in one, and 48 Broad street in the other. A Yes, I see 48 Broad here (indicating).

MR. BUCKNER: I object to this as immaterial. I don't see the purpose of it.

MR. WAHLE: I'll connect it, if your Honor please.

THE COURT: What is the purpose of it?

MR. WAHLE: I would like your Honor to excuse me from stating it in the presence of the witness, but I will state it to your Honor privately.

CASE # 1363

THE COURT: yes, I wish you would. Step up here.

Leave the stand, witness.

BY MR. WAHLE:

Q Now the affidavits as you have them, as they were submitted to you, were blank, so far as the name of the street and the number of the house is concerned, to which they refer ; is that right? A Well, they were not, to my knowledge, in blank.

MR. BUCKNER: One moment. So far as this particular question, as to the location of the houses is concerned, I wish to state for the record, and it will save some time, that I asked them not to tell me the location, so that, if they were tipped off, they couldn't blame me.

MR. WAHLE: Now, that's a nice reason to give here. I am asking the facts, not reasons.

MR. BUCKNER: And I am stating a fact for your information, so that it will save Mr. Wahle some time. I purposely left these blanks and told the Commissioner and the witnesses that I didn't want to know the numbers of the houses, so that, if there was a tip off, that I couldn't be blamed, or the District Attorney's office either.

MR. WAHLE: Now, I don't care for that information, if your Honor please, from the District Attorney. I hear the Greeks bringing gifts.

CASE #1363

BY MR. WAHLE:

Q Now, isn't the name and location of the place written in there, in ink? A Yes.

Q Is it your own handwriting? A No, sir, it isn't.

Q In whose handwriting is it? A I don't know.

Q But they are written in? A Yes, sir.

Q And in those two affidavits do you mention the name of a single man as a defendant? A Why, surely, I mention a lot of people as defendants.

Q Did you hear my question? A Do I mention a single man, you said?

Q (Question repeated). A Yes.

Q The name of a single man? A No; a lot of men.

Q Do you mention the name of any man in those affidavits? A I don't know what name you mean.

Q I am asking you. (Question repeated). A Under the name I gave them; yes.

Q The name? A The name that I gave them.

Q Did you mention the name of a single man? A I did, according to my knowledge.

Q What name did you mention? A John Banker.

Q Is that a name? A That was my name.

Q Don't you know that it is a fictitious name that you gave, this morning? A I didn't know any other name, at the time.

CASE #1363

Q You didn't; did you? A No, I didn't.

Q And you might have saved us five minutes, if you had said that at first. A That's what I said at first.

Q Now you described these men in a certain way; didn't you? A Yes.

Q For instance -- do you know how many you described in those two affidavits? A About thirty odd.

Q About thirty odd? A Yes, sir.

Q And you described them by giving the age, the height, and the weight and whether they were clean shaven or not; is that right? A Yes, sir.

THE COURT: Couldn't we save time, Judge Wahle?

If you will step around here, I will make a suggestion.

MR. WAHLE: But I have a synopsis of it that I can use in my argument. -- I haven't much more to ask of him, in this line.

BY MR. WAHLE:

Q How many men did you describe in that affidavit?

A In State street?

Q (Question repeated) In the two affidavits that you got out for 48 Broad street and 3 State street, as being thirty years old? A I couldn't say, off hand.

Q How many men did you describe as being five foot, five inches tall?

CASE #1363

MR. BUCKNER: Oh, I object to that question as frivolous.

THE COURT: I will allow it.

MR. WAHLE: Frivolous? When no other description is given?

BY MR. WAHLE:

Q How many men did you describe as five foot five?

A I couldn't tell you, unless I got all the warrants together and looked them over.

Q Now in that affidavit you described -- in those two affidavits you described the following individuals: John Banker No. 3, thirty years old, five foot four inches tall, 135 pounds, smooth shaven. You described another man: thirty years old, five foot seven inches tall, 145 pounds, smooth shaven; another man, thirty years old, five foot five inches tall, 135 pounds, smooth shaven; another man, thirty years old, five foot four inches, 135 pounds, smooth shaven. Now, which was a doorman, a banker or a raker? A Line them up before me, and I'll give you every one of them.

Q No, I am reading your affidavit now. Which one was a raker, and which one was a doorman, and which was a banker?

MR. BUCKNER: I object.

BY MR. WAHLE:

Q Can you tell? A Yes, sir.

Q Can you tell from that description?

CASE #1363

MR. BUCKNER: I object to that as immaterial. The witness makes this affidavit, and then he goes and picks out the man.

MR. WAHLE: There were thirty men arrested here, were not there?

MR. BUCKNER: Yes, on a week's investigation.

MR. WAHLE: I don't think it is fair to say that in the presence of the jury.

MR. BUCKNER: Well, it is in the evidence. I am only quoting the evidence.

MR. WAHLE: No, it isn't in the evidence.

BY MR. WAHLE:

Q Now, can you tell me how many bankers there were?

A Three.

Q How many rakers? A Two rakers. And a couple of managers. And some of them were under a misdemeanor charge.

Q No. Now I am asking you how many of the men that you described here as thirty years old, and about five foot five inches high, and weighing about 135 pounds, you are able to say now were rakers, bankers, managers or doormen?

A If I could see the men, I could pick out every man's occupation.

Q In other words, you swore to these affidavits?

A Yes.

Q Upon which these warrants were issued against these

CASE #1363

thirty odd men? A Yes.

Q And you knew no other description? A No. I knew their description, and could pick them out, and did pick them out.

Q You describe one man as thirty years of age, five foot seven inches tall, weighing 145 pounds, and smooth shaven.

Can you tell us who that man was?

MR. BUCKNER: I object to that as immaterial.

THE COURT: Objection sustained.

BY MR. WAHLE:

Q When you swore to that affidavit, did you know who it was?

MR. BUCKNER: I object to that as improper.

THE COURT: Overruled.

A I surely did.

BY MR. WAHLE:

Q Can you tell us now who it was?

MR. BUCKNER: Objected to as having been ruled on.

THE COURT: Sustained.

MR. WAHLE: Exception.

BY MR. WAHLE:

Q Has your memory got weaker ~~than~~ since the day that you swore to that affidavit?

MR. BUCKNER: Objected to.

THE COURT: Sustained.

MR. WAHLE: Exception.

CASE #1363

BY MR. WAHLE:

Q You swore to a man thirty years of age, five ^{foot} four tall, and weighing 135 pounds. Did that man wear a mustache or whiskers, or was he smooth shaven, and who was he?

MR. BUCKNER: Objected to as immaterial, irrelevant and incompetent, and improper.

THE COURT: Does the affidavit further state who the witness can identify?

MR. BUCKNER: Yes.

THE COURT: Annexed to the affidavit is a statement by the affiant to the effect that he is able to identify .

MR. WAHLE: But that,s not the question. The affidavit is made on the 19th, and I am talking of what he swore to on the 14th. Those information affidavits are made after the defendant is apprehended.

THE COURT: But here it is, "Whose true name is to the deponent unknown."

MR. WAHLE: No, sir, but I am asking him about the 14th of February. You will find nothing in those affidavits but John Banker No. 1, aged so and so, weighing so and so, and so and so tall." Those are the affidavits which he verified.

THE COURT: "But who can be identified by deponent".

MR. WAHLE: That is all right, but I am asking him to do it now.

CASE #1363

MR. BUCKNER: No, but you are not bringing them in. He says he can pick them out, if he sees them now.

MR. WAHLE: I don't have to bring them in.

THE COURT: Objection sustained.

MR. WAHLE: Exception. Now I offer those two sets of affidavits in evidence.

MR. BUCKNER: I don't object, though it is only encumbering the record.

MR. WAHLE: I'll take the encumbrance. Does your Honor receive them?

THE COURT: There is no objection. They may be marked.

(They are marked Defendant's Exhibits 1 and 2).

BY MR. WAHLE:

Q Now, on the 15th day of February, 1911, was it, Mr. Weitsman, that the police visited the premises No. 3 State street? A About 4:45 p.m.

Q About 4:45 p.m.? A Yes, sir.

Q Can you approximate how many people were there?

A Well, about a hundred and fifty or one hundred and seventy five.

Q Were there not nearer two hundred? A Possibly.

Q Well, don't you know the difference between fifty or seventy-five and two hundred? A I said one hundred and fifty or one hundred and seventy-five.

Q Well, won't you speak up. I couldn't hear you.
You say between one hundred and fifty and two hundred?

A Yes, sir.

Q And a large number of those were permitted to go; is that correct? A Yes, sir.

Q And do you remember how many of the men were taken to Police Headquarters? A Sixteen -- fifteen or sixteen; somewhere around that neighborhood.

Q Weren't there nearer thirty? A No, not out of that place.

Q I am asking you about that place? A No, not out of that place.

Q Now, will you kindly think a moment? I am asking you about 3 State street, and I am asking you about the arrests that were made there, at the time that you made them, on the 15th of February. Weren't there between twenty and thirty people taken -- as matter of fact, I am told there were twenty-two,-- but I am asking you because you were there? A There wasn't thirty, I am positive. Somewheres between or around eighteen or nineteen people.

CASE #1363

Q Somewheres between or around eighteen or nineteen people? A yes, sir.

Q And how many people had you described in this affidavit, with reference to 3 State street; do you remember?

A I think around 13 or 14.

Q Now will you tell us why it was that more people were taken than there were warrants for, if you know?

A Well, yes, there wasn't any more taken than they had warrants for.

Q Well, you only swore to 13 people. A I am not positive of that. That's my best recollection.

Q Well, the count shows 13 people that you described in your affidavit, as to 3 State street. Now why were nine more taken than the thirteen? A Well there wasn't nine more than that taken.

Q Now, how long did it take you to identify out of the men who were brought to Police Headquarters the 13 men that were described in that affidavit? A How long did it take me?

Q Yes. A About an hour.

Q An hour? A Yes; that is, until the papers and all were prepared.

Q No. I am asking you how long it took you to pick out the 13 men that you had described in that affidavit out of the men that were brought to Police Headquarters? A About

CASE #1363

five minutes.

Q were they lined up? A Yes.

Q How many were lined up? A I don't quite recall.
I had 72 men arranged down there.

Q I am asking you about No. 3 State street. How many were lined up? A Between 13 or 14 and 19.

Q Now weren't more people taken than the warrants called for, because you were in doubt as to the identify of the people taken at 3 State street? A No, sir.

Q I am talking of 3 State street, you know. A That's what I am talking about too.

Q And don't you know that the arrest isn't entered ~~in~~ in the blotter until late in the evening, at Headquarters, Police Headquarters? A It wasn't entered?

Q It wasn't entered? A I suppose not.

Q Do you know that? A Do I know why?

Q Do you know that it wasn't entered until late in the evening? A No, I don't.

Q Can you give any reason why the defendants' names were not put in the blotter until late in the evening?

A Well, I wasn't there, to identify them.

Q Why, you were down there when the arrest was made; weren't you? A Yes; but I had to go down to --

Q One moment. And you were at 3 State street? A yes, sir.

CASE #1363

Q And when you got through there, you went to 48 Broad street; didn't you? A Yes.

Q And what time was that arrest made? A The very same time.

Q About five o'clock? A 4:45; yes.

Q And they were all brought to Police Headquarters together? A I don't know.

Q Well, they were all there at the same time?

A When I came there, they were there.

Q And when did you get there? A About half past nine or ten o'clock.

Q About half past nine or ten o'clock? A Yes, sir.

Q And where were you meantime? A I went down with Commissioner Flynn to other places that were raided at the same time.

Q And didn't you identify those people also? A Yes.

Q How many people have you identified as coming from gambling places where the raids were made? A About a hundred, or a little over a hundred.

Q That is, on your identification warrants have been issued for over a hundred people? A Yes.

Q And, so far as the No. 3 State street place is concerned, from the 5th to the 15th? A From about the 10th to the 15th.

Q Now did you say anything about being there on the 10th

CASE #1363

of February in the Magistrate's Court?

MR. BUCKNER: Objected to.

THE COURT: Overruled.

MR. BUCKNER: Was he asked about that?

MR. WAHLE: Yes; he was asked by Mr. Nolan this series of questions:

"Q You stated everything that you saw these defendants do on the premises? A Yes, sir.

"Q So that there is nothing that you have to add to the statement you made on your direct examination? A No.

"Q I am asking you now if you have stated all the transactions that came under your observation, as you have testified, at the time of your visit on the 10th of February? A All that I know of."

MR. BUCKNER: Yes, the 10th of February.

MR. WAHLE: Yes, and he was asked about everything that he had seen there. But he didn't, ~~there~~ in the Magistrate's Court, say a word about this after the 10th of February, and up to the 15th.

MR. BUCKNER: But he wasn't asked about that.

BY MR. WAHLE:

Q How many times did you visit 48 Broad street?

MR. BUCKNER: I object to that.

MR. WAHLE: It is on the credibility of his identification at No. 3 State street, your Honor.

CASE #1363

THE COURT: I sustain the objection.

MR. WAHLE: I am not going any further than to get the number of times he was there.

THE COURT: I sustain the objection.

BY MR. WAHLE:

Q How many other places than 3 State street -- and limit your answer only as to places that warrants were issued for -- did you visit, prior to the 10th of February, 1911?

A Four places.

Q And in those four places, a hundred warrants were issued on your identification? A No, only about 76.

Q And in all of those affidavits, the persons for whom the warrants were issued were described as John Banker, or John Raker, and John Doorkeeper, etc., and their description as to age, height, and whether they were clean shaven or not? A Yes.

Q And how much did you get from Mr. Flynn for this work? A \$3 a day.

Q And, in addition to that, you got your expenses; is that right? A Yes, sir.

Q Have you any promise from Mr. Flynn about continuing your activities for him in another field of work that you know of? A No, sir, absolutely none.

Q Did you look at this place very carefully, No. 3 State street? A What?

CASE #1363

Q Did you examine it very carefully when you went into it? A I examined it, yes, some.

Q Well, you were going there as an attache of the Police Department; of the Police Department of the City of New York; weren't you? A Yes, sir.

Q By virtue of the designation of Deputy Commissioner Flynn, at \$3 a day and expenses? A yes, sir.

Q And you knew that you were going to these places for police purposes; is that right? A yes, sir.

Q Now describe that building, please, from the outside? A It is a three story and basement brick building, about 25 feet wide, red brick. That's about all I can describe to you.

Q Sir? A It's a three story and basement dwelling. It must have been at one time an old fashioned dwelling. That's the nearest description I can give of it to you upon the outside.

Q You were really in this place; were you? A Yes.

Q And you were in there at least twice? A More than that.

Q More than that? A Yes, sir.

Q And is that all you can tell us about the outside of the building? A That's all I can think of now, unless there is some particular thing that you want to know.

Q Now you have identified all these people. Now tell

CASE # 1363

us what there was on the outside of that building, if there was anything different from any other building? A Nothing that you could notice from the outside, nothing whatever.

Q Nothing that you could notice from the outside?

A Nothing; except perhaps a club sign.

Q A club sandwich, did you say? A No, a club sign.

Q You speak so low, I can't hear you. And was that on the window shades, or on the front of the wall?

A just a little board.

Q On the front of the wall? A Yes, sir.

Q Do you remember the name of the club, if there was a name there? A The Battery Park Club.

Q Now what else did you notice on the outside of the building? A Fire escapes.

Q Well, what else? A That's all I can think of.

Q Now think very hard, please. A Well, to be honest with you, I didn't pay any particular attention to the outside of the building.

Q You didn't pay any particular attention to the outside of the building? A No, not too much.

Q Now what sort of a stoop was it? A A brown stone.

Q Was it a stoop that went right up from the sidewalk, or an odd stoop? A Well, it was a stoop that you went up one side, and reached a little platform, and then turned and entered the door.

CASE #1363

Q You didn't notice the drinking fountain on the front of the building, did you? A No, sir.

Q Going there for ten days, you didn't notice a fountain, with a cup, to drink water, that is right under the stoop, and is put there by one of the Free Ice Water Societies, and has been there for years? A No, sir.

Q Do you know what business they conduct in the basement? A I have never been in the basement.

Q Did you ever see any sailors going in and out of there? A No, sir.

Q You never saw anybody stop and get a drink of water at this permanent fountain that is there? A No, sir.

Q And never saw the fountain there? A No, sir.

Q And don't know whether it is there now or not?
A No, sir.

RE-DIRECT EXAMINATION BY MR. BUCKNER:

Q Do you remember being asked in the Magistrate's Court the following question, and giving the following answers:

"Q You know James Fest by name? A No. Q Do you know Banker by name? A Yes, sir. Q Where is he? A Right there (indicating James Fest). Q What was he doing?

A He was engaged in the same operations as Banker No. 1." Do you remember giving that testimony? A Yes, sir.

MR. WAHLE: Now may the District Attorney state that

CASE #1363

he gave that testimony after he had sworn that he had no more to say? I only want to get the facts straight, though I don't care anything about it.

MR. BUCKNER: Then, if you don't, why talk about it?

BY MR. BUCKNER:

Q was this question asked, and did you give this answer --

MR. WAHLE: Now I object to the District Attorney reading from the former testimony of his own witness. He can't contradict him by it, and he can't bolster him up by it. He can't ask him whether he was asked about certain things, and whether he so testified.

MR. BUCKNER: But I can clear up temporary misinformation.

THE COURT: Objection overruled.

MR. WAHLE: Exception.

BY MR. BUCKNER:

Q Were you asked this question, and did you make this answer: "Q See if you can ~~pick~~ point out the man that you describe as Banker No. 1? A That man (indicating Joseph Thomas)."

MR. WAHLE: Now I object to this question, because it has no reference to this defendant. He was called Banker No. 2.

MR. BUCKNER: And your Honor probably, having been

CASE #1363

engaged, at the moment in other court business, did not hear the preceding question. I will read it: "What was Joseph Thomas doing there? A He was standing at the box with silver dollars and half dollars in it, and, as certain numbers of the dice were thrown, he would take the money around the table, and scoop it up, and put it on top of the money he had, and other times he would take the money out of the box, and stack it alongside of the money that was laying on the line.

Q Is that the John Banker No. 1 you referred to when you said this defendant was engaged in the same operation as Banker No. 1? A Yes, sir.

MR. WAHLE: Now that's the testimony that I objected to. That referred to Banker No. 1.

BY MR. BUCKNER:

Q So you did say something about --

MR. WAHLE: I object. He said something about John Banker No. 1, about what he was doing, but that doesn't refer to this man. It refers to another man altogether, not this man.

BY MR. BUCKNER:

Q Then you did say something about a box in the Magistrate's Court?

CASE #1363

MR. WAHLE: I object to it as immaterial, irrelevant and incompetent. He said nothing in reference to a box, in reference to the defendant.

THE COURT: Is the box concerning which the witness testified the box which the defendant had in his possession?

MR. BUCKNER: He has testified here, on direct examination, that the defendant had a box on the table. Judge Wahle, on cross-examination, made a great deal out of the point that, in the Magistrate's Court, referring to this defendant, he did not use the word "box". Now, I assert that, in the Magistrate's Court, he said this man was doing just what Banker No. 1 was doing, and I show by another page of the Magistrate's testimony, that he said that Banker No. 1 was standing by the box, with the silver dollars and half dollars in it, and was conducting the banking of the game there.

MR. WAHLE: Well, I may not be clear in the expression of my language, if your Honor please, but let me see if I can make clear what I am getting at, to your Honor. This gentleman on the stand, to-day, in the direct examination, described with minute detail that which he said he saw this man doing, standing behind the numbers 6 and 8, with a box in front of him, in which box were silver coins of vari-

CASE # 1363

ous denominations. Out of the box he would put certain coins on certain numbers on the line, and from the line he would take the money and put it back in the box. And I drew his attention to his testimony, on the direct examination, in the Magistrate's Court, where this gentleman had testified to what he did himself, and he said he stood at the line and put money on the line, and kept it there, or left it there, or took it away, as he won or lost, ~~and~~ and that the defendant did the same as he did, not the same as John Thomas did.

MR. BUCKNER: No, sir. He said he did the same as he, John Banker No. 1 did. I will repeat it to your

Honor: "Q What did you see John Banker the 2nd do?

A Taking money off the line, when certain numbers would show up, and placing money there when certain numbers didn't show up." That's what he said he saw this man doing.

And then Mr. Nolan pinned him down to that, and said,

MR. WAHLE:

"Is that all you saw?" and he said, "Yes." And towards the end of the case, either the Magistrate or Mr. Buckner said to him again, "What did you see this man doing?" and he said, "The same thing as I saw John Banker No. 1 doing." Now he had testified that he had seen John Banker No. 1 doing the things with the box that, on direct examination, to-day, he testified he saw the defendant doing. Now, when he first testified in the Police Court,

CASE #1363

without any chance to reflect upon it, did he say what he has testified to now?

THE COURT: Will you repeat the testimony that you read, Mr. Buckner?

(Mr. Buckner repeats it).

MR. BUCKNER: Now, since the witness said that this man was doing the same as Banker No.1, I referred back to page --

MR. WAHLE: Now, your Honor, that's just what I say he has no right to read in, what the witness said as to John Banker No.1. That is his testimony there, and we are not bound by that.

THE COURT: Well, that testimony should have been objected to in the Magistrate's Court, because it states a conclusion of fact. But, on the question of whether or not this defendant had used the word "box" in the Magistrate's Court, it is relevant.

MR. WAHLE: No, sir, that's not the point. What do I care whether he used the word "box" or not. The point I make is that he did not describe any such operation as to the defendant. I don't care whether he testified in the Magistrate's Court that he took the money out of a box or a tin can, but he described no such operation.

THE COURT: I will allow this question.

MR. WAHLE: very well, sir. I'll take an exception.

CASE #1363

BY MR. BUCKNER:

Q Just one question. On the 15th, at the time the arrest was made, was the general lay-out of the room the same as it was on the 10th?

MR. WAHLE: Objected to, as immaterial.

THE COURT: Sustained. It states a conclusion of facts.

BY MR. BUCKNER:

Q What was the condition of the premises, of this room, which you have been testifying about, on the 15th, with reference to its condition on the 10th of February?

MR. WAHLE: I object to that as irrelevant and immaterial, and as calling for a conclusion.

MR. BUCKNER: I am laying the foundation for photographs; that is all.

MR. WAHLE: I object. When Mr. Buckner gets to my weight, he will wrestle with one, and only one question at a time, and will wait for another question until he gets to it. I object to this as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

THE COURT: Gentlemen of the jury, do not discuss this case among yourselves, nor permit any person to talk with you about it; nor form nor express any opinion as to

CASE #1363

the guilt or innocence of the defendant, until the case is finally submitted to you.

You may go until 10:30 to-morrow morning.

(The trial was then adjourned to Tuesday morning,
May 2nd, 1911, at 10:30)

Trial resumed.

New York, May 2nd, 1911.

JAMES M. WEITSMAN, his re-direct examination being continued, testified as follows:

RE-DIRECT EXAMINATION CONTINUED BY MR. BUCKNER:

Q Weitsman, what floor of this building was this crap table on that you have been testifying about? A The floor above the parlor floor.

Q That would be what is called the second floor?

A Including the basement, it would be the third.

Q It depends upon whether you count the basement or not? A Yes, sir.

Q Well, I hand you a photograph, and ask you to examine it. Don't say anything. Just examine it. Does that photograph represent any premises with which you are familiar?

A Yes, sir.

Q What premises does that photograph represent, and at what time?

MR. WAHLE: That I object to as irrelevant and immaterial.

MR. BUCKNER: It is only preliminary.

MR. WAHLE: And as incompetent generally and specifically from this witness. By generally and specifically I mean that it is incompetent evidence,

CASE #1363

and he is not competent to testify whether it is a photograph of any place or not.

THE COURT: Well, it is not offered in evidence yet. The District Attorney will have to present additional evidence to connect it.

MR. WAHLE: And I submit then, if your Honor please, that it is not proper to ask the witness to state his conclusions as to what that represents. If that photograph was taken of any particular premises, the man who took it ought to be called to state. We don't need his conclusions as to what it represents.

THE COURT: You should ask the witness whether the article represented in the photograph, with reference, to its condition, is the same.

MR. BUCKNER: This was only preliminary, that question. The next question would have been what your Honor suggests. Repeat my question, Mr. Stenographer.

(The question is repeated by the stenographer)

MR. WAHLE: Objected to, as immaterial, irrelevant and incompetent from this witness, and I object to the form of the question.

THE COURT: Objection sustained.

BY MR. BUCKNER:

Q Does that photograph represent any premises with which you are familiar? A Yes, sir.

Q Was there any particular time when the conditions in any premises with which you are familiar were the same as represented in that photograph? Yes or no?

MR. WAHLE: Objected to as immaterial, irrelevant and incompetent, and it is further incompetent because he is not the person competent to testify to that.

THE COURT: Overruled.

MR. WAHLE: Exception.

A Yes, sir.

BY MR. BUCKNER:

Q At what time is that photograph the same as the condition of any premises with which you are familiar?

MR. WAHLE: To that I object, for the same reasons, and as not proper rebuttal.

THE COURT: Overruled. It is not offered as rebuttal.

MR. WAHLE: Not proper re-direct examination, I mean.

THE COURT: I shall allow it, in the exercise of discretion, as evidence in chief.

MR. WAHLE: And I don't take exception to your Honor's exercise of discretion, but I do except to so much of your Honor's ruling as permits this testimony, over the other objections.

A At 5 o'clock, on February 15th.

CASE #1363

BY MR. BUCKNER:

Q 1911? A Yes, sir.

Q And what premises? A No. 3 State street.

MR. WAHLE: One moment, please. Now I make the same objection, that it is immaterial, irrelevant and incompetent, and not within the issues; that this witness is not competent to state what that photograph represents; and, furthermore, that it is calling for a conclusion upon his part.

THE COURT: Objection overruled.

MR. WAHLE: I take an exception, and on each of the grounds.

A At 3 State street, Manhattan.

BY MR. BUCKNER:

Q What floor?

MR. WAHLE: I make the same objection on each of the grounds, if your Honor please.

THE COURT: I overrule the objection.

MR. WAHLE: Will your Honor grant me an exception? And I take an exception as to each of the grounds of objection.

A The floor above the parlor floor.

BY MR. BUCKNER:

Q Now state the condition of that -- were you familiar with the condition of that room on February 11th, 1911?

CASE #1363

THE COURT: I call your attention, judge Wahle, to the case of the Roosevelt Hospital vs. The Elevated Railroad, 21 Supplement, page 205; Archer vs. New York City Railway, 106 New York, 589; Albert vs. The New York and Lackawanna Railroad, 118 New York, and Cowley vs. The People, where the evidence was admitted.

BY MR. BUCKNER:

Q Now answer the question. Were you familiar with the condition of those premises on February 11th, 1911? A Yes, sir.

Q Was the condition the same, or different, on February 11th, 1911, and on February 15th, 1911, at the hour you specify? A A little bit different.

Q Talk louder. A A little bit different.

Q And what was the difference? A This table here --

MR. WAHLE: One moment.

BY MR. BUCKNER:

Q Now, don't point out anything. Briefly, what was the difference? A It was in better condition than this photograph shows.

Q Well, what was the condition on those two dates, without reference to the photograph? Can't you tell us?

A The table was all put together; one of the bars was not missing; and the place in general; a lot of people around the table.

CASE #1363

Q One difference then was the number of people around?

A Yes; about 25 or 30.

Q What was the difference in reference to the floor, if any? A Everything upset and in disorder.

Q Was the top of the table in the same or in a different condition on February 15th, from that which it was in on the 10th? A In a different condition.

Q In what respect was it different?

MR. WAHLE: I object to this line of inquiry, as immaterial, irrelevant and incompetent, and calling for the conclusion of the witness, and not within the issues.

THE COURT: Allowed.

MR. WAHLE: Exception.

A It was in better condition.

THE COURT: Why not make a concession, then, Judge, and take your exception.

MR. WAHLE: Well, I don't want, if your Honor please, as I stated yesterday, to invade the sequence of what Mr. Buckner is trying to prove, by these constant interruptions and objections. Your Honor also knows the rule that I am bound to take them.

THE COURT: Surely.

MR. WAHLE: Now, if we can agree that I may have the same objection and exception throughout, that is all

CASE #1363

I want.

THE COURT: You simply object to these questions as to their competency?

MR. WAHLE: Yes, sir, these photographs, on the ground that if they are of the 15th, they are not within the issue.

THE COURT: But, as to the accuracy and authenticity of the photographs is there any objection to that?

MR. WAHLE: Oh, no, not as to their accuracy. I don't believe that Mr. Buckner would be a party to any such proceeding as that.

THE COURT: You see that any person who is able to identify a photograph as the photograph of the object taken is a competent witness, under the decisions, and it is not necessary to have the photographer present.

MR. WAHLE: Now, if your Honor please, I am willing to waive the presence of the photographer. If your Honor thinks that, as matter of law, as each of these photographs is offered in evidence -- I haven't seen them, and some of them may be relevant, and some not -- but if your Honor thinks they are material and competent evidence, I shall not insist upon the presence of the photographer.

THE COURT: There is no issue raised as to the accuracy of these pictures?

CASE #1363

MR. WAHLE: No, sir, as photographs. I concede that they are, in other words, mechanically and photographically correct. The only question is, like any other bit of evidence, is it competent? Now, if the understanding may be had as to these questions, unless something else arises, if it may be understood that there is an objection recorded and an exception as to their materiality and competency, that is all I want.

THE COURT: Yes, it is so understood.

BY MR. BUCKNER:

Q Was the situation on February 15th substantially the same as that on February 10th, except for the presence of men, and the litter on the floor? A Well, there was some slight difference, some changes.

Q Well, was it substantially the same? A Yes, sir.

Q Was the ceiling the same? A Yes, sir.

Q Were the walls the same? A Yes, sir.

Q And the floor the same, except for the presence of paper? A Yes, sir; and furniture, and a lot of men being there.

Q Was the location of the crap table the same? A The same, absolutely.

Q Was it the same table? A The same table.

Q Was it the same crap cloth? A The same crap cloth.

Q Is there any difference, except the absence of men

CASE #1363

and the disorder of the floor? A Outside of the board had been washed down.

Q What? A The blackboard, the racing sheet, had been washed down.

Q Well on the picture that you have, that is not shown here? A Part of it is.

THE COURT: Well, under your indictment, Mr. District Attorney, you must confine yourself to the game of craps.

THE WITNESS: Part of the board, to the right (indicating).

MR. BUCKNER: Well, that's enough. I don't want that.

BY MR. BUCKNER:

Q Well now does the photograph which I hand you substantially represent the location in the room where the crap table which you have been testifying to was on February 10th, 1911? A Yes, sir.

MR. BUCKNER: I offer that particular photograph in evidence.

MR. WAHLE: I object, if your Honor please, to the offer of the photograph, upon the ground that it is irrelevant, immaterial and incompetent as evidence; furthermore, upon the ground that it isn't binding upon the defendant, it not appearing that the defendant was in any way responsible for the condition just shown upon this

CASE #1363

photograph. Now, I am going to ask your Honor to look at that photograph and see what is shown there. It does seem to me, unless the defendant was in some way connected with that condition, it is incompetent against him.

THE COURT: I shall allow it.

MR. WAHLE: Will your Honor grant me an exception, please?

(It is marked People's Exhibit 2)

BY MR. BUCKNER:

Q Will you examine the photograph I hand you? Were you ever familiar with the premises, which are the same as those delineated on that photograph? A Yes.

Q At what time were you familiar with the premises in which the condition was exactly the same as that depicted on the photograph?

MR. WAHLE: May I make the same objection, and have the same ruling?

THE COURT: Yes.

A About 5 o'clock, February 15th.

BY MR. BUCKNER:

Q And where were those premises? A 3 State street.

Q Were you familiar with the premises at 3 State street, on February 10th, 1911? A Yes, sir.

Q Were you familiar with the particular portion of the

CASE #1363

premises delineated on the photograph that you hold in your hand? A Yes, sir.

Q Was the condition on February 10th and February 15th, 1911, the same or different with respect to the particular portion delineated on the photograph? A It was not the same.

Q In what respect was it different? A A hole chopped in the door.

Q Was there any difference, except the hole chopped in the door? A No, sir.

Q Where was the door to which you refer in those premises? A The door leading into -- at the head of the stairway on the third floor, including the basement, leading into that room.

Q The third floor including the basement? A Yes, sir.

Q And, if you don't count the basement, what floor was it? A The second floor, one flight up.

Q And was that the door that you went through when you entered the premises? A Yes, sir.

Q The door represented there? A Yes, sir.

Q Was it necessary to get through that door to get into the room where the crap game was? A Yes, sir.

Q Did you see who entered that door on February 15th? A Yes, some I noticed.

Q I mean any of the officers? A Yes, sir.

CASE #1363

Q Who did you see go in there? A Commissioner Flynn and Lieutenant McMahon and a lot of other officers. I don't know them by name, but know them by face.

Q Where were you when they went through that door?

A I was right near it.

Q When was the hole made in that door that you speak of?

MR. WAHLE: I object to that, as not binding on the defendant, and as immaterial, irrelevant and incompetent.

BY THE COURT:

Q Was the defendant in the premises at the time the hole was made in the door? A Yes, sir.

BY MR. BUCKNER:

Q Where were you? A I was in the same room with the defendant.

Q You were in the same room with the defendant?

A Yes, sir.

THE COURT: I shall allow it.

MR. WAHLE: Your Honor will grant me an exception.

BY MR. BUCKNER:

Q When was the hole made?

MR. WAHLE: I object to it as immaterial, irrelevant and incompetent, and your Honor allows it, and I take an exception.

A It was made between seventeen minutes after four, or forty-seven minutes after four, and five o'clock.

CASE #1363

Q Well, when was it made with reference to the arrest of the defendant and others? A Between 4:45 and 5 o'clock.

Q When was it made with reference to the arresting of the defendant? Before or after his arrest? A Before the arrest.

Q How long before? A Well, until the officers got inside the premises, and they were picked out.

Q Now into what did that door open? A That opened on the side --

MR. WAHLE: I object to it as immaterial, irrelevant and incompetent, if your Honor please.

MR. BUCKNER: I want to find out how close it was to the room in which the defendant was alleged to have been.

THE COURT: Is that evidence material?

MR. BUCKNER: I think so, sir. I want to find out just where the door was in reference to the room where the crap table was.

THE COURT: I shall allow that.

MR. WAHLE: And your Honor see the impropriety of this line of testimony, I hope, and I don't wish to animadvert upon the conduct of the District Attorney at all in the statement, but I claim that it shows, if anything, that, if the defendant was there at all, he was there as a player. And how was he responsible for the

CASE #1363

circumstance in any way which created the necessity for opening that hole in that door, making that hole in the door?

I am willing to assume, for the sake of this argument, that he was there as a banker at that crap table; but, even then, what is there here to show that he was responsible for the conditions that made it necessary, if it was necessary -- and your Honor don't even know that it was necessary? Why not let the man who banged the hole in that door, if there was one, tell your Honor and this jury what they found to make it necessary.

THE COURT: But that was not the question.

MR. WAHLE: I know that, but I only say that to show you how absolutely immaterial and incompetent it is. Some over zealous man, anxious to please a flashlight photographer, might have put a hole in the door.

MR. BUCKNER: I don't want the hole; I want the door; I want the jury to see the door, and I am willing to waive the hole.

MR. WAHLE: You can't. And that reminds me of the story of the German recruit, who was asked what a cannon was, and how it was made, and he said, "You take a hole and put iron around it." And there is the hole in this case all the same, with the door around it.

THE COURT: I believe it has some bearing on the

CASE #1363

ture of the business in which the defendant was engaged, if any, provided it be found by the jury that he was a banker or game keeper there. Objection overruled.

MR. WAHLE: Exception.

BY MR. BUCKNER:

Q Now the particular question is: Now, into what did that door open? A It led into the room proper.

Q It was the entrance into that room? A Yes, sir.

Q You went through it? A Yes, sir.

Q Was it necessary to go through it? A Yes, sir; you couldn't get into it in any other way.

MR. BUCKNER: I offer in evidence this photograph, being the photograph of the only entrance to this room where the crap table was. And I ask the Court to instruct the jury to disregard that portion of the photograph which represents conditions on the 15th, instead of the 10th.

MR. WAHLE: The District Attorney is requesting your Honor to instruct the jury to do something that is an impossibility.

THE COURT: But it is the duty of the jury to obey the Court's admonition to disregard the fact that a hole was made in the door.

MR. WAHLE: It is the duty of the jury, if your Honor please, to make an honest effort to do so; and

CASE #1363

your Honor, even in instructing the jury, will take notice of the limitations of human ability, even when it sits in the jury box; and I submit that, if this photograph has on it matter which the District Attorney concedes, practically, is not proper to show to the jury, this photograph should not be admitted in evidence; and I object to it on the District Attorney's own statement, and on the general ground that it is immaterial, irrelevant and incompetent.

THE COURT: I shall allow it in evidence. And you, gentlemen, are instructed to disregard the evidence which the door shows, that is, that a hole was made in that door, at the time the officers went there; you should entirely disregard that evidence.

MR. WAHLE: And how about the bolts that are shown on that photograph, on that door? And there is a label at the bottom of it.

THE COURT: Yes, paste something over that label, put some paper over it.

MR. BUCKNER: Yes, sir; I have erased it, so that it cannot possibly be seen.

(It is admitted in evidence, and marked People's Exhibit 3).

MR. WAHLE: Exception.

CASE #1363

RE-CROSS EXAMINATION BY MR. WAHLE:

Q You were asked, Mr. Weitsman, by the learned District Attorney, when he handed you this photograph, People's Exhibit 2, whether it reminded you of any place that you had seen. Do you remember being asked that question, or that question in substance? A Yes, sir.

Q Did you have any difficulty in reading the piece of paper which was pasted at the bottom of the photographs (reads)?

A I didn't absolutely look at it.

Q Not at all? A No, sir.

Q And then, of course, the label being there, it wasn't difficult for you to be reminded what the photograph represented

A The photograph itself showed it.

Q Yes. Now was this table which is shown upon this photograph, People's Exhibit 2, entirely in the condition in which it is shown on this photograph, during the whole of the afternoon? A There is only the door at the entrance of the place.

Q You don't understand me. Look at the photograph, and I will examine you with the photograph in your hands. Just keep it, Mr. Weitsman. You see the table that is shown on Exhibit No. 2. And it is a pool room as there shown; isn't it? A Yes, sir.

Q Now, at the time that the police broke in, was that table in the condition it is now shown on that picture?

CASE #1363

A Yes, sir.

Q Has the table been broken at all? A Yes, partly.

Q And was it broken while the police was trying to move it? A It was broken while the axes was battering the door down.

Q The table was broken by the axes which battered in the door? A No, sir. While the policemen were breaking the door down, this table was broken by men inside.

Q And was it again put together? A No, sir, it was left in that way.

Q And in the condition in which it is? It is broken, you say? A Yes, sir.

Q It is standing on four legs; is it not? A Yes, on four legs.

Q And part of it is off? A Yes.

Q And at the time you were shown this photograph, People's Exhibit 3, you saw that there was a label at the bottom, describing that; did you not?

MR. WAHLE: Well, I don't know whether that quite intended. May I have that photograph, Mr. Brothers, if you are not using it?

THE COURT: What are you speaking of, Mr. Wahle?

MR. WAHLE: I was examining as to a photograph, with a label on it; it was on it when it was shown to the jury; but, thereafter, Mr. Buckner erased the con-

CASE #1363

tents of the label, and I ask now that the photograph be considered as if the label was on it, in the condition in which it was shown to the jury.

THE COURT: Yes. And it seems to me that the witness should not have ^{been} shown a photograph with the street number of the place represented on it.

MR. BUCKNER: But neither Judge Wahle nor I noticed that; and now he calls attention to the label on the second photograph, and I promptly erased it.

MR. WAHLE: I did notice it on the first photograph, and I left it there purposely, because I wanted to show that this gentleman, who so promptly identified the photograph, recognized it very promptly by the label that was on it.

THE COURT: Is there any question that these photographs correctly represent the place represented on the photograph?

MR. WAHLE: I don't know, sir; I wasn't there. That is all the questions I want to ask of the witness. I have done with the witness, except that I offer in evidence, as part of my cross examination, a certificate of the County Clerk of Kings County, dated the 29th of April, 1911; I offer that in evidence.

MR. BUCKNER: I object to it. It is collateral matter, and he is bound by the answers of the witness.

CASE #1363

THE COURT: I exclude it. It is collateral matter, and I exclude it on the authority of the People vs. Stokes and the People vs. Garmo.

MR. WAHLE: I take an exception. May it be marked for identification?

THE COURT: Yes; it may be marked for identification.

(It is marked Defendant's Exhibit 3 for identification).

JOHN McMULLEN, of 244 East 86th street, and an officer attached to the Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BUCKNER:

Q officer, did you make the arrest in this case?

A I did.

Q Where did you arrest the defendant? A At 3 State street.

Q What time? A About 4:15 in the evening.

Q What day? A On the 15th of February.

Q What year? A 1911.

Q What part of the premises? A On the third floor.

Q Did you -- how did you effect an entrance into the premises?

MR. WAHLE: Objected to as immaterial, irrelevant

CASE #1363

and incompetent.

BY THE COURT:

Q You had a warrant, Officer? A I did, sir, and several of them.

BY MR. BUCKNER:

Q For this defendant? A Well, I didn't know that defendant at the time, until he was picked out, after I got in.

BY THE COURT:

Q Was the door closed? A We went through three doors.

Q Well, was the first door closed? A Yes, sir.

THE COURT: You had better comply with the statutory provisions in examining this officer, with a view to determining whether he had a right to break the door, if he did break the door.

MR. WAHLE: Now, if your Honor please, the very fact that I have in mind is not his statutory right. If a felony was being committed, if he had no warrant, being a police officer, and had reason to believe a felony was being committed, he had a right to blow the door down. But that is not the point. It is immaterial entirely to the issue as to whether this defendant conducted a crap game on the 10th of February, or the date named in the indictment.

THE COURT: The people, I believe, offered some evidence to show that he was engaged in the game of crap

CASE #1363

on that day, the 15th.

MR. WAHLE: But I still object. I object, if the Court please. This is on the 15th.

THE COURT: I shall allow it. Objection overruled.

MR. WAHLE: Exception.

BY MR. BUCKNER:

Q The question is how did you effect an entrance into those premises?

MR. WAHLE: Objected to.

THE COURT: Allowed.

MR. WAHLE: Exception.

A I had two officers with me, Officers Daly and Murphy, and also Commissioner Flynn. And we first tried the outside door, and couldn't get in, and I said, "Go ahead. Break the door."

THE COURT: No. Strike that out.

BY MR. BUCKNER:

Q What did you do? A We broke the first door.

Q Was it a light or heavy door? A There were iron screens there, and plate glass.

Q And what next did you encounter? A We encountered an ice box door leading upstairs.

MR. WAHLE: Now I object to this entire line of testimony, if your Honor please.

BY THE COURT:

Q You encountered what? A An ice box door.

CASE #1363

THE COURT: Well, strike that out, that they encountered an ice box door.

BY THE COURT:

Q Describe the door?

MR. WAHLE: Objected to.

THE COURT: Overruled.

MR. WAHLE: Exception.

A We first got to the door leading upstairs to the first floor. That door was closed and locked. It was a door of wood, about four ply thick.

BY MR. BUCKNER:

Q Four feet thick? A Yes, of wood, about four inches thick.

Q And describe it further, if you will. Anything else besides wood? A Yes; it was wood and iron.

Q Well, how much iron was there? A Well, there was the claps of iron or steel on it; I couldn't say which.

Q How was it locked? A Inside.

Q well, how did you get through that door? A well, we broke through with axes, and then we went up another flight, and we met another big door, probably five inches thick, at the head of a narrow stairway.

Q And did you find it open or closed? A We found it locked also.

CASE #1363

Q What kind of a door was it? Describe it more fully?

A A wooden door, with big iron hooks and bars inside.

Q And how did you get through that door? A Well, we broke that door, too.

Q And, when you got through that door, where were you?

A Well then we were on the third floor.

Q And what did you do when you got through that third door? Where did that bring you to? A On the third floor.

Q Well, what sort of a room? A It was a big room. Probably there were about two hundred people in that room when we got up there.

Q Is that the room that you arrested the defendant in?

A Yes, sir.

Q I hand you People's Exhibit 3, and ask you to state if that represents any of the three doors you have described, if you know? A Yes.

Q Which one? A That's the third floor.

Q That's the last door you went through; is it?

A Yes, sir.

Q I hand you People's Exhibit 2, and ask you to state if you are familiar with any premises that that photograph purports to represent? A That's also the third floor.

Q Talk a little louder. A That's also the third floor. That's the crap table.

Q (Indicating) Of the No. 3 State street place?

A Yes, sir.

CASE #1363

Q On February 15, 1911, the day of the arrest? A Yes, sir.

MR. BUCKNER: That's all. Just a minute. No, that's all.

CROSS-EXAMINATION BY MR. WAHLE:

Q How many people do you say were in this place at the time you entered it, officer? A Well, there were two--I've said--there were two floors, and people on the two different floors.

Q But I mean where this crap table was? A Probably 175 or 200 people.

Q You didn't know the individuals for whom you had the warrants; did you? A I did not.

Q And who pointed out the men whom you were to arrest? A There were a man in the room, which I found out afterwards his name.

Q Was that the man Weitsman, who was on the stand, this morning? A I haven't seen him on the stand. I've seen him outside. I wasn't in the court this morning.

Q Was it James W. Weitsman, who was a witness here? A Yes, sir.

Q And he pointed out to you and your brother officers those who were to be arrested? A We took the individual names of each person that was in the place, and, as we passed

CASE #1363

them out of the door, he picked out the ones that we had warrants for.

Q That is, you took the names of about 175 or 200 people? A Yes, sir.

Q And you lined them up, as each one went out? A Yes, sir.

Q And, as some man would approach, Mr Weitsman would say, "Take that man"? A He would say, "That's one of the men that you have got a warrant for."

Q And you would take that man? A I would put them to one side.

Q And those are the men that you afterwards took with you to Police Headquarters? A Yes, sir.

Q Is that correct? A Yes, sir.

REDIRECT-EXAMINATION BY MR. BUCKNER:

Q Just one question. Were these prisoners all arrested on one complaint? A No, they were arrested on different complaints; they were on different complaints.

Q Well what were the two complaints, what were the two kinds of complaints under which they were arrested? A Under section 970 and section 986. Some of them was held on two complaints, and some on one.

Q Some for the misdemeanor, and some for the felony?

A Yes, sir.

Q And do you remember how many were taken out altogether?

CASE #1363

A I think there were 13 or 14--17 altogether. Some was discharged at Police headquarters, that night.

J O H N S T R I N G E R, of 969 Jefferson avenue, Brooklyn, a witness called on behalf of the People, being duly sworn testified as follows:

DIRECT-EXAMINATION BY MR. BUCKNER:

Q Stringer, you have pleaded guilty to the indictment of being a common gambler, I believe?

MR. WAHLE: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

BY MR. BUCKNER:

Q Were you familiar, in the month of February, 1911, with the premises at 3 State street, Manhattan?

MR. WAHLE: Now, I ask that your Honor instruct the witness, inasmuch as I recognize the rule that the witness is not entitled to counsel, that he need not answer any questions that may tend to degrade or incriminate him. If your Honor declines to give that instruction, I ask that I, as his attorney, or his counsel, may be permitted to give him that instruction.

THE COURT: Do you represent this witness?

MR. WAHLE: I have represented this witness, sir, upon the charge that is made against him. I appeared for

CASE # 1363

him when he was arraigned before your Honor, and it is quite immaterial to me whether he testifies or not, but I think he should be informed of his privilege. I am not instructing him not to answer. What the Court can do, and what I can do, I am thoroughly familiar with, and I am asking your Honor to instruct the witness as to his rights, or to permit me to do so.

THE COURT: Since when has a person such rights, under our present law?

MR. WAHLE: No witness can be compelled to answer any question, the answer to which may tend to degrade or incriminate him.

THE COURT: I am speaking of a case of this character.

MR. WAHLE: Of this character?

THE COURT: Yes.

MR. WAHLE: Then, if your Honor please, he should be advised as to any immunity that is coming to him.

THE COURT: Well, Mr Buckner, step up here.

MR. WAHLE: Don't, please, put me in the wrong category. I am not objecting to his testifying, but I cannot permit him, as his attorney, to go on, without somebody instructing him as to his rights.

THE COURT: I understand your position.

Stringer, ordinarily, the law of this State, under

CASE #1363

our Constitution, prohibits the District Attorney from compelling a person to become a witness against himself. A witness has a right to decline to answer any question that might tend to degrade him or incriminate him, or convict him of a crime.

The Legislature, however, has passed a law, which is as follows: "No person shall be excused from attending and testifying, or producing any books, papers, or other documents, before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this article--" and this article refers to the crimes of gambling and pool selling, and various other forms of gaming-- "upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime, or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may so testify, or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding." Now do you understand what I have said to you?

THE WITNESS: I think I do, sir.

MR. WAHLE: I thank your Honor.

CASE #1363

BY MR. BUCKNER:

Q Were you familiar with the premises 3 State street, Manhattan, on February 10, 1911? A I was employed there, and I have plead guilty.

THE COURT: No. Just answer the questions, Mr Stringer.

THE WITNESS: All right, sir.

BY MR. BUCKNER:

Q You were employed there? A I was employed there.

Q In what capacity were you employed there? A I was employed on the wheel.

Q What kind of a wheel? A A roulette wheel.

Q The ordinary gambling game of roulette? A Yes, sir, the ordinary game, I guess that's right.

Q How long did you work there? A A short time, possibly two weeks.

Q I see. Did you see the defendant on the day of the raid? A Who did I see, sir?

Q This James Fest (indicating the defendant)? A I've seen him; I don't remember whether I saw him on the day of the raid or not.

Q Well, wasn't he taken along with you to the Headquarters, and afterwards to the Magistrate's Court? A There was several arrested and taken there.

Q Don't you know the people who you were with in the Magistrate's Court and at Headquarters? A Do I know them?

CASE #1363

Q Yes. A Why, some of them I do.

Q Well, do you know this man, (indicating the defendant)?

A No, sir.

Q You don't even know whether he was with you in the Magistrate's Court? A Yes, sir, he was in the Magistrate's Court.

Q Was he taken with you to Headquarters? A Yes, sir.

Q Then you do know that he was taken to Headquarters and to the Magistrate's Court? A Yes; he was taken there with us.

Q Now, how long before the date of the raid had you first seen this man? A How long before?

Q Yes. A Had I seen him?

Q Yes. A Why I had seen him there for a week or ten days.

Q Where was the crap table with reference to where the roulette wheel was? A It was in the opposite corner.

Q In the same room? A In the same room; yes.

Q Does People's Exhibit 2 represent the table on which crap was played? A It looks like it to me; yes.

Q Was crap played on that table for the two weeks before the raid? A Well, it was played on some table there, on a crap table.

Q Well, was it played on the table in that location in the room? A Yes, sir.

CASE #1363

Q Now during the--let us say the week before the raid, did you see the defendant? A I couldn't tell. I had seen him previous to the time of the raid there.

Q Yes.^(sic) Well, didn't you see him every day right along up to the time of the raid? A No, sir, I didn't see him in there every day.

Q Well, how often did you see him there? A In the space of time I was employed there?

Q Yes. A In two weeks?

Q Yes. A Possibly eight or ten times.

Q In the space of two weeks? A Yes, sir.

Q Eight or ten times? A Yes, sir.

Q Were you open on Sunday? A No, sir.

Q Well, two weeks would be twelve days, exclusive of Sundays; wouldn't it? A Yes, sir.

Q You mean to say that you only saw him eight or ten days out of the twelve? A That's all.

Q Will you swear that you didn't see him every day?

A He was absent. There was one or two days that he was absent, that he didn't show up. He was sick, I believe.

Q Oh, there were one or two days that he was sick?

A Yes, sir.

Q Well, what part of the room did he work in?

MR. WAHLE: I object to that, as embodying a statement of facts not proven. There is no evidence that he

CASE #1363

worked there at all.

THE COURT: Objection sustained.

BY MR. BUCKNER:

Q In what part of the room did you see him? A All over the room; in different parts of the room.

Q Well, what particular part? A No particular part.

Q Well, you had to see him somewhere in the room, if you saw him in the room at all; didn't you? A Why, certainly. That's what I say.

Q Well, then where did you see him in the room? A I saw him walking up and down the floor.

Q Did you ever see him at the crap table? A Yes.

Q What was he doing there? A Just standing there.

Q Did you ever see him doing anything at the crap table?

A No, sir.

Q Did you ever see any one doing anything at the crap table? A Well, there was such a crowd between my table and that table, the crowd was so big, that I couldn't see what was going on there at all.

Q Did you ever see him playing at that table? A No, sir; only standing there. I thought he was only playing the races there, because a friend of his said to me one day, "Has that friend of mine that I play the races with been in here today?"

Q As a matter of fact, can you point out any single man

CASE #1363

in that place who operated a game, except yourself? A The party that worked with me at the wheel.

Q Well, but he has been discharged at the Magistrate's Court; hasn't he?

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

THE COURT: Sustained.

BY MR. BUCKNER:

Q Can you pick out a single person who was operating a game there, who is now under indictment?

MR. WAHLE: I object to that as immaterial irrelevant and incompetent to this issue.

THE COURT: Sustained.

BY MR. BUCKNER:

Q Do you mean to say you can't tell what this defendant did?

MR. WAHLE: I object to that as there is no testimony given yet that he did anything.

THE COURT: Pardon me a moment, Mr Buckner.

BY THE COURT:

Q How many people would you see in this place, each day?

A You mean that came in and out?

Q Yes? A Possibly 200.

Q Did you have any speaking acquaintance with any of the 200? A With very few.

Q With how many? A Well, some days, eight or ten

CASE # 1363

11

players that came in.

Q You knew their names? A No, sir; just knew of them coming in there casually, because a man employed in a poolroom of that kind, he could see a great many people every day.

Q Did you talk with this defendant? A Sir?

Q Did you talk with this defendant? A Just to pass the time of day.

Q Now you saw him there eight or ten days. Now tell this jury what you saw him doing there, if anything? A I saw him play the races there, at least, I suppose he played the races, because he had a slip in his hand, and some money, and went to the office.

Q Did you ever see him doing anything at the crap table? A No, sir; but I saw him standing there, like many others.

Q I thought you said before that there were so many people between your table and the crap table that you could not see what was going on? A I couldn't, I couldn't see anything but a lot of people standing there.

Q How many times did you see the defendant standing at the crap table? A Well, nearly every day.

Q For how many hours a day? A Well, he wouldn't stand there all the time he was in the room; he would walk away.

Q What did you see the defendant doing, if anything,

CASE #1363

while standing at the table? A I couldn't state what he did, sir.

Q You saw him standing there? A Yes, but there was a crowd around the table, a crowd also around the table that I was employed at.

Q And you saw him standing around the crap table how many times? A Well, nearly every day that he was there.

Q Eight or ten times? A Yes, sir.

THE COURT: Call in this witness Weitsman.

BY THE COURT:

Q Do you know Weitsman (indicating)? A This gentleman here (indicating)?

Q Yes. A Yes, I saw him on the day of the raid.

Q Did you see him prior to the day of the raid? Take a good look at him. Come up here, Weitsman. A I think I remember seeing him once previous to the raid, possibly twice, but there was so many people coming and going there all the time that I paid very little attention to anybody.

Q Now didn't you see him more than twice? A Not to my knowledge, no, sir.

Q Did you see the defendant in the premises while Weitsman was there? A Well, that I don't remember, sir. I've seen this gentlemen, I think, not over twice (indicating Weitsman).

Q Where did you see him? A He was in the room.

Q Did you see him near the crap table? A He stood by wheel.
the/wheel. I couldn't tell the people that were over at the
crap table, because their backs were turned to me.

Q Well, how is it that you can recognize this defendant
as being near the crap table? A I saw him walk from the
wheel over there.

Q You said you saw him standing at the crap table eight
or ten times? A Yes, he was standing there sometimes, eight
or ten times in the day, and walked away, and go back and look
at what was going on, I suppose.

Q But you are sure that you saw the defendant in those
premises? A Yes, sir.

BY MR. BUCKNER:

Q Now, isn't it a fact--now, did you see anybody acting
as a banker of the crap game, paying out money?

MR. WAHLE: I object to it as immaterial, irrelevant
and incompetent.

THE COURT: Objection overruled.

MR. WAHLE: Your Honor will grant me an exception.
Can I further object on the ground that it is an attempt
to impeach the testimony of his own witness.

MR. BUCKNER: Well, I make the statement that he
is a hostile witness.

MR. WAHLE: No, there is no evidence of that at all.

THE COURT: On the authority of the People against

CASE # 1363

Kelly, 113 New York, the People against Sexton and the People against Bullard and Pearsall, I will allow the question.

MR. WAHLE: Your Honor will grant me an exception.

BY MR. BUCKNER:

Q Can you pick out anybody who was paying out money on behalf of the house? A I say I couldn't see what was going on, counsellor.

Q And you worked at the roulette table in the same room for two weeks? A Yes. They had a different class of people every day.

Q I see. You couldn't pick out any of them? A I don't think I could.

Q Now you understand what I mean by the people who were paying out money. There were people there acting as bankers; weren't there? A I suppose they had in all kinds of game.

Q Well, don't you know that they had in that crap game? A I know that I did, at the wheel.

Q (Question repeated.) A Well, I heard people speak of it, yes.

Q Was it in the same room? A It was in the same room, right across the room.

Q Didn't you yourself ever go near the crap table? A Very seldom. I don't believe I was ever there twice in my life, and then just to glance around; that's all.

CASE #1363

Q Well, do you know other people who were acting as bankers those two times that you were there? A I was interested, I was interested, I was looking at the cloth. I didn't pay any attention to anybody that was there.

Q Well, is this cloth, People's Exhibit 1, is this the cloth that was used there for the game of crap? Don't shake your head until you look at it, you know. Come down and look at People's Exhibit 1, just come down and look at this, and tell me if that is the cloth that was used there? A I don't recognize it.

Q That is an unusual cloth is it not? Did you ever see any other cloth like it? A No, but I wasn't interested in the cloth at all when I was there.

Q Well, why did you say you were interested in the cloth, just now? A Well, I meant I was interested in the game.

Q Then that was a slang expression, meaning the amount of money that was on the cloth? A That means the table.

Q Now at those times who was banking the game? A I don't know.

Q At the times that you were so much interested in the cloth? A I don't know.

Q You couldn't pick them out, could you, Stringer?
A No.

Q Now, if you couldn't see who was banking the game, banking the game, do you know whether the defendant was or not?

MR. WAHLE: I object to that as argumentative.

THE COURT: Sustained.

MR. BUCKNER: Withdrawn.

BY MR. BUCKNER:

Q Do I understand you to say that you couldn't see from your position who were acting as bankers at the crap table?

A No, I couldn't; because there was a crowd around my table all the time, and between my table and the crap game.

Q Now the roulette game was a very small game, was it not? A Yes, very small, but there was a crowd around the table all the time.

Q Now the crap game there was a big game; wasn't it? A Yes, quite big.

Q And there were three bankers working there all the time; weren't there? A I couldn't say. I couldn't see who was there.

Q You couldn't see the backs of the men who were acting as bankers? A I couldn't see; I couldn't see whose backs I saw, but I saw backs.

Q And you had only one assistant at the roulette table, because that was a very small game? A Yes, sir.

Q And most of the time he acted as a capper? A No, not always; once in a while.

Q Well, did he act as capper most of the time? A No, sir, because if he had--

CASE #1363

17
Q Now, do I understand, then, that, when you were arrested you were surprised to see that this man was arrested (indicating the defendant)? A I was surprised to see us all arrested.

Q What's the defendant's name? A I don't know, sir.

Q Didn't you ask somebody, "What's the matter with your friend, that he failed to show up for two days?"? A I didn't know his name, and I didn't ask that.

Q Well, who did you speak to about it? A Well, some friend of his who said that he was playing the races with him.

Q Well, how would you describe him, the person you spoke to? A Well, his friend came in and asked if he had come in.

Q I thought you said a moment ago that you asked, when he didn't show up, and were told that he was sick? A No, I didn't. Just a moment, please.

Q Yes. A A friend of his that I seen in there with him came in, one day, and asked me if his friend had been in, and I said, "Who?" And he said, "The gentleman I put in with and play the races with."

Q Now, then, who said he was sick? A Why, another fellow told me.

Q Oh, a third friend? A Yes, sir.

Q He came up and told you that this man was sick?

A Yes, sir.

Q What did he call him by, what name? A I don't re-

CASE #1363

member whether it was Al or what.

Q. What? A I don't remember his name.

Q. Well, he must have referred to him by some name; didn't he? A No; because he knew--he supposed that I knew him, I suppose.

Q. You didn't call him John Banker, second, being smooth shaven, thirty years old, five feet seven inches tall? A John Banker?

Q. What does he call him? A He didn't call him anything.

Q. Well, how did you know who he was talking about?

A Because I had seen him with him there.

Q. You had seen him with both these two friends? A I had seen him talking to a good many people there. I don't know whether they were friends of his; I suppose they are.

Q. Well, as I understand, these men that you were arrested with, and the men that you were taken to the Magistrate's Court with, and the men you were indicted with, you are absolutely unaware that they had anything to do with any gambling there?

MR. WAHLE: Objected to.

THE COURT: Sustained.

BY MR. BUCKNER:

Q. Do you remember the men that were with you at the Magistrate's Court? A Not all of them.

CASE #1363

Q Did you recognize any of them? A Did I recognize any of them there?

Q Yes. A I did.

Q Did you suppose that they were patrons of the place?

MR. WAHLE: I object to that, as immaterial, irrelevant and incompetent, what he supposed.

THE COURT: Objection sustained.

BY MR. BUCKNER:

Q Didn't you know that they were employees of the place?

MR. WAHLE: I object to that on the ground that it is immaterial, irrelevant and incompetent, what he knew as to anybody else but the defendant.

THE COURT: Allowed.

MR. WAHLE: Your Honor will grant me an exception.

BY MR. BUCKNER:

Q What is the answer?

MR. WAHLE: Now one moment, please. I object to the question on the ground that it calls for a conclusion, and because it is immaterial, irrelevant and incompetent what this witness knew of people other than this defendant.

THE COURT: Objection overruled.

MR. WAHLE: Your Honor will grant me an exception.

MR. BUCKNER: Well, I will withdraw that particular question.

BY MR. BUCKNER:

CASE #1363

Q When you got to the Magistrate's Court, did you recognize any one that was there with you as an employee of the place, except yourself? A No, sir.

Q You were the only man that the police had right?
A Oh, they took a good many.

Q Yes? A And there was some discharged.

Q Yes? A At Headquarters, I believe.

Q Yes? A Who they were, I don't know.

Q But so far as you were aware, you were the only man that was working at the place, so far as you knew, of all the men that were down in the Magistrate's Court? A No, I can't say that.

Q Except your boy there that you say was a capper occasionally? A He was the only one I knew in the place.

Q And you didn't know anybody else in the place? A No, none of the employees.

Q Have you been to 12 South street since you have been arrested?

MR. WAHLE: I object to that as immaterial, irrelevant and incompetent. We are trying this defendant, if your Honor please, and not that man on the stand.

MR. BUCKNER: It is a preliminary question.

THE COURT: Sustained.

BY MR. BUCKNER:

Q Have you seen the defendant at 12 South street since

CASE # 1363

you have been arrested? A No, sir.

Q The last few days, you have been consulting about this matter, haven't you, with some of the men interested in 3 State? A I haven't consulted them. I've talked the matter over with them, certainly.

Q Yes, you have talked the matter all over with them?
A No, not all over.

Q And with Judge Wahle? A No, I haven't spoken with Judge Wahle for two or three days. He spoke to me, to be sure to be here to-day, the last time I was here, I believe.

Q Haven't you advised with him since this trial started?
A No, sir.

Q Haven't you talked with some of the men down at 12 South street? A Well, I spoke to a number of my friends ~~xx~~ about the race.

Q And some of your friends that came from 3 State street, you have talked to them about this defendant; haven't you?

A I don't know whether they come from 3 State street or not.

Q Well, have you talked to anybody that was arrested in 3 State street about your testifying? A Not to my knowledge, sir.

Q Haven't you talked to Pop Sloan, to-day?

MR. WAHLE: I object, sir, to the introduction of any of these names.

THE COURT: Sustained.

CASE #1363

BY MR. BUCKNER:

Q Do you know a man named John Lewis?

MR. WAHLE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. WAHLE: Exception.

A No, sir.

Q Do you know a man who gives his name as John Lewis?

A No, sir, I don't.

Q Well, whom have you talked to--I withdraw that. On Friday night, didn't you talk to some of the people that have been arrested in 3 State street about this case? A No, sir, I don't remember that.

Q Didn't you talk to them on Saturday? A Well, spoke of it you mean? Spoke of the case?

Q Yes. A I don't remember whether they belonged to 3 State street or not.

Q Well, you talked to some people about it, didn't you?

A Just some of my friends; yes.

Q And some of them asked you if you could recognize this man; didn't they? A No, sir.

Q And didn't you tell them that all you would testify to was that you had seen his face, but you didn't know his name, and never saw him doing anything there? A No, sir. Did I understand you to ask if I talked about this case with anybody?

CASE #1363

Q Yes. A Yes I talked about it with some persons, some friends.

Q And was it discussed between you as to whether you knew him or didn't know him? Wasn't that discussed between you and anybody, whether you knew this defendant or not? A Well, I don't fully get the idea of the question.

MR. BUCKNER: Oh, that's all. Question withdrawn.

CROSS-EXAMINATION BY MR. WAHLE:

Q Now, I am going to ask you a question which I objected to myself, a little while ago. On last Friday or Thursday-- on last Thursday you pleaded guilty, did you not, before his Honor, Judge Rosalsky, in Part I, to the indictment against you as a common gambler, is that correct? A That's correct, sir.

Q And at that time I stood there as your counsel, is that correct? A Yes, sir, it is.

Q And then you were ordered to report to the District Attorney's office forthwith; do you remember that? A (No answer.)

Q His Honor directed that you should go to Mr Brothers's office, the gentleman sitting next to Mr Buckner (indicating)?

A Well, how I come to visit that office?

Q No. Do you remember that you were told to go up there? A I was told to go up there.

Q And did you go up to Mr Brothers's office, the District

CASE #1363

Attorney's office, the Assistant District Attorney, on Thursday afternoon, after you pleaded guilty? A Yes, I went up to his office.

Q And didn't Mr Brothers there inquire of you what you knew about this case? A He did.

Q And did he ask you generally the information that you had about No. 3 State street?

MR. BUCKNER: I object to this as improper. I do not see its competency at all.

THE COURT: Objection overruled.

BY MR. WAHLE:

Q Did he, Mr Stringer? A What was the question?

Q Did he ask you what you knew about this place, 3 State street? A He showed me the photographs, and asked me if I recognized them.

Q Did he ask you about Fest, this man here, this defendant (indicating)? A Fest?

Q Yes. A I didn't know--

Q Did he ask you about the man on trial? A He asked me if I knew him.

Q And did you tell Mr Brothers then the same thing that you told Mr Buckner here to-day, in substance? A Yes, sir, as far as I --

Q Yes. Have you seen, since the day you pleaded guilty before Mr Justice Rosalsky, or gotten any advice from

CASE # 1363

any lawyer as to what you were or were not to say, except what your talks may have been with Mr Buckner or Mr Brothers?

A No, sir, I haven't.

Q Have you seen any lawyer, except the District Attorney?

A No, sir, I haven't.

MR. WAHLE: That's all.

MR. BUCKNER: That's all. The People rest.

MR. WAHLE: May I have the indictment, or a copy of it? That will do. Have you a copy of the indictment, Mr Buckner?

MR. BUCKNER: No.

MR. WAHLE: Then let me have the original indictment. Your Honor, I ask that the People be required to elect upon which count of this indictment they intend to go to the jury?

THE COURT: Motion denied.

MR. WAHLE: I now move, if your Honor please--I take an exception--I now ask if your Honor please, that you take from the jury the first count of this indictment.

THE COURT: Denied.

MR. WAHLE: Exception.

THE COURT: Let me have the original indictment.

MR. WAHLE: I've got it here, Judge. If I had a copy of it, we might proceed more intelligently. I have a copy now, and I will read them by numbers. I think I know the sequence of them, and your Honor, with the original before you, can pass upon them as I refer to them. I'll get along with a copy, instead of the original. I have it pretty well in mind. May I have an indictment in the case of another of the defendants in this case?

CASE #1363

Now, with the indictment before your Honor, I renew the motion that your Honor take away from the consideration of the jury the consideration of the first count in the indictment.

THE COURT: Motion denied.

MR. WAHLE: Exception. I ask your Honor that you take from the jury the second count of the indictment.

THE COURT: Denied.

MR. WAHLE: Exception. And the third count in the indictment.

THE COURT: Denied.

MR. WAHLE: Exception. I ask that you take from the consideration of the jury the fourth count of the indictment.

THE COURT: Denied.

MR. WAHLE: Exception. I ask that there be taken from the consideration of the jury the fifth count of the indictment.

THE COURT: Denied.

MR. WAHLE: Exception. I ask that there be taken from the consideration of the jury the sixth count of the indictment.

THE COURT: Denied.

MR. WAHLE: Exception. I ask that there be taken from the consideration of the jury the seventh count of

CASE #1363

the indictment.

THE COURT: Denied.

MR. WAHLE: Exception. I ask that there be taken from the consideration of the jury the eighth count in the indictment.

THE COURT: Motion granted.

MR. WAHLE: That was a one to eight shot, anyway.

Now, if your Honor please, the People having rested, I move that your Honor direct the acquittal of the defendant, upon all the counts in the indictment which your Honor has retained before the jury.

THE COURT: Denied.

MR. WAHLE: Exception. Now, if your Honor please, the defendant rests.

MR. BUCKNER: The People rest.

THE COURT: Go to the jury.

MR. WAHLE: One moment please. Now, if your Honor please, I renew my application that there be taken from the consideration of the jury the first count of the indictment.

THE COURT: Motion granted.

MR. WAHLE: I now move that there be taken from the consideration of the jury the second count of the indictment.

THE COURT: In taking the first count from the jury

CASE #1363

the reference clauses will be retained in the indictment?

MR. WAHLE: Yes, sir; so as to make the rest of it intelligent. I appreciate that.

THE COURT: Motion granted.

MR. WAHLE: I ask that there be taken from the consideration of the jury the third count of the indictment.

MR. BUCKNER: It seems to me, your Honor, that a portion of that count is a part of our case, "the care, custody and supervision of the apparatus."

MR. WAHLE: Well, if your Honor please, money is not apparatus. That's the very thing I had in mind.

THE COURT: I deny your motion as to the third count.

MR. WAHLE: May I have an exception, if your Honor please? I move, if your Honor please, that there be taken from the consideration of the jury the fourth count of the indictment.

THE COURT: The fourth count?

MR. WAHLE: Yes.

THE COURT: Motion denied.

MR. WAHLE: An exception, if your Honor please. I move that there be taken from the consideration of the jury the fifth count of the indictment.

THE COURT: Motion denied.

MR. WAHLE: Exception. I move that your Honor take

CASE #1363

from the consideration of the jury the sixth count of the indictment.

THE COURT: Denied.

MR. WAHLE: I take an exception. Does your Honor want to hear me on the sixth count?

THE COURT: Yes.

MR. WAHLE: That, if your Honor please, is the count of the indictment which charges the defendant with being a gamekeeper of a gambling game, and my understanding of the law, of the conception of the statute, is that the words in the statute must be taken in their ordinary and accepted meaning.

I say to your Honor that there is no such thing known in the English language as a gamekeeper of a gambling house. The word "gamekeeper" in the statute is a barbarism.

The only definition that is found either in the law books or the dictionaries -- the Standard, Century or Webster's -- is that a gamekeeper is a person having supervision of the game in a preserve.

The word "gamekeeper" is never found in connection with any game of chance, and the word in the statute has no place there, and is meaningless; and I press my motion on the ground that a gamekeeper in a gambling game is something unknown in the English language. They might as well call him the tenor singer in a gambling house.

The statute does not say anything about what a game-keeper is, but simply says dealer, gamekeeper or player.

THE COURT: I think the ordinary English meaning there would mean the keeper of a game.

MR. WAHLE: But the ordinary meaning means nothing.

THE COURT: I have not had occasion to examine the subject. You probably have.

MR. WAHLE: Will your Honor send, during the recess, for the dictionaries, or for Bouvier's.

THE COURT: You say that there is no definition of the gamekeeper in a game?

MR. WAHLE: No, sir. And I was just as much astonished as your Honor is, when I looked it up. I even looked it up in Wallace's dictionary, the big English dictionary, and you can't find it in that. Your Honor will make a note of it, please, and reserve decision on that until after recess?

THE COURT: Yes.

MR. WAHLE: And I will ask your Honor to take from the consideration of the jury the seventh count of the indictment.

THE COURT: A player?

MR. WAHLE: Yes.

THE COURT: Yes, I think we can take that away.

Motion granted.

MR. WAHLE: Now, if your Honor please --

THE COURT: Now, what counts remain?

MR. WAHLE: One moment. I am not sure, your Honor -- as to the third count, I move that the District Attorney be required to elect. That reads against the defendant, "As having the care, custody and supervision of, or authority and control over the various places in that count mentioned." Upon what theory do we go to the jury? That he had the care, supervision of, or control or authority over the things therein mentioned?

THE COURT: On all.

MR. WAHLE: Does your Honor deny my application to compel the District Attorney to elect?

THE COURT: I fail to understand the point that you make.

MR. WAHLE: The point I make, if your Honor please, is this. Here is an omnibus count.

THE COURT: Yes.

MR. WAHLER: Now, here is an omnibus count (Reads.) Now the only testimony that your Honor has in this case, upon which even a hat could be hung, is something with reference to dice and a box in which money was, and a table.

There isn't anything here, if your Honor please, to show that this man, even if you take the testimony of Weitsman to be true, for the purposes of this application,

CASE #1363

7

had the care or custody, or the control, or the management of that room, or any part of it, or of any cards, or any paraphernalia, in the place where he was, as Weitsman says.

Can the jury say, for instance, that this man had the care, or custody of the cards or chips, or roulette wheel, or the racing sheets, if there were any there; that he had the supervision of this whole room in which the photographs show there were various other implements?

THE COURT: I shall deny your motion.

MR. WAHLE: Your Honor will grant me an exception.

Now I ask your Honor to take from the jury so much of the third count of the indictment as charges this defendant with having the care, custody, supervision, authority and control over the use of a certain room, and divers cards in that room.

MR. BUCKNER: That is a question of proof, your Honor.

THE COURT: That is a question of evidence. The gist of it is the game of craps, a gambling game, commonly known as craps, where money and property were dependent upon the result of the game.

MR. WAHLE: Your Honor and I agree, but I don't want this count to go to the jury in the language in which it is.

They could have proven anything relating to that count, but they have proven only dice, and we are now chiseling down this complaint to the evidence.

CASE #1363

THE COURT: I shall deny your motion, to strike out any of the allegations of the indictment.

MR. WAHLE: But that's not what I am moving.

THE COURT: Your Motion is that I strike out, "divers cards, chips, etc." Motion denied.

MR. WAHLE: I am not moving to strike out, but to take it from the jury, the consideration of so much of this indictment as refers to cards, chips, implements, paraphernalia, devices, etc.

THE COURT: Motion denied.

MR. WAHLE: I make the same application as to the 4th count .

THE COURT: Denied.

MR. WAHLE: Exception. And I make the same application as to the -- no, the fifth count doesn't contain that.

Now, I make a specific motion, if your Honor please, to take from the consideration of the jury all such portions of any count in the indictment that refer to cards, chips, - I think you will find them enumerated only in the third and fourth counts.

THE COURT: Denied.

MR. WAHLE: Exception.

THE COURT: You see, Judge Wahle, you are forgetting that provision of the law that makes one who aids another

CASE #1363

in the commission of a crime a principal. That is why I am allowing some of these counts to stay in the indictment.

MR. WAHLE: This question is, if your Honor please -- we haven't anything to do with anything but craps, and there is nothing in this case to show that he was a principal in any other offence. We might as well understand where we are at. I understand that I am trying this defendant on the theory that he is a common gambler, on the ground that he ran this game of craps.

THE COURT: You are correct.

MR. WAHLE: And I have been careful to point out that this game was paid with dice, and not with cards or chips. I take an exception to your Honor's denial.

THE COURT: Then there remain before the jury the third, fourth, fifth and sixth counts.

MR. WAHLE: Yes, sir. Now, upon those, I ask your Honor to direct a verdict of acquittal, on the ground that the People have failed, by credible evidence, to establish the guilt of the defendant.

THE COURT: Denied.

MR. WAHLE: Exception.

THE COURT: Now, how long do you want to sum up?

MR. WAHLE: Well, I don't want to start now, because I don't want to break in on my summing up. I think if we take the afternoon between your Honor, the District

CASE #1363

Attorney and myself, we could get within the case to-day.

THE COURT: How long do you want?

MR. WAHLE: Probably three-quarters of an hour;
probably not so much.

MR. BUCKNER: I want about fifteen or twenty minutes,
your Honor.

(The Court admonished the jury under section 415
of the Code of Criminal Procedure, and took a recess
until two o'clock.)

MR. WAHLE: May I submit some requests to charge, your
Honor?

THE COURT: Yes, certainly.

CASE #1363

AFTER RECESS.

MR. BUCKNER: Will your Honor grant me a few minutes?

THE COURT: Yes. Judge Wahle, I have carefully examined the various counts in this indictment, and I have concluded to submit the case upon the third count of this indictment, and all the other counts are withdrawn from the jury, except the reference clauses therein contained, which will remain.

MR. WAHLE: Yes, sir, of course those will remain.

THE COURT: The third count alone remains for the consideration of the jury.

MR. WAHLE: Yes, sir, I understand.

THE COURT: I want to say to you, gentlemen of the jury, that the law permits the District Attorney to plead in one indictment alleged offences of a cognate character, so that the evidence presented will fit a particular count or counts in the indictment, and that is the purpose of frequently joining in an indictment more than one count. So I shall submit for your consideration the third count of the indictment.

MR. WAHLE: But now, if your Honor please, it is a source of gratification to know that your Honor has agreed with me on all the other propositions, but in order to be consistent, I ask your Honor to eliminate from the third count of the indictment all reference to that charge, so

CASE #1363

far as it refers to cards and tips.

THE COURT: These allegations are surpluses. There is no doubt about that.

MR. WAHLE: Then, if that be the understanding, I shall not press the motion.

And then, again, in order to be consistent, I move that your Honor advise the jury to acquit the defendant, on the ground the People have failed to establish the guilt of the defendant under the third count of the indictment.

THE COURT: Motion denied.

MR. WAHLE: Your Honor will grant me an exception, if your Honor please.

Mr. Buckner has stated to me that he expected to call Commissioner Flynn, to corroborate the witness Weitsman on the proposition that Commissioner Flynn had furnished some money, and I have stated that I will make no comment upon the fact that Mr. Commissioner Flynn is not called to corroborate Weitsman in that matter. I cannot controvert it, and I shall proceed on the theory that he was employed by Commissioner Flynn. I shall make no point on it.

MR. BUCKNER: Then your Honor I am ready to go to the jury.

(Mr. Wahle then summed up for the defense, and Mr. Buckner closed the case for the People.)

CASE #1363

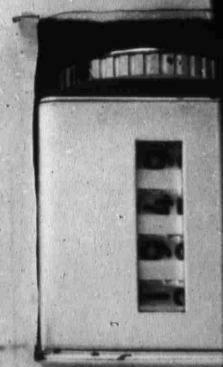
(During the summing up for the People of Mr Buckner.)

MR. WAHLE: I except to this remark of the District Attorney; that their verdict will be equivalent to their saying that they don't believe in enforcing the gambling law; that they don't believe it is the duty of the District Attorney to enforce the gambling law. Now, I say that is an improper remark to make to the jury.

THE COURT: The jury will disregard the statement made by the District Attorney. You are to determine the guilt or innocence of this defendant, gentlemen, and remarks of a personal character, made by counsel on either side, or expressions of opinion, made by counsel on either side, not sustained by the evidence, are valueless, and should be disregarded by the jury.

(The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess for 15 minutes, until 4 o'clock P. M.)

CASE #1363



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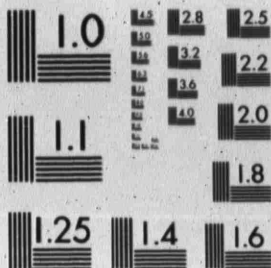
CASES 1354 TO 1363

TRIAL TRANSCRIPTS

1883 - 1927

JOHN JAY COLLEGE

NEW YORK, NY



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A



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